
(2010) 12 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2022 of 1990

Chaman Lal

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311
Industrial Disputes Act, 1947 — Section 2, 33C(2)
Punjab Civil Services Rules — Rule 7.2

Citation : (2011) 129 FLR 303 : (2011) LLR 577

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Judgement

Ritu Bahri, J.—The petition under Articles 226 and 227 of the Constitution of India is for quashing the award of the Labour Court (Annexure P-1) dated 11.11.1989.

The Petitioner-Chaman Lal filed an application u/s 33-C(2) of the Industrial Disputes Act, 1947 against the Xen Hydel Field Mechanical Division, Nangal Township District Ropar.

2. The Petitioner worked as Shevel Operator with effect from 1.6.1977 in the work-charge capacity in the Hydel Field Mechanical Division Nangal (Township of Anandpur Sahib Hydel Project. He was sent to Thein Dam project on 16.7.1984. His salary was paid by Hydel Mechanical Division, Nangal. He has claimed in application u/s 33-C(2) of the Industrial Disputes Act, 1947 salary for the period from 3.6.1985 to 30.9.1985 which comes to Rs. 6879.17 P. In the second application No. 1310/86 he has claimed salary with effect from 1.10.1985 to 31.10.1986 claiming Rs. 29,822.80 P.

3. The Petitioner submits that he worked upto 10.7.1985 in the Thein Dam and thereafter reported back to his parent department. His parent department did not provide any duty to him. His services were never terminated and he was not allowed to join.

4. The stand of the department is that the workman was suspended on 3.6.1985 till 31.7.1985. He was reinstated on 1.8.1985. Thereafter, the workman did not report for duty on his reinstatement at Nangal. He is not entitled to any wages for this period in dispute. The workman admits the fact that he was suspended. The Labour Court after examining the evidence has come to the conclusion that there is no evidence on record by the workman that he had made any representation to the department for joining back the duty. There is no evidence that he personally went for joining duty and to whom he reported for duty. The Labour Court has awarded suspension allowance for the period from 1.6.1985 to 31.7.1985 @ 50% of his basic pay which comes to Rs. 650/-. His prayer for payment of salary with effect from 1.10.1985 to 31.10.1985 is rejected.

5. Mr. Subhash Ahuja, Counsel appearing for the workman, has argued that Petitioner had gone to report back for duty on 11.7.1985. He was never provided any duty nor was paid any salary. He was reinstated in service with effect from 1.8.1985. He claimed that after 1.8.1985 he was an employee of the department and the department could terminate the services of the employee only by issuing show cause notice. The Petitioner is entitled to the salary after 1.8.1985. The department has referred to paragraph 18(2) of the Anandpur Sahi Hydel Project which says that if a workman remains absent without permission, he shall be deemed to have retired for the purpose of Section 2(oo) of the Industrial Disputes Act, 1947.

6. Mr. Ahuja has argued that absence from duty for more than 10 days/8 days as provided in the various Standing Orders would amount to misconduct. Termination of service of the workman on this score without resorting to the procedure established by law is liable to be set aside. Absence from duty without permission amounts to automatic removal, cannot be resorted to without following the procedure under Article 311 of the Constitution of India. A prayer has been made that in Rule 7.2 of the Punjab Civil Service Rules, the Petitioner is entitled to dearness allowance and other allowances permissible under the Rules besides the half basic pay.

7. Reference has been made to Capt. Virendra Kumar v. The Chief of the Army Staff, New Delhi and Ors. 1986 (1) SLR 4221 to contend that the term "voluntary retirement" denotes a clear cut intention on the part of the workman of not coming back to service. In the present case, there was no intention on the part of the Petitioner of voluntary retirement from service. In view of the above fact, the award of the Labour Court is liable to be set aside and Petitioner is entitled to the salary for the period mentioned above. Mr. Ahuja has placed reliance on Pepsu Road Transports Corporation, Patiala v. Pargat Singh and Anr. 1998 (2) RSJ 507. In this case while passing the order of suspension allowance the authority did not pass any order on pay and allowances which were payable apart from subsistence allowance. Such an order was liable to be quashed on the ground that the aggrieved employee was liable to hearing before passing the order. The Management had no power to restrict the pay and allowances to the subsistence

allowance, depriving the employee to other allowances admissible. The Petitioner prays that he is entitled to benefits of dearness allowance admissible on leave salary. Since no procedure has been followed while terminating his services, he is entitled to the benefit of salary with effect from 1.10.1985 to 31.10.1986 which comes to Rs. 29.822.80P.

8. Ms. Harman Sullar, appearing on behalf of the Respondent State, has argued that the Petitioner was suspended by the competent authority i.e. Executive Engineer, Thein Dam Project. After being relieved from Thein Dam Project he did not report for duty to his parent department. There is nothing on record to suggest that he had given any joining report. The Petitioner workman was covered under the Certified Standing Orders of the workcharge staff on Anandpur Sahib Hydel Project. As per Clause 18 (2) of the said Standing Orders the Petitioner was deemed to have voluntarily retired for the purpose of Section 2(oo) of the Industrial Disputes Act, 1947. No notice for termination of his services was required to be served on the Petitioner. Clause 18(2) of the aforesaid Standing Orders is reproduced hereunder:

18(2)-If a workman remains absent without permission and remains absent from beyond the period of leave originally granted or subsequently extended he shall loose his lien on the appointment and shall be deemed to have voluntarily retired for the purpose of Section 2(oo) of the Industrial Disputes Act, 1947, unless he explains within. fifteen days of the commencement of his absence to the satisfaction of the authority competent to sanction leave that absence was due to circumstances beyond his control and leave is due to him whatever with or without wages. But when competent authority is not satisfied with the explanation tendered, it may at the discretion, however, deal with the absence in any one of the following manners:

(a) Sanction period of absence as leave without wages soon if leave with wages is due to him.

(b) Convert his absence to whole or the part as suspension and regularise the remaining period as leave with/without wages.

(c) Sanction leave with or without wages together with an other inflicting of the or issuing warning.

9. Learned Counsel for the State has argued that observations of the Supreme Court in Capt. Virendra Kumar v. The Chief of the Army Staff, New Delhi and Ors. 1986 (1) SLR 422 are not attracted to the case of the Petitioner as they are not similarly situated.

10. After going through the entire file and the award, I am of the view that the Petitioner has not been able to lead any evidence to prove that he had personally gone for joining his duty. He has not mentioned to whom he had reported for duty. There is no entry in the record of the Respondent that Petitioner had come to join in the office.

11. In view of the evidence as recorded by the Labour Court, I am of the considered view that the Petitioner has failed to prove that he had gone for duty after being reinstated from 1.8.1985. He is not entitled for any salary after 1.8.1985. However, as per the judgment in Pepsu Road Transports Corporation, Patiala's case (supra) the writ petition is partly allowed. The Respondents are directed to calculate and make the payment of Dearness Allowance over and above the subsistence allowance within a period of three months from today. The writ petition is disposed of with costs of Rs. 5,000/-.