NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 346 OF 2015
(Arising out of S.L.P. (C) No. 1532 of 2014)

JASMER SINGH ... APPELLANT

VERSUS

STATE OF HARYANA & ANR. ...RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

2. This appeal is filed by the workman, aggrieved by the impugned judgment and order of the Punjab and Haryana High Court in L.P.A. No. 2245 of 2011 (O & M) dated 19.09.2013 affirming the judgment and order of the learned Single Judge dated 7.04.2010 passed in C.W.P. No. 9532 of 2001 by which Award dated 27.07.2000 of the Industrial Tribunal-cum-Labour Court, Panipat, in Reference No. 205 of 1997 is set aside, raising certain

questions of law and urging various legal grounds in support of the same.

3. In nutshell, facts are stated for the purpose of finding out whether the impugned judgment and order of the Division Bench warrants interference by this Court in this appeal.

4. The appellant-workman was working as daily paid worker in the office of Sub Divisional Officer/Engineer, Provincial Division No. 3, PWD B & R Karnal since 1.1.1993 and remained in service upto December, 1993. He had completed more than 240 days of continuous service in one calendar year. His services were terminated on 31.12.1993 without complying with the mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). The respondent-management neither issued notice nor notice pay nor retrenchment compensation was given to him. The principle of 'last come first go' was not followed as provided under Section 25G of the Act and the persons who

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were juniors to him in service were retained. Therefore, he has raised an industrial dispute under the provisions of the Act before the Conciliation Officer requesting for setting aside the order of termination as the same is *void ab initio* in law and sought an order for reinstatement with back wages and other consequential benefits. As the workman's demand made in his Notice dated 27.11.1996 was not complied with, the Conciliation Officer submitted a failure report to the State Government of Haryana. The State Government of Haryana in exercise of its statutory power under Section 10(1)(c) of the Act referred the industrial dispute to the Industrial Tribunal-cum- Labour Court for adjudication as per the points of dispute. The same was registered as Case Reference No. 205 of 1997 for adjudication of the dispute.

5. The Industrial Tribunal-cum-Labour Court answered the points of dispute referred to it. Both the parties filed their respective statements *inter alia* justifying their demand and order of

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termination passed against the workman. The respondent-management has taken preliminary objections contending that Reference is bad in law as necessary parties are not impleaded to the order of reference, namely, Sub Divisional Engineer, Province Sub Division No.8, PWD (B & R) Karnal, the claim of the workman is time barred and the provisions of the Act are not applicable to the respondent-employer. Further, the appellant was employed on daily wages muster roll by the Divisional Engineer, Provincial Sub-Division No. 8, PWD (B & R), Karnal, in the month of January, 1993 and he left the job on his own accord in August, 1993 and he has not completed 240 days in that Sub Division. It was further pleaded by the respondent-employer that some other daily wage workmen who were working along with him in August, 1993 continued to work in September, 1993 as well and if the workman attended the duty in September, 1993 there is no reason not to employ him along with others. Further, it was pleaded that in October, 1993 the appellant went to another Sub-

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Divisional Officer where some other work was going on and got himself employed there afresh and worked up to December, 1993 in Sub-division No.6 and again he left the job voluntarily during December, 1993 and therefore, termination order was not passed by respondent-employer. The number of working days of the workman as given in the written statement that he did not complete 240 days in any calendar year and as such, the provisions of Section 25-F clauses (a) & (b) of the Act were not required to be complied with. To the said written statement, a reply statement was filed by the workman.

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6. On the basis of the pleadings made on behalf of the parties, five Issues were framed and the witness Mr. Vipin Sharma on behalf of the employer along with the workman was examined by himself to prove their respective cases. The workman produced Ex 6 WX - Muster Roll of September, 1993 to prove his case that he worked for 240 days in a calendar year with the respondent-employer and the Industrial Tribunal-cum-Labour Court on the basis

of pleadings and evidence on record has recorded the finding of fact and answered the issues framed by it in the Award in favour of the workman after proper appreciation of evidence on record. The Industrial Tribunal-cum-Labour Court has recorded the finding of fact on issue No. 1 after adverting to the evidence of the workman-WW1, who has stated in his statement of evidence that he had been appointed in the respondent-management on monthly pay of Rs.1240/-.

