

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

CWP-10276-2016 (O&M)
Date of decision : 18.07.2023

BALBIR SINGH (SINCE DECEASED)
THROUGH LRS.

- ...Petitioners

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT, DISTRICT PANIPAT
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vijay Deep Rathee, Advocate
for Mr. Balraj Singh Rathee, Advocate
for the petitioners.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER, J. (ORAL)

Petitioner-Balbir Singh (since deceased) had filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing/modifying the award dated 26.08.2015 (Annexure P-10) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat (respondent No.1), to the extent whereby the full back wages from the date of demand notice was not granted to him.

A further writ in the nature of *mandamus* has been sought for seeking direction to respondent No.2 to pay the full back wages to the petitioner from the date of demand notice i.e. 30.05.2006 (Annexure P-2).

2. Briefly, the petitioner-Balbir Singh is stated to have joined as a Conductor on 05.01.1990 in the Haryana State Transport i.e. Haryana

Roadways through Staff Selection Board, Haryana. The petitioner claims that he worked from 05.01.1990 to 28.09.1999 regularly without any break and was drawing salary @ Rs.4200/- per month. As per the petitioner, his work and conduct had remained good throughout during the tenure of his service. It is the case of the petitioner that respondent No.2 (The General Manager, Haryana Roadways, Sonapat, District Sonapat) gave a charge-sheet dated 08.06.1994 to him; wherein a domestic enquiry was held. However, the petitioner claimed that the Enquiry Officer never called him and neither the statement of any witness was recorded in the presence of the petitioner. It is claimed that the petitioner was not granted any opportunity to cross-examine the witnesses and even no opportunity was afforded to him to give his defence evidence. As per the petitioner's case, respondent No.2 terminated his services on 28.09.1999 on the basis of a false report of Enquiry Officer. Even the appeal filed by the petitioner before the State Transport Officer, Haryana, was also dismissed on 05.12.2005; whereupon, the petitioner served a demand notice dated 16.05.2006 (Annexure P-1), seeking his re-instatement with continuity of service with full back wages, which was followed by another demand notice dated 30.05.2006 (Annexure P-2); however, the said notice is stated to have not replied by respondent No.2.

3. It appears that thereafter, the dispute of the petitioner was referred to the Labour Court, Panipat, vide order dated 29.08.2012 (Annexure P-4). The petitioner filed the claim petition before the learned Labour Court, claiming that he has been illegally terminated from the services and thus, he is entitled to be re-instated in service with all consequential benefits alongwith continuity of service with full back wages.

4. The afore-said claim petition of the petitioner was contested by respondent No.2-department by filing its reply. The learned Industrial Tribunal-cum-Labour Court, Panipat, on the basis of the pleadings of the parties, framed the following issues :-

“1. Whether the termination of services of workman Sh. Balbir Singh is legal and valid. If so, to which relief, the workman is entitled ? OPW.

2. Whether the enquiry as conducted against the workman was not fair and proper? OPW

3. Whether the claim petition is bad for delay and latches as alleged? OPM

4. Relief.”

5. Thereafter, the learned Labour Court passed an order dated 14.08.2015 (Annexure P-9) holding that the enquiry proceedings were not conducted in accordance with law and the same were held to be a nullity. Subsequently, the learned Labour Court, passed an award dated 26.08.2015 (Annexure P-10) in favour of the petitioner, holding that the termination of services of the petitioner was not justified and accordingly, it was directed that the petitioner be re-instated with continuity of service with 50% back wages from the date of demand notice i.e. 30.05.2006 (Annexure P-2).

6. As per the petitioner, he was allowed to join the service in the month of December 2015. The petitioner has filed the instant writ petition to the limited extent whereby, only 50% back wages were granted to him rather than full back wages.

7. Upon issuance of notice of motion in this case, the reply on behalf of respondent No.2 has been filed, which is already on record.

8. Learned counsel for the petitioner submits that since the termination of services of the petitioner was held to be bad and illegal;

accordingly, the learned Labour Court should have allowed full back wages rather than granting 50% back wages. It is submitted that the burden of proof of being gainfully employed post termination of the services of the petitioner was on the respondent-Management; accordingly, he prays that the award dated 26.08.2015 (Annexure P-10) may be modified by awarding full back wages to the petitioner.

9. Per contra, learned counsel appearing for respondent No.2 submits that the award in question, does not call for any interference as the petitioner has been rightly granted 50% of the back wages as while appearing before the Labour Court, the petitioner-workman did not aver and prove that he was un-employed or not gainfully employed post termination of his services. It is submitted that although, it has been held by the Labour Court that the services of the petitioner were terminated un-justifiably; however, it does not itself create a right of re-instatement with full employment benefits and full back wages. It is submitted that grant of back wages always involves a discretion of Court and initial onus is upon employee to plead and prove his claim that he was not gainfully employed during idleness period, which was not done by the petitioner; therefore, he has been rightly granted 50% of the back wages. Accordingly, it is prayed that the present petition may be dismissed.

10. I have heard learned counsel for the parties and have perused the paper-book with their able assistance.

11. The limited issue for consideration before this Court, in the peculiar facts and circumstances of the case, is as to whether the petitioner-Balbir Singh (since deceased) is entitled to the full back wages or not or as

to whether he has been rightly awarded 50% back wages by the Labour Court.

