Sain's case is of no avail to the appellants. This is all the more so in view of the fact that even during the course of enquiry, there was denial of a reasonable opportunity to the plaintiff-respondent.

(17) No other point has been urged.

(18) In view of the above, the inevitable conclusion is that there is no merit in this appeal. It is consequently, dismissed. In the circumstances of the case, there will be no order as to costs.

J.S.T.

Before G.S. Singhvi and S.S. Sudhalkar, JJ.

RAJINDER SINGH,—*Petitioner*

versus

THE PRESIDING OFFICER, LABOUR COURT, U.T. CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. 923 *of 96*

April 10th, 1995

The Industrial Disputes Act, 1947—S.25-F-Retrenchment in violation of s. 25—F-Labour Court held the retrenchment illegal—Normal rule in such cases—Reinstatement with full back wages—Deviation from normal rule—Discretion exercised by the Labour Court—Interference in exercise of writ jurisdiction.

Held, that in exceptional cases, the Labour Court/Industrial Tribunal may exercise its discretion to make deviation from the normal rule of re-instatement with full back wages. The very recognition of the fact that the discretion vests in the Labour Court/ Industrial Tribunal to modulate the relief to be awarded to the workman leads to an irresistible inference that in all cases of unlawful retrenchment of the service of the workman, it is not necessary that the adjudicating body must award reinstatement with full back wages. The adjudicating bodies constituted under the *Act* 1947 are presumed to be possessed with special knowledge with regard to industrial Legislation and industrial disputes. They are presumed to be well equipped and well versed in law relating to industrial disputes and are expected to judicially exercise their discretion while giving relief to the workmen. In cases where the discretion is properly exercised by the Labour Court/Industrial Tribunal and there is no failure of justice, this court will not exercise its certiorari jurisdiction to interfere with the award.

(Paras 11 and 12)

Further held, that the delay of more than three years on the part of the petitioner in raising the demand certainly constituted a valid consideration for declining the relief of full back wages.

(Para 13)

K.L. Arora, Counsel, *for the Petitioner.*

Charu Tuli, Dy. Advocate General Punjab,
Dr. Balram Gupta, Counsel for Satnam Singh,
R.S. Randhawa, Counsel, *for respondent No. 3*

JUDGMENT

G.S. Singhvi, J.

(1) This petition has been filed with two-fold prayers. In the first place, it has been prayed that the respondents be directed to implement the award (Annexure P-1) and to take back the petitioner on duty forthwith and release 50% back wages. In the second place, that portion of the award has been challenged by which the Labour Court has restricted the relief of back wages to the extent of 50%.

(2) Shorn of other details, it may be stated that the petitioner was appointed as Mason some time in July, 1988 in the Public Works Department (B and R), Punjab, and was posted at Sector 39, Chandigarh. According to the petitioner, his service was terminated with effect from 1st March, 1989 without compliance of the mandatory provisions contained in Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act'). He filed Civil Writ Petition No. 3047 of 1989 challenging the termination of his service. Initially, the High Court passed an order of status-quo on 13th March, 1989 but later on that order was vacated. The writ petition was dismissed as withdrawn on 20th December, 1992. Thereafter, the petitioner raised a demand for his re-instatement and ultimately the Government of Punjab made a reference of the industrial dispute to the Labour Court, Union territory, Chandigarh. Notice of the reference was served upon the parties. No one appeared on behalf of the employee and on 22nd August, 1994, the Labour Court passed an order for *ex parte* proceedings. The petitioner appeared and supported his claim. Relying on his testimony, the Labour Court held that the termination of service

of the petitioner was contrary to Sections 25-F and 25-G of the Act. Consequently, it passed the award Annexure P-1 dated 3rd October, 1994 and ordered the re-instatement of the petitioner with continuity of service but 50% back wages.

(3) It appears from the record that the respondent Nos. 2 to 4 filed Civil Writ Petition No. 12604 of 1994 challenging the award dated 3rd October, 1994. On 28th August, 1995, an *ad-interim* stay order was passed by the High Court. However, after hearing the parties, the Court dismissal the writ petition on 7th November, 1995.