7. He has further stated that he has worked up to 31.12.1993 and showed that he has worked for more than 310 days both in Sub Division Nos. 8 and 6. He has produced the Muster Roll in support of his contention and further stated that the Executive Engineer of both the Sub Divisions is same. He has further stated that while terminating his service, neither notice nor notice pay in lieu of notice or retrenchment compensation was given to him. He has further produced the photocopy of the Muster Roll Exh. WX showing that he worked for 22 days during the month of September, 1993. Therefore, the total

number of days worked in a calendar year, as indicated in the written statement filed by the respondent-employer at para 2, if taken into consideration then it will be more than 240 days the workman has worked in the establishment of the respondent-employer. The genuineness of the document is not questioned by the respondent’s counsel in the cross-examination of WW-1, therefore, the same is accepted and held that the workman has worked for more than 240 days during a calendar year preceding the date of his termination from the services. Undisputedly, retrenchment compensation was not given by the respondent-employer to the appellant contending that he is not entitled for the same, as he has not worked for 240 days, and therefore, the question of giving retrenchment compensation does not arise. The Industrial Tribunal-cum-Labour Court has also considered the evidence of MW 1 – Vipin Sharma, SDO, who had stated in his evidence that the appellant-workman had worked in their Sub-Division No. 8 from January, 1993 to August,

1993 and had left the work in the month of September, 1993. He further stated that from October, 1993 to December, 1993 he had worked in some other Division, which does not fall in the National Highway Division. To this effect, no documentary evidence is produced. On the other hand, the evidence produced by him proves that he has worked during the month of September, 1993 with the respondent-employer which would clearly go to show that he has worked for more than 240 days in the Sub Division and further, the said witness of the respondent-employer has stated that administrative control of Sub Division No. 6 and Sub Division No. 8 is under the different Executive Engineer. He further stated that construction of National Highways and its maintenance work is given by the Ministry of Surface of India. After adverting to the said evidence of MW-1 and the plea taken by the respondent-employer in the written statement that the appellant-workman has left the job voluntarily, therefore, he is not entitled for the

benefit of Section 25-F clauses (a) and (b) of the Act, is rightly rejected by the Industrial Tribunal-cum-Labour Court after placing reliance upon Civil Writ Petition No. 2375 of 1997 titled "Rajpati vs. HUDA" in which the High Court has observed that Executive Engineer is the appointing and terminating authority of the workmen in both the Sub-Divisions. Therefore, the Industrial Tribunal-cum-Labour Court has rightly recorded a finding of fact on the basis of evidence on record stating that the contention urged on behalf of the respondent-employer that the workman has worked in two different Sub Divisions is immaterial for the reason that the XEN of both the Sub Divisions is the same. Therefore, the issue No.1 is rightly decided in favour of the appellant-workman and against the respondent-employer.

8. Further, the evidence of Executive Engineer is considered, who deposed in his evidence that he has worked as Sewadar with the respondent-employer from January, 1993 to December, 1993 and total number of working days in a calendar year are

shown as 310, the said evidence was considered with reference to the Muster Roll Exbs M-1 to M-8 produced by the respondent-employer and its written statement, wherein the respondent-employer has categorically stated that in Sub Division No. 8 Karnal, the workman has worked for 231 days and in view of the Muster Roll for the month of September, 1993, which is tendered by the workman as Exb. WX, who has worked for 22 days during that month, therefore, the total number of working days in Sub Division No. 8 for the period from January, 1993 to September, 1993 and sub-Division No.6 would be 253 days. As the total number of working days are more than 240 days, therefore, the documentary evidence produced by the workman is rightly relied upon by the Labour Court and that the workman has rendered more than 240 days' service in the establishment of the respondent is established. Hence, it has further held that the non-compliance of the provisions of Section 25-F clauses (a) and (b) of the Act i.e. issuance of neither notice nor notice pay and payment of

retrenchment compensation to the appellant are not complied with, therefore, the labour court has correctly held that the termination of the services of the workman is illegal and accordingly, the issue No. 1 is answered in favour of the workman and against the respondent-employer.

