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

**LPA No. 419 of 2022**
**Reserved on: 31.01.2023**
**Date of Decision: 15.02.2023**

**Dinesh Pal Singh ......Appellant**

**Vs.**

**M/s Hindustan Unilever Limited and another .........Respondents**

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA**
**HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Appellant-in- person.

None for the respondents.

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**HARPREET KAUR JEEWAN, J.**

Consideration in the present Letters Patent Appeal filed by the appellant is to the order of the learned Single Judge, dated 18.04.2022, in CWP-431-2019, titled as **Hindustan Unilever Ltd. Vs. The Presiding Officer and another**, whereby the writ petition was allowed by the learned Single Judge. The respondent/employer-M/s Hindus Unilever Ltd. filed a petition under Article 226 of the Constitution of India praying for issuance of a writ in the nature of '*certiorari'* for quashing the impugned Award dated 28.08.2018 (Annexure P-1), passed by the learned Labour Court-II, Faridabad, which was allowed by the learned Single Judge by passing the impugned order, dated 18.04.2022. By way of order dated 18.04.2022 another petition filed by Dharambir Singh was also decided.

2. The brief facts as involved in the present appeal are that the appellant-workman-Dinesh Pal Singh was employed with M/s Modern Food Industries (India), Limited and was appointed at the Head Office in his capacity as a Junior Assistant since 30.07.1991. He was transferred to

Faridabad Unit of the employer-company and the said unit was closed on 19.12.2003 necessitating the retrenchment of all the workmen working in the said unit. The appellant was also retrenched but was offered retrenchment compensation in accordance with the provisions of the Industrial Disputes Act, 1947. However, he refused to accept the same and raised an industrial dispute. The same was referred to the Labour Court, Faridabad, which has been answered by the Labour Court in favour of the workman-Dinesh Pal Singh, whereby ordering his reinstatement of service with 50% of back-wages and 9% interest per annum from the date of the Award.

3. The employer filed a writ petition challenging the order of reinstatement and payment of 50% back-wages with 9% interest. The learned Single Judge allowed the writ petition filed by the respondent-employer observing that the Unit where the workman-Dinesh Pal Singh was working at that relevant time was shut down. All the employees were offered the Voluntary Retirement Scheme (VRS) benefits. Thereafter, production at most of the units was stopped by the company. Only six units of the company were in operation in the Southern region and even those units stood sold to M/s Niman Foods Private Limited in the year 2015. It was also observed that even the assets and liability of the said company had already gone to the Hindustan Unilever Limited by way of order dated 15.01.2007 passed by the Delhi High Court. Hence, as of that day the respondent-employer does not exist as an independent legal entity. There was no Head Office of the company-M/s Modern Food Industries (India) Limited, in existence anywhere. In this conspectus, there was no legal entity where the workman-Dinesh Pal Singh could be ordered to be

reinstated, as a result of adjudication of the dispute. It was further observed by the learned Single Judge that though the workman has expressed his desire only to get the reinstatement. The possibility of the reinstatement stands frustrated because of intervening facts through which the legal entity of M/s Modern Food Industries (India) Limited stands extinguished. Since there is a Successor Company which has taken up the financial liability of M/s Modern Food Industries (India) Limited, therefore, the compensation can still be paid to the workman. Considering the facts and circumstances of the case, the learned Single Judge while setting aside the Award passed by the Labour Court held that the appellant is entitled to compensation of ₹7,00,000/- along with interest @ 9% per annum from the date of the Award passed by the Labour Court till the actual amount. The respondent was also directed to take every possible step required to be taken by it, to ensure that the other amount including the amount of the Employees Provident Fund (EPF) is released to the workman-Dinesh Pal Singh at the earliest. The payment of compensation was ordered to be made within a period of four weeks.

4. The appellant, who is appearing in person, submitted that he was working in the Head Office of the Management at New Delhi and worked there since 1981 till March 2002. Initially, he was working purely on temporary basis, but his services were confirmed after the completion of the probation period, which was for a period of 01 year. On March 25, 2002, he was transferred on *ad hoc* basis from Head Office to Roller Flour Mill, Faridabad, on account of exigency of work but in the same capacity and same pay scale. However, the Management had terminated the services of the appellant on 19.12.2003, on the ground that there is no work in

Roller Flour Mill, Faridabad (Haryana). The appellant had returned the cheque amounting to ₹1,00,183/- bearing No. 296657, which was sent to him through registered post by the Management. The appellant alleged that his transfer was motivated and actuated by *mala fides* only to terminate his service in the garb of closure of Unit at Faridabad. It was further submitted that prior to closing of Faridabad Unit, the Management transferred two other employees namely, Sh. Ravindra Kumar Shrivastav and Sh. Yogendra Chauhan from Roller Flour Mill, Faridabad Unit to other Unit situated at Kanpur (U.P.) in the month of September 2003, i.e. before the closure of the units. This shows the *mala fide* intention of the respondents because the said two employees were much junior to the appellant. It was further pointed out that total five workmen were transferred from Delhi Bread Unit-I and from the Head Office of RFM Unit at Faridabad, on the pretext of exigency of work. The other workmen challenged the said transfer order by way of filing a Civil Writ Petition which was dismissed by the Delhi High Court, on the ground that the transfer was not isolated and was as per the appointment letter issued by the Head Office. However, during pendency of the transfer petition, the Management of the RFM Unit at Faridabad, terminated all the five workmen, on account that no work order from Government of Uttar Pradesh has been received and the RFM Units were lying idle since April 2003 and accordingly, the Unit was closed in October 2003. It was also submitted that the Management had also closed one of their unit namely Fruit Juice Bottling Plant, situated at Lawrence Road, Delhi, before closing the RFM Unit. While offering the VRS Scheme to the employees of the said Fruit Juice Bottling Plant, they were also given an offer of transfer but no such offer was given an the Management to the employees at RFM Unit at Faridabad.

