

CWP No.7073 of 2017

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CWP No.7073 of 2017
Date of Decision: 03.04.2017**

Executive Engineer (PWD) Branch

...Petitioner

vs.

Smt. Krishna Devi and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present Mr.Vishal Garg, Additional Advocate General, Haryana.

RAJIV NARAIN RAINA, J (ORAL)

Respondent Krishna Devi's length of service is substantial just short of 14 years from 1997 to 2011 in the petitioning department. The ingredients regarding proof of jurisdictional facts in the Industrial Disputes Act, 1947 (the "Act") stand satisfied on the evidence of record. The respondent had completed as per Section 25B, that is, 240 days of service in the preceding 12 month from the date of termination of employment in February 2011. The provisions of Section 25-F of the Act were found in breach and the termination was held illegally perpetrated in absence of notice, notice pay and payment of retrenchment compensation at the time of retrenchment. The Labour Court has granted relief to the Krishna Devi by awarding reinstatement with continuity of service with restriction of 50% back wages from the date of demand notice, i.e, 27.11.2012 by applying the Supreme Court rulings in cases Anoop Sharma v. Executive Engineer, Public Health, Division No.1, Panipat, 2010 (3) SCT 318, besides, two judgments of this Court in Ramesh Kumar v. State of Haryana, 2010 (1)

Law Herald (SC) 592 and Haryana Agricultural University v. Presiding Officer, Industrial Tribunal -cum- Labour Court and another, 2011 LLR 1218.

Learned law officer for Haryana argues that reinstatement should not have been awarded in this case and instead compensation in lieu of reinstatement would have served the interest of justice in case the finding on the legality or otherwise of the termination is not liable to be interfered with.

In labour disputes where relief has to be awarded there are always two dilemmas court has to grapple with. In a scenario where termination is held to be illegal without any doubt on facts that make for relief, then on the one side reinstatement with 50% of back wages and continuity stands granted but the State is not happy with the dispensation. On the other side is dreary picture if the Petitioner State is asked to cough up compensation package of ₹ 1 Lakh per year of continuous service which will take us to a shocking amount of ₹ 14 lakhs in case of full time and say half of that amount for part-time employment, which is also sizeable.

The question is which is the better and more reasonable model for the petitioner to follow and at the same time satisfactory for the workman. This is for the petitioner to mull over since respondent is not being summoned since I am not inclined to interfere. Given the choice I think the State would settle for the one less onerous, both to the State and the erring officials in the petitioning department who may have to bear the cost jointly and severally, if I were to follow the broad principle culled out of earlier case law including by the Division Bench of this Court in Municipal Council, Dina Nagar Vs. Presiding Officer, Labour Court, Gurdaspur, (2015) 1 RSJ 765 or should apply pro-rata financial dispensation in

Supreme Court cases such as in BSNL v. Man Singh, (2012) 1 SCC 558 awarding ₹ 2 lakhs for about one year of service and BSNL v. Bhurumal, (2014) 7 SCC 177 which accounts for ₹ 3 lakhs for two years of service. There is hardly any need to multiply the case law to hammer only a short point regarding quantum of compensation. However, if the above court approved awards of compensation in lieu of reinstatement are multiplied by the number of years of documented service of 27 years spent in the present case I have hardly any doubt the petitioner would agree to withdraw the petition.

I asked the learned law officer which of the models would he prefer to accept for which limited purpose notice to respondent worker could be issued on payment of litigation costs to receive her response, reminding of the old idiom: “You pays your money and you makes your choice”. He answered appropriately by pregnant silence. Nevertheless, the choice remains with the State by way of adjusting the relief which may a settlement out of court. Needless to say, the three sides of two coins with one blank are costly affairs in terms of failure of the petitioner and its officials to follow the procedure which has been mandatory for bringing retrenchment to an end lawfully by prescribed payments which a miniscule part of the award, with one more telling effect than the other, than what has been awarded in judicious half of full back wages from the date of demand notice, it could not have been fairer even in a case of part time employment.

Then what fault can be found with the work of the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat in its award dated 07.04.2016 and would refuse to entertain this petition. Besides, the State has taken one year to file the writ petition which is rather belated and shows

CWP No.7073 of 2017

-4-

non-seriousness in litigation. While upholding the award and dismissing the petition, I would grant liberty to the State to recover 50% back wages from the officers who took the decision not to pay retrenchment compensation and failed to apply statutory requirements of the Act. Breach of law by the salaried officers/officials of the State their apathy and disregard of their legal responsibilities owed to the statute is commission of unlawful acts committed by the servants of the State which fall in the category of statutory tort. The price of statutory tort has to be borne by the State first and shared by the officials of State who misguided the department, which has the audacity to file this petition in the face of settled law unless it meant to bargain for relief in the case of intervention. Let them be told that the High Court is not a bargaining counter in labour disputes. That is in principle for the the Lok Adalat and the Mediation and Conciliation Centres annexed to Courts.

The conduct of erring officials be enquired into by the State for suitably reimbursing its exchequer.

The impugned award bears no testimony of an error apparent on the face of record nor any perversity in the outcome. As a result, the petition is devoid of substance and is hereby dismissed in limine.

03.04.2017
mamta

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No