9. On issue No. 3, after adverting to the case of ***State of Punjab** v. **Kalidass and Anr.*** in C.W.P. No. 1742 of 1996, wherein the High Court has observed that the workman cannot be allowed to approach the Labour Court after 3 years of termination of his services, upon which reliance placed by the respondent-employer with reference to the said plea the Labour Court has rightly placed reliance upon the judgment of this Court in ***Ajaib Singh v. Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. and Anr.***[1] in which it is observed by this Court that there is no period of limitation to the proceedings in the Act. Accordingly, Issue No. 3 is answered against the

[1] (1999) 6 SCC 82

respondent-management. The relevant paragraph from ***Ajaib Singh's*** case (supra) are extracted herein below:

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....."

10. On issue No. 4, after adverting to the judgment of the High Court in the case of ***State of Punjab*** *v.* ***Hari Dass***[2], in which it is held that the Public Works Department (B & R) is an industry and accordingly the said issue was also answered

[2] (1999) 2 RSJ 266

against the respondent-management.

11. Eventually, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination passed against the workman and awarded reinstatement in his job with continuity of service and full back wages to him.

12. The said Award is challenged by the respondent-employer in Civil Writ Petition No. 9532 of 2001 urging untenable contentions. In the said writ petition, the High Court exercised its jurisdiction contrary to the judgment of this Court in the case of ***Syed Yakoob** v. **K.S. Radhakrishnan & Ors.***[3] and also the judgment, which was referred to in the case of ***Harjinder Singh** v. **Punjab State Warehousing Corporation***[4]. The learned counsel for the appellant has aptly placed reliance upon another judgment of ***Anoop Sharma** v. **Executive Engineer, Public Health Division No.1, Panipat (Haryana)***[5] in support of her legal submissions that both the learned Single Judge and

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[3] (1964) 5 SCR 64
[4] (2010) 3 SCC 192
[5] (2010) 5 SCC 497

the Division Bench of the High Court have erred in exercising their supervisory power under Article 227 of the Constitution of India in setting aside the finding of fact recorded on the facts based on the pleadings and evidence on record.

Further in the case of ***Harjinder Singh*** *v.* ***Punjab State Warehousing Corporation*** (supra), wherein this Court opined on the exercise of power by the High Court under Article 227 of the Constitution of India as under:-

> "21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years

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ago, Gajendragadkar, J, opined that:-

> "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - State of Mysore v. Workers of Gold Mines AIR 1958 SC 923."

13. In view of the aforesaid statement of law the setting aside of the Award by the learned Single Judge which is affirmed by the Division Bench is vitiated in law as the same is contrary to the judgments of this Court referred to supra, upon which the learned counsel for the appellant has rightly placed reliance in support of the correctness of the finding recorded by the labour court on the various issues, particularly the finding of fact that the workman has worked for more than 240 days in a calendar year and termination order is *void ab initio* in law for non-compliance of Sections 25-F (clauses (a) and (b)), 25-G and 25-H of the Act, therefore, the Industrial Tribunal-cum-Labour Court has rightly set aside the order of termination of services of the workman and awarded the order of reinstatement

with continuity of service and full back wages. The said relief in favour of the appellant-workman, particularly the full back wages is supported by the legal principles laid down by this Court in the case of ***Deepali Gundu Surwase*** *v.* ***Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors.***[6]***,*** wherein the Division Bench of this Court to which one of us was a member, after considering three-Judge Bench decision, has held that if the order of termination is *void ab initio*, the workman is entitled to full back wages. The relevant para of the decision is extracted hereunder:-

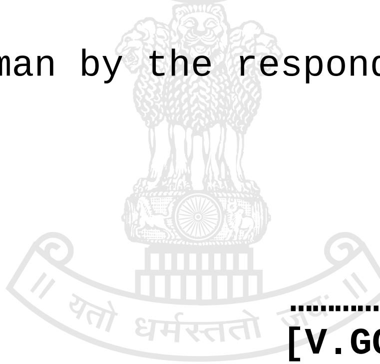
> “22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not

[6] (2013) 10 SCC 324

> only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is *ultra vires* the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

In the circumstances, the appeal is allowed, the judgment & order passed by the learned Single

Judge in C.W.P. No. 9532/2001 which is affirmed by the Division Bench of the High Court in L.P.A. No. 2245/2011 in its judgment and order are set aside and the Award of the Industrial Tribunal-cum-Labour Court is restored. The respondent-employer is directed to comply with the Award within six weeks from the date of receipt of a copy of this order and send a report to this Court. The appeal is allowed with cost of Rs.25,000/- payable to the appellant-workman by the respondent employer.



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NEW DELHI,
JANUARY 13, 2015