

(2000) 12 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5130 of 2000

Ballarpur Industries Ltd.

APPELLANT

Vs

Karan Singh

RESPONDENT

Date of Decision : 04-12-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25

Citation : (2000) 12 P&H CK 0030

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

Bench : Division Bench

Advocate : Mr. Arun Walia, for the Appellant; Mr. S.P. Laler, for the Respondent

Judgement

S.S. Sudhalkar, J.—By this writ petition, the employer is challenging the award of the Labour Court dated 4.10.1999 vide which workman/respondent No. 1 (hereinafter referred to as "respondent") was ordered to be reinstated with continuity of service and it was ordered that he be given an alternative employment on any other equivalent or similar post, he was holding.

2. Respondent was a driver of the petitioners. He met with an accident on 9.1.1993. It is alleged that the accident took place because of the rash and negligent driving of Tractor Trolley driver. It suffered grievous injuries. He remained on medical leave under treatment.

3. On 15.3.1993, after recovery, he went to report for duty and also submitted a written request in that regard but the petitioners put him off on one pretext or the other. He went regularly and repeatedly visiting them but was not allowed to join the duty. Therefore, he served a demand notice, the termination of his service being without notice and retrenchment compensation. The case of the petitioners before the Labour Court was that the respondent had absented from his work without leave or authorization and took up alternative employment and he had voluntarily abandoned the job. It was further pleaded that he was no longer physically fit or capable of discharging the duties of a driver and it was

because of this reason that he had abandoned the work. It was also contended that he was appointed as a driver on purely temporary basis and he had many a time dis-obeyed the instructions issued by the petitioners when he was working on the post of a driver and he was also given warning for the same. He repeated the misconduct despite the warning. He used to take official vehicle for his personal use without the permission of the competent authority. On 9.1.1993 also he had taken the official vehicle without the permission of the petitioners and met with an accident. He never give any information to the petitioner. He did not inform about his treatment also. It is contended that the respondent was not in contact with the petitioners since the date of his accident. We have heard learned counsel for the parties.

4. The petitioners have taken up a case that respondent had abandoned the job. However, if we consider the date of accident on which the respondent sustained injuries, considering that time must have been spent for taking treatment etc. the filing of the claim petition, cannot be said to be belated which would give rise to presumption of respondent having abandoned the job. Moreover, no other evidence has been shown to us from which the say of the petitioners that respondent had abandoned the job can be accepted,

5. Counsel for the petitioners argued that no alternative service can be granted to the respondent. Counsel for respondent argued that the Labour Court has rightly made an award regarding alternative work/service to be given to the respondent. He has relied on the case of Anand Bihari and others Vs. Rajasthan State Road Transport Corporation, Jaipur and another, . In that case, the employees were employed as drivers in the Rajasthan State Road Transport Corporation to drive the roadways buses of the Corporation. They had put in a long service discharging their duties. Sometime in 1987, their routine medical examination showed that they had developed defective eye-sight and did not have the required vision for driving heavy motor vehicles like buses for which they were engaged by the Corporation. The Medical Board was therefore, constituted by the Corporation and directed the workers to appear before it for testing their eye-sight. The Board found them totally unfit for driving heavy motor vehicles. The Corporation thereafter issued notice to the workman to show cause why their services should not be terminated. They submitted their explanation asking for second test of the Eye-sight and prayed that in case they were found to be unfit, they should be given other job in the Corporation. The Corporation after considering explanation, terminated their services. The orders of termination were challenged before the High Court by individual writ petitions on two grounds, first that the termination amounted to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act (hereinafter referred to as "the Act") and since the retrenchment was without following the mandatory provisions of Section 25F of the Act, it was illegal. Secondly, it was argued that there was an agreement with the drivers' union and the Corporation under which it was provided that if the driver was found unfit for driving the bus, he should be posted as a helper. In pursuance of the said agreement, the Corporation issued a

certificate providing for giving the job of a helper to an unfit driver. This certificate is of March, 1980. Relying on it, it was argued that the termination of service was illegal on that ground as well. The workmen had not only prayed for quashing of termination orders but in the alternative also prayed for direction to the Corporation to offer them the alternative job of a helper. It was held by the Supreme Court that the Corporation had taken up an unhelpful stand in the matter. The Supreme Court had suggested the Corporation to take a suitable scheme on compassionate or charitable basis. The Corporation thereafter, passed Resolution No. 51 of 1991 which is as under ; -

"Resolution No. 51/90 : As a measure of rehabilitation for the drivers terminated on medical grounds, it was resolved that RSRTC may provide margin money loan to the extent of shortfall in the borrower's own contribution, comprising of (sic) benefits available under Industrial Disputes Act and inclusive of CPF, Gratuity etc. in case these employees form a Co-operative Society duly registered and willingly agree to engage such financed new bus(es) with RSRTC on contract till RSRTC loan along with interest is repaid".

6. The Supreme Court had held that the Corporation has not appreciated that what they had asked the Corporation was to formulate a scheme of relief which is the legitimate due of the workmen and not a scheme on compassionate or charitable basis. It is observed that the workmen are not denizens of an Animal Farm to be eliminated ruthlessly the moment they become useless to the establishment. They have not only to live for the rest of their life but also to maintain the members of their family and other dependents. The Supreme Court found that the Corporation had shown helplessness to evolve proper scheme and therefore, it directed the Corporation as under :-

"(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory - amount as follows :-

(a) whether the employee has put in 5 years or less than 5 years" service, the amount of compensation shall be equivalent to 7 days" salary per year of the balance of his service.

(b) whether the employee has put in more than 5 years" but less than 10 years" service, the amount of compensation shall be equivalent to 15 days" salary per year of the balance of his service;

(c) where the employee has put in more than 10 years" but less than 15 years service, the amount of compensation shall be equivalent to 21 days" salary per year of the balance of his service;

(d) where the employee has put in more than 15 years" service but less than 20

years service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(e) where the employee has put in more than 20 years' service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service. The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation shall be that of the workman."

7. In the present case, it is not disputed that the petitioner has not served any notice to the respondent and that the retrenchment compensation is not paid. No domestic enquiry has been held against the respondent so that his services could not be terminated legally without following the mandatory provisions of law. As discussed earlier, we have found that the allegation of abandonment of job cannot be said to be accepted. In the case of Anand Bihari (*supra*), the employer was State Road Transport Corporation. Here, in this case, the employer is a limited company. We do not propose any scheme in the present case. However, as we have found that the termination of services is not proper, we do not find that the award of the Labour Court so far as it orders reinstatement of the respondent with continuity of service and 50% back wages, should "be disturbed. The petitioner may consider whether respondent can be given alternate employment or not. However, even if alternative employment cannot be given, the service cannot be terminated against the provisions of law.

8. In view of the above reasons, we do not find any reason to interfere with the award of the Labour Court ordering reinstatement. The writ petition is dismissed subject to the directions given above.

9. Petition dismissed.