

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 03.03.2020****CR No.1460 of 2020 (O&M)**

Vaish Public School

...Petitioner

Vs.

Sanjay

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kuldeep Tiwari, Advocate, for the petitioner.

Mr. Sandeep Singal, Advocate, for the caveator/respondent.

RAJIV NARAIN RAINA, J. (ORAL)

1. The only dispute raised by the counsel for the petitioner worth consideration is that the date of termination should not be taken as 01.04.2006 as claimed by the workman, but after he had suffered injuries during and in the course of employment with the petitioning school on 24.10.2007. According to them, the workman on his volition left the job. This plea has not been explained by the Labour Court in its award, which granted reinstatement with continuity of service and back wages on a finding that the School had violated Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') and due to breach of statutory mandatory condition, the termination had been rendered illegal. The parties are in execution of the award under Section 11(9) of the Act in the Civil Court. The Civil Court has accepted the calculation sheet filed by the employee and ordered the petitioning School to pay the balance sum of Rs.3,42,289.24 to the award holder.

2. It may be mentioned that pursuant to the award, the respondent was reinstated into service in 2018 after the passing of the award dated 31.01.2017. In the chart, back-wages have been claimed at the rates of minimum wages fixed under the Minimum Wages Act, 1948 from 01.04.2006 to 31.08.2017.

3. The only dispute now remains to be resolved falls between 01.04.2006 to 24.10.2007. In order to put an end to the litigation, Mr. Sandeep Singal, learned counsel appearing on caveat for the respondent-workman concedes without admitting that wages for this period may be excluded from the order dated 03.02.2020, which means Rs.3,42,289.24 – Rs.28,862.37 = Rs.3,13,426.87 to put an end to the matter.

4. I may observe that when the Labour Court grants reinstatement, it is as though the termination order was not passed and the workman continues in service and is therefore entitled to all the consequential benefits as though he was in service. This principle operates by a deeming legal fiction which has been explained in a plethora of judgments with its guiding star in the Supreme Court judgment delivered in **Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd.**, (1979) 2 SCC 80: AIR 1979 SC 75 with Justice D.A. Desai authoring while sitting in a three Judge bench with V.K.Krishna Iyer and O. Chinappa Reddy JJ. In the same year that HTW was decided, a Full Bench of this Court in **Hari Palace, Ambala City Vs. The Presiding Officer, Labour Court & another**, ILR 1979 (P&H) 243 applied the law laid down then recently in *Hindustan Tin Works* for the first time in our Court in April 2, 1979 introducing the logical derivative from the ratio in *Hindustan Tin Works* that reinstatement to service would follow when termination order is held void

and illegal by the labour court with the additional principle innovated beyond the judgment in HTW holding that “unless there are reasons necessitating departure” then back wages can be reduced or scrapped. See also on this point Division Bench judgment of this Court in **The Secretary to Government of Punjab, Department of Irrigation, Chandigarh & another Vs. Vinod Kumar & another**, 2009 (1) SCT 16 and the order of the Single Bench in **State of Punjab & another Vs. Presiding Officer, Labour Court, Jalandhar & another**, 2016 (1) SCT 29. Accordingly, the workman had a right as asserted by him part of which he has given up today to avoid further litigation.

5. Though there is no hard and fast rule not to count the period of back-wages from 01.04.2006 or that it may be counted from 24.10.2007 in this case, but yet in the spirit of give and take with the respondent relenting to put an end to the litigation in the interest of justice a small increase in the amount would be justified after imposing the cut for the period subtracted as per statement of worker made through his counsel. Accordingly, this Court deems it appropriate that JD will make payment of Rs.3,20,000/- in full and final settlement of the dispute.

6. At this stage, Mr. Singal has produced photocopy of a document of the Union Bank of India, Railway Station Branch, Rohtak to the effect that A/c No.522102010043365 in the name of Vaish Public School which stands attached by the executing court reflects a balance of Rs.3,68,079.79.

7. Accordingly there are sufficient funds to discharge the liability under the award in execution of decree. Hence, the attachment order will

prevail and continue to operate till the money is not transferred into the account of the workman, if not on the next date of hearing then on the next.

8. With these observations and modification, the petition stands partly allowed.

9. The respondent workman would be entitled to litigation costs assessed at Rs.10,000/- which he must have incurred in this litigation protecting his interest upon a caveat. The litigation costs shall be paid to the workman in cash against proper receipt on the date before the Execution Court for payment on both counts.

03.03.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No