

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 22.02.2019****1. CWP No.9234 of 2012**

Raj Kumar & others

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

2. CWP No.9784 of 2012

Balwan Singh

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

3. CWP No.10711 of 2012

Urmila & another

...Petitioners

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

4. CWP No.11910 of 2012

Sharbati Devi & others

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

5. CWP No.13667 of 2012

Lal Singh & others

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

6. CWP No.1986 of 2015

Jagmal Singh

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

7. CWP No.215 of 2019

Anita Rani

...Petitioner

Vs.

The Presiding Officer, Central Government Industrial Tribunal -cum-
Labour Court-I, Chandigarh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: For the petitioners:

Mr. Deepak Sonak, Advocate;
Mr. J.S.Virk, Advocate;
Mr. Rajiv Kumar Saini, Advocate;

For respondent No.2-Indian Agriculture Research Institute:

Mr. Naveen Chopra, Advocate;

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of the aforementioned seven writ petitions, as the cause they espouse and the factual and legal issue involved is common and identical and, therefore, they can be conveniently decided by a single order.

These cases can be divided into two groups i.e. Group – ‘A’ and Group – ‘B’. Group ‘A’ consists of CWP Nos.9234, 9784 & 10711 of 2012, whereas Group ‘B’ consists of CWP Nos.11910, 13667 of 2012; 1986 of 2015 and CWP No.215 of 2019.

The petitioners in Group ‘A’ have been in service since 1996 and are continuing. They have approached this Court against an award passed by the Presiding Officer, Central Government Industrial Tribunal - cum- Labour Court-I, Chandigarh on 21.04.2010 in Industrial Reference No.33 of 1999 titled ‘Satpal Vs. The Head, Indian Agriculture Research Institute, Karnal’. The dispute referred by the appropriate Government for determination under Section 10 of the Industrial Disputes Act, 1947 was as follows:

“Whether the action of the management of IARI, Karnal by not giving a chance to Shri Satpal S/o Shri Roop Chand daily paid labourers for his engagement and re-engaging his juniors into employment is legal and justified? If not, to what relief the workman is entitled?”

When all these writ petitions except CWP No.215 of 2019 came up for hearing on 15.11.2018, this Court passed the following order:

“The Head, Indian Agriculture Research Institute, Karnal-respondent No.2 will submit a list of workers from seniority list – B who approached the Labour Court and who did not, prior to 21.04.2010 when the award was passed in case of Satpal Vs. The

Head, Indian Agricultural Institute, Karnal. This information is necessary to help to separate the cases from List 'B' of those who approached the Court and those who did not. Prima facie those who did not raise a dispute may have over the decades lost their rights by way of waiver and acquiescence. They may not claim equal rights as those who have approached Court within reasonable time. For this proposition see State of U.P. & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347.

Needful be done on or before the next date of hearing.

To come up on 05.12.2018.”

In compliance of the directions issued, the official respondents have submitted an affidavit dated 05.12.2018 in which it has been explained as follows:

“2. That in total 13 workers from List B had approached the Labour Court. The labourers who had approached the Labour Court vide award dated 02.12.2008 passed by Presiding Officer, Central Government Industrial Tribunal -cum- Labour Court-I, Chandigarh wherein it was directed to the respondent to maintain only one seniority list and it was further directed to reinstate the labourer without the back wages are as follows:

- (A) (i) Shri Om Parkash S/o Shri Nirmal Singh
- (ii) Ajmer Singh S/o Krishan Lal
- (iii) Sh. Rajender Kumar S/o Sh. Kailash Ram
- (iv) Sh. Ram Pal S/o Shri Ruda Ram
- (v) Sh. Mulak Raj S/o Shri Data Ram
- (vi) Sh. Angoori Devi W/o Shri Brahma

The labourers who had approached the Labour Court vide award dated 27.07.2009 passed by the Presiding Officer, Central Government Industrial Tribunal -cum- labour Court-I, Chandigarh wherein it was directed to the respondent to maintain only one seniority list and it was further directed to reinstate the labourer without the back wages are as follows:

- (i) Shri Hari Ram S/o Shri Nanu Ram
- (ii) Rameshwar S/o Sh. Hirda Ram
- (iii) Sh. Chote Lal S/o Sh. Ashfi Mehta

- (iv) Sh. Ompal S/o Shri Surjan Singh
- (v) Sh. Urmila W/o Babu Ram
- (vi) Sh. Man Singh S/o Shri Nirmal Singh

The labourer who had approached the Labour Court vide award dated 21.04.2010 passed by the Presiding Officer, Central Government Industrial Tribunal -cum- Labour Court-I, Chandigarh is as follows:

- (i) Satpal S/o Shri Roop Chand

Thus, in total there are only 13 workers from List B who had approached the Labour Court. It is herein clarified that they are working with the virtue of stay order passed by this Hon'ble Court in their favour."

