
(1961) 07 P&H CK 0011
In the Punjab And Haryana At Chandigarh

Daljeet and Co. Private Ltd.	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 28-07-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 15

Citation : AIR 1961 P&H 569 : (1964) 9 FLR 23 : (1963) 2 LLJ 17

Hon'ble Judges : S.B. Capoor, J

Bench : Single Bench

Advocate : H.L. Sibal and D.D. Khanna, for the Appellant; B.S. Bindra, for the Respondent

Judgement

S.B. Capoor, J.—Civil Writ No. 1530 of 1960 under Article 226 of the Constitution of India and Civil Miscellaneous Petition No. 2685 of 1960 under Article 227 of the Constitution are directed against various parts of an award made by the Labour Court, Rohtak (respondent in both the petitions) in a dispute between the workmen and the management of Messrs. Daljeet and Company (Private) Limited, Rupar, and it will be convenient to dispose of both the petitions by this order.

2. The award was published in Part I of the Punjab Government Gazette for the 9th of September, 1960. A copy of the gazette has been placed on the record of Civil Miscellaneous petition No. 2685 of 1960 and a type written copy is annexure "C" to Civil Writ No. 1530 of 1960. The civil writ has been filed by the management and the civil miscellaneous petition by four of the workmen, whose names are Ram Gopal, Sadhu Singh, Baldev Singh and Ram Singh.

3. The facts briefly are that Messrs. Daljeet and Company (Private) Limited -- hereinafter to be referred to as the Company -- and the Ambala Bus Syndicate (Private) Limited entered into an agreement in March, 1959, one of the provisions of which was that 28 workmen who were employed by the latter concern were to be transferred to the service of the Company. In pursuance of

this agreement, these 28 workmen became the employees of the Company as from the 10th of March, 1959.

Apparently some of these workmen were not agreeable to their transfer and on the ground that it was intended to break their unity and was a measure of victimisation, they raised an industrial dispute which was referred for adjudication to the Industrial Tribunal, Patiala. That dispute was, however, withdrawn by the workmen as stated in the Industrial Tribunal's award dated the 31st of May, 1960 (Reference No. 81 of 1959) as published in the Punjab Government Gazette of the 24th of June, 1960.

4. The present reference relates to 17 of these workmen, whose services were terminated by the order of the management of the Company with effect from the 10th of April, 1959. The only term of reference was whether the dismissal of these workers was justified and in order and if not, to what relief each of them was entitled. On the basis of the written statements filed by the parties, the Labour Court framed the following issues :

1. Is the reference illegal, void and ultra vires for the reasons given in the written statement? (O. M.)

2. (i) Whether the dismissal of the workmen given in the reference order is justified and in order? (O. M.)

(ii) If not to what relief each of them is entitled? (O.W)

The finding of the Labour Court on issue No, 1 in favour of the workers as to the reference being in order has not been challenged in the writ petition and we are, therefore, concerned only with two sub-heads under issue No. 2. The Labour Court found that out of the workmen to whom the reference pertains Charan Singh had stayed away and that his dismissal was justified. As regards the remaining 17 workmen, the finding was that the ground alleged by the management, i.e., wilful absence from duty, has not been sustained and that they were accordingly illegally dismissed by the management. Re-instatement was, however, ordered only in respect of the following 13 workmen

1. Ganesha Ram, Mistri
2. Gurdial Singh Gandhi, Mistri
3. Mehar Chand, Mistri
4. Mehar Singh, Cleaner
5. Ajmer Singh, Cleaner
6. Amrik Singh, Cleaner
7. Amar Nath, Mistri
8. Lachhman Singh, Cleaner

9. Sher Singh, Cleaner
10. Jagat Ram, Cleaner
11. Shubh Kumar, Electrician
12. Gurdial Singh Cleaner
13. Nachhater Singh, Cleaner.

with continuity of service and they were also given two-thirds of their back wages from the date of dismissal to the date of the publication of the award. As regards the remaining four i.e., the men who are the applicants in Civil Miscellaneous No. 2685 of 1960 -- Ram Copal, Sadhu Singh, Baldev Singh and Ram Singh, the finding was that they had made and supported a false report (Exhibit M. 19) against the management and on that account it was neither desirable nor proper to thrust them on the management, and that their presence in the industry was bound to cause disharmony and disturb the peace of the industry.

The Labour Court therefore, refused to reinstate these four, but considered that as they had continuously reported for duty, they were entitled to be compensated for the Period of their unemployment since the time of their dismissal. They were, therefore, awarded compensation equivalent to their full wages from the date of their dismissal to the date of publication of the award.

5. The management in the writ petition are aggrieved by the order re-instating the 13 workmen and allowing them two-thirds of the back wages. With regard to the other four workmen, the grievance of the management is that when they were not re-instated, they were not entitled to be compensated for the Period of their unemployment, nor was any such question raised in issue.

6. In the miscellaneous petition, the four workmen, who are the petitioners, contended that it was never the case of the management that they had been dismissed for lodging any false report against the management and hence the order of the Labour Court refusing to re-instate them was unjustifiable and illegal.

7. The principal question to be determined in the writ petition is whether there is any such defect of jurisdiction or illegality in the finding of the Labour Court On issue No, 2, which can justify interference under Article 226 of the Constitution of India. It is well established (see Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, that this jurisdiction under Article 226 of the Constitution will not be exercised to quash an award of a tribunal on the ground of mistake of fact if no such mistake is apparent On the face of the record,

Errors in appreciation of documentary evidence, and errors in drawing inferences or omission to draw inferences cannot be corrected by the High Court in exercise of its jurisdiction under Art. 226 or 227 of the Constitution of India. Keeping these observations in my mind, I am fully satisfied that the finding of the Labour

Court on issue No. 2(i) cannot be impugned.