(4) Even thereafter, the petitioner was not re-instated in the service. Notice of this petition was ordered to be issued on 18th January, 1996. When the case was listed for arguments on 16th February, 1996, the Court expressed the opinion that the departmental official have derilicted in the discharge of their duties by not implementing the award dated 3rd October, 1994 and, therefore, appropriate action deserves to be taken against them. On 22nd February, 1996, learned Deputy Advocate General informed the Court that the petitioner has been taken back in service with effect from 18th February, 1996. It was also given out that the amount of 50% back wages is ready for payment to the petitioner. That payment has in fact been made to the petitioner. Learned counsel for the petitioner states that the amount paid to the petitioner does not represent complete payment of 50% back wages as payable to the petitioner on the basis of the award (Annexure P-1) because the petitioner has to be given benefit of higher wages on the basis of his continuous service. In our opinion, for claiming such relief, it would be appropriate to relegate the petitioner to the remedy available to him under Section 33-C(2) of the Act.

(5) In support of the claim of the petitioner that the Labour Court has acted illegally in awarding only 50% back wages, Shri K.L. Arora, learned counsel for the petitioner, argued that once a finding of invalid of retrenchment has been recorded by the Labour Court it was left with no option but to order re-instatement of the petitioner with continuity of service and full back wages. Shri Arora placed reliance on the judgment of the Supreme Court in *Mohan*

Lal v. *Management, Bhar Electronics* (1), he also placed reliance on a Full Bench decision of this Court in *Hari Palace Ambala City* v. *The Presiding Officer, Labour Court and another* (2), *M.S. Vasantasenaiah* v. *The Divisional Controller, K.S.R.T.C., Bangalore and another* (3) and *Shri Kanwar Rohit* v. *The Presiding Officer, Labour Court, Chandigarh* (4).

(6) We have thoughtfully considered the submission of Shri Arora but do not find any cogent reason to accept the same. It is well settled that ordinarily a workman, who has been illegally retrenched from service, has a right of re-instatement with continuity of service and back wages. In *State of Bombay* v. *The Hospital Mazdoor Sabha and others* (5), their Lordships of the Supreme Court held that termination of service by way of retrenchment brought about in violation of the provisions of Section 25-F renders it invalid and inoperative. In subsequent decisions such termination brought about in contravention of the mandatory provisions contained in Section 25-F has been described as void ab-initio. De hors the jugglery of expression used to describe an order of retrenchment passed in contravention of Section 25-F, it would be sufficient to reiterate that where the Labour Court/ Industrial Tribunal finds that the termination of service of a workman has been brought about in clear violation of the mandatory provisions contained in Section 25-F or any other part of the 1947 Act or the principles of natural justice, the normal rule of re-instatement with continuity of service and back wages should be followed. However, this rule is not absolute one and in all cases and in all circumstances, it is not obligatory and sometimes it is impossible to apply this rule.

(7) In *S.K. Verma* v. *The Central Government Industrial Tribunal-cum-Labour Court and another* (6), their Lordships referred to the well settled rule of re-instatement of the workman in service and payment of back wages but proceeded to indicate

(1) AIR 1981 S.C. 1253
(2) 1979 PLR 720
(3) 1995 (5) SLR 117
(4) 1992 (3) SLR 789
(5) AIR 1960 SC 610
(6) AIR 1981 SC 422

the cases where deviation from this rule may be made. The observations made by the apex Court in this context are quite instructive and therefore the same are quoted below :—

> "But there may be exceptional circumstances which make it impossible or wholly inequitable *vis-a-vis* employer and the workman to direct re-instatement with full back wages. For instance, the industry might have closed down or might be in serious financial doldrum. The workman concerned might have secrued better or other employment elsewhere and so on. In such situations, there is a vestee of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of re-instatement where re-instatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases, the Court may mould the relief but, ordinarily the relief to be awarded must be re-instatement with full back wages."

(8) In the often quoted decision of the Supreme Court in *State Bank of India* v. *N. Sundra Money* (7), the relief of full back wages was denied even though their Lordships held that the termination of service of the workman was contrary to Section 25-F.

(9) In *Hindustan Tin Works Pvt. Ltd.* V. *Employ of M/s. Hindustan Tin Works* (8), their Lordships of the Supreme Court laid down the guidelines on the issue of award of back wages and observed :—

> "In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all

(7) AIR 1976 S.C. 1111
(8) AIR 1979 S.C. 75

the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reasons and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular."

