

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

**CWP No.9158 of 2017
Date of decision: 01.05.2017**

District Forest Officer (Territorial), Faridabad ... Petitioner

VS.

Hemi & anr. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Garg, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J.(ORAL)

1. The Forest Department, Haryana is in writ presented in the year 2017 asserting that the award of the Labour Court passed on 04.04.2013 and endorsed on 17.05.2013 deserves to be set aside. The challenge is brought after four years by the State without sufficient cause shown explaining the reasons which have led to the enormous delay and unexplained laches in approaching the Court against the award. The dreary side of the picture is that the award remains unimplemented. Despite the narration of facts in para.10 of the writ petition, where a feeble attempt has been made to explain the delay, the same are not found acceptable reasons to condone late coming to the writ court. The stock defence of administrative delay is that the Legal Remembrancer to Govt. of Haryana had when the case was put up before him as to whether a writ should be filed against the award, he had opined that it should not be filed. Time was spent in undoing the opinion at different levels spending years together in office rigmarole. A reading of

para. 10 leaves no manner of doubt in the mind of the Court that the delay in approaching Court was not bona fide or caused by circumstances beyond the control of the State. The petition deserves to be dismissed summarily.

2. Even though the petition deserves to be dismissed on the short ground of delay, yet I have delved into the facts to satisfy myself on the merits which briefly put reveal that the respondent-workman was appointed as a Chowkidar in August 1995 and worked regularly till 03.02.2000 on which date his services were illegally terminated. This led to the dispute raised under Section 2A of the Industrial Disputes Act, 1947 claiming reinstatement with consequential benefits. After efforts made to reconcile the disputing parties to an amicable settlement the conciliation process led to failure of talks and as a result the dispute was referred to adjudication by the Labour Court.

3. The Labour Court after holding trial and letting in evidence of the disputants noted after appreciating the testimonies of the witnesses produced by either side, that the workman did not ask for regularisation as the claim was neither sought nor referred for adjudication, a prayer suggested by the State as an argument to demolish the award. The workman only claimed reinstatement with consequential benefits and not regularisation of his service. It was beyond cavil that the workman had completed 240 days of continuous and uninterrupted service in the preceding 12 calendar months from the date of termination and four years prior thereto. This is apparent since the length of employment was admittedly of long duration i.e. from 1995 to 2000. The reference was made

in 2006 by the appropriate government, which reference was decided in the year 2013 against the petitioner State and partly in favour of the claimant. By the award the workman has been denied 50% back wages by the discretion of the Labour Court shaping the relief keeping the totality of facts in view and the delay in raising the dispute and consequently, the reference. Labour Court has power to mould the relief and factor out delay in raising dispute. Section 10 of the ID Act is untrammelled by limitation. Workers in India are usually unorganized, are usually poor persons with migratory employment habits in search of jobs and by reason of their condition face inherent and massive difficulties in accessing justice and when accessed it would be at high cost.

4. The Forest department has produced the Work Payment Chart of labour work performed by its workers for the period 1990 to 2003 for the first time in this Court. This document was not produced before the Labour Court and the authenticity of which cannot be considered and decided by mere production of document in which the name of the respondent does not figure, which Chart has not suffered mode of proof and opportunity to the workman to meet the document. In any case, it is only a Work Payment Chart being only a loose leaf from the Attendance Register, which cannot be allowed to be introduced for the first time in writ proceedings where it is placed as Annexure P-2 being a new plea. I refuse to read the Chart into legal evidence.

5. The Labour Court in para. 13 of the award has read from the text of the cross-examination of the witnesses of the management from

where it came out that persons junior to the workman were retained in service when after the respondent ex-workman was shunted out of employment. This was admitted thereby occasioning infraction of Section 25G of the ID Act.

6. Needless to say, the evidence of the workman went unrebutted and therefore, juniors cannot be placed on a better footing than him. He deserves parity of treatment.

7. The only finding of which I am a little chary is to deny balance 50% back wages of the full wages for the reason assigned by the Labour Court that the workman had not actually worked during the period of forced idleness resulting from illegal termination and therefore, the cut was being imposed. However, I would drop the matter there but after expressing uneasiness on the observation to operate as a reason for denial of right since the workman is not before the Court in challenge to that part of the award and leave it at that.

8. I would also reject the story-line created in para. 10 of the petition in trying to explain long slumber. If the State sleeps tight over its rights, if any, perceived by it for four years, the Court will not wake it up and interfere in the perfectly good award for the asking.

9. There is no fundamental flaw found or illegality in the impugned award on hearing the counsel for the State, or suffering from errors which might tend to vitiate it. No genuine ground is furnished in the petition warranting interference in writ jurisdiction when not sitting in appeal. There is neither an error apparent on the face of the award or

discoverable behind its veil, however much it is lifted. There is no taste of perversity or irrationality in making the award to snuff it out of existence to deny just relief awarded to the workman.

10 Accordingly, the writ petition is dismissed on merits as well since it has no substance and also on account of huge delay of four years in approaching the court against an award passed in the year 2013 with the State waking up suddenly only to avoid eminently possible attachment of property in implementation of the award in execution proceedings, if they are pending or to be filed, as the case may be.

11. The State is directed to implement the award of reinstatement forthwith without forcing court implementation and to determine the sum, of 50% back wages and pay the same to the respondent workman within eight weeks from the date of receipt of this order. In case of default, the amount in default from the date payable i.e. on expiry of the period fixed for payment will carry interest at the rate of 9% per annum till payment.

(RAJIV NARAIN RAINA)
JUDGE

01.05.2017

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1. Whether speaking/non-speaking?	Yes
2. Whether reportable?	No