

Before Rajiv Narain Raina, J.

PYARE LAL—Petitioner

versus

THE PRESIDING OFFICER, I.T.-CUM-L.C.

AND OTHERS—Respondents

CWPNo.19834 of 2011

February 18, 2013

Constitution of India, 1950 - Arts. 14, 16 & 226 - Industrial Disputes Act, 1947 - Ss.25F, 25G & 25H - Petitioner working as Beldar-cum-Mali in Forest Department - Services terminated without show cause notice - Co-workers junior to him retained in service - After his retrenchment workers like him appointed - Completed 240 days of continuous service preceding date of disengagement - Labour Court declined relief on the ground that daily wager not entitled to re-instatement - Awarded Rs.36,000/- as compensation - Writ Petition filed - Held, Finding of Labour Court that S.25F of Industrial Disputes Act, 1947 was violated not challenged by Department - Department bound by findings - Award of compensation not judicious dispensation of justice - Writ Allowed - Reinstatement with continuity of service and back wages along with 12% interest ordered.

Held, that the finding of the Labour Court that the termination was brought about in breach of mandatory provisions of Section 25-F of the Act has not been challenged by the Forest Department. They are, therefore, bound by those findings.

(Para 10)

Further held, that having reached thus far, the Labour Court thought it fit to award only Rs.36,000/- as compensation. This, to my mind, is not judicious dispensation of justice in the face of violation of mandatory provisions of Section 25-F of the Act.

(Para 11)

Further held, that resultantly, this petition and connected writ petitions are allowed. The impugned awards are set aside. The petitioners are ordered to be reinstated with continuity of service. Back-wages are ordered to be due and payable from the date of receipt of reference since from the record made available, it is not clear as to when the demand notices

in this group of cases was served on the management. It would, therefore, be safe to award back-wages from the date of reference. Let the back wages be calculated and paid to the respective workmen within three months of receipt of certified copy of this order failing which back wages would carry 12% interest from the appointed date, that is, the date of reference till payment.

(Para 14)

Further held, that the forest department would also remain at liberty to hold an enquiry against erring officer (s) after identifying them who failed to comply with the mandatory provisions of the Industrial Disputes Act, 1947 and particularly, Section 25-F thereof at the time of retrenchment. In case conduct of anyone is found remiss or wanting, then back-wages ordered by this Court may be recovered from erring officer(s) found responsible so that the public exchequer does not suffer on account of laxity of public servants in discharge of their statutory duties. The result of the enquiry is directed to be placed on the record of these cases after completion. Let that exercise be finalized within six months. Also let a copy of this order be sent to the Secretary, Forest Department, Government of Haryana for further remediable action. This appears to this court to be the best possible way to stop the law of the jungle from prevailing in the forest department in these and future cases. It is now not enough to callously throw a marginal daily wage worker out of job and deprive him of his micro livelihood with characteristic bureaucratic mirth, without following due process of law, and then leave him to battle it out in court for years, and then be told to accept reinstatement without back wages. This is another terrible facet of man's inhumanity to man. We must try to put an end to it.

(Para 15)

R.S.Chauhan, Advocate, *for petitioner(s)*

Deepak Jindal, DAG, Haryana

RAJIV NARAIN RAINA, J.

(1) Heard.

(2) This order will dispose of CWP Nos. 19834 of 2011, CWP 19843 of 2011, CWP 19899 of 2011 & CWP No.19912 of 2011 as common questions of law and fact are involved in all the four cases. For the sake of convenience, facts are taken from CWP No.19834 of 2011.

(3) The petitioner was a workman before the Labour Court in Reference No.16 of 2007. He served as Beldar-cum-Mali in the Hansi Range of Sarsana Block, Hisar in the Forest Department, Haryana from July, 1994 till October, 2003. In the demand notice served raising the industrial dispute, he claimed that his services were illegally terminated on 1.11.2003, without show-cause notice, charge-sheet or compensation. He further claimed that his coworkers who were junior to him, were retained in service. After his services were retrenched, workers like him were appointed in the same territorial block in Hansi Range. He alleged violation of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short "the Act"). His termination was brought about by a verbal order. At that time, he was being paid Rs.2500/- per month. He had completed 240 days of continuous service in the twelve calendar months preceding the date of disengagement. He was paid wages against bills and his name was on the muster rolls.

