
(2003) 04 P&H CK 0099
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 997 of 1987

Bal Krishan

APPELLANT

Vs

Bara Pind Khalsa Co-op. Agricultural Service Society and
Another

RESPONDENT

Date of Decision : 02-04-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11

Citation : (2003) 134 PLR 806

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Vikas Singh, for the Appellant; Jagdeep Bains, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This order shall dispose of two Civil Writ Petitions bearing No. 997 of 1987, filed by Bal Krishan, the workman and 3756 of 1987, filed by the Management i.e. the Bara Find Khalsa Co-operative Agricultural Service Society Limited, Bara Pind (hereinafter referred to as "the Management-Society") against the award dated 30th October, 1985 passed by the Labour Court, Jalandhar, vide which it has ordered reinstatement, of the workman while holding his termination as illegal, but the back wages has been denied to him on the ground that he was in gainful employment.

2. The brief facts of the case are that the workman was working as a Salesman with the Management-Society. His services were terminated with effect from 24th September, 1981 without issuing any show cause notice, charge sheet or without holding any inquiry. The workman raised an industrial dispute by serving a notice under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The said dispute was referred to the Labour Court for adjudication. Before the Labour Court, both the patties were provided due opportunity to lead their evidence and they led the evidence in support of their respective claims. Ultimately, the Labour Court vide its award dated 30th

October, 1985 partly allowed the reference. The termination of the workman was found to be illegal and unjustified and he was ordered to be reinstated with continuity in service. However, he was declined the back wages. The Management-Society as well as the workman have challenged the said award by filing the aforesaid two writ petitions.

3. Learned counsel for the Management-Society submitted that the workman had filed an appeal against the order of termination of his services before the Assistant Registrar, Cooperative Societies Nawan Shahar, who vide his order dated 11th August, 1981 dismissed the appeal after noticing the entire history of the case and after holding that his termination was justified. After that the workman raised the aforesaid industrial dispute which was referred to the Labour Court for its adjudication.

4. Learned counsel for the Management-Society made only one submission that once a workman had availed his alternative remedy in the general law or in the Eye-laws of the Society then he could not have opted for the remedy provided under the Act by raising an industrial dispute seeking its determination by the Labour Court. In support of his contention, learned counsel relied upon a decision of the Jammu & Kashmir High Court in Subash Chander Gupta and Ors. v. State Bank of Patiala and Ors. 2002(4) S.C.T. 735.

5. In reply to the aforesaid contention, learned counsel for the workman submitted that in spite of the fact that the matter regarding termination of an employee of the Cooperative Society is decided by the Registrar under the Co-operative Societies Act, still the matter can be referred u/s 10 of the Act to Labour Court for its adjudication and the Labour Court is not debarred from deciding the matter on the ground that the matter was finally decided by the authorities under the Co-operative Societies Act. In support of his contention, learned counsel for the workman relied upon the Full Bench decision of this Court in The Ambala Central Co-Operative Bank Limited Vs. The State of Haryana and Others, .

6. I have considered the arguments raised by learned counsel for the parties, in my opinion, the point raised by learned counsel for the Management-Society has been squarely answered in the aforesaid Full Bench decision of this Court in the Ambala Central Co-operative Bank Limited, Ambala v. The State of Haryana and Ors. (supra).

In that case, the question which was referred to the Larger Bench was that whether the order passed by the Registrar under the Co-operative Societies Act would disentitle the workman to move the State Government to refer the matter to the Labour Court under the provisions of the Act? and such decision given by the Registrar would operate as resjudicata. While answering this question, the Full Bench of this Court has held as under:

"In view of the consistent decisions referred to above specifying the scope of the authorities under the Co-operative Societies Act, the Civil Court and the Labour