5. We have considered the aforesaid arguments and perused the paper book. The main allegation of the appellant is with regard to his transfer from Delhi to Roller Flour Mill, NIT, Faridabad, having been motivated and actuated by *mala fides*. The appellant has never challenged his transfer having been made with any *mala fide* intention. Similarly, the appellant could not show that his termination was on account of any *mala fide* on the part of his employer or the respondent. He has himself admitted that Roller Flour Mill, NIT, Faridabad, was lying idle w.e.f. April 2003 and this Unit was closed on October 2003. He has also taken a plea that the Management of RFM Unit, at Faridabad, terminated all the workmen on the pretext that no work order from the Government of Uttar Pradesh was received. Para No. 4 of his petition filed before the Industrial Tribunal-cum-Labour Court, Faridabad, indicates the said pleadings. He has also admitted in paragraph No. 7 of his petition that before closing the present Unit at Faridabad, another Unit namely, Fruit Juice Bottling Plant situated at Lawrence Road, Delhi, was also closed. The allegation that two employees were transferred from Faridabad Unit to another Unit does not make a case of *mala fide* on the part of the respondent. Similarly, merely offering the benefit of VRS to the appellant cannot be termed as a *mala fide* offering or by transferring him to another unit on the part of the respondent.

6. In view of the aforesaid discussion, we find that the learned Single Judge has rightly observed that many other workmen had accepted the compensation. There is change of circumstances which had been pointed out by the respondent-Management and subsequently, all the Units

in the Northern Region were closed down. Six Southern Units have also been sold along with its Brand Name "Modern Food". Hence, no Unit of Modern Food Industries Limited is functioning and under the orders of the High Court, the company-Modern Food Industries (India) Limited stands closed as such. The respondent employer does not exist as an independent legal entity where the appellant-workman-Dinesh Pal Singh could be ordered to be reinstated. In such circumstances, on account of the subsequent happenings which have not been disputed by the appellant, the order passed by the learned Single Judge is well reasoned and justified.

7. The principles have been laid down by a Full Bench of this Hon'ble Court in **Municipal Council, Dina Nagar, Tehsil & District Gurdaspur vs. Presiding Officer, Labour Court, Gurdaspur and another** 2014 (4) SCT 514, in which one of us (G.S. Sandhawalia, J), was also a member, for guiding as to whether reinstatement or compensation is a suitable relief in cases of a workman. The Labour Court was to take into consideration the various aspects as to the nature of appointment, availability of the post, the availability of work etc. The said principles are reproduced as under:-

> "Thus the following principles are laid down:-
>
> (i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.
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> (ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be

deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid do wn by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to an shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement."

8. Then by applying the ratio of the said decision, the submissions made by the appellant for granting him reinstatement are not acceptable. As far as the quantum of compensation as awarded by the learned Singe Bench, we are of the considered opinion that the compensation amount is well justified. The Apex Court in **Haryana Urban Development Authority Vs. Om Pal, (2007) 5 SCC 742** granted ₹25,000/- for the service of one year whereas in **Uttaranchal Forest Development Corporation Vs. M.C.Joshi, (2007) 9 SCC 353**, for a period of 2 years, a sum of ₹75,000/- was granted. Similarly, in **Asst.Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh, 2013 (1) SCR 679**, the said view was followed while noticing that the service was of 8 months and thus, compensation of ₹50,000/- was granted. Similarly, in **Management, Hindustan Machine Tools Ltd. Vs. Ghanshyam Sharma, 2018 (18) SCC 80**, for a period of one year, compensation of ₹50,000/- had been granted. In **K.V.Anil Mithra & another Vs. Sree Sankaracharya University of Sanskrit & another, 2021 (4) SCT 415,** for a period of little over 4 years, amount awarded was ₹2,50,000/- in lieu of the reinstatement and back wages of 50% which was granted and accordingly, modified.

9. Even the interest of the appellant had been protected by the learned Single Judge by awarding him compensation of ₹7,00,000/- along with interest @ 9% per annum from the date of the Award passed by the Labour Court till actual payment. Apart from this, the interest of the appellant with regard to the statutory payments have also been protected by the learned Single Judge by observing that the employer shall take every possible step required to be taken by it to ensure that the other payments

including the amount of the Employees Provident Fund is released to the workman-Dinesh Pal Singh at the earliest.

10. In such circumstances, the prayer of the appellant for granting him reinstatement by setting aside the order of the learned Single Judge and by upholding the order of the Tribunal cannot be legally tenable. Considering the facts in totality, it is not a case of reinstatement.

11. Keeping in view the aforesaid reasons, we are of the considered opinion that the order passed by the learned Single Judge is well reasoned and justified in view of the circumstances of the case. The reinstatement being not possible due to change in the circumstances the compensation has been rightly quantified and awarded. No interference is called for.

12. Accordingly, the present appeal stands dismissed.

Pending miscellaneous applications, if any, also stand disposed of.

**(G.S. SANDHAWALIA)**
**JUDGE**

**(HARPREET KAUR JEEWAN)**
**JUDGE**

**February 15th, 2023**
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| Whether Speaking | Yes |
| Whether Reportable | No |