(10) In *Gujarat Steel Tubes Ltd.* v. *Its Mazdoor Sabha* (9), their Lordships relied on the observations made in the *Hindustan Tin Works* v. *Its employee* (supra) and modified the relief of full back wages by reducing it to 75% by observing :—

"Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Art. 43A cannot be missed, as explained in Hindustan Tin Works. Labour is no more a mere factor in production but a partner in industry, conceptually speaking and less than full back wages is a sacrifice by those who can best (least ?) afford and cannot be demanded by those, who least sacrifice their large 'wages' though can best afford, if financial constraint is the ground urged by the latter (Management) as inability to pay full back pay to the former. The morality of law and the constitutional mutation implied in Article 43A bring about a new equation in industrial relations. Anyway, in the Hindustan Tin Works' case, 75 per cent of the past wages was directed to be paid. Travelling over the same ground by going through every precedent is supererogatory and we hold the rule is simple that the discretion to deny re-instatement or pare down the quantum of back wages is absent save for exceptional reasons."

(11) From the above decisions, it is apparent that their Lordships of the Supreme Court have un-equivocally recognised the principle that in exceptional cases, the Labour Court/Industrial

(9) AIR 1980 S.C. 1986

Tribunal may exercise its discretion to make deviation from the normal rule of re-instatement with full back wages. The very recognition of the fact that the discretion vests in the Labour Court/ Industrial Tribunal to modulate the relief to be awarded to the workman leads to an irresistible inference that in all cases of unlawful retrenchment of the service of the workman, it is not necessary that the adjudicating body must award re-instatement with full back wages.

(12) We may also observe that the very tenor of the reference made to the Labour Court contemplated award of appropriate relief to the workman in case it was found that the termination of his service was illegal. The adjudicating bodies constituted under the 1947 Act are presumed to be possesed with special knowledge with regard to industrial legislations and industrial disputes. They are presumed to be well equipped and well versed in law relating to industrial disputes and are expected to judicially exercise their discretion while giving relief to the workmen. In cases where the discretion is properly exercised by the Labour Court/Industrial Tribunal and there is no failure of justice, this Court will not exercise its certiorari jurisdiction to interfere with the award.

(13) If the impugned award is examined in the light of the above-stated principles, we find that against the termination of his service, the workman had prosecuted CWP No. 3047 of 1989 for over three years. The interim stay order passed in his favour was vacated on 17th May, 1989 and for a period of three years and seven months thereafter, the writ petition was kept pending by him before this Court. It is indeed unfortunate that neither the petitioner nor the private respondent thought it proper to bring it to the notice of the Labour Court that a writ petition had been instituted by the petitioner before the High Court for quashing of the termination of his service. The litigious perseverance shown by the petitioner to keep the writ petition pending for over three years and seven months after the vacation of stay order is a strong circumstance which could legitimately be taken into consideration while awarding the relief of back wages. It is impossible for us to be totally oblivous of the fact that the petitioner had worked for a period of less than 12 months before the alleged termination of his service. It is also not possible to overlook the fact that he was serving

a public employer and even if the termination of his service has been treated as illegal, the respondent Nos. 2 to 4 cannot be burdened with the liability to pay salary to him even for that period during which the petitioner had prosecuted a untenable remedy. Back-wages payable to the petitioner have to be so paid out of public exchequer and not out of pocket of an individual officer. Therefore, the delay of more than three years on the part of the petitioner in raising the demand certainly constituted a valid consideration for declining the relief of full back wages. Therefore, even though the impugned award does not contain cogent reason for not giving full back wages to the petitioner, we are of the considered opinion that by his conduct the petitioner dis-entitled himself from claiming the relief of full back wages.

(14) The judgments on which Shri Arora has placed reliance turned down on their own facts. None of them can be read as laying down a strait-jacket formula for award of relief to the workman, whose service has been terminated by way of retrenchment without compliance of the provisions of the Act.

(15) In our opinion, the petitioner is not entitled to claim that even though he has not discharged duty for a single day between 1st March, 1989 and 3rd October, 1994 and even though he had delayed the raising of demand by more than three years and nine months, we should exercise our extraordinary jurisdiction and modify the impugned award and direct the respondents to pay him full back wages. In our considered view, the impugned award has not resulted in substantial failure of justice.

(16) For the reasons stated above, the first prayer made by the petitioner for re-instatement and payment of 50% back wages is treated as having become infructuous subject, of course, to the right of the petitioner to move application under Section 33-C(2) of the 1947 Act on the basis of alleged error in the calculation of amount paid to him. His prayer for award of full back wages is rejected and to that extent the writ petition is dismissed.

S.C.K.