This has led to creation of two sets of persons. One in List – A, who have been working since 1996 and the others in List – B, whose services stand retrenched/terminated prior to 1993. The persons falling in List-B are the petitioners in CWP Nos.11910, 13667 of 2012; 1986 of 2015 and CWP No.215 of 2019. CWP No.215 of 2019 has been filed very recently and notice of motion has not been issued. To include that petition in this bunch, notice is issued, which is accepted by Mr. Naveen Chopra, learned counsel representing respondent No.2 - Institute. Paper-book has been supplied to Mr. Chopra in the Court itself. However, no reply is necessary.

In *Satpal's* case, the Tribunal instead of restricting itself to the reference, reproduced above, went on to create an anomaly in the award by expanding the scope of the orders to persons not before it and whose rights have been prejudiced are those in the petitions filed by Mr. Sonak and Mr. Virk. These people were not parties to award. The operative part of the award of the Tribunal contained in the concluding paragraph is reproduced below:

“Another question before the Tribunal is how the violation of the right of the workman should be remedied? In my opinion, the remedy lies in the direction that management should prepare only one list and if any of the workman from the second list is found senior to the workman who has provided the work from list one, they should be provided the work immediately. The act of management by maintaining a second list with assurance to provide the work to the workman, is an indirect admission of laches in publication of advertisement of the scheme and service of notice upon them. Accordingly, the management is directed to maintain one list at the place of two and, if workman is found senior to the workman who is working with the management, the management is further directed to reinstate the workman without the back wages within one month from the date of publication of this award. The reference is disposed of accordingly. Let Central Government be approached for publication of award and thereafter, file be consigned to record room.”

The conclusion arrived at by the Tribunal has adversely affected the petitioners in CWP Nos.9234, 9784 & 10711 of 2012. These workmen were issued disengagement notice(s), which have brought them to this Court. The operation of the disengagement/retrenchment notice(s) (Annex P-3 to P-23) was stayed till further orders on 16.05.2012. These petitioners were not party to the award and the general directions contained in the award have adversely affected their right to service. To this extent, the impugned award is directed to be made ineffective against the petitioners in the present three writ petitions i.e. CWP Nos.9234, 9784 & 10711 of 2012. The award will remain restricted to the rights of *Satpal*. The award suffers from judicial overreach and the directions which are against the petitioners in these three petitions are clearly illegal and are accordingly invalidated. Any observations made in the award will not run against the interests of the petitioners. Doubtless, the award suffers from fundamental flaws when it

ropes in persons not before it and, therefore, the petitioners in CWP Nos.9234, 9784 & 10711 of 2012 have clearly made out a case for interference to the extent of their rights being prejudiced.

As a result, the observations and directions contained in the impugned award will not be read in the case of the petitioners. And accordingly, their writ petitions are allowed to the extent prayed for. Notice(s) of disengagement/retrenchment are quashed.

Now coming to the remaining petitions, it may be noticed that the petitioners are out of service since 1993. They have approached this Court either in the years 2012, 2015 or 2019. The award could not create any legal rights in their favour. The impugned award has only added to the confusion beyond *Satpal's* case travelling beyond the terms of the reference. These petitioners are fence-sitters and are deemed to have acquiesced and waived their rights as they have never approached the Labour Court by raising an industrial dispute nor have they filed writ petitions within reasonable time. On the other hand, the petitions have been filed after inordinate delay and laches and are hit by doctrine enunciated by the Supreme Court in case State of U.P. & others Vs. Arvind Kumar Srivastava & others, (2015) 1 SCC 347, wherein direction 22.2 was applied to dismiss the case on delay and laches and on waiver and acquiescence. Thus, a direction cannot be issued after two decades to reinstate the petitioners in service. Accordingly, these petitions i.e. CWP Nos.11910, 13667 of 2012; 1986 of 2015 and CWP No.215 of 2019 are dismissed.

However, this order will not preclude respondent No.2 – Institute to consider cases sympathetically of anyone of the unsuccessful petitioners in these cases. They are free to apply to the Institute in case

vacancies are available and they have any industrial rights remaining. The Institute is at liberty to consider their cases in the exigencies of administration and the need of work. However, anything done in this regard will not affect the petitioners in CWP Nos.9234, 9784 & 10711 of 2012. They will continue unhindered by anything said against their interest in the award.

With these observations, all the petitions and any pending application/s therein stand disposed of.

22.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>