
(2008) 02 P&H CK 0262
In the Punjab And Haryana At Chandigarh

Desh Sewak Foundry

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25, 25F, 25FFF

Citation : (2008) 02 P&H CK 0262

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Judgement

K.C. Puri, J.—This judgment will dispose of Civil Writ Petition Nos. 2729 of 1999, titled Desh Sewak Foundry v. Presiding Officer, Labour Court, Gurdaspur and Anr. 3951 of 1999, titled Desh Sewak Foundry v. Presiding Officer, Labour Court, Gurdaspur and Anr. 3955 of 1999 Desh Sewak Foundry v. Presiding Officer, Labour Court, Gurdaspur and Anr. 3964 of 1999, Desh Sewak Foundry v. Presiding Officer, Labour Court, Gurdaspur and Anr. and 3965 of 1999 titled Desh Sewak Foundry v. Presiding Officer, Labour Court, Gurdaspur and Anr. as common questions of fact and law are involved. Facts have, however, been extracted from Civil Writ Petition No. 2729 of 1999.

2. It is pleaded that the petitioner is a partnership firm. Respondent No. 2, Ajit Singh joined as a Partner with the petitioner firm with effect from 2.4.1976. The petitioner firm was covered under the provisions of Employees Provident Fund Scheme, 1952. Respondent No. 2 also became a member of this scheme immediately on joining the petitioner firm. There were two independent units in the petitioner firm.

3. One was Workshop Department and the second was Foundry Unit. Due to certain economic facts and other circumstances which were beyond the control of the management of the petitioner firm and heavy losses suffered by the petitioner firm, the petitioner had to close its Workshop Department. Consequently, closure notice dated 28.9.1984 was issued and it was mentioned therein that it was decided to close the Workshop Department with immediate

effect and all the workmen employees in the said Department were informed to collect the payment of their legal dues in accordance with Section 25FFF read with Section 25F of the Industrial Disputes Act (in short the Act). It was also made clear that in case the workmen failed to collect the same, the amount will be remitted to them by Pay Order at their given address. A copy of the said notice was also sent to the Labour Inspector, Labour Commissioner, Punjab, Chandigarh besides the concerned workmen. As nobody turned up to collect the dues in terms of the notice dated 28.9.1984, the respondent No. 2 sent a cheque of Rs. 3,634.96P as compensation in terms of Section 25FFF of the Act. Respondent No. 2 refused to accept the registered letter and it was received back undelivered. The workers raised an industrial dispute. Ultimately, the matter was referred to the Labour Court, Gurdaspur. During the pendency of proceedings before the Labour Court, even the Foundry Section was finally closed and the premises of the Foundry have already been sold out. The Labour Court passed the award dated 2.3.1998 vide which it was held that the services of workman i.e. Respondent No. 2 were terminated which amounted to retrenchment and because of non compliance with the provisions of Section 25 of the Act, the termination was illegal and consequently respondent No. 2 was reinstated with continuity of service with back wages to the extent of 75%. The petitioner has termed the award of the Labour Court as illegal, against the provisions of the Act and perverse.

4. The petitioner further pleaded that the findings of the Labour Court that there was no closure and it was retrenchment were totally arbitrary and wholly illegal. The Labour Court wrongly concluded that the Workshop Unit and Foundry Unit were interdependent. Actually, both these units were totally independent. The Labour Court has mis-read the report of the Inspector of Factories to conclude that the Workshop Unit of the factory was in operation after its closure. The Labour Court has also gone wrong in awarding 75% back wages to the workman.

5. No written statement has been filed.

6. I have heard arguments of counsel for the parties and have gone through the record of the case.

7. Learned Counsel for the petitioner has argued on the lines of his pleadings. It is submitted that the Foundry Unit and the Workshop Department were two separate units. The Workshop Department had been closed as the same was constantly running in the losses. Mere fact that the Foundry Unit was working does not lead to the conclusion that the workmen were retrenched. According to Section 2(cc) of the Act, closure means closing down of a place of employment or part thereof. So, the partial closure is allowed under the Act.

8. I have carefully considered the said submission, but, do not find any force in the same. The learned Labour Court has given elaborate finding in this regard. The income tax record has been taken into consideration. The report of Inspector of Factories who visited the spot was also considered while holding that closure

by the petitioner is illegal. Mere fact that on part of the building, some construction has been raised is also no ground to declare the closure as valid. The learned Labour Court has given a finding that the present petitioner has failed to prove the fact that the unit working in the premises is separate from the alleged closed unit. So, that being a finding of fact cannot be interfered with while exercising the power under writ jurisdiction.

9. The submission of counsel for the petitioner that compensation u/s 25FFF could be paid after retrenchment, in view of authority reported as Sunder Singh and Another Vs. Beas Construction Board, New Delhi and Others, also cannot be accepted as the Labour Court has held that closure was illegal. The learned Labour Court has held that the petitioner-firm has shown profits and machinery has also not been sold prior to the alleged closure. That finding also does not require interference. Authority reported as District Red Cross Society v. Babita Arora and Ors. (2007)7 SCC 366 also does not advance the case of the petitioner as the learned Labour Court has held that the petitioner-factory was still working and there was no alleged closure.

10. The Learned Counsel for the petitioner has submitted that the Labour Court has awarded 75% of back wages. The petitioner-firm has suffered financial loss. The Hon'ble Apex Court in U.P. State Brassware Corpn. Ltd. and Another Vs. Uday Narain Pandey, has held that grant of full back wages could not be allowed in a mechanical manner. It has been further held that keeping in view the old position and the new position regarding grant of back wages, the Labour Court should mould the relief according to the circumstances of the case. In the said case, the closure was held illegal and the back wages were confined to 25% of the total wages. The respondents must not have remained idle for such a long period. So, in case the Court is not inclined to accept the plea that closure was legal, in that case, the claim of the workmen regarding back wages be disallowed.

11. In reply to the above-said submission, Mr. M.S.Bedi, Learned Counsel for workmen has submitted that the Labour Court has already restricted the claim to the extent of 75%. The discretion exercised by the Labour Court is not required to be interfered with. The workmen are out of job for the last so many years due to the fault of the petitioner. So, a request has been made not to interfere in the back wages.

12. I have carefully considered the rival submissions made by the counsel for both sides.

13. The alleged closure relates to the year 1984. The award was passed on 2.3.1998. The writ petition is being decided in the year 2008.

14. In authority in Uday Narain Pandey's case (supra) etc., it has been held that the old view that in case retrenchment is found to be invalid, the full back wages are to be granted has now changed with the passage of time. It cannot be believed that workmen would have survived for the last 24 years without any

work. In the above authority reported in Uday Narain Pandey's case (supra), the closure was held to be bad and claim of back wages was confined to 25% of the total back wages. So, keeping in view the abovesaid authority, I am of the considered view that the interests of justice would be met in case the claim of workmen is restricted to 25% of the back wages and I order accordingly.

15. In view of the above discussion, the writ petition stands partly accepted to the extent of restricting the claim of workmen to the extent of 25% of back wages instead of 75% back wages granted by the Labour Court, and remaining part of award stands affirmed.

16. A copy of the judgment be placed on the connected writ petitions.