
(1992) 06 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition NO. 7066 of 1992

Deepak Kumar

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 03-06-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1994) 68 FLR 333 : (1993) 2 LLJ 224 : (1993) 103 PLR 299

Hon'ble Judges : V.K. Bali, J; Amrit Lal Bahri, J

Bench : Division Bench

Advocate : Ravi Kant Sharma, for the Appellant;

Judgement

1. Deepak Kumar was employed with Punjab Agro Industries Corporation. His services were terminated in 1982. In 1985, he moved an application u/s 33C(2) of the Industrial Disputes Act for computation of his salary after the alleged order of the termination. The application was contested by the management. A specific issue was framed i.e. issue No. 1 which is as under:

"Whether the application is not maintainable as alleged in the preliminary objections of the written statement".

2. While dismissing the above issue it was observed as under with respect to different powers and functions of the petitioners:-

"The principal objection of the respondent against the claim is that the applicant was employed in a managerial capacity and as such was not a workman within the meaning of Section 2(s) of the Act. The contention is unanswerable. As Assistant Manager of the workshop, the applicant had the power to replace parts of the tractors sold by the respondents, to follow up the potential customers when such work was assigned to incur an expenditure upto a certain limit for sale promotion, to pass octroi charges paid on tractors, to purchase parts for the service repair of tractors locally and to pass electricity bills of the show rooms (Exhibit M/I). In addition he had the power to initiate confidential reports of

Senior/Junior Mechanics, Auto Electricians, apprentice auto electricians, store men and others working under him (Exhibit M/2). All these are managerial powers".

3. A finding was given on the material aforesaid that the petitioner was not a workman and the application was dismissed. Subsequently, the petitioner raised an industrial dispute u/s 10(1)(c) of the Act challenging his order of termination which was decided by the Labour Court on November 11, 1991. Copy of award is Annexure P/4. Finding given by the Labour Court earlier in Annexure P/1 was held to be binding that the petitioner was not a workman and hence the reference was answered accordingly. Before that a similar reference was made which was declined on technical grounds. Annexure P/4 award dated November 11, 1991 is under challenge in this Writ Petition.

4. The learned counsel for the petitioner has argued that the Labour Court while deciding application u/s 33C(2) has no jurisdiction to decide the status of "workman" as such and the finding given in its award Annexure P/1 cannot be treated as binding on the Labour Court while deciding reference u/s 10(1)(c) of the Act. The contention cannot be accepted. It is only on proof of the fact that the petitioner was a workman as defined under the Act that the Labour Court could further proceed with an application filed u/s 33C of the Act for computation of the back salary and wages. This was inherent in the provision of Section 33 to invest the Labour Court with the jurisdiction to compute arrears of pay or wages. Thus, it cannot be said that the Labour Court had no jurisdiction to decide the question whether the petitioner was a "workman" as defined under the Act in the proceedings u/s 33C(2) of the Act.

5. The contention of learned counsel for the petitioner further is that the finding given in the award Annexure P/1 was erroneous and the same could not operate as res judicata in the subsequent proceedings before the Labour Court u/s 10(1)(c) of the Act. The contention again cannot be accepted, firstly the award of Labour Court Annexure P/1 which was given after taking into consideration different functions to be performed by the petitioner is a finding of fact. We have extracted portion of award Annexure P/1 above and we are of the same view that the petitioner was not a "workman" as defined in the Act. The mere fact that one of the functions of the workman was also to get service and repair of the tractors per se will not make him a "workman" when all other functions of the petitioner were managerial or supervisory in nature. It cannot be held that the finding of Labour Court in Annexure P-1 is in any manner erroneous in law. Such a finding was not challenged by the petitioner promptly in any proceedings and decision of the Court which had the jurisdiction to decide the same between the same parties would be binding applying the principle of constructive res judicata. The impugned order Annexure P-4 based on such a finding is valid. No ground for interference therewith is made out. Dismissed.