

**SUPREME COURT OF INDIA**

Haryana Urban Development Authority

Vs.

Devi Dayal

C.A.No.1940 of 2002

(D. P. Mohapatra and P. Venkatarama Reddi JJ.)

08.03.2002

**JUDGEMENT**

**P. Venkatarama Reddi, J.**

1. By the impugned judgment, the High Court of Punjab and Haryana upheld the award of the Labour Court, Gurgaon , dated 14-3-2000 in Ref. No. 451 of 1996. Aggrieved by the same the present SLP is filed by Haryana Urban Development Authority.
2. In the SLP, notice was issued to the respondent, limited to the question of back wages. Though respondent has been served, none appears for the respondent.
3. Leave is granted and the appeal is heard insofar as the award of back wages is concerned.
4. The respondent was engaged on daily wages as helper on 1-8-1994. He worked upto 17th October, 1995 when his services were dispensed with According to the appellant he did not work continuously during that period and he was frequently remaining absent from duty for which a show cause notice (Ext. M. 1) was issued to him. It is an undisputed fact that no retrenchment compensation or one month's notice or pay in lieu thereof was offered to the appellant. On the admission of MW-1 that the workman rendered duty for 340 days during the year preceding the date of termination, the learned Presiding Officer of the Labour Court held that the termination was illegal, being contrary to the provisions of the Industrial Disputes Act. Hence he directed reinstatement with continuity of service and full back wages.
5. The question whether the appellant is an 'Industry' within the meaning of Industrial Disputes Act need not be gone into for the reason that notice in the SLP is confined to the question of back wages only. For that very reason, the learned counsel for the appellant has refrained from raising any other contention.
6. We are of the view that having regard to the facts of the case, the award of full back wages covering a period of nearly five years is not warranted. Firstly, it is to be noted that the

respondent was in service for a short period with frequent spells of absence. The second and more important aspect is that there is a reasonable possibility of the respondent being gainfully employed somewhere else. The respondent was working as a Helper which, apparently, involves performance of work of manual labourer. In all probability, he would have been working somewhere and earning daily wages, if not regularly, at least for some days in a month. The respondent did neither assert in the claim statement nor did he give any evidence that he could not earn anything throughout by way of daily wages or otherwise during this long interregnum. Considering all these aspects, it would not be a sound exercise of discretion to saddle the appellant with the liability of full back wages. We are inclined to think that the award of back wages to the extent of 50% would be proper and justified, on the peculiar facts of this case.

7. Accordingly, the award of the Labour Court shall stand modified and the appeal is thus partly allowed. Parties are left to bear their own costs.

Appeal partly allowed.