

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9375 of 2017

Date of Decision: 3.05.2017

Head Teacher, M.G. Government Primary
School, Panchor

... Petitioner

Versus

Smt. Anguri & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. RT Redhu, DAG, Haryana.
for the petitioner.

RAJIV NARAIN RAINA, J.

1. This Court is rather mortified that the Education Department of State of Haryana has presented this frivolous petition against the award of the learned Labour Court -I, Gurugram announced on October 3, 2016 which grants relief of a paltry sum of ₹ 50,000/- in lieu of reinstatement to the respondent Anguri. To try and save ₹ 50,000/-, the State has thought it fit to ask the Office of Advocate General, Haryana, to file this petition under Articles 226/227 of the Constitution of India for setting aside the award even when there being not even a single arguable ground on which the award can be disturbed in supervisory jurisdiction under Article 227 or discretionary and extraordinary jurisdiction under Article 226 of the Constitution.

2. This is an ex facie frivolous writ petition involving an illegal and *ab initio* void termination of the respondent Anguri who was once employed in a Government run primary village school as a Sweeper, which abrupt action deprived livelihood to a small marginal worker trying to eke out a living for her family after spending six years of service in the Primary School, cleaning and sweeping its floors.

3. In the reference trial before the learned Labour Court the relationship of employment was admitted. The issue of completion of 240 days required was admitted. Non-compliance of conditions precedent to retrenchment incorporated in Section 25-F of the Industrial Disputes Act, 1947 ('ID Act') was ex facie established when retrenchment compensation was not paid at the time of termination and even thereafter. The case before the learned Labour Court was sought by the department school to be elevated to the level of bad conduct and misbehaviour, without any back-up documentary evidence to support the defence plea.

4. The learned Labour Court rightly held that if that was true, then neither a reasonable opportunity was offered to the workman by show cause notice against action proposed nor was observance of the minimal guarantee of the principles of natural justice abide by the procedure through enquiry to establish misconduct given. Oral imputations of misconduct are neither here nor there, coming from State department, to justify termination without “indicating reasons for retrenchment” which is part of the mandatory apparatus enshrined in Section 25F (a) of the ID Act. The devise of hire and fire in employment is antiquated doctrine.

5. The argument of the petitioning management in imputing misconduct on Anguri was raised before the Court below but rightly failed eliciting the perfect legal response from the learned Labour Court holding that termination was neither fair nor justified and the same argument fails before this Court as well during the hearing given to the learned law officer. It follows sequitur that there is nothing in this case for determination by the High Court. The learned Labour Court has refused reinstatement and granted only ₹ 50,000/- as compensation in lieu reinstatement for six years of

documented service and still the State is unfortunately dissatisfied with the award. The principle: first violate the statutory law in the ID Act, and then get away with a meagre amount of compensation, and then bring a frivolous petition shows utter heartlessness, and apathy to a fellow being. Irresponsible litigation and unethical appeals brought by the State to Courts in the face of the National Litigation Policy, 2010 has suffered serious adverse comment of the Supreme Court in Punjab State Power Corporation Ltd. Patiala v. Atma Singh Grewal, (2014) 13 SCC 666.

6. The State should not be made to suffer its public money to the whims and caprices of its officialdom in litigation matters. The State needs in its short memory to be reminded of the observations in *Atma Singh Grewal* case, which deserve to be reproduced in quotes:-

“14. No doubt, when a case is decided in favour of a party, the court can award costs as well in his favour. It is stressed by this Court that such costs should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Ramrameshwari Devi v. Nirmala Devi⁸]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We do not think so. We are of the firm opinion that imposition of costs on the State/PSUs alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that costs, if imposed, comes from the government’s coffers. Time has, therefore, come to take next step viz. recovery of costs from such officers who take such frivolous

decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of costs from the officer concerned be passed only in those cases where appeal is found to be ex facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.

15. In a case like the present, where the officer concerned took the decision to file the appeal, direction of the High Court to recover the costs from him cannot be faulted with. Sense of responsibility would be drawn on such officers only when they are made to pay the costs from their pockets, instead of burdening the exchequer.

16. We are, therefore, not inclined to recall the aforesaid direction of the High Court to recover the costs from the officer concerned. Dismissed with further costs of Rs 10,000.”

7. Holding the light dispersed by the Supreme Court in *Atma Singh Grewal* case, this vexatious petition is dismissed with costs of ₹ 50,000/- to be paid by the State of Haryana to the Punjab State Legal Services Authority, Chandigarh within a period of two months and proof of deposit be placed through an application presented in this case for its record after disposal. If default is made, the sum in default will carry 12% interest till deposit.

8. I would have awarded costs to the workman to match the amount of compensation but refrain from doing so because the dismissal of the petition is in *limine* since notice to Anguri was not issued as it was found not justified. To imagine, the State of Haryana expected notice to be issued to

Anguri for her to spend money in litigation to defend ₹ 50,000/-. What could be more callous attitude, I dare not think.

9. With the dismissal of this petition the respondent's rights, if any, against the award are kept open, in case of challenge brought to this Court. I express no final opinion on the merits of relief awarded, as that might cause prejudice to the respondent. But the chapter qua the petitioner is closed.

10. The amount of costs shall be recovered from the officers who took the decision to retrench Anguri by disobeying and violating the substantive statutory safeguards in the ID Act and from the officers in the department who took the decision to file the present irresponsible petition including paying back the costs involved in filing.

11. A copy of this order be sent by the office to the Chief Secretary, Haryana to help curb reckless litigation by the State in this Court.

3.05.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>