

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

**L.P.A.No.261 of 2016 (O&M) in
Civil Writ Petition No.2162 of 2015
Date of Decision: July 17, 2018**

The Improvement Trust, Barnala & others

...Appellants

Versus

Lal Ji & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MR.JUSTICE AMIT RAWAL**

**Present: Mr. Neeraj Sharma, Advocate,
for the appellants.**

**Mr.Tribhawan Singla, Advocate,
for respondent No.1.**

AMIT RAWAL, J.

Civil Misc.No.531-LPA of 2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 19 days in filing the appeal is condoned.

CM stands disposed of.

LPA No.261 of 2016

The Improvement Trust, Barnala assailed the order of the
learned Single Bench dated 14.12.2015, whereby the award dated
12.9.2013 passed by the Presiding Officer, Industrial Tribunal, Patiala (for
short `Tribunal') has been set-aside and the workman had been ordered to be
reinstated in service forthwith with continuity and back wages from the date

of the demand notice dated 30.12.2003.

Mr.Neeraj Sharma, learned counsel appearing on behalf of the appellants submitted that respondent No.1-workman had joined the Improvement Trust on 17.2.1993 as Mali and had been drawing a sum of ₹ 63/- per day. His services, alleged to have been terminated on 10.8.1999, were not in violation of the provisions of Section 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (for short 'the Act'). Respondent No.1 had already filed a Civil Suit bearing No.250 of 20.12.1999 against his termination. The same was dismissed as withdrawn on 24.11.2003 and, therefore, the demand notice dated 30.12.2003 was not maintainable as it was hit by doctrine akin to *res judicata*. The award of the Tribunal granting compensation of ₹ 10,000/- was perfectly legal and justified and there was no violation of the provisions of Section 25-G of the Act. The amount of arrears ordered to be paid to the workman within three months was too onerous as he remained silent for almost four years in raising the demand notice. Even if the arrears have been reckoned from the date of issuance of demand notice, the termination was not in violation of the provisions of Section 25-F of the Act as workman was not a regular employee of the Improvement Trust, but was employed on contract basis.

During the course of hearing, learned counsel for the appellants made a statement that the order of the learned Single Bench has been complied with, but regarding the back wages, this Court, vide order dated 9.3.2016 stayed the payment of back wages and, thus, urged this Court for setting-aside the order under challenge.

Mr.Tribhawan Singla, learned counsel appearing on behalf of respondent No.1 defended the order of the learned Single Bench on the

premise that there was clear violation of the provisions of Section 25-F of the Act as while retrenching respondent No.1 no compensation was paid, therefore, the compensation would not have satisfied the requirement of law. In essence, the termination order is illegal and void ab-initio. The Management cannot be permitted to raise submission with regard to the non-availability of the work, particularly when it has been proved on record that the workman was replaced by another daily wage employee. However, during the course of hearing, Mr. Singla, on instructions from his client, did not deny the factum of reinstatement of the workman, but had been very fair to state that his client is willing to forego the back wages to the extent this Court deems fit.

We have heard the learned counsel for the parties, appraised the paper book and are of the view that the order of the learned Single Bench ordering in reinstatement is perfectly legal and justified, for, it has been proved on record that the workman was replaced by another daily wage employee and, therefore, the award of the Tribunal in merely granting compensation was rightly set-aside.

Vis-a-vis payment of back wages and owing to the statement made by Mr. Singla, we modify the order of the learned Single Bench by confining the back wages to 25% from the date of demand notice, i.e., 30.12.2003.

With the aforementioned modification, the order under challenge vis-a-vis reinstatement of respondent No.1 is upheld. The appellants are directed to make payment of back wages to the extent of 25% within a period of three months from the date of receipt of certified copy of this order.

Letters Patent Appeal stands disposed of in the aforementioned terms.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 17, 2018
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No