
(2005) 07 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19544 of 2004

Ruldu Ram and Another

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Co-operative Societies Act, 1961 — Section 54

Citation : (2006) 1 LLJ 893 : (2005) 141 PLR 416

Hon'ble Judges : S.S. Nijjar, J;Nirmal Yadav, J

Bench : Division Bench

Advocate : T.P. Singh, for the Appellant; G.S. Cheema, D.A.G., for resp. No. 1 and B.B.S. Sobti, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioners were appointed as Field Assistant/Salesman with the Punjab State Co-operative Supply and Marketing Federation Ltd. (hereinafter referred to as "Markfed"). On 2.11.1998, separate charge sheets were issued to the petitioners on the same allegations. Common departmental enquiry was held. As a result of the enquiry, the petitioners were dismissed from service by order dated 4.1.2001. Statutory/departmental appeal filed by the petitioners was also dismissed by order dated 8.4.2003. Aggrieved against the action of the Markfed, the petitioners filed revision before respondent No. 1. After hearing the parties, respondent No. 1 allowed the revision petition by order dated 5.4.2004. Although the petitioners were ordered to be reinstated in service with all service benefits, they were not granted the arrears of pay for the period during which they remained dismissed from service. By this petition under Articles 226/227 of the Constitution of India, the petitioners have challenged the order passed by respondent No.1 dated 5.4.2004, only to the extent that they are entitled to full salary on reinstatement.

2. Respondent No. 2 has filed a written statement. It has stated that the

petitioners had been rightly charge-sheeted and had been rightly dismissed from service. The surcharge proceedings u/s 54 of the Punjab Cooperative Societies Act, 1961 could not be initiated as the lapses were not detected during the course of audit, enquiry, inspection or winding up of the Markfed. Respondent No. 2 in the written statement has also taken a preliminary objection that the writ petition which has been filed after a year of the passing of the impugned order, suffers from laches and, therefore, deserves to be dismissed.

3. We have heard the learned counsel for the parties. Mr. T.P.Singh, learned counsel appearing for the petitioners, submitted that once an order of dismissal has been set aside and the petitioners have been directed to be reinstated, they are entitled to full back wages as consequential relief. In support of his submission, the learned counsel relied on a judgment of this Court in the case of *Hari Palace, Ambala City v. The Presiding Officer, Labour Court* (1979) 81 P.L.R. 720. Mr. Sobti has submitted that the relief of full back wages is not to be granted as a matter of right. The plea with regard to the wages was not even raised before the revisional authority. Therefore, the respondents were denied the opportunity to place on the record material to show that the petitioners had been gainfully employed during the period when they remained dismissed from service. Having considered the submissions made by the learned counsel for the parties, we are of the considered opinion that the writ petition deserves to be allowed. The law has been categorically laid down by a Full Bench of this Court in the case of *Hari Palace (supra)*, in the following words:-

"5. There is no gain saying 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 whether 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. Ropar v. The State of Punjab and Ors.* 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 Ors. v. The Assistant Labour Commissioner and Ors.* The Allahabad High Court was inclined to take a similar view in *Postal Seals Industrial Cooperative Society Ltd. v. Labour Court, Lucknow*, and the same tenor is the judgment of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kumdar Mandal*.

6. However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in *Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.*, 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 not normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer's."

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 been reiterated by their Lordships in *G. T. Lad and Ors. v. Chemicals and Fibres India Ltd.*"

5. A perusal of the aforesaid observations clearly shows that full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. Even if the petitioners had failed to take the plea before revisional authority about not being gainfully employed, the back wages could not be denied to them in the present proceedings. The petitioners have categorically stated in paragraph-10 of the writ petition that during the period from the date of their dismissal till the date of their reinstatement i.e. 4.1.2001 to 4.6.2004, both the petitioners remained unemployed and were not employed anywhere, nor it was the case of the Management before respondent No.1, as is clear from the reply filed by respondent No. 2 before respondent No.1 in the revision petition. In reply to the aforesaid averments, respondent No. 2 has merely stated that the contents of para 10 are denied for want of knowledge. This bald denial by the respondent would not justify making an exception to the general rule as held by the Full Bench of this Court in the case of *Hari Palace (supra)*. That being the legal petition, we allow the writ petition and modify the order passed by the revisional authority dated 5.4.2004 to the effect that the petitioners shall be entitled to full back wages for the period during which they remained out of service on account of the wrongful dismissal with effect from 4.1.2001 to 4.6.2004. Let the consequential relief be paid to the petitioners within a period of 3 months of the receipt of certified copy of the order.

Petition allowed. No costs.