

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

CWP No.18719 of 2016
Date of Decision : 25.11.2019

(1)

Ram Bhaj Singh

...Petitioner

Versus

The Presiding Officer and another

....Respondents

(2)

CWP No.18722 of 2016
Date of Decision : 25.11.2019

Suresh Kumar

...Petitioner

Versus

The Presiding Officer and another

....Respondents

(3)

CWP No.18723 of 2016
Date of Decision : 25.11.2019

Krishan Kumar

...Petitioner

Versus

The Presiding Officer and another

....Respondents

Coram : Hon'ble Mr. Justice B.S.Walia.

Present: Mr. Sandeep Singal, Advocate
 for the petitioner in all cases.

Mr. Nishant Arya, Advocate for
Mr. S.K. Verma, Advocate
for respondent No.2 in all cases.

B.S.WALIA, J.

1. This order shall decide CWP Nos.18719 of 2016, 18722 of 2016 and 18723 of 2016, as similar point for consideration arises in all cases, i.e., whether the award of the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as 'the Tribunal') holding the termination of service of the petitioner-workman to be in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), but reinstating the workman with 50% back wages is liable to be modified and the workman held entitled to full back wages.

2. Brief facts of the case leading to the filing of writ petitions are that the petitioners were selected and appointed as Tubewell Attendants vide appointment letter dated 19.01.1993 / 19.01.1993 / and 04.02.1993 respectively. Services of the petitioners were terminated vide order dated 04.11.2000. Appeal filed by the petitioners before the Chairman, Board of Directors of respondent No.2 was dismissed vide order dated 31.07.2008 as was the second appeal filed before the Registrar, Cooperative Societies and the revision petition filed before the Financial Commissioner-cum-Principal Secretary, Cooperation Department, Haryana, vide order dated 30.04.2009 and 14.01.2011 respectively, where after the petitioners raised an industrial dispute by serving demand notice dated 02.05.2011. On completion of pleadings and on the basis of evidence led by the parties, the Tribunal passed award Annexure P/3, dated 22.05.2015, 25.05.2015 and 26.05.2015 respectively by directing reinstatement with continuity of service and 50% back wages w.ef. the

date of claim statement i.e. 29.08.2011. Award Annexure P/3 was challenged by the respondent / management by way of CWP No.17271 of 2015/ CWP No.17241 of 2015 and CWP No.17242 of 2015 respectively but the same were dismissed by upholding the award passed by the Tribunal, vide order Annexure P/4 dated 20.08.2015, while observing therein that the order would not preclude the petitioners /workmen from approaching the High Court for award of full back wages and in case such a petition was filed, the same would be decided on its own merits.

3. Sole ground of challenge to the impugned awards in all the three writ petitions is of the petitioners having been denied full back wages especially in view of the writ petitions filed by the respondent-management against the impugned award having been dismissed by the High Court and the awards having attained finality.

4. Sole argument raised by learned counsel for the petitioner-workman is that the termination order having been held to be illegal, null and void and reinstatement having been ordered in view of the petitioners not having been gainfully employed and living from hand to mouth by doing labour work solely to earn their livelihood and not having been able to secure any permanent job and being unemployed till date, the petitioners were entitled to full back wages especially in view of the fact that the post against which the petitioners were working in the respondent-management was of permanent nature.

5. Thus, the sole point for consideration is whether on termination of services of the petitioner- workman having been held to be in violation of the mandatory provisions of the Act and reinstatement

having been ordered, full back wages could be restricted to 50% or full back wages ought to have been awarded.

6. The law is settled that on termination being held to be illegal and the workman being not gainfully employed, on reinstatement, the workman is entitled to full back wages. Similar view was taken by Hon'ble the Full Bench of this Court in Hari Palace, Ambala City vs. The Presiding Officer, Labour Court and another 1979 PLR 720 as also a Division Bench of this Court in S.N. Dutta vs. Panipat Cooperative Sugar Mill Ltd. Panipat and another 2019 (1) SCT 784.

7. Hon'ble the Supreme Court in M/s Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others 1979 (2) SCC 80 has held that

“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 litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz. to resist the workman'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.”

Likewise, in Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyala (D.Ed.) 2013 (4) SCT 716, Hon'ble the Supreme Court held that

“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. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

8. Learned counsel for the respondent-management contended that the writ petition was misconceived and was liable to be dismissed as the petitioners had not averred in the claim statement that the petitioner was unemployed or not able to find any work. Learned counsel relied upon the decision of Hon'ble the Supreme Court in Rajasthan State Roadways transport, Jaipur vs. Shri Phool Chand 2018 (18) SCC 299, to contend that a workman had no right to claim full back wages from his employer as a right only because the Court has set aside the dismissal order in his favour and directed his reinstatement in service.

9. Learned counsel has also relied upon the decision of Hon'ble the Division Bench of this Court in S.N. Datta's case (supra) to contend that in view of the petitioner-workman not having averred in the claim statement nor stated that he had not worked during the period he remained out of job, he would not be entitled to full back wages. In the instant case except for making a claim for full back wages, there is no averment in the claim statement of the petitioner-workman having remained unemployed nor statement that he was not

gainfully employed anywhere and had no earning to maintain himself and his family.

10. Learned Counsel for the petitioners has failed to refer to any material to show that the petitioners pleaded in the claim statement or made a statement before the Tribunal that after dismissal from service, they were not gainfully employed anywhere. Therefore no circumstances exist warranting interference with the award passed by the Tribunal whereby the petitioners were reinstated with continuity of service and 50% back wages.

11. Accordingly, finding no merit in the writ petitions, the same are dismissed.

(B.S.WALIA)
JUDGE

25.11.2019

rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No