

**CWP No.4342 of 2020(O&M)
and other connected cases**

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

**CWP No.4342 of 2020(O&M)
and other connected cases
Date of Order:01.03.2021**

Sharma Ram

..Petitioner

Versus

**Presiding Officer, Industrial Tribunal, Patiala
and others.**

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Animesh Sharma, Advocate,
for the petitioner(s) in
(CWP No.4342, 4421, 4362, 4380, 4381, 12647, 4554, 4567,
4604, 5215, 5721, 5723, 5758, 5788, 5319 and 6180 of 2020.**

**Mr. G.S.Bal, Sr. Advocate, with
Mr. Sewa Singh, Advocate,
for the Punjab Financial Corporation.**

ANIL KSHETARPAL, J(Oral)

Through this judgment, 32 Civil Writ Petitions bearing no.4342, 4421, 4362, 4380, 4381, 12647, 4554, 4567, 4604, 5215, 5721, 5723, 5758, 5788, 5319, 6180, 14479, 14599, 14603, 14622, 14679, 14879, 14486, 14488, 14758, 14770, 14780, 14899, 14492, 14496, 14539, 14952 of 2020, shall stand disposed of. Out of the above referred 32 writ petitions, 16 writ petitions have been filed by the workmen, whereas the remaining have been filed by the management-Punjab Financial Corporation, challenging identical awards passed in all the writ petitions by the Industrial Tribunal, Patiala (hereinafter referred to as 'the tribunal').

Detailed particulars of the petitioners, their date of joining, date

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of dismissal, salary/emoluments, years of service, as well as compensation
awarded has been compiled in a tabulated form which is as under:-

<i>Sr. No</i>	<i>CWP No.</i>	<i>Title</i>	<i>Salary/ emoluments</i>	<i>Date of joining</i>	<i>Date of Dismissal</i>	<i>Years of service</i>	<i>Compensation awarded.</i>
1	4342/2020	Sharma Ram	Rs.13,110/-	23.09.1985	29.11.2011	26 years 2 months	Rs.8000/- per year of service
2	4362/2020	Prem Chand	Rs.13,110/-	11.01.1988	29.11.2011	23 years 10 months 19 days	Rs.8000/- per year of service
3	4380/2020	Kesar Singh	Rs.13,110/-	05.02.1988	29.11.2011	23 years 09 months 25 days	Rs.8000/- per year of service
4	4381/2020	Sukhwant Singh	Rs.13,110/-	16.01.1988	29.11.2011	23 years 10 months 14 days	Rs.8000/- per year of service
5	4421/2020	Madan Gopal	Rs.13,110/-	25.05.1988	29.11.2011	23 years 06 months 5 days	Rs.8000/- per year of service
6	4554/2020	Harchand Singh	Rs.13,110/-	27.03.1987	29.11.2011	24 years 08 months 29 days	Rs.8000/- per year of service
7	4567/2020	Shamsher Singh	Rs.13,110/-	03.01.1987	29.11.2011	24 years 10 months 27 days	Rs.8000/- per year of service
8	4604/2020	Nirmal Singh	Rs.13,110/-	27.12.1984	29.11.2011	26 years 11 months 3 days	Rs.8000/- per year of service
9	12647/2020	Ram Pal Deceased through LRs	Rs,2,650/-	26.05.1988	29.11.2011	23 years 06 months	Rs.8000/- per year of service
10	5215/2020	Satpal	Rs,2,650/-	02.07.1993	20.08.2002	09 years 02 months	Rs.5000/- per year of service
11	5319/2020	Gurcharan Singh	Rs,2,650/-	19.03.1994	17.02.1999	04 years 11 months	Rs.5000/- per year of service
12	5721/2020	Ram Sarup	Rs,2,650/-	29.03.1993	27.07.2002	09 years 04 months	Rs.5000/- per year of service
13	5723/2020	Ram Kumar	Rs,2,650/-	23.11.1993	01.04.2002	08 years 06 months	Rs.5000/- per year of service
14	5758/2020	Malkiat Singh	Rs,2,650/-	11.04.1994	20.08.2002	08 years 06 months	Rs.5000/- per year of service
15	5788/2020	Sudagar Gir	Rs,2,650/-	29.03.1993	20.08.2002	09 years 05 months	Rs.5000/- per year of service
16	6180/2020	Kirpal Singh	Rs,2,650/-	18.04.1994	27.07.2002	08 years 03 months	Rs.5000/- per year of service

As noticed in the tabulated information, the Tribunal has awarded compensation in lieu of reinstatement. The workmen have filed these writ petitions claiming that they are entitled to reinstatement or in the alternative for grant of appropriate compensation for illegal termination of their services.