Court and the remedies available thereunder the decision of the Division Bench of this Court in the Kapurthala Central Cooperative Bank Limited v. State of Punjab, does not lay down the law correctly. In that case it was held that the employee of a Co-operative Society having elected his remedy of filing an appeal under the provisions of the Act and failed there could not get the matter referred through the State to the Labour Court u/s 10 of the Industrial Disputes Act. It was also held in this case that the decision of the authorities under the Co-operative Societies Act (Registrar of the Co-operative Societies) would operate as resjudicata. Since the dispute between the workman and the Bank in the present case related to establishment of the Society, it could be referred to the Arbitrator u/s 102 and adjudicated u/s 103 of the Act reproduced above. Jurisdiction of the Civil Court would obviously be barred to challenge those decisions. However. Industrial Disputes Act dealing with the special subject relating to rights of the workman and the management and the relief provided therein could only be granted by the Court established under the Industrial Disputes Act. Section 128 of the Haryana Co-operative Societies Act was rightly held to be ultra vires i.e. the remedies available under the Industrial Disputes Act could not be denied to the workman of the management, a Co-operative Society. In that sense the order of the Registrar passed under the provisions of the Co-operative Societies Act cannot be treated as decision final to operate as res judicata in the Labour Court in a reference u/s 10 of the Industrial Disputes Act. Obviously when the order itself is under challenge the same cannot operate as res judicata. To sum up, it is held that after the Registrar decides the matter between an employee and employer, a Co-operative Society, with regard to the termination of his service under Sections 102 and 103 of the Haryana Co-operative Societies Act, 1984 the matter could be referred u/s 10 of the Industrial Disputes Act as an industrial dispute to the Labour Court for adjudication. It is further held that such a decision made by the Registrar under the Haryana Co-operative Societies Act would not operate as res judicata in proceedings initiated on reference u/s 10 of the Industrial Disputes Act in the Labour Court."

7. In view of the aforesaid legal position, it cannot be held that the workman was not entitled to get his industrial dispute referred to the Labour Court for its adjudication because his appeal, filed under the Bye-laws against the termination of his services, was dismissed by the Assistant Registrar, Co-operative Societies. Therefore, I do not find any merit in the writ petition filed by the Management-Society.

8. The workman has challenged part of the award passed by the Labour Court, vide which he was declined the back wages. Learned counsel for the workman submitted that once the termination of a workman is found to be illegal and he is ordered to be reinstated, normally the full back wages should have been allowed to him. While referring a decision of the Full Bench of this Court in Hari Palace, Ambala City v. The Presiding Officer, Labour Court and Anr. (1979)81 P.L.R. 720 (F.B.) learned counsel for the workman submitted that if a workman is reinstated with continuity of service, the relief of full back wages should have been granted

to such workman from the date of his dismissal- In case the workman is found to be in gainful employment during the period of his termination, then he can be denied the back wages for that period. But it is for the employer to prove that the workman was in gainful employment for the whole or part of the period in question in the instant case, the workman has been denied the back wages by the Labour Court while holding that the workman, while appearing in the witness box, did not state a word that he remained unemployed during the period of his termination. The contention of learned counsel for the workman is that it was for the Management-Society to prove that the workman was in gainful employment during the period of his termination.

9. I have considered the submissions made by learned counsel for the workman "and have perused the record of the case.

10. In my opinion, there is no force in the contention of learned counsel for the workman. In the writ petition, filed by the workman, not even a single averment has been made by him that he as not in gainful employment during the period of his termination. On the other hand, the Management-Society in reply to the claim made by the workman has specifically stated in para 10 that the workman was in full employment during the period of his termination. This averment was never controverted by the workman by filing any replication or rejoinder. Similarly, in its written statement the Management-Society has specifically stated that the workman never claimed in the statement of claim filed by him before the Labour Court that he remained unemployed during the period of his termination. When he appeared in the witness box, he did not state a word that he was out of employment during the said period. If the workman has not stated in his statement before the Labour Court and even in the instant writ petition that he was out of employment during the period of his termination, it cannot be held that he was not in gainful employment during that period. I find no illegality or infirmity in the order passed by the learned Labour Court in this regard, whereby the back wages have been declined to the workman.

11. In view of the aforesaid discussion, both these writ petitions are hereby dismissed.

12. No order as to costs.