

Hari Palace Ambala City v. The Presiding Officer, Labour Court and another,—(S. S. Sandhawalia, C.J.)

That being so, this appeal has necessarily to be allowed, the order of the learned Single Judge is set aside and the references made by the respondent-landowners are dismissed. There will be no order as to costs.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., B. S. Dhillon and R. N. Mittal, JJ.

HARI PALACE AMBALA CITY,—Petitioner.

versus

THE PRESIDING OFFICER, LABOUR COURT and another,—  
Respondents.

Civil Writ Petition No. 3521 of 77

April 2, 1979.

*Industrial Disputes Act (14 of 1947)—Sections 7 and 10(1), Second Schedule, Item 3—Termination of services of a workman held invalid—Workman directed to be reinstated—Grant of back wages—Criteria stated—Gainful employment of the workman during the period of forced idleness—Onus of proof—Whether on the employer.*

Held, that ordinarily a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule and the party objecting to it must establish the circumstances necessitating departure: (Para 6).

*Petition under Articles 226/227 of the Constitution of India praying that the petition be accepted, records of the case sent for and;*

- (a) a writ in the nature of certiorari issued quashing the impugned award annexure P. 9.
- (b) any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case.

- (c) *services of notice of motion dispensed with since respondent No. 2 is seeking to get the impugned award implemented ;*
- (d) *filing of certified/original copies of annexures P. 1 to P. 9 dispensed with;*
- (e) *Operation of the impugned award stayed till the writ petition is finally disposed of; and*
- (f) *costs awarded to the petitioner.*
- (g) *filing of typed copy of Annexure p-9 be dispensed with.*

N. K. Sodhi, Advocate, for the Petitioner.

M. S. Liberhan, Advocate, for respondent No. 2.

#### JUDGMENT

S. S. Sandhawalia, C.J.

(1) What criteria should govern the grant of full back wages to a workman under the industrial law, when the termination of his services is held invalid by the Labour Court and the relief for reinstatement is granted to him—is the sole, though significant, question which had necessitated the admission of these two connected writ petitions (C.W.P. No. 3521 of 1977—*Hari Palace, Ambala City, v. Presiding Officer, Labour Court, etc.* and C.W.P. No. 4414 of 1978—*Dharam Paul Chadha v. The Presiding Officer, Labour Court, etc.*), for a hearing before a Full Bench.

2. At the very outset it deserves highlighting that the matter is so squarely covered by a recent judgment of the final Court that it would be patently wasteful to elaborate the issue either with regard to the principle or to precedent. Therefore, a brief reference to the averments in C.W.P. No. 3521 of 1977—*Hari Palace v. Presiding Officer, etc.* would suffice to give the necessary background giving rise to the legal issue aforesaid.

3. The petitioner firm claims that their employee-respondent No. 2, Shri Walaiti Ram, had on his own accord resigned from his job, which was duly accepted by it. However, about two weeks

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thereafter respondent No. 2, is alleged to have demanded reinstatement on the plea that his services were illegally terminated on 18th October, 1975. An industrial dispute was raised, which on a reference to the Labour Court was decided in favour of the respondent-workman. It was held by the Labour Court,—*vide* its order dated 7th April, 1977 that the alleged resignation of the workman was not a genuine document and the termination of his services was unjustified. It accordingly allowed to the workman the relief of reinstatement with effect from 18th October, 1975, with continuity of service, and also granted full back wages from the said date.

4. Mr N. K. Sodhi, appearing for the petitioner very fairly concedes that the sole point that calls for determination in the present case is whether the grant of full back wages to the respondent-workman, without his having made a specific claim therefor or led sufficient evidence in support thereof, is sustainable in law. It was pointed out that no specific issue was framed on this point by the Labour Court. Basically reliance of the learned counsel was on a Division Bench Judgment of the Bombay High Court reported in *Sadanand Patnakar v. M/s. New Prabhat Mills No. 2, Bombay, etc.* (1) Counsel further argued that in the said High Court a view consistent with the aforesaid judgment has always been taken.

5. There is no gainsaying the fact that there has been some divergence of opinion in the various High Courts on the point earlier. Varying views had been expressed as to where precisely the onus lay with regard to the claim to back wages and also with regard to the striking of the issues or the necessary point for determination thereof by the Labour Court itself. Within this Court a Division Bench in *Daljeet and Co. Private Ltd., Rupar v. The State of Punjab and others* (2) has held that the dismissed employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal, and it is for the employer to raise this matter and prove that the employee had been earning wages for the whole or any part of the period in question. The aforesaid view has been consistently followed in this Court and reaffirmed in *Harbans Singh and others v. The Assistant Labour Commissioner and others*, (3). The Allahabad High Court

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(1) 1975(1) Labour & Industrial cases 457.

(2) A.I.R. 1964—Punjab page 313.

(3) 1976 Pb. Law Reporter 221.

was inclined to take a similar view in *Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow*, (4) and the same tenor is the judgment of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kamdar Mandal* (5).

6. However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in *M/s. Hindustan Tin Works Pvt. Ltd., v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd., and others*, (6) wherein the appeal by Special Leave was expressly limited to the question of grant of back wages. It has been held therein in no uncertain terms:

“Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer.”

And again:

“Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure.”

The aforesaid view has then been reiterated by their Lordships in *G. T. Lad and others v. Chemicals and Fibres India Ltd.*, (7).

7. In view of the aforesaid enunciation of the law it is plain that the matter is now concluded against the petitioner in C.W.P. No. 3521 of 1977. The writ petition is accordingly dismissed, but the parties are left to bear their own costs.

8. The only additional point raised in C.W.P. No. 4414 of 1978 was that the Labour Court had misdirected itself and mis-appreciated the evidence in coming to the finding that the respondent-workman was entitled to reinstatement. We have closely perused the order of Presiding Officer wherein he has adverted to all

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(4) (1971) Labour Law Journal 327.

(5) (1971)1 Labour Law Journal 508.

(6) A.I.R. 1979 S.C. 75.

(7) 1979 Labour & Industrial Cases 298.

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the relevant evidence to come to a considered finding that the management had abruptly terminated the services of the workman and in fact he never abandoned his post by wilful absence from duty as alleged by the management. Even otherwise it is patent that this finding in the present case appears to be one of fact arrived at on the basis of evidence adduced. It is not the province of the writ Court to easily disturb the finding of fact arrived at by the Labour Court on the basis of evidence. This writ petition also is, therefore, without merit and is dismissed leaving the parties to bear their own expenses.

Bhopinder Singh Dhillon, J.—I agree.

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N.K.S.

FULL BENCH

*Before S. S. Sandhawalia, C.J., D. S. Tewatia and G. C. Mital, JJ.*

SUKHDARSHAN SINGH,—*Petitioner.*

*versus*

STATE OF PUNJAB and others,—*Respondents.*

*Civil Writ No. 696 of 1978*

April 16, 1979.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 32-D (3), (4), (5) and 50—Order passed by the Commissioner under Section 32-D (3)—Revision against such order—Whether competent under Section 32-D (4).*

*Held*, that (i) if against the order of the Collector an appeal is decided under sub-section (3) of Section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955, no further revision would lie under sub-section (4) and finality would attach to the order under sub-section (3) by virtue of sub-section (5), as the order under sub-section (2) would be deemed to be passed by the State Government even if passed by an officer authorised by the State Government in this behalf.

(ii) If no appeal is filed under sub-section (3) then the revisional power under sub-section (4) can be exercised by the State Government or its delegate and finality will attach under sub-section