

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

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**LPA-2157-2017 (O&M)**  
**Reserved on 23.03.2023**  
**Date of Decision: 29.03.2023**

Punjab School Education Board & Anr.

. . . . Appellants

**Vs.**

Presiding Officer, Industrial Tribunal, Gurdaspur & Another

. . . . Respondents

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**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO**  
**HON'BLE MRS JUSTICE SUKHVINDER KAUR**

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Present: Mr. Dharam Vir Sharma, Sr. Advocate with  
Ms. Sunder Kumari, Advocate  
for the applicants-appellants.

Mr. V.K. Shukla, Advocate  
for respondent No.2.

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**M.S. RAMACHANDRA RAO, J.**

This Letters Patent Appeal is filed challenging judgment  
dt.28.07.2017 in CWP-19956-2012.

Respondent No.2 was appointed as a Helper in the Punjab School  
Education Board (Appellant No.1) on 01.02.1996 on daily wages, but his  
services were terminated on 05.06.1998 in violation of Section 25F of the  
Industrial Disputes Act, 1947.

A reference was made by the State of Punjab under Section  
10(1)(c) of the Industrial Disputes Act, 1947 to the Industrial Tribunal,  
Gurdaspur as to whether his termination was legal and justified, and if it is not  
justified, then what were the benefits he should be granted.

LPA-2157-2017 (O&M)

An award was passed on 21.10.2011 by the Presiding Officer of the Industrial Tribunal (respondent no.1) after considering the evidence on record that the termination of respondent No.2 was in violation of Section 25F of the Industrial Disputes Act, 1947. He therefore set aside the termination of respondent No.2 by the appellants and directed his reinstatement with continuity of service. He however observed that it cannot be taken that respondent No.2 remained fully unemployed between the date of his termination and till the date of the award, and so granted only 50% of back wages from the date of termination of his services till he is taken on duty.

The appellants filed CWP-19956-2012 challenging said award contending that respondent No.2 had been reinstated in service, but since there was a delay in raising the industrial dispute for 4 years, the award of the Industrial Tribunal, to the extent it granted back wages, has to be set aside.

Respondent No.2 however contended in the Writ Petition that the Industrial Tribunal had only awarded 50% back wages taking into consideration the fact that there was a delay of 4 years in raising the industrial dispute, and so, there is no necessity to interfere with the award of the Industrial Tribunal.

The learned Single Judge partly allowed the Writ Petition on 28.07.2017 and modified that award of the Industrial Tribunal holding that respondent No.2 is entitled to 50% back wages only from the date of reference i.e. 19.07.2002 and not from 05.06.1998, when his services were terminated. The appellants were directed to calculate and disburse back wages within 3 months from 28.07.2017, failing which it was held that respondent No.2 would be entitled to interest @8% per annum from the date of the award.

LPA-2157-2017 (O&M)

Dissatisfied with the order of the learned Single Judge, this Letters Patent Appeal has been filed by the appellants.

Counsel for the appellants reiterated his contention that no back wages should have been awarded at all in favour of respondent No.2, and learned Single Judge had erred in granting back wages to respondent No.2 from 19.07.2002, though not from 05.06.1998. Counsel for the appellants relied on *Brij Bhushan vs. Industrial Tribunal-cum-Labour Court, Panipat*<sup>1</sup>, *Bharat Sanchar Nigam Limited & Ors. vs. Kailash Narayan Sharma*<sup>2</sup>, *Divisional Forest Officer vs. Mangat Ram & Another*<sup>3</sup>, *Raghubir Singh vs. State of Haryana*<sup>4</sup>, *Shivlal Kumar vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar*<sup>5</sup>, and *Ram Palat vs. Officer, Industrial Tribunal-cum-Labour Court, U.T.*<sup>6</sup>

Counsel for respondent No.2 however contended that the order of the learned Single Judge is an equitable order and did not warrant any interference of this Court in exercise of its Letters Patent Appeal jurisdiction. He also relied upon the decision of the Supreme Court in *Malwa Vanaspati & Chemical Company Ltd. vs. Rajendra*<sup>7</sup> and *Gurmail Singh vs. Principal, Government College of Education*<sup>8</sup>.

