

(2000) 09 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 571 of 2000

Ashok Kumar

APPELLANT

Vs

Presiding Officer, Labour Court, Jalandhar and others

RESPONDENT

Date of Decision : 18-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Industrial Disputes Act, 1947 — Section 2

Citation : (2000) 09 P&H CK 0060

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

Bench : Division Bench

Advocate : Mr. R.S. Sharma, for the Appellant;

Judgement

S.S. Sudhalkar, J.—This writ petition has been filed by the workman challenging the award dated 29.7.1999 (annexure P/2) passed by the Labour Court vide which reference was dismissed against him. The petitioner was in the service of respondents No. 2 to 5. He joined service on 1.8.1978. His services were terminated on 30.12.1981. The petitioner filed departmental appeal against the order of termination. The same was dismissed on 24.9.1982.

2. The petitioner filed civil suit challenging the termination of his service. The suit was decreed on 15.10.1984. However, learned Additional District Judge vide his judgment and decree dated 23.1.1988 set aside the judgment and decree of the trial Court and dismissed the suit. Regular second appeal filed by the petitioner was dismissed. So also was the fate with the SLP filed by the petitioner before the Supreme Court.

3. Thereafter, the petitioner served the employer with the demand notice dated 9.9.1996. The conciliation proceedings were initiated but failed and, therefore, reference was made to the Labour Court. The Labour Court by his impugned award rejected the prayer of the petitioner on merits, though it held that the reference was maintainable in spite of the civil suit being dismissed. Aggrieved by the said order, the petitioner has filed this writ petition.

4. The Labour Court has considered that the petitioner was given opportunity during the department enquiry. The Labour Court has pursued the judgment of Sub Judge 111 Class and has held that the petitioner has admitted that the charge sheet was served on him and he had submitted reply to the charge sheet and enquiry was initiated against him and he had led defence evidence as well. The Labour Court has also referred to the enquiry file which shows that the petitioner was charge sheeted on 20.7.1981 on the ground that while he was on duty and plying on Jalandhar-Shimla route, his bus was checked by Shri Jagdish Lal and Gian Chand, Inspectors at Kanda Ghat and they detected 15 passengers without tickets travelling from Solan to Kanda Ghat. It is further observed by the Labour Court that according to the enquiry file, after the department closed its evidence, the petitioner was given opportunity in defence and he had examined witnesses in his defence. Even the departmental witnesses were thoroughly cross-examined by the petitioner. Therefore the Labour Court has held that the petitioner was given due and proper opportunity during the departmental enquiry. It is further held that the petitioner while appearing as WWI could not refer to any document available on the enquiry file which could be considered to be forged or fabricated document and that he also could not deny his signatures on the various documents available on the enquiry file. The Labour Court has also considered that no mala fides have been alleged by the workman against departmental witnesses, Enquiry Officer, Presenting Officer, Punishing Authority or the Appellate Authority.

5. After hearing the learned counsel for the petitioner we find that there is no reason to interfere with the findings recorded by the Labour Court. We agree with the Labour Court regarding the reasons given by it to reject the claim of the petitioner. We do not find any infirmity in it. Moreover, the petitioner had earlier filed a civil suit on the same cause of action in which he succeeded but the appeal against it was allowed and the appellate judgment remained confirmed up to the Supreme Court. Counsel for the petitioner argued that this point has been held in his favour by the Labour Court, therefore, unless the said point is challenged by the other side, it cannot be looked into. We do not agree with this proposition. The final order was in favour of the respondents and, therefore, there was no reason or opportunity to challenge the said order and, hence, the said point cannot be treated as having become resjudicata. In the case of *MidnapurZamindari Co. Ltd. v. Narseh Narayan Roy* AIR 1922 PC 241 it has been held as under:

"Their Lordships do not consider that this will be found an actual plea of res judicata, for the defendant, having succeeded on the other plea, had no occasion to go further as to the finding against him."

6. We make it clear that in the present case earlier suit was not dismissed as withdrawn but was contested on merits right upto the Supreme Court. (We do not express any opinion in this case as to what would be the effect in case the civil suit filed and withdrawn because we are not called upon to decide this

question).

7. This then takes us to the question of the effect of the judgment in civil suit on the rights of the workman before the Labour Court. Counsel for the petitioner has relied on the judgment in C.W.P. 16214 of 1994 : 1996(3) SCT 225 (P&H) titled General Manager, Punjab Roadways and another v. Dharani Singh and another. It is a judgment of learned Single Judge of this Court in which he has held that the decree and judgment of the civil Court are not binding on the Labour Court and the same does not operate as res judi-cata. The reason for coming to this conclusion according to learned Single Judge is that the jurisdiction of the civil Court is excluded to try such a suit and the civil Court has no jurisdiction to grant a declaration that the order of termination is bad as the dispute relates to an industrial dispute. As against this, there is a judgment in the case of Sukhi Ram v. State of Hary-ana 1982(1) S.L.R. 663. It is a judgment of Full Bench of this Court in which it has been laid down that dispute in connection with an industrial dispute arising out of the right or liability under the general or the common law, the worker has got two alternative remedies available to him, (i) to go to civil Court, and (ii) under the Industrial Dispute Act. It is further held that the worker must distinctly elect one of his remedies and he cannot avail of both the remedies. It is further held that the civil Court has got the jurisdiction to entertain a suit falling in second category. The Full Bench has referred to the case of Premier Automobiles Limited v. Kamalakar Shantaram Wadke and others 1982 P.L.R. 717; 1975(48) FJR 252. It has been held therein that if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is an alternative remedy, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular case.

8. Therefore, when both the remedies are there, the suitor has to choose the remedy and cannot go for both. Here in this case, the petitioner has exhausted his remedy right up to the Supreme Court and, thereafter, he chose to give demand notice. Therefore, we do not agree with the finding of the Labour Court on the issue of maintainability of the claim under the Act and in view of the above reasons also the relief prayed for by the petitioner could not have been granted to him.

9. As a result, we do not find any merit in this writ petition and the same is hereby dismissed.

10. Petition dismissed.