

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

L.P.A. No.793 of 2016 (O&M) in
Civil Writ Petition No.59 of 2014
Reserved on : August 17, 2019
Date of decision: September 30, 2019

M/s Caparo Maruti Ltd. ...Appellant
Versus
P.O. Industrial Tribunal and another ...Respondents

AND

2. L.P.A. No.794 of 2016 (O&M) in
Civil Writ Petition No.150 of 2014

M/s Caparo Maruti Ltd. ...Appellant
Versus
P.O. Industrial Tribunal and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Saurabh Parkash, Advocate and
Mr. K.S. Rupal, Advocate for the appellant.

Ms. Abha Rathore, Advocate for respondent No.2.

HARINDER SINGH SIDHU, J.

1. For the reasons stated in CM-1615-LPA-2016 in LPA-793-2016 and CM-1617-LPA-2016 in LPA-794-2016, the delay of 36 days in filing the appeals is condoned.

2. This judgment shall dispose of two Letters Patent Appeals bearing LPA No.793 of 2016 and LPA No.794 of 2016 as common questions of law and fact are involved.

For facility of reference, facts are being taken from LPA

No.793 of 2016.

3. This Letters Patent Appeal has been filed against the judgment dated 29.02.2016 of the learned Single Judge, whereby, CWP No.59 of 2014 titled as Ajmer Singh vs. Presiding Officer, Industrial Tribunal-I, Gurgaon and another, filed by respondent No.2 has been allowed, the award dated 18.09.2013 of the Labour Court has been modified and respondent No.2 has been held entitled for reinstatement with all consequential benefits but without back wages.

4. Respondent No.2 joined the appellant as a Welder on 05.05.1999. He was sent for training to Maruti Udyog Limited, Gurgaon from 11.05.1999 to 30.07.1999. His services were terminated on 21.06.2000 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (for short 'Act'). He served demand notice dated 17.07.2000 challenging his termination and seeking reinstatement with continuity of service with full back wages. The dispute was referred for adjudication to Labour Court-I, Gurgaon by the appropriate Government.

5. The case of the appellant before the Labour Court was that respondent No.2 had been employed by a contractor M/s R.K. & Company and that there was no relationship of master and servant between respondent No.2 and the appellant.

6. The Labour Court vide award dated 18.09.2013, held that the services of the workman- respondent No.2 had been terminated without complying with the mandatory provisions of Section 25-F of the Act. The

documentary evidence made it clear that respondent No.1 had joined the management w.e.f. 05.05.1999 on the post of Welder and continuously worked as such upto 20.06.2000. The appellant had an agreement with M/s R.K. & Company dated 15.05.1999 which was renewed for a period of one year from 15.05.2000 to 14.05.2001. M/s R.K. & Company was granted registration certificates under Contract Labour (Regulation and Abolition) Act 1970 from 01.01.2000 to 31.12.2000. Perusal of documents revealed that respondent No.2 was allowed to carry out the work through the contractor, though the contractor had no valid license from November 1999. It was concluded that the name of the workman had been deliberately placed on the roll of the contractor engaged by the management in order to defeat his legal rights. Both the principal employer and the contractor were held jointly and severally liable.

7. The Learned Labour Court however denied the relief of reinstatement and awarded compensation of Rs.50,000/-. In doing so the Court was influenced by the consideration, that during the period of twelve years respondent No.2 had remained out of service the technology had undergone change and that he would not be familiar with the new technology.

8. The Ld. Single Judge while modifying the award on the question of reinstatement held that the aforesaid opinion of the Labour Court was without any basis. There was nothing on record to suggest that respondent No.2 would not be able to perform the duties of a Welder. Respondent No.2 had obtained training from Maruti Udyog Limited,

Gurgaon. The certificate that he had been engaged as an apprentice in the trade of Turner had been proved on record. It was thus concluded that the relief of the reinstatement had been denied by the Labour Court on imaginary grounds.

9. During the course of hearing before the Ld. Single Judge counsel for respondent no.2 had stated that he would give up the claim for back wages. The Writ Petition was allowed. The Award of the Labour Court dated 18.09.2013 was modified to the extent that respondent No.2 was held entitled for reinstatement with all consequential benefits but without back wages. The appellant was held entitled to seek refund of the amount of reinstatement deposited with the Executing Authority in pursuance to the award.

