

(1991) 08 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1994 of 1985

Ajit Singh

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(2)

Citation : (1992) 65 FLR 455 : (1994) 3 LLJ 526 : (1992) 101 PLR 186

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : R.K. Malik, for the Appellant; P.K. Mutneja, for the Respondent

Judgement

Jawahar Lal Gupta, J.—This order will dispose of C.W.P. Nos. 1994 and 2018 of 1985. The facts as mentioned in C.W.P. No. 1994 of 1985 may be noticed. The petitioner herein was appointed as a legal assistant with the Sonapat Cooperative Sugar Mills Ltd. Sonapat, on 27th September, 1978. On 9th February, 1980, his services were terminated. Ajit Singh raised a dispute, which was referred to the Labour Court u/s 10 of the Industrial Disputes Act, 1947. The learned Labour Court found that the applicant was a workman and that the services had been terminated without complying with the provisions of section 25F of the Act. Consequently, the order was held to be illegal and void ab initio. While examining the question of back wages, the learned Labour Court found that the workman "is a practising advocate" at Sonapat. It is difficult to believe that he may not be earning anything while being at the Bar. It is common knowledge that most of the co-operative sugar mills in the State of Haryana are in the red. So, taking into consideration the totality of circumstances, I order that the "workman shall be reinstated forthwith with continuity of service and he is awarded 50 percent of back wages".

2. Ajit Singh has filed a Civil Writ Petition No. 1994 of 1985, claiming that he was entitled to be awarded the full back wages. The management has filed C.W.P. No. 2018 of 1985, challenging the Labour Court's award ordering the reinstatement

of Ajit Singh. The primary ground of challenge raised by the management regarding the jurisdiction of the Labour Court to go into the dispute in view of the provisions of sections 128 and 102 of the Haryana Cooperative Societies Act, 1984, having been negated by the Full Bench, vide its judgment of 14th August, 1986, Mr. Pawan Mutneja, learned counsel for the petitioner, has contended that a legal assistant cannot be held to be a workman. He has contended that his duties were not purely technical or clerical, but he used to advise the management, prepare and file written statement and even appear in courts. On these premises, it has been contended that the finding of the Labour Court that Ajit Singh was a workman cannot be sustained.

3. This matter appears to be concluded by the judgment of this Court in *Rajesh Gars v. Management*, 1984 (3) SLR 397. While dealing with the case of a legal assistant, it was observed as under:

"The petitioner's duty at best was that of a skilled clerk having in his clerical duties to put up notes and seek instructions. Besides that, as urged, he had to tender legal advice when asked by the Corporation and draft and approve documents as asked by the Corporation from the legal point of view. The duties of the petitioner have even been termed by learned counsel to be "techno-clerical" with the aid of legal knowledge which the petitioner possessed. And on these grounds it is contended that these duties could by no stretch of imagination be regarded as administrative or managerial, especially when the petitioner had no administrative control over anybody and was rightly designated to "assist" the Corporation in matters asked by it. Once it is held that the petitioner was not working in the Corporation in any administrative or managerial capacity, he has conversely to be held a "workman" within the meaning of section 2(s) of the Act. Mr. Bhagirath Das" learned counsel for the respondent, has not been able to meet the point as raised by learned counsel for the petitioner and the view which logically follows. Thus, the petitioner has to be and obviously must be held to be a "workman" within the meaning of the Act and the preliminary issues decided by the Tribunal in that regard to have been decided on a jurisdictional error".

4. In view of the above, it is held that Ajit Singh was a workman.

5. It has been further contended on behalf of the management that the workman was practising as an advocate at Sonapat and had even been appointed as Additional District Attorney. The specific averment as made in para 7(v) is as under:

"That admittedly, respondent No. 2, who was a law graduate and was working as a legal assistant with the petitioner society was gainfully employed after his services had been terminated. The Labour Court has found that he was practising as an advocate at Sonapat and was, therefore, gainfully self-employed. Not only this, soon after his services were terminated, the said respondent was appointed Additional District Attorney by the State Government and is posted as such at

Karnal. In these circumstances, the Labour Court was not justified in directing payment of 50 per cent back wages to respondent No. 2".

6. The reply of the workman is as under:

"This ground has been deliberately kept vague by the petitioner. The date of appointment of the answering respondent as Additional District Attorney, Karnal, has been given. The Labour Court has awarded 50 percent backwages taking into consideration all the circumstances of the case".

7. A perusal of the above shows that the workman has neither denied the fact that he had been practising as advocate nor he has denied the fact that he had been appointed as an Additional District Attorney. It is in this situation that the validity of the award has to be examined. It may also be mentioned that according to learned counsel for the parties, the workman had been appointed as Additional District Attorney in the year 1985 and had continued to occupy that position till January 1987.

8. The workman had joined the post of legal assistant on 28th September, 1978. His services were terminated on 9th February, 1980. He had thus worked for a total period of about 17 months. Thereafter, he has been practising as an advocate and had even been appointed as Additional District Attorney in the year 1985. Taking the totality of circumstances into consideration, I am of the view that the award of 50 per cent backwages from the date of termination to the date of the award, viz., 13th November, 1984, would be a just and fair compensation to the petitioner. He having been appointed as Additional District Attorney in the year 1985, it would not be in the fitness of things to order his reinstatement in service, especially when from the evidence on record it is apparent that one Vishnu Dutt had been appointed in his place.

9. Both the writ petitions are disposed of in the above terms.