On the other hand, the respondent-Corporation has assailed the correctness of the award passed by the Tribunal while asserting that the Tribunal has erred in granting compensation.

It is not in dispute that the respondent-Corporation is in the business of giving advances to various entrepreneurs. The respondent-Corporation has been constituted under the State Financial Corporations Act, 1951. On account of default in re-payment, the respondent-Corporation takes over the properties including business premises. All the workmen were employed to carry out watch and ward duties over such properties. Thus, the workmen were never employed against a regular post.

It is also not in dispute that all the workmen have completed more than 240 days in the period anterior to the date of termination of their services. It has also come on record that the workmen were required to reside in the premises to ensure that no theft or damage is caused to the property.

There are certain other facts which are required to be noticed. All the workmen were parties to six writ petitions filed in High Court seeking the relief of regularization as well as equal pay for equal work. The writ petitions came to be dismissed on 18.04.2001. The workmen filed Letter Patent Appeals which were also dismissed on 30.11.2006. The workmen filed appeals before the Hon'ble Supreme Court which were

dismissed on 16.08.2017. Thereafter, the workmen sought references in the year 2017 and 2018, which were allowed and the government referred the matter to the Tribunal for adjudication.

Learned senior counsel appearing for the management-Corporation contended that the workmen were not employees of the respondent-Corporation. He submitted that the emoluments paid to the workmen were credited to the loan account of the defaulting unit. He further, while relying upon the judgment passed in the writ petition decided on 18.04.2001, submitted that there was no relationship of master and servant between them. He further contended that the reference was sought after a delay of 6 years approximately (in some cases 11 to 14 years) and therefore, there was no live industrial dispute at the relevant time.

Per contra, Sh. Animesh Sharma, learned counsel appearing for the workmen has contended that there is no delay on the part of the workmen as the petitioners have been agitating before the High Court as well as before the Supreme Court upto 16.08.2017 and demand notices were also issued in the month of April, 2016, September, 2017, January, 2018 and August, 2018. He further submitted that there is no limitation provided for seeking reference. He further contended that a casual observation made in a judgment cannot be treated as a precedent. He further submitted that in a previous writ petition i.e. Civil Writ Petition No.5219 of 2014, decided on 11.02.2015, while dealing with identically situated workmen, this court has after holding that there exists a relationship of master and servant, granted compensation @ Rs.65,000/- per completed year. He further contended that the judgment of the learned Single Judge has not been challenged by the respondent-Corporation whereas Letter Patent Appeal filed by the workmen

is pending.

After having heard learned counsel for the parties and perused the paper books, this court now proceeds to adjudicate upon the dispute.

First argument of learned senior counsel appearing for the respondent-Corporation that there is no relationship of master and servant, does not have any substance for various reasons, noticed hereinafter. It is not in dispute that the respondent-Corporation had engaged the workmen. Merely because the salary/emoluments paid to the workmen were being credited to the loan account will not sufficient to hold that there was no relationship of master and servant. The respondent-Corporation after having taken over the properties of the defaulters was required to protect the same. For that purpose, it was required to engage watch and ward staff. As would be noticed, some of the workmen have worked for a period of more than 26 years. Approximately, as many as 10 workmen have worked for more than 20 years whereas remaining have worked for merely 10 years, except one who had worked only for a period of nearly 5 years.

Still further, this court has carefully read the judgment passed by a Coordinate Bench on 18.04.2011 while dismissing the various writ petitions seeking regularization. In the aforesaid case, two issues were required to be decided by the Court. First whether the workmen were entitled to regularization and second whether the workmen were entitled to equal pay for equal work. Therefore, an ancillary observation made by the Court, with greatest respect, that there was no relationship of master and servant, cannot be treated as a binding precedent. It is well settled that only the ratio-decidenti of a judgment is binding whereas the obiter-dicta cannot be treated as binding. Still further, as noticed, a Co-ordinate Bench while

deciding Civil Writ Petition No.5219 of 2014 and other connected petitions vide judgment dated 18.09.2001 has already held that the relationship of master and servant does exist.

In view of the aforesaid discussion, this bench expresses its inability to accept the first argument of learned senior counsel appearing for the Corporation.