8. The material question to consider was whether the purporting ground of dismissal, viz., that the workers had wilfully absented themselves from duty, had been established by the management or not. The case of the workers was that they had reported themselves for duty on the 10th of March, 1959, to Shri Hazura Singh, Acting Managing Director of the Company, but were not assigned any work and that they continued to report themselves for duty, but the management did not choose to assign work to them.

The workmen, therefore, made representations (copies Exhibits W. W. 1/1 to W. W. 1/18) to the management as also to the Labour Inspector. Ultimately, the Shop Inspector Shri Balwant Singh W. W. 7, intervened with the management and on the 23rd of March 1959, they were assigned some work. The next day, i.e., on the 24th of March, 1959, they were again not given any work though they continued to report themselves for duty.

They relied on letters Exhibits M. 9 dated 24th March, 1959, W. 7. dated 25th March, 1959, W. W. 1/22 dated 27th March, 1959 which they sent to the management, but which, according to the postman's report the Managing Director Shri Bachan Singh Bala refused to receive, Mr. Puri, Labour Officer, and Mr. Ambwani, Labour Inspector, have established that during the period subsequent to the 24th of March, the workmen were trying their best to persuade the management to assign them work, but to no avail.

9. On the part of the management it was contended that the workmen to whom the reference pertains did not at all report for duty during the period. 10th of March, 1959, till the 22nd March. It was only on the 23rd March, 1959, that they attended and they were assigned work, but the next day i.e., the 24th, they left their duty without permission after lunch interval. They stated that this was due to an incident which occurred on the morning of 24th, when Ram Singh (one of the petitioners in C. M. No. 2685/1960) was ordered by Hazura Singh to remove certain tyres, but he declined to do so and insulted Hazura Singh, and the other workmen out of sympathy with Ram Singh stopped work and a false report with the police was lodged against the management.

10. The Labour Court has held and quite rightly that absence, if any, from the 10th upto the 22nd March was condoned by the management inasmuch as the workmen to whom the petition pertains were allowed to resume work on the 23rd. With regard to the period from the 24th March up to the date of the termination of services of these workmen the Labour Court, believed On the basis of the oral and documentary evidence led before it the case set up by the workmen and in these proceedings it is not possible to come to a contrary opinion.

11. Mr. Sibal arguing on behalf of the management contended that the Labour Court in coming to its finding on issue No. 2(i) had been influenced by the consideration that the transfer of the services of these 28 workmen from the

Ambala Bus Syndicate (Private) Limited to the Company was neither legal nor proper. He further contended that inasmuch as the workmen had withdrawn the reference (No. 81 of 1959) which was concerned with the dispute, it should have been held that they had no grievance on the score of their transfer.

This according to Mr. Sibal was an irrelevant consideration and the view of the Labour Court on this matter vitiated its finding on this issue. In this connection, reliance was placed on the observations of their Lordships of the Supreme Court in *J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur*, to the effect that it is not open to the tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper.

12. I do not consider that there is any substance in this argument. It was contended by the workmen in the statement of this case that the transfer of their services to the company was made with mala fide intentions and the Labour Court has considered the matter of the transfer only incidentally in order to assess the background of the relations between the parties and with a view to finding out as to whether there could be any reason for the management of the Company to refuse to assign duties to the workmen. Thus, the award of the Labour Court on issue No. 2 (i) is by no means vitiated.

13. With regard to the 13 workmen, whose reinstatement was ordered, the only other question remaining is whether any interference is required with the direction allowing them two-thirds of their back wages from the date of their dismissal to the date of publication of the award. Mr. Sibal has contended that these workmen might during the period they remained out of employment have found service in some other Concern, but if this was so, some positive evidence ought to have been led by the management.

No question was put that they have been in some other employment during the relevant period to any of the workmen who appeared as witnesses. This part of the Labour Court's order is also, therefore, unexceptional. With regard to the four workmen who are the applicants in the civil miscellaneous petition, Mr. Sibal's contention was that the order of the Labour Court declining to re-instate them was patently an order within its jurisdiction and such being the case, this Court's jurisdiction under Article 227 of the Constitution Cannot be invoked.

The scope of the jurisdiction under Article 227 of the Constitution has been authoritatively stated by the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, that under this Article of the Constitution the power of interference is limited to see that the tribunal functions within the limits of its authority. On this short ground alone, the petition under Article 227 of the Constitution (C. M. No. 2685 of 1960) fails.

14. The only other question remaining is whether these four workmen were entitled to be compensated for the period of their unemployment since the date

of their dismissal. The Labour Court has curiously enough awarded full wages to them while it has allowed only two-thirds of the back wages to the 13 workmen who were re-instated by it. Mr. Sibal has referred to Pudukottah Textiles Ltd. Vs. A. Subramaniam and Others, in which it was observed that if the dismissal was found to be justified the tribunal had no jurisdiction to award any compensation.

The findings of the Labour Court are, in fact, somewhat contradictory. The ground upon which their re-instatement was declined was that they had made a false report with the police, Exhibit M. 19, against the management. This report is dated the 24th March, 1959, i. e., much before the date of dismissal or termination of the workmen's services, and if the making of the report has been held to furnish a good ground for declining their re-instatement no legal basis exists for awarding them compensation for the period of their unemployment and accordingly that part of the award which directed payment of compensation to these four workmen is quashed.

15. In the circumstances, the parties are left to bear their own costs in both these petitions.