(4) The Labour Court in the impugned award has returned a positive finding of fact of non-compliance of Section 25-F of the Act. The Labour Court has declined relief of reinstatement on the ground that a daily wager is not entitled to reinstatement. In reaching this conclusion, the Labour Court relied on *Secretary, State of Karnatka versus Umadevi and others (1)*, *Ghaziabad Development Authority and another versus Ashok Kumar and another (2)*, *Mahboob Deepak versus Nagar Panchayat, Gajraula (3)*, *M.P.Administration versus Tribhuwan (4)*, *Uttanchal Forest Development Corpn. versus M.C.Joshi (5)* and *State of M.P. and others versus Lalit Kumar Verma (6)*.

(5) The Labour Court further held that the workman was engaged on daily wages, without following rules and the principles commensurate with Articles 14 and 16 of the Constitution of India. He was not appointed against a sanctioned post by any competent authority. Therefore, even if the workman had completed 240 days of service, it was immaterial as there could be no reinstatement to service or grant of back-wages.

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- (1) 2006 RSJ 572
 - (2) 2008 (4) SCC 261
 - (3) (2008) 1 SCC 575
 - (4) (2007) 9 SCC 748
 - (5) (2007) 2 SCC (L&S) 813
 - (6) (2007) 1 SCC 575

(6) The Labour Court found that it was a case of entitlement of just and reasonable compensation by applying the law laid down in *Jagbir Singh versus Haryana State Agriculture Marketing Board and another* (7), *Telecom District Manager and others vs. Keshab Deb.* (8) and *State of Haryana through Executive Engineer versus Ishwar Singh and others* (9).

(7) Resultantly, for 9 years and 3 months of uninterrupted service, the Labour Court thought it fit to award only Rs.36,000/- as compensation in lieu of reinstatement. The impugned award dated 18.6.2010 has been called in question in this petition.

(8) In the written statement, manifold defences have been taken including that the Forest Department is not an industry; the workman was engaged as his own Contractor; no service record was maintained, the worker had submitted quotations and having offered the lowest rate, he was allotted the work and payments were made against bills on completion of work assigned; the main function of the workman was to plant trees, especially during the rainy season and the work being seasonal in nature, there was no employment possibility for the whole year; no juniors were retained in the department nor thereafter; they were not under obligation to comply with the provisions of the Act; the decision of the Supreme Court in *Bangalore Water Supply and Sewerage Board versus A. Rajappa* (10), has been referred to a larger Bench. Therefore, it could not be said by any stretch of imagination that the Forest Department is an industry; the claim statement has been filed after a gap of three years which is belated.

(9) The onus to prove employment from July, 1994 to October, 2003 was on the workman. He had no documentary evidence in his possession to prove the issue as he had record of muster rolls and payment bills for work done in Hansi Range.

(10) In order to discharge the burden of proof, he filed an application before the Labour Court requesting summoning of record i.e. muster rolls, issue register, cash-book and bills from July, 1994 to October 2003 from

