

(2001) 03 P&H CK 0137
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition NO. 3162 of 1983

B.K. Juneja

APPELLANT

Vs

Industrial Tribunal Haryana, Faridabad

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11
Penal Code, 1860 (IPC) — Section 324, 34

Citation : (2001) 03 P&H CK 0137

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Mr. Sudhir Mittal, for the Appellant;

Judgement

S.S. Sudhalkar, J.—This writ petition is filed by the workmen challenging the award of the Labour Court dated 4.10.1982 qua the denial of back wages, in lieu of which a sum of Rs. 5000/- has been given as compensation.

2. Counsel for respondent No. 2 is not present. He is also not present in connection with the connected writ petition filed by the respondent challenging the award of the Labour Court.

3. I have heard learned counsel for the petitioners.

4. Learned counsel for the petitioners has argued that the Labour Court has not given any reason for the denial of the back wages. The Labour Court has observed regarding back wages in the last paragraph of the award. It is as under:

"As regards the relief, the learned representative for the management Dr. Anand Prakash cited Shalimar Works Limited Vs. Their Workmen, and 1977 Lab.I.C. 213 . He further agreed that the reference was made much later stage and it took longer time in the adjudication which facts should also be kept in view while granting relief I have gone through the law cited by the learned representative, this case has its own peculiar facts. The workmen withdraw their dues including Provident Fund during the pendency of their writ petition in the High Court. Shri

Harish Chand, workman was taken on duty under a settlement during the pendency of this reference. Shri Malkhan Singh was convicted in a case under Sections 324/34 IPC for an assault on Shri Niranjana Sinha, a workman of the Goodyear Factory because the latter appeared as a witness in a domestic enquiry held by the management against Shri Malkhan Singh. The conviction was upheld by the Sessions, Judge, Gurgaon, in appeal. Therefore, he could not be reinstated for the misconduct. Shri Janak Singh and Shri Chaman Lal were re-employed by the management and were in service. Therefore, the cases of Sarveshri Jai Chand, B.K. Juneja and Shiv Narain Sharma are to be considered at the final stage. It was in normal course to grant re-instatement with back wages but looking to the peculiar circumstances of the case, it will be in the fitness of things to re-instate the three workmen but I do not allow back wages to them. They will be entitled to compensation of Rs. 5000/- each in addition to reinstatement. I award accordingly."

5. In view of the judgment of the Full Bench of this Court in the case of *Harilal Palace, Ambala City v. The Presiding Officer, Labour Court* and another 1979 P.L.R. 720 the award of the back wages is a rule and if there is any exception, it has to be shown by the person contending the same. It has been held in that case 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. It has further been held that this is the normal rule and the party objecting to it must establish the circumstances necessitating departure. In the present case the Government had declined to make the reference. The petitioners had to file CWP 3618 of 1972 which was allowed. The respondent filed LPA against that, which was dismissed and ultimately the reference was made in the year 1977. The reasons given by the Labour Court are not appealing. On the contrary there are no reasons for the denial of the back wages. The peculiarity found by the Labour Court should have been clarified when that was made the basis for denying the back wages. Therefore, I do not accept the reasons given by the Labour Court for denial of back wages. However, in view of the fact that the reference was made in the year 1977, I find that the back wages can be restricted for the period from 1977.

6. As a result, this petition is partly allowed. The petitioners are entitled to back wages from the date of reference.