Next argument of learned senior counsel is based on delay and latches. It is apparent that the workmen have been litigating throughout. The workmen filed writ petitions in the High Court seeking regularization in the years 1998, 1999 and 2000, which came to be decided in the year 2001. Thereafter, Letter Patent Appeals were filed which were decided on 30.11.2006. Thereafter, workmen filed Special Leave Petitions before the Supreme Court in which after grant of leave, the appeals were dismissed on 16.08.2017. Hence, it is apparent that the industrial dispute has been kept alive. The Hon'ble Supreme Court in **Prabhakar vs. Joint Director, Sericulture Department and another, (2015) 15 SCC 1**, has laid down that there is no limitation for seeking reference to the Tribunal as the law of limitation does not apply. No doubt, it has been held that in case the government or the Court finds that there is no alive industrial dispute or it is non-existent at the relevant time, then the government or the court can refuse to grant relief. However, the Court has further held that in other cases, the court is entitled to mould the relief. At this stage, it would be appropriate to extract the concluding paragraph where the legal position was summarized in the following manner:-

40. On the basis of aforesaid discussion, we summarise the legal position as under:

An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial Tribunal directly, except in those cases which are covered by Section 2A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that 'any industrial dispute exists or is apprehended'. The words 'industrial dispute exists' are of paramount importance unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus, becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute. Dispute or difference arises when one party make a demand and other party rejects the same. It is held by this Court in number of cases that before raising the industrial dispute making of demand is a necessary pre-condition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exist. Since there is no period of limitation, it gives right to the workman to raise the dispute even belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of

the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as “dead”, then it would be non-existent dispute which cannot be referred. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection. Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an “existing dispute”. In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no “industrial dispute” within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted.

In view of the aforesaid discussion, this bench does not find that the industrial dispute was non-existent.

Next aspect which needs adjudication is whether the workmen are entitled to reinstatement or not?

It has been noticed by the Tribunal that the workmen were not appointed against a regular post and they were appointed for watch and ward staff duty of the units, possession whereof was taken over by the respondent-Corporation. The nature of work is not regular and would depend upon various factors including the fact as to how many units have been taken over by the Corporation at a relevant time and for how much time.

Still further, all the workmen are out of service for a minimum period of 10 years. In some cases, they are out of service for approximately 19 years. In these circumstances, the Tribunal has correctly held that the petitioners are not entitled to reinstatement, particularly when the workmen were not appointed against a regular post.

Now let's shift our focus to the crucial question as to what should be the appropriate amount of compensation. It may be noted here that while directing the employer to pay compensation, the court has to adopt a pragmatic, rational and practical approach. The court is also required to keep in mind the doctrine of proportionality. On the one hand, there is a precedent in Civil Writ Petition No.5219 of 2014, where the Court has awarded compensation @ Rs.65,000/- per year. On the other hand, Sh. Bal, learned senior counsel contends that the Corporation has suffered huge losses as noticed in the judgment dated 11.02.2015 and therefore, the compensation already awarded by the Tribunal is appropriate.

It may be noted here that while determining compensation some kind of thumb rule has to be applied. The court is also required to balance the interest of both the parties. The respondent-Corporation is wholly owned Public Sector Undertaking of the State Government. It is spending the public money. At the same time, the workmen who were chucked out of service without following the provisions of the Industrial Dispute Act, 1947, have to be granted an appropriate relief. Since, the orders terminating the services of the workmen were passed without following the procedure prescribed under the Industrial Dispute Act, 1947, therefore, such orders are null/void/ inoperative.

Keeping in view the aforesaid facts, this court is of the considered view that the benchmark set in the judgment dated 11.02.2015 while deciding Civil Writ Petition No.5219 of 2014, is appropriate. However, there is another aspect of the matter which cannot be over-looked. It has been noticed that as many as 10 workmen had completed more than 23 years of service. In other words, they were nearing normal retirement age.

It is also apparent that the petitioners were not appointed after adopting proper selection procedure or giving a fair opportunity to every one. They were engaged in a casual manner. The terms of their appointment have come on record in LPA No.1946 of 2001, decided on 30.11.2006. From the terms, it can be inferred that the services of the workmen could be terminated at any time.

Keeping in view the aforesaid facts, these writ petitions are disposed of by directing that the petitioners shall be entitled to compensation @ Rs.65,000/- per year, subject to maximum cap of

Rs.5,00,000/-.

Learned counsel representing the workmen relies upon the judgment in **Municipal Council, Dina Nagar vs. Presiding Officer, Labour Court, Gurdaspur and another, 2014(70) R.C.R.(Civil), 119** to contend that the workmen are entitled to compensation @ Rs.1,00,000/- per year for the time period for which they have worked.

This court has carefully read the judgment. In the aforesaid case, the Division Bench had found that the workmen have worked for 2 to 3 years only. Still further, the compensation is awarded by the Court in exercise of its discretionary power. While granting compensation, the Court is required to examine the peculiar facts of the given case and its ultimate result thereof. Hence, such judgment, with greatest respect, cannot be treated as a binding precedent.

With these observations, the writ petitions are disposed of.

01st March, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No