(7) 2009 (4) RSJ 367

(8) 2008 (4) SCT 33

(9) 2008 (3) SCT 788

(10) 1978 (2) SCC 213

the department. The Labour Court directed the Management to produce the relevant record since onus had shifted on it being custodians of original record and special to their knowledge. Pursuant to that direction, one Ramesh Kumar, Forester appeared and brought some record i.e. cash books and muster roll issue register showing the payments made to the workman in the year 2001 and 2002. He deposed that the muster rolls from June, 2000 to January, 2004 pertaining to the workman were also issued, but he had not brought the original muster rolls for production. He undertook to produce photocopies of the muster rolls on the next date of hearing. However, despite the assurance given the muster rolls were not produced. The Labour Court drew an adverse inference against the Management which had withheld vital evidence. The Labour Court found that due to non-production of record by the Management, the workman could not be put to disadvantage in absence of justifiable reason for non-production of record. In the face of this, the Labour Court held that the termination of the services of the workman was not in conformity with the provisions of the Act. The finding of the Labour Court that the termination was brought about in breach of mandatory provisions of Section 25-F of the Act has not been challenged by the Forest Department. They are, therefore, bound by those findings.

(11) Having reached thus far, the Labour Court thought it fit to award only Rs.36,000/- as compensation. This, to my mind, is not judicious dispensation of justice in the face of violation of mandatory provisions of Section 25-F of the Act. The effect of non-compliance of Section 25-F is settled by a string of landmark judgments recently passed by the Supreme Court in *Anoop Sharma* versus *Executive Engineer, Public Health Division No.1, Panipat (II)*, *Devinder Singh v. Municipal Council, Sanaur*, (Civil Appeal No.3190 of 2011 decided on 11.4.2011) and *Harjinder Singh* versus *Punjab State Warehousing Corporation Ltd. (12)*.

(12) In *Harjinder Singh (supra)*, the Supreme Court has held:-
“30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the *raison d'être* of the judicial process and an impression has been created that the

(11) 2010 (3) SCC 497

(12) (2010) 3 SCC 192

constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary or the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer – public or private.”

(13) In the written statement filed by the respondent-Department, no objection has been taken with respect to the nature and quality of the appointment of the petitioner as not measuring up to the standards demanded by Articles 14 and 16 of the Constitution. Therefore, this issue cannot be raked up for the first time in writ proceedings, in view of the ratio of law laid down in *Harjinder Singh (supra)* itself.

(14) Resultantly, this petition and connected writ petitions are allowed. The impugned awards are set aside. The petitioners are ordered to be reinstated with continuity of service. Back-wages are ordered to be due and payable from the date of receipt of reference since from the record made available, it is not clear as to when the demand notices in this group

of cases was served on the management. It would, therefore, be safe to award back-wages from the date of reference. Let the back wages be calculated and paid to the respective workmen within three months of receipt of certified copy of this order failing which back wages would carry 12% interest from the appointed date, that is, the date of reference till payment.

(15) The respondent-department would, however, be at liberty to hold an enquiry and fix liability on erring officials who failed to produce the record before the Labour Court after giving an undertaking to do so. The conduct of Ramesh Kumar, Forester who appeared as management witness in all the four cases may be examined at the level of the Government. The forest department would also remain at liberty to hold an enquiry against erring officer(s) after identifying them who failed to comply with the mandatory provisions of the Industrial Disputes Act, 1947 and particularly, Section 25-F thereof at the time of retrenchment. In case conduct of anyone is found remiss or wanting, then back-wages ordered by this Court may be recovered from erring officer(s) found responsible so that the public exchequer does not suffer on account of laxity of public servants in discharge of their statutory duties. The result of the enquiry is directed to be placed on the record of these cases after completion. Let that exercise be finalized within six months. Also let a copy of this order be sent to the Secretary, Forest Department, Government of Haryana for further remediable action. This appears to this court to be the best possible way to stop the law of the jungle from prevailing in the forest department in these and future cases. I say so after gaining firsthand experience of many cases of this kind involving the respondent department coming up in the roster of this Court recently where breach of law is writ large and wanton disregard of the mandatory procedural safeguards underlying Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is now not enough to callously throw a marginal daily wage worker out of job and deprive him of his micro livelihood with characteristic bureaucratic mirth, without following due process of law, and then leave him to battle it out in court for years, and then be told to accept reinstatement without back wages. This is another terrible facet of man's inhumanity to man. We must try to put an end to it.

(16) The four petitions stand disposed of accordingly.