
(1961) 05 P&H CK 0026
In the Punjab And Haryana At Chandigarh

Amritsar Rayon and Silk Mills (Private), Ltd.	APPELLANT
Vs	
Industrial Tribunal and Others	RESPONDENT

Date of Decision : 12-05-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2, 25F, 25J, 33

Citation : (1962) 1 LLJ 563

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Judgement

K.L. Gosain, J.—By this petition under Article 226 of the Constitution of India, Amritsar Rayon and Silk Mills (Private), Ltd., hereinafter called the employers, seek to have an appropriate writ, direction or order quashing the award of the Industrial tribunal, Punjab, Patiala, dated 30 December 1959, in complaint No. 43/1 of 1959. Certain disputes arose between the petitioners and their workmen u/s 10 of the Industrial Disputes Act and they were referred to the Industrial tribunal, Punjab, Patiala, for adjudication. The said reference (43 of 1958) was pending before the tribunal when one of the employees Achhar Singh was chargesheeted for not subjecting himself to search by Talab Singh, chowkidar, at the time of his leaving the mills after the working hours. An inquiry was held into the aforesaid misconduct by the labour welfare officer and his services were terminated on 13 July 1959, under Para. 18 (a) of the standing orders of the mills. The operative portion of the order of termination as reproduced in the award reads as under:

From the evidence produced, it is proved that on 8 July 1959, after the close of your shift, you ran away on your cycle without allowing the chowkidar of the main gate of the mills to satisfy himself about the contents of your bag, in spite of his asking you to do so. Previously also on two occasions you were caught for taking away mills property. So the management would have been justified in dismissing you for the above misconduct. But taking a lenient view, the management hereby terminate your employment under Para. 18(a) of the mills

standing orders. Under the same paragraph, you are entitled to twelve days' wages in lieu of notice. You can collect these wages along with your other outstanding wages from the office of the mills.

2. Achhar Singh then filed a complaint u/s 33A of the Act on 26 September 1959, and on the said complaint, the impugned award was given by the industrial tribunal, Punjab, Patiala, and by virtue of the same it was ordered that the management shall reinstate Achhar Singh from the date of the termination of his service with the result that there will be no break in his service and he shall also be paid his back wages in full accruing due till the date he is actually reinstated.

3. The award of the tribunal is a speaking one and is based on three reasons, which briefly stated are as follows:

(1) The order of termination was passed not by the manager of the employer's company but by one of the directors and it cannot, therefore, be deemed to be an order under the standing orders;

(2) that the order really amounted to retrenchment of Achhar Singh and as the provisions of Section 25F of the Act were not followed, the said retrenchment is hit by Section 25J and standing order 18(a) having different provisions from Section 25F of the Act is invalid;

(3) the order although stated to have been made under standing order 18(a) is really one of punishment as contemplated by Clause (b) of Section 33(1) of the Industrial Disputes Act and is liable to be quashed on the short ground that necessary permission for the same as required by Section 33(2) of the Act was not obtained by the employers.

4. Sri Bhagirath Das, who appears for the petitioner, contends that none of these three reasons are valid according to law. The first reason is factually incorrect inasmuch as Pyare Lal is the director as also the manager of the company and the order made was in his capacity as a manager. This fact was stated by the petitioners in Para. 3 of their petition and has not been denied by the respondents in their written statement. This contention must obviously prevail because the factual mistake in the award is patent from the pleadings themselves. With regard to the second reason, it has been held by this Court in Civil Writ No. 162 of 1960, decided by Grover, J., on 16 December 1960, *British India Corporation v. Industrial Tribunal, Punjab* [vide p. 577 (infra)] that an order of this nature cannot fall within the ambit of the definition of retrenchment as given in Section 2(oo) of the Act. The definition of retrenchment as given in the said section reads as under:

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action?

It has been held by this Court in the aforesaid case that the words "for any reason whatsoever" qualified only the "retrenchment" and not the "termination"

by the employer of their service. The retrenchment may be made for any reason whatsoever but it must essentially be "retrenchment," which according to the ordinary connotation means the discharge of surplus labour or staff by the employer. Grover, J., has rested his decision on a number of cases, two of which were decided by their lordships of the Supreme Court. I have no reason at all to differ from the view taken in Civil Writ No. 162 of 1960 (supra).

5. With regard to the third reason given by tribunal, I am wholly unable to agree that the case falls within the ambit of Section 33(1)(b) of the Act but even assuming that it does, the tribunal clearly erred in law in setting aside the order of the management merely on the ground that permission u/s 33(2) of the Act had not been taken from the tribunal, in such circumstances, the tribunal was bound to go into the merits of the case and to find whether the order was justified on evidence. I had an occasion to deal with a similar matter in another case and my judgment is reported in *Oriental Textile Finishing Mills Vs. State of Punjab and Others*, and it supports the petitioner's contention. In fact this proposition is conceded by the learned Counsel for the respondents.

6. All the three reasons given by the tribunal being entirely erroneous in law, it must be held that there are patent errors of law on the face of award and that the same is liable to be quashed on the basis of those errors. I would, accordingly allow this petition and quash the impugned award of the tribunal. Respondent 1 will pay the petitioner's costs.