

(2000) 09 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16255 of 1999

Bakhtawar Singh

APPELLANT

Vs

P.O. Central Govt. Industrial
Tribunal-cum-Labour Court

RESPONDENT

Date of Decision: Sept. 15, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Mr. Madan Mohan, for the Appellant; Mr. N.S. Bawa, for the Respondent

Judgement

S.S. Sudhalkar, J.

Written statement on behalf of respondent No. 2 produced today in the Court. Copy of the same has been given to counsel opposite. The same is taken on record.

2. Heard learned counsel for the parties.

By this writ petition, the petitioner-workman is challenging the award of the Labour Court only qua back-wages. The Labour Court, instead of awarding back wages has awarded only Rs. 25,000/- in lieu thereof. The Labour Court in para No. 9 of the Judgment has dealt with this point. It is the considered (conceded ?) fact that the petitioner-workman had denied in his cross- examination that he was earning Rs. 80/- to Rs. 100/- per day from 1986. However, it held that the petitioner has not stated how he was maintaining his family from that date and that he has also not deposed that he remained unemployed from that date.

3. Learned counsel for the respondent has argued that even when the dispute was going on. the petitioner was offered appointment by respondent but he refused to come. However, it can be seen from para No. 9 of the award that the re-instatement offered to him was without back wages and, therefore, the offer was conditional and it cannot be said that the petitioner could be compelled to accept the offer when he

was agitating against the termination which he was challenging as wrongful.

4. In the case of Hari Palace, Ambala City v. The Presiding Officer, Labour Court and another 1979 PLR 720, the Full Bench of this Court has held 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 is further held that is the normal rule and the party objecting to it must establish the circumstances necessitating departure.

5. In the present case, it is not shown by the party opposing the back wages i.e. respondent, that the petitioner was gainfully employed and therefore, it cannot be said that there is any reason shown necessitating departure from the principle, shown in the Full Bench judgment. The petitioner is, therefore, entitled to full back wages. We restrict the back wages from the date of demand notice.

6. For the reasons stated above, this writ petition is allowed. The petitioner is entitled for full back wages from the date of demand notice. The amount of Rs. 25,000/- already paid by the respondent shall be given credit of.

7. Petition allowed.