

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19761 of 2013

Date of Decision: 14.11.2018

Ram Prasad

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-
cum-Labour Court, Hisar and another

... Respondents

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

Present: Mr. S.K. Verma, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

RAJIV NARAIN RAINA, J.(Oral)

1. The challenge in this petition is to the award dated April 12, 2013 made by the Presiding Officer, Labour Court, Hisar. A finding of fact has been returned that termination was bad due to non-compliance of Section 25-F of the Industrial Disputes Act, 1947 ("1947 Act").

2. Having reached that conclusion, the Labour Court denied reinstatement and in lieu thereof awarded a sum of ₹1,20,000/- with interest @8% per annum from the date of publication of award till realization, thinking that this sum is just and reasonable compensation. The only reason given to deny reinstatement is that the petitioner was appointed to the post of Cook-helper de hors the rules as no application was called from the general public to fill up the post nor the names of eligible candidates were called from the Employment Exchange and that is how the Labour Court moulded the relief. In para.15 of the award the Labour Court dealt with the

question as to what relief the petitioner would be entitled to for violation of provisions of Section 25-F of the 1947 Act . The Labour Court referred to the following judgments without discussing them to deny the relief of reinstatement with full back wages:-

1. *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and others*, 2010 LLR 677;
2. *U.P. State Brassware Corpn. Ltd. and another v. Uday Narain Pandey*, (2006) 1 SCC 479: 2006 LLR 214 (SC)
3. *Uttranchal Forest Development Corpn. v. M.C. Joshi*, (2007) 9 SCC 353;
4. *State of M.R. and others v. Lalit Kumar Verma*, (2007) 1 SCC 575;
5. *Madhya Pradesh Administration v. Tribhuban*, (2007) 9 SCC 748: 2007 LLR 785 (SC);
6. *Sita Ram and others v. Moti Lal Nehru Farmers Training Institute*, (2008) 5 SCC 75 : 2008 LLR 549 (SC);
7. *Jaipur Development Authority v. Ram Sahi and another*, (2006) 11 SCC 684 : 2007 LLR 92 (SC);
8. *Ghaziabad Development Authority and another v. Ashok Kumar and another*, (2008) 4 SCC 261 : 2008 LLR 555 (SC);
9. *Mahboob Deepak v. Nagar Panchayat, Gajrula and another*, (2008) 1 SCC 575 : 2008 LLR 117 (SC);
10. *Jagbir Singh v. Haryana State Agriculture Marketing Board and another*, (2009) 15 SCC 327 : 2009 LLR 1254.

3. Research on law on the subject would reveal that when those judgments were delivered judicial thinking tended to hold that reinstatement is not automatic or would not necessarily follow if law and procedure of retrenchment is breached. The departure came in Harjinder Singh vs. Punjab State Warehousing Corporation, (2010) 3 SCC 192; Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana), 2010 (3) SLR 663 and Deepali Gundu Surwase v. Kranti Junior Adhyapak

Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324 etc. with the Supreme Court reverting to the philosophy in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd., (1979) 2 SCC 80 and the Full Bench of our Court in Hari Palace, Ambala City vs. The Presiding Officer, Labour Court & another, ILR 1979 (P&H) 243 that if Section 25-F of the 1947 Act is not complied with, where it is mandatory, the termination order is rendered void *ab initio* and has to be treated as no order in the eyes of law. This gives rise to continuity in service and reinstatement as though the order was never passed. The judgment in Jasmer Singh v. State of Haryana and another, (2015) 4 SCC 458 was delivered after the award but is relevant to this case.

4. Award of back wages remains in the discretion of the Tribunal on a case to case basis. In Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur v. Presiding Officer, Labour Court, Gurdaspur and another, 2014 (4) SCT 514 a Full Bench decision of this Court has culled out the following principles in para.48 of the judgment which are:-

“(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore,

the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account

of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.”

5. The reference having been answered the matter went to the Division Bench where quantification of relief took place. The Court evolved a rough and ready principle by granting ₹1 lac for every year of continuous service as just and reasonable compensation.

6. Returning to the award and to the issue of relief of compensation granted then in my considered view a sum of ₹1,20,000/- is wholly inadequate for the duration of service. If the principles in *Dina Nagar* are applied then the petitioner would take ₹12 lac compensation for 10 years of continuous service. However, in case the petitioner was a part time employee as asserted by the State then the amount can be reduced by half applying the rule of thumb.

7. There is another important aspect of this case which requires consideration. The petitioner had once approached this Court in CWP No.19792 of 2005 claiming regularization. The petition was admitted on March 21, 2006 and remains pending in this Court. It is the say of the petitioner that due to backlash of that litigation he was forced out of the job. But if this Court were to quash the award and order reinstatement then what should be the relief package as a whole. There can be no doubt that the termination was void *ab initio* for want of compliance of Section 25-F of the 1947 Act, a conclusion which even the labour court arrived at on the evidence.

8. Following the recent judicial opinion of the Supreme Court and

other Courts, I find no reason to unjustly deprive the petitioner of reinstatement as the reason given by the Labour Court to decline this prayer is not germane to the consideration as it has limited its perfunctory glance to the judgments mentioned in para.15 of the award without noticing the more recent judgments.

9. Having considered the matter thoroughly and on hearing the learned counsel for the respective parties at length, this Court is of the considered view that the award suffers from error which is fundamental in nature due to inadequacy of reasons in the award in the matter of moulding relief.

10. For what has been said before, the impugned award dated April 12, 2013 deserves to be set aside. The petitioner is reinstated to service with continuity. However, he is held entitled to lump sum back wages of ₹3 lac which is one fourth of compensation that could be granted had reinstatement been denied.

11. Mr. Nain submits that the petitioner has not shown that he was not gainfully employed during the period when he was out of service.

12. I do not find such plea taken by the management before the Labour Court nor has the Labour Court discussed this point. In any case, the award of money for years spent litigating is in the nature of solatium, damages, costs, compensation or reparation of the wrong done by the department of the Government in disobeying the law under Section 25-F of the 1947 Act. It will be open to the Government to recover money under this order from those responsible in the department for disregarding the mandatory procedure at the time of termination by failing to give notice, one

months' wages in lieu of notice and payment of retrenchment compensation at the rate of 15 days average wages for every year of completed service.

13. The petition is allowed. The award is modified. The petitioner is held entitled to reinstatement to the original job with continuity and ₹3 lac compensation for illegal termination.

(RAJIV NARAIN RAINA)
JUDGE

14.11.2018
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Whether speaking/reasoned	Yes
Whether reportable	Yes