

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

**CWP No.9373 of 2017
Date of decision: 03.05.2017**

District Food & Supply Controller, Karnal

.... Petitioner

vs.

Rajesh Kumar & anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.T.Redhu, DAG, Haryana.

RAJIV NARAIN RAINA, J.

The defence of the State was struck off after giving several effective opportunities to file written statement. No reasonable explanation is forthcoming before the learned Labour Court tendered by the Department of Food and Supplies, Haryana. The labour Court would not wait on and on to receive reply for the department. When the written statement is not presented in the time allowed time and again then there is justification to proceed with the case in absence of reply. The department has not disclosed as to what steps were taken against the erring officer/s, who failed to submit the written statement of defence in time. If written statement is not filed it does not mean that striking out the defence would result in denial of opportunity to the department to cross-examine the workman and his witness, if any, and try to demolish his case. Moreover, the department could always tender its documents to throw light on the case since the record would consist of public documents which could easily be brought on record despite the fact that the defence stands struck off. Even no

application was preferred for recall of the order, and if it was filed and dismissed, the above legal position would still hold good and allow partial entry to the case.

The labour court is free to device its procedure as it thinks best, keeping principles of natural justice in mind. Pleadings in labour Court are not read strictly but in substance unlike in civil disputes instituted by plaintiffs in suits to be decided by the Code of Civil Procedure. The labour court is concerned with substance and not the form while deciding industrial disputes as it has mostly to follow the rules of justice.

The finding of the labour court is that there is violation of the provisions of Section 25 F of the ID Act which renders the termination illegal. The period of service as a Chowkidar was from 05.05.2009 to 07.12.2012.

Keeping in view all these facets in mind, the labour court has exercised its powers within its jurisdiction and made the award after appreciating the evidence on record and deemed it fit to strike down the termination order granting reinstatement to service but in doing so it has imposed a substantial cut on back wages by half restricting it from the date of demand notice i.e. 18.03.2014.

The State department has got away rather lightly with the relief which could have been more considering the finding that the termination was illegal and void. Once discretion is properly exercised by the labour Court judiciously it is not open to criticism and it will not be right to disturb the award under Article 226 of the Constitution and the restrictions placed

on this Court have been explained by the Supreme Court in **Syed Yakoob vs. K.S.Radhakrishnan & ors., AIR 1964 SC 477** and other judgments of the Supreme Court and the High Courts born from that judgment, holding that interference can only be when the case is of no evidence; the reasoning is entirely perverse; there is an error apparent on the face of the record; the award is so irrational as no reasonable man would take the view taken on the given facts. Challenge can also be if there is a fundamental flaw visible to the eye in the award which requires no forensic debate to reveal and which has resulted in a gross miscarriage of justice or is such an error which is completely incurable except upon remand. Save as otherwise, interference is ruled out. Moreover, a writ petition against an award of the Tribunal is not an appeal against the decision conferring jurisdiction on this Court to arrive at a different conclusion on the same material.

I do not find any such deadly infirmity in the award to warrant interference in the judgment of the labour Court and dismiss the same in limine.

03.05.2017

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**(RAJIV NARAIN RAINA)
JUDGE**

- 1. Whether speaking/non-speaking?*
- 2. Whether reportable?*

Yes
No