10. Ld. Counsel for the appellant has assailed the direction for reinstatement. He has argued that instead of directing reinstatement the compensation awarded could have been enhanced.

11. We are not persuaded to agree with him. It is no doubt true, that in various decisions in the recent past, Hon'ble Supreme Court has held that in cases of termination of service without complying with the provisions of the Industrial Disputes Act, 1947 reinstatement ought not to be granted as matter of course and that award of suitable compensation would be more appropriate.

12. But it cannot also be lost sight of that there is an equally compelling line of decisions, where Hon'ble Supreme Court has disagreed with that view and held that anything less than reinstatement with full back

wages would militate against the objectives and purposes of the Industrial Disputes Act.

13. In this regard two decisions may be referred to which have been followed in number of cases thereafter.

14. After an extensive review of the case law including decisions where compensation instead of reinstatement was granted, Hon'ble Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and others, (2013) 10 SCC 324*** stated that the following propositions emerged :

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the

course suggested in Hindustan Tin Works (P) Ltd. v. Employees.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

15. The same view was reiterated in ***Tapash Kumar Paul v. BSNL, (2014) 15 SCC 313***, where two separate but concurring opinions were rendered . It was held that order of reinstatement should ordinarily be granted. Compensation instead of reinstatement may be granted only for certain compelling justifiable reasons.

16. It was observed as under:

“4. It is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.”

In the concurring opinion it was observed as under:

“8. The learned counsel on behalf of the respondent has relied upon the decision of this Court in Telegraph Deptt. v. Santosh Kumar Seal to contend that in the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if the termination of employee has been found illegal or is in

contravention to the prescribed procedure. The learned counsel has further relied upon Santosh Kumar Seal judgment which holds as under: (SCC pp. 776-77, para 10)

“10. In a recent judgment authored by one of us (R.M. Lodha, J.) in Jagbir Singh v. Haryana State Agriculture Mktg. Board, the aforesaid decisions were noticed and it was stated: (SCC pp. 330 & 335, paras 7 & 14)

‘7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

** * **

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.’”

9. *The learned Senior Counsel has further relied upon the decision of this Court in BSNL v. Kailash Narayan Sharma to hold that reinstatement may not be a natural consequence of termination of service of a workman in contravention to Section 25-F of the ID Act. The relevant para reads as under:*

“The decisions of this Court referred to above, in no uncertain terms hold that in case of termination in violation of Section 25-F of the ID Act, relief of reinstatement may not be the natural consequence. It will depend upon the facts and circumstances of each case. It is not automatic. In the facts of a given case, instead of reinstatement, monetary compensation can be granted. The cases in hand clearly fall within the ratio

of the decisions of this Court, referred to above.”

10. *However, it is pertinent to mention that the recent decision of this Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya took a contrary view. The Court in that case, opined as under: (SCC pp. 344-47, paras 22-24)*

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. v. Employees in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of

reinstatement with full back wages. This Court examined the issue at length and held: (SCC pp. 85-86, paras 9 & 11)

‘9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law’s proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the

workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

* * *

11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be

done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular....'

After enunciating the above-noted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages.

24. Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court and observed: (SCC p. 447, para 6)

"6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

(emphasis in original)

11. Therefore, in the light of the decision of this Court in Deepali Gundu case which has correctly relied upon higher Bench decisions of this Court in Surendra Kumar Verma case and Hindustan Tin Works (P) Ltd., I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.”

17. In the present case, the workman- respondent No.2 has given up claim for back wages. Only reinstatement with continuity of service but without back wages has been directed by the Ld. Single Judge.

18. We find no illegality or perversity in the aforesaid order warranting interference. This appeals are accordingly dismissed.

19. During the pendency of these appeals this Court had directed the appellant to deposit some compensation with the Executing Authority and respondent No.2 - the workman was given liberty to withdraw the same. If the compensation has been withdrawn by the workman, the same may be recovered by the appellant in easy instalments.

**(RAJIV SHARMA)
ACTING CHIEF JUSTICE**

**(HARINDER SINGH SIDHU)
JUDGE**

September 30, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No