

Before Harbans Lal, J.

**HABRI COOPERATIVE CREDIT AND SERVICE SOCIETY
LTD., HABRI,—Petitioner**

versus

**THE PRESIDING OFFICER, LABOUR COURT,
AMBALA AND ANOTHER,—Respondents**

C.W.P. No. 9477 of 1987

5th November, 2008

Constitution of India, 1950—Art. 226—Ex parte award ordering reinstatement with payment of back wages—Challenge thereto—Plea regarding delay of 9 years in serving demand notice by workman—Management failing to contest matter before Labour Court despite service—Payment of back wages by keeping in view principles of natural justice, equity and good conscience—Workman undergoing litigation for over 20 years—To meet ends of justice management directed to pay a sum of Rs. 2.75 lacs by way of compensation to workman.

Held, that entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate Court/Tribunal.

(Para 11)

Further held, the workman has undergone litigation for over 20 years. The interest of justice would be met, if a sum of Rs. 2.75 lacs is directed to be paid to him by way of compensation. The payment shall be made within 12 weeks from today, failing which it shall carry interest at the rate of 9% per month from today till the date of actual payment.

(Para 12)

Rakesh Gupta and C. B. Goel, Advocates *for the petitioner.*

R. S. Chahar, Advocate *for respondent No. 2.*

JUDGMENT

HARBANS LAL, J.

(1) This petition has been moved by Habri Cooperative Credit and Service Limited, Habri under Articles 226/227 of the Constitution of India for quashing the impugned award Annexure P.2, dated 2nd May, 1987.

(2) The brief facts giving rise to this petition are that prior to coming into force of the Common Cadre Rules, 1975, the respective Societies used to employ its staff. Under these Rules, all the Secretaries working in the Primary or Central Cooperative Societies were screened and selected by the Appointing Authority. Balwant Singh—respondent (hereinafter to be referred as ‘the workman’) was not selected by the authority. Consequently, he was no more in service of the petitioner-Society. He had relinquished the charge on 1st September, 1976. After the enforcement of these Rules, the Primary Cooperative Society ceased to have any control over the appointment or removal of the Secretaries of the Society. Thus, the workman was not the employee of the petitioner-Society. He was not brought on the Common Cadre Rules referred to above. He did not ask for any reference to the arbitration as contemplated by Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961, nor Section 102 of the Haryana Cooperative Societies Act, 1984. He remained at home after 1st September, 1976 when he gave the charge of his post. He preferred a reference under the Industrial Disputes Act, 1947 (for short, ‘the Act’) and served a demand notice under Section 2-A of the Act on 2nd July, 1984. State Government did not refer the same for adjudication on the ground that he was not the employee of the said Bank. The petitioner-Society is a primary Society and is a member of the Kurukshetra Central Cooperative Bank Limited, Kurukshetra. Since the dispute was not referred for adjudication against the Kurukshetra Central Cooperative Bank Limited, no reference could be preferred against the petitioner-Society, who was not the employer of the workman. However, the demand notice was referred to the Presiding Officer, Labour Court, Ambala. Since the workman was not the employee of the petitioner-Society, so the later did not prefer to contest the dispute. Consequently, the Labour Court passed an award,

dated 2nd May, 1987 *ex parte* Annexure P.2. The very demand of the workman and the decision of the Government referring the same to the Labour Court for adjudication of the dispute between the workman and the petitioner-Society is wholly illegal and without jurisdiction, as there existed no relationship of master and servant between them. Moreover, there was no order of termination of service of the workman-Balwant Singh. The impugned award Annexure P.2 is patently illegal and without jurisdiction on the grounds as embodied in this petition. In his written statement, the respondent-workman has averred that he was possessing all the pre-requisite qualifications as envisaged under Rule 9.6 of the Common Cadre Rules, which came into force on 3rd March, 1975, whereas the answering respondent remained in the employment of the petitioner-Society till 1st September, 1976. His services were dispensed with without any reason or notice as contemplated under the Act. He had served the petitioner-Society since 1971 to 1st September, 1976 and had never been an employee of the Central Bank under the Common Cadre Rules. The demand notice was served upon the petitioner-Society. The reference against the Kurukshetra Central Cooperative Bank was declined by the State Government,—*vide* memo on the sole ground that the answering respondent was not an employee of the Bank and that is why the dispute was referred. Lastly, it has been prayed that this petition may be dismissed.