12. In the case of ***Haryana Urban Development Authority v. Om Pal, 2007(2) SCT 749***, it was held that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

13. In the case of ***Management of Regional C.E. P.H.E.D. Ranchi v. Their Workmen Rep. by District Secretary, 2018(4) SCT 427***, Hon'ble Supreme Court held as under:

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. *In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, **M.P. State Electricity Board v. Jarina Bee (Smt.)**, 2003(3) S.C.T. 625 : (2003) 6 SCC 141, **G.M. Haryana Roadways v. Rudhan Singh**, 2005(3) S.C.T. 559 : (2005) 5 SCC 591, **U.P. State Brassware Corporation v. Uday Narain Pandey**, 2006(1) S.C.T. 77 : (2006) 1 SCC 479, **J.K. Synthetics Ltd. v. K.P. Agrawal &Anr.**, 2007(2) S.C.T. 79 : (2007) 2 SCC 433, **Metropolitan Transport Corporation v. V. Venkatesan**, 2009(3) S.C.T. 749 : (2009) 9 SCC 601, **Jagbir Singh v. Haryana State Agriculture Marketing Board &Anr.**, 2009(3) S.C.T. 790 : (2009) 15 SCC 327 and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.**, 2013(4) S.C.T. 716 : (2013) 10 SCC 324.*

14. *The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.*

15. *Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material*

facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to 37 workmen while directing their reinstatement in service.

17. We, however, find that the High Court in para 9 of the order placed reliance on the decision of this Court in Deepali Gundu Surwase (supra) for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in the case of Deepali Gundu Surwase (supra) itself, this Court referred decisions, which we have mentioned in para 13 above and then in para 38 of Deepali Gundu Surwase, this Court culled out the ratio of all the cited cases. Thereafter, this Court in Deepali Gundu Surwase' case granted relief to the concerned workers on the facts involved in that case. In our opinion, the High Court did not apply the ratio of the decision in Deepali Gundu Surwase (supra) to the facts of this case properly and only quoted one para of the judgment in Deepali Gundu Surwase (supra) which contained general observations. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

18. We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).

19. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages..."

14. Considering the case of the petitioner, in view of the afore-stated legal position, it would be apposite to refer to the statement of the petitioner before the learned Labour Court, which reads as under :-

“ I, Balbir Singh, S/o Sh. Jati Ram, R/o Village Bali Kutubpur, Tehsil Ganour, Distt. Sonapat, do hereby solemnly affirm and declare as under :-

1. That the deponent was appointed as conductor No.351 by the management/respondent on 05.01.1990 as sponsored by Staff Selection Board, Haryana.

2. That the services of the deponent were regularized from very beginning. The deponent worked from 05.01.1990 to 28.09.1999 regularly without any break and the salary of the deponent was Rs.4200/- per month, no complaint regarding the work and conduct of the deponent and the junior to the deponent are still working.

3. That the management/respondent gave a false charge-sheet dated 08.06.1994 to the deponent, that was duly replied by the deponent.

4. That the management/respondent conducted a domestic inquiry in case of the deponent on the basis of false charge-sheet and the inquiry officer never called the deponent in inquiry proceedings and not recorded any statement of any witnesses to the deponent and also not gave the chance to give defence evidence.

5. That the action of inquiry officer was totally illegal, unjustified and against the principal of natural justice, the inquiry conducted by the inquiry officer was totally unfair and un-proper.

6. That on the basis of false report of the inquiry officer, the management/respondent have terminated the services of the deponent on 28.09.1999 without any personal hearing of the deponent.

7. *That the deponent filed a departmental appeal before the State Transport Officer, Haryana, which was dismissed on 05.12.2005.*

8. *That the action of the management/respondent in termination of the services of the deponent is totally illegal, unjustified and ultra-virus.*

9. *That a prior registered A.D. notice dated 16.05.2006 was served upon the management/respondent, but till today the management/respondent have not given any reply of this prior notice till today.”*

15. A perusal of the aforesaid statement/affidavit of the petitioner made before the Labour Court, would manifest that no averment was made by the petitioner that he was un-employed or was not gainfully employed post termination of his services.

16. It is well settled that it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

17. Thus, in the facts and circumstances of the present case where the petitioner-Balbir Singh (since deceased) has not even claimed before the Labour Court that he has remained un-employed or not gainfully employed post termination of his services, the Labour Court was justified in not granting full back wages.

18. In the end, learned counsel for the petitioner has made a faint attempt to impress upon this Court that in the claim petition, the petitioner had made a claim regarding his un-employment in the prayer clause;

however, I am not impressed by this submission. The said prayer-clause in the claim petition reads as under :-

“It is, therefore, prayed that the workman may kindly be reinstated with continuity of services and full back wages for the enforced and unemployed period with all consequential benefits, for the sake of natural justice.”

19. In my considered view, the averment made in the afore-said prayer clause cannot be said to be a statement claiming that the petitioner was un-employed or not gainfully employed post termination of his services. Be that as it may, in view of the legal position indicated above and in peculiar facts and circumstances of this case, no interference is called for in the Award dated 26.08.2015 (Annexure P-10).

20. In view of the above, I do not find any merit in the instant petition and the same is, accordingly, dismissed.

21. All pending application/s, if any, shall stand closed.

July 18th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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