

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

LPA No. 1539 of 2015 (O&M)
in CWP No. 14038 of 2015.

Date of decision : 20.2.2018

Naval Singh

.. Appellant

versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Circle-1, Faridabad and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice B.S. Walia**

Present: Mr. G.C. Shahpuri, Advocate, for the appellant.
Mr. Ravi Dutt Sharma, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

The order passed by the learned Single Judge dated 31.7.2015 vide which the writ petition filed by appellant was dismissed, has been impugned by filing the present intra-court appeal. The learned Single Judge upheld the award of the Labour Court dismissing the claim of the appellant.

The appellant claimed that he was appointed as Mali-cum-Chowkidar on 1.5.1995 and continued working till such time he was retrenched on 13.5.2004. A group of more than 50 workmen were retrenched at the same time. The other workmen approached this court directly by filing writ petition. In fact, the retrenchment process started as

the workmen, who had completed more than 10 years, had claimed regularization in terms of the policy framed by the State. While rejecting their claim, they were retrenched. Order passed in one of the writ petitions bearing CWP No. 8284 of 2004-Brij Mohan vs State of Haryana and others has been annexed, where the prayer was for setting aside the order rejecting the prayer of the workman therein for regularization of services and also setting aside the order of retrenchment. During the pendency of the writ petition, the writ petitioner therein was allowed to continue. During the pendency thereof, the State itself re-called the workmen back in service and even regularized his services.

The appellant claimed that because of his illness, he could not approach the Court. He got the demand notice served after his retrenchment. The reference was rejected by the Labour Court.

The submission is that the workmen, who were retrenched along with the petitioner, have been taken back in service and their services have been regularized. The appellant should also be treated in the same manner. In support of the arguments that delay in raising the industrial dispute is not fatal, reliance was placed on judgment of Hon'ble the Supreme Court in Ajaib Singh vs The Sirhind co-operative Marketing-cum-Processing Service Society Limited 1999 (6) SCC 82 and further that there is no estoppel to claim any benefit even if the retrenchment compensation has been received, reliance was placed upon judgment of this Court in Nar Singh Pal vs Union of India – 2000 (3) SCC 588.

On the other hand, learned counsel for the State submitted that the Labour Court found that there was no violation of provisions of Section

25-F of the Industrial Disputes Act, 1947, as the retrenchment compensation was paid to the appellant. There is no error in the order passed by the learned Single Judge whereby the award of the Labour Court has been upheld. The case of the appellant is not similar to other workmen, whose services were regularised.

After hearing learned counsel for the parties, we find that the appellant also deserves to be granted similar relief, which has been granted by the State to other workmen, whose services were retrenched at the same time. The only difference is that they had approached the Court challenging their retrenchment order and were allowed to continue during the pendency of the writ petitions. The State considered the matter of similar other workmen and even their services were regularized lateron. There was delay in the case of the appellant to raise the industrial dispute. He failed before the Labour Court as it was found that retrenchment compensation was paid to him, which was a meager amount i.e. ₹ 6,340/-, though he had served the department for a period of nine years. In Nar Singh Pal's case (supra), Hon'ble the Supreme Court opined that mere acceptance of amount of retrenchment compensation would not mean that he had surrendered all his constitutional rights. Para 12 of the aforesaid judgment is extracted below:-

“12. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This we are constrained to observe, was wholly erroneous and

was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of Rs. 6,350/-. was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained.”

Considering the aforesaid judgments and also the fact that all other workmen, whose services were dispensed along with the appellant had been taken back and their services were regularized, in our view, the appellant should not be discriminated. He was low paid employee working on meager salary to maintain himself and his family. The fact that services of all other workmen, who were retrenched along with the appellant, after they were taken back in service, have been regularised, is not in dispute.

For the reasons mentioned above, the impugned order passed by the learned Single Judge as well as the award of the Labour Court are set aside. Respondent no. 2 is directed to take the appellant back in service with continuity in service, however, as the appellant had not worked for the

period, after he was retrenched and further there was delay in raising the industrial dispute, he shall not be entitled to any back wages, but his case for regularization be considered.

The appeal stands disposed of.

(Rajesh Bindal)
Judge

20.2.2018
vs

(B.S Walia)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No