#### Consideration by the Court

We have noted the contentions on both the sides.

Admittedly, the appellants had reinstated the respondent no.2 into service on 3.5.2012, 11 years back. Though they challenged the award of the

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<sup>1</sup> 1998(3) SCT 17 (DB) P&H

<sup>2</sup> 2014(16) SCC 440 SC

<sup>3</sup> 2009(1) SCT 62-DB P&H

<sup>4</sup> 2010(1) SLR 193-DB P&H

<sup>5</sup> 2012(3) RSJ 479 (DB) P&H

<sup>6</sup> 2015(2) SCT 163 (SB) P&H

<sup>7</sup> 2009(12) SCC 490

<sup>8</sup> 2000(9) SCC 496

LPA-2157-2017 (O&M)

Industrial Tribunal before this Court in its entirety by filing CWP-19956-2012 on 4.10.2012, this was 7 months after he was reinstated into service.

A reading of the order of the learned Single Judge shows that no contention about validity of direction of the Industrial Tribunal as regards reinstatement of respondent no.2 was urged by the appellants before him and it appears that only grant of backwages to respondent no.2 was contested.

In this LPA, counsel for appellants has sought to now contend that the Industrial Tribunal should have granted compensation to respondent no.2 and ought not to have granted reinstatement. Even the decisions cited by the appellants deal with the question whether compensation in lieu of reinstatement with back wages can be granted or not.

But admittedly in the instant case, the appellants had reinstated respondent No.2 on 03.05.2012, even before filing the CWP-19956-2012 challenging the award on 04.10.2012. No contention appears to have been raised before the learned Single Judge at the time of hearing of the Writ Petition that compensation in lieu of reinstatement should have been granted by the Industrial Tribunal, and the only point urged appears to be as to whether back wages could have been granted at all to respondent No.2.

Therefore, it is not open to the appellants in this Letters Patent Appeal to now contend that that Industrial Tribunal could not have directed the reinstatement and should have only awarded compensation particularly since respondent No.2 had been reinstated on 03.05.2012, more than 11 years back.

That apart, the Industrial Tribunal had awarded only 50% back wages on the ground that respondent No.2 cannot be said to have been fully unemployed from the date of his termination till the date of passing of the

LPA-2157-2017 (O&M)

award, and the learned Single Judge had further reduced the period for which back wages are to be awarded, by holding that respondent No.2 is entitled to 50% back wages only from the date of reference i.e. 19.07.2002 and not from 05.06.1998, the date of his termination from service, since there was a delay in raising the industrial dispute.

In *Allahabad Jal Sansthan vs. Daya Shankar Rai & Another*<sup>9</sup>, the Supreme Court held that where an employee has been reinstated in service and he had not raised any plea or adduced any evidence to the effect that he had remained unemployed from the date of his termination till the date of his reinstatement, interest of justice would be served if the employee is given 50% of back wages.

Similar view has been taken in *Gumail Singh* (8 *supra*) where the Supreme Court had denied back wages for the period for which there was a delay in raising the dispute regarding termination before the Labour Court. Also in *Malwa Vanaspati* (7 *supra*), the Supreme Court modified the award of the Labour Court and granted only 50% of back wages on the ground that the employee was taken back into service.

Having regard to these decisions, we find no infirmity in the order passed by the learned Single Judge awarding 50% back wages from 19.07.2002, the date of the reference, and not from 05.06.1998, the date when his services were terminated in violation of Section 25F of the Industrial Disputes Act, 1947.

Accordingly, the Appeal is dismissed with costs of Rs.25,000/- to be paid by appellants to respondent No.2 within 6 weeks from the date of receipt of copy of this order.

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<sup>9</sup> 2005(5) SCC 124

LPA-2157-2017 (O&M)

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)  
JUDGE

(SUKHVINDER KAUR)  
JUDGE

29 .03.2023  
*Mohit Goyal*

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable?        | Yes/No |