(3) After hearing the representative of the workman, the learned Presiding Officer, Labour Court, Ambala passed the impugned award by observing as under :—

“The matter is already subjudice with the Court without awaiting the result of the criminal case services of Shri Balwant Singh have been terminated in violation of Section 25(F). So, I think that the termination order passed by the respondent regarding services of workman is at this stage unjust and illegal during the pendency of Criminal Case against the workman and other person. So, termination of the workman is set aside with the relief of reinstatement with continuity in service and with full back wages, I pass an *ex parte* award regarding the dispute in hand between the parties accordingly. This Award of mine regarding the present

industrial dispute shall not have any effect on the Criminal Case pending in the Court of S.D.J.M., Kaithal. Neither this Award shall in any respect influence the mind of the Criminal Court while delivering judgment in Criminal Case.”

(4) Feeling aggrieved with this award, the petitioner has filed this petition.

(5) I have heard the learned counsel for the parties, besides perusing the findings returned by the learned Presiding Officer, Labour Court with due care and circumspection.

(6) Mr. Rakesh Gupta, Advocate appearing on behalf of the petitioner urged with great eloquence that the services of the workman were terminated in October, 1976 whereas he asked for a reference on 29th June, 1985 which is obviously after about nine years. He could not ask for any relief at such a belated stage. The learned Labour Court has gravely erred in not taking into consideration this long delay of nine years. To buttress this stance, he has sought to place abundant reliance upon the observations made in re: **Haryana State Cooperative Land Development Bank versus Neelam, (1)** in which the respondent-workman had approached the Labour Court after more than seven years. The Labour Court held that the claim was made at a belated stage and answered the award against the respondent—workman. The award was set aside by the High Court and ordered reinstatement of the respondent. The Apex Court held that the conduct of the respondent in approaching the Labour Court after more than seven years had rightly been considered relevant for refusing relief to her. It was not a fit case where the High Court should have interfered with the discretionary jurisdiction exercised by the Labour Court.

(7) To tide over these submissions, Mr. R. S. Chahar, Advocate representing the respondent argued that the petitioner did not have the courage to contest this matter before the Presiding Officer of the Labour Court. In the impugned award, it has been mentioned that respondent-Management was served, but in spite of service, it did not appear. The respondent-Management was proceeded *ex parte*. It clearly indicates that the Management was quite disinterested to pursue the matter before the Labour Court. That being so, now it does not lie in its mouth to

contend that the demand was raised by the workman at a belated stage. He further puts that a glance through the observations made by the Labour Court would reveal that the same call for no interference. At this juncture, it is pointed out by the learned counsel for the petitioner that the workman has superannuated. This fact has not been denied by the adversary. The learned Presiding Officer, Labour Court has observed that while removing the workman from service, no notice, no retrenchment compensation was paid. The Assistant Registrar Cooperative Societies conducted inquiry against him and copy of the inquiry report is Ex.A.2. Thereafter, arbitration proceedings were carried out against him. The award of arbitration is Ex.A.3. A police case was registered against him in which four, five other persons have also been summoned by the Court and copy of the order of the Court is Ex.A.4. He served demand notice upon the Bank and, thereafter, his case was referred to the Labour Court. The Cooperative Society issued a 'no dues certificate' to him and copy of the same is Ex.A.5. One more 'no due certificate' was issued to him and copy of the same is Ex.A.6. A glance through the findings returned by the learned Labour Court would reveal that no interference is warranted therein. The workman cannot be reinstated as he has already superannuated. The petitioner-Company has not assigned any cogent reason for not contesting the matter before the Labour Court. If there was delay in serving the demand notice by the workman, in that, the petitioner—Company should have come forward and raised an objection in this behalf before the Labour Court. The facts of **Neelam's case** (*supra*) are distinguishable from the one in hand. That being so, the contention raised on behalf of the petitioner's Company is turned down.

(8) Coming to the back-wages, in re: **General Manager, Haryana Roadways versus Rudhan Singh**, (2) it has been held as under :

“There is no rule of thumb that in every case where the Industrial Tribunal gives a findings that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether *ad hoc*, short term, daily wages, temporary or

permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wage for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.”

(9) Again in **Allahabad Jal Sansthan versus Daya Shankar Rai**, (3) after considering the relevant cases on the point, their Lordships were pleased to observe in the following terms :

“We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.”

(10) In re: **U.P.S.R.T.C. Ltd. versus Sarada Prasad Misra, (4)**
it was observed as under :

“From the above cases, it is clear that no precise formula can be adopted nor ‘cast iron rule’ can be laid down as to when payment of full back wages should be allowed by the Court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the Court or Tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order.”

(11) Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate Court/Tribunal.

(12) Adverting to the case in hand, the workman has undergone litigation for over 20 years. The interest of justice would be met, if a sum of Rs. 2.75 lacs is directed to be paid to him by way of compensation. The payment shall be made within 12 weeks from today, failing which it shall carry interest at the rate of 9% per month from today till the date of actual payment. Accordingly, the award is modified.

(13) Disposed of accordingly.

R.N.R.

(4) JT 2006 (5) SC 114