Before K. Kannan, J.

HAWA SINGH.—*Petitioner*

versus

THE P.O., INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISSAR AND ANOTHER.—*Respondents*

C.W.P. No. 7714 of 1995 &
C.W.P. 7517 of 1995

5th November, 2009

Industrial Disputes Act, 1947—S.19(6)—Constitution of India 1950—Art. 226—Labour Court ordering reinstatement of workmen—Management not permitting workmen to resume duty—Workmen issuing notices-Delay in filing petition does not take away rights of workmen–Management not denying basis of calculations—Workmen held to be deliberately denied by management to resume duty and entitled to recover full wages for period as claimed-Management also held liable to pay interest @ 9% from the date of respective petitions filed before Labour Court till date of payment.

Held, that even as regards the finding that the management had lawfully terminated the award, it is meaningless. All that the workmen required to do to prove the unwillingness of the management to permit the workmen to resume duty was to show that there had been awards in their respective favour directing reinstatement and that notices had been issued by the workmen with copies to the Labour Commissioner that they were willing to resume duty, but the management was not prepared to allow them entry. The management ought not to have been permitted to take advantage of their own wrong and the purported notices served by the management on 2nd July, 1986 purporting to cancel the award must have been seen as an act of the management to take advantage of their own wrong.

(Para 7)

Further held, that the workmen were, under the circumstance, definitely entitled to treat themselves as still in employment and claim the wages that they were demanding for the period when they were not allowed

to rejoin duty. The delay in filing the petition does not take away the rights of the workman. The basis of the calculations themselves were not denied by the management. What was, however, in denial was their entitlement. In view of my finding that the workmen were deliberately denied by the management to resume duty, the resultant finding in answer to claims made by the workmen shall also be that the workmen are entitled to recover full wages for the period as claimed. The management shall also be liable to pay interest at 9% from the date of the respective petitions filed before the Labour Court till the date of payment.

(Para 9)

Mrs. Tarun Jain, Advocate, *for the petitioner.*

Shailender Jain, Advocate, *for respondent No. 2.*

K. KANNAN, J.

(1) For the reasons stated in the applications, the writ petitions are ordered to be restored to its original numbers.

(2) Applications are allowed.

(3) The two writ petitions arise out of the rejection of claim petitions filed at the instance of two workmen working in the same establishment for recovery of wages denied to them between the period from 1st August, 1987 to 30th April, 1990. The claim in Civil Writ Petition No. 7714 of 1995 was for 50,000 and for the same period for the petitioner in Civil Writ Petition No. 7517 of 1995 was Rs. 45,000. The claim petitions came to be filed under the following circumstances.

(4) By award published on 13th December, 1984, both the workmen had been directed to be reinstated in service. It is also an admitted fact that the award had been published in the gazette in the year 1985. The complaint of both the workmen was that in spite of the directions for reinstatement, they had not been permitted to enter the factory and report for duty. Consequently, both the workmen had issued notices on 3rd June, 1986, again on 17th June, 1986. The receipt of both the notices had been admitted by the management and they had responded through notices on 9th June, 1986 and yet again on 2nd July, 1986, on both the occasions

denying the contentions of the workmen that they had reported for duty, but on the other hand, turning the tables on them by stating that the workmen had not deliberately returned to duty and that the notices were being sent purporting to terminate the award as required under Section 19(6) of the Industrial Disputes Act. The workmen had complained that the management had deliberately stated falsehood as though they were prepared to comply with the award, but, on the other hand, they had, in brazen defiance of the awards of the Labour Court, disallowed the workmen to resume duty.

(5) When the applications had been filed under Section 33-C (2), the management had contended that the workmen had never reported for duty after the favourable orders passed in their favour, but they had been working elsewhere and hence, not been keen to resume duty with the management. It was also their contention that the awards had been terminated by properly issuing notices under Section 19(6) of the Industrial Disputes Act. The Labour Court accepted the contentions of the management and found that the workmen had failed to prove that they were willing to resume duty. It also found that there was no proof that the workmen had sent notices offering to go back to duty. The orders rejecting the claims of the workmen are the subject of challenge before this Court.

(6) The first line of reasoning that the workmen had failed to prove that they were willing to resume duty and that it was only the management that prevented them from rejoining, were attempted to be shown by the learned counsel for the petitioners, to be patently wrong, for, it failed to note an admitted position that the notices had been issued. The Labour Court which had made the reference to the letters of the management on 9th June, 1986 and 2nd July, 1986, when they were complaining that the workmen had not reported for duty themselves contained recitals of receipt of notices from the workmen. The workmen had also issued notices during the pendency of the proceedings calling upon the management to produce the copies of letters dated 3rd June, 1986 and 17th June, 1986, where they had offered to resume duty. If only the Labour Court had adverted to recitals in notices of the management, it could have been seen that the management was afterall responding to the notices issued by the workmen and the finding that the workmen had not proved their willingness to their rejoining duty, would be seen to be patently wrong.

(7) Even as regards the finding that the management had lawfully terminated the award, it is meaningless. All that the workmen were required to do to prove the unwillingness of the management to permit the workmen to resume duty, was to show that there had been awards in their respective favour directing reinstatement and that notices had been issued by the workmen with copies to the Labour Commissioner that they were willing to resume duty, but the management was not prepared to allow them entry. The management ought not to have been permitted to take advantage of their own wrong and the purported notices served by the management on 2nd July, 1986 purporting to cancel the award must have been seen as an act of the management to take advantage of their own wrong.

(8) Even the effect of Section 19(6) has been wrongly understood by the management. The said sub-section reads as follows :—

> *"Nothwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."*

In **L.I.C.** *versus* **D. J. Bahadur, (1)** the Hon'ble Supreme Court held that a settlement or award continues to operate even after service of notice and lapse of two months subsequent thereto contemplated under Section 19(2) or notice proposing change in conditions of service under Section 9-A and would stand terminated only when replaced by another settlement or award. Consequently, the notice issued by the management on 2nd July, 1986 itself cannot terminate the award. It could at best serve as a fresh negotiation point for a future dispute that may arise. The position urged by the counsel for the management, if it were to be accepted, would lead to disastrous consequences of valid awards passed to be stifled at mere whims of a party against whom it is passed by merely serving a notice. This, the legislature never intended and this situation the section does not simply result.

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(1) (1981) 1 SCC 315

(9) The workmen were, under the circumstances, definitely entitled to treat themselves as still in employment and claim the wages that they were demanding for the period when they were not allowed to rejoin duty. The delay in filing the petition does not take away the rights of the workman. The basis of the calculations themselves were not denied by the management. What was, however in denial was their entitlement. In view of my finding that the workmen were deliberately denied by the management to resume duty, the resultant finding in answer to claims made by the workmen shall also be that the workmen are entitled to recover full wages for the period as claimed. The management shall also be liable to pay interest at 9% from the date of the respective petitions filed before the Labour Court till the date of payment.

(10) The orders of the Labour Court are set aside and the claim petitions are allowed as prayed for with interest and cost assessed at Rs. 5,000 for each case.

R.N.R.

Before M. M. Kumar & Jaswant Singh, JJ.

G. L. BATRA.—*Petitioner*

versus

STATE OF HARYANA AND OTHERS.—*Respondents*

C.W.P. No. 13029 of 1997

4th November, 2009

Constitution of India, 1950—Arts. 14, 16 & 226—Haryana Public Service Commission (Conditions of Service) Regulations, 1972—Reg. 6—Punjab State Public Service (Conditions of Service) Regulations, 1958—Reg. 5(1)—Two distinct classes—Non-pensioners and re-employed pensioners—Fixation of pay differently—Regulations contemplating a valid classification between in-service employees and re-employed pensioners—No reason to frown at different treatment being given to different classes of persons in matter of fixation of pay—Punjab and Haryana Regulations are not hit by Articles 14 and 16(1) of the Constitution—Constitutional