

(2014) 02 P&H CK 0185

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. Nos. 125, 126, 168, of 2008 (O&M) and L.P.A. Nos. 862, 869 of 2009 (O&M)

Desh Sewak Foundry

APPELLANT

Vs

Presiding Officer, Labour Court, Gurdaspur

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

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

Citation : (2014) 3 LLN 253 : (2014) LLR 967 : (2014) 2 SCT 801

Hon'ble Judges : Rajive Bhalla, J; Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : R.S. Ahluwalia, Advocate for the Appellant; M.S. Bedi, Advocate for Respondent No. 2, Advocate for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—All these five Letters Patent Appeals bearing Nos. 125, 126, 168 of 2008 as also 862 and 869 of 2009 arising out of adjudication of Civil Writ Petitions bearing Nos. 3955, 2729, 3951, 3965 and 3964 respectively vide a common judgment dated 25.2.2008 passed by the learned Single Judge are being taken up together for decision as these are interconnected. For convenience and clarity, facts have been taken from LPA No. 126 of 2008.

2. Respondent No. 2 Ajit Singh was working as a Turner with the L.P.A. No. 126 of 2008-3-appellant, a partnership firm. There were two units, one was workshop unit whereas the other one was foundry unit. Claiming financial difficulties and losses as also circumstances beyond the control of the Management of the firm, the appellant had set up a case for closure of the workshop unit. Closure notice dated 28.9.1984 was referred to with further assertion that all the workers in the said department had been informed about the closure notice and had been asked to collect payment of their legal dues in accordance with Section 25FFF read with Section 25F of the Industrial Disputes Act, 1947 (hereinafter called the Act). The concerned departments including the Labour Commissioner, Punjab had been

informed. Since no workman turned up to collect his dues in terms of closure notice of 28.9.1984, the employer sent payment of compensation to all workers in terms of provisions of the Act, but the workmen did not receive the same.

3. Respondent No. 2 Ajit Singh raised an industrial dispute which was adjudicated by the Presiding Officer, Labour Court, Gurdaspur (hereinafter called the Labour Court) in favour of the workman holding that the provisions inter alia of Section 25F of the Act had not been complied and thus, termination of the workman was illegal. Consequently, the workman was ordered to be reinstated with continuity in service and backwages to the extent of 75% vide Award dated 2.3.1998 (Annexure P-7).

4. This Award was challenged by the appellant-firm by way of CWP No. 2729 of 1999. The plea of the appellant-firm that closure of the workshop unit was necessitated by the circumstances beyond their control and thus, the case was covered u/s 25FFF of the Act and not u/s 25F of the Act, was found to be without merit. Modifying the Award, backwages were restricted to 25% instead of 75% (as had been ordered by the Labour Court). The remaining part of the Award was affirmed.

5. In this appeal, contention of the appellant is that there could be partial closure as well and thus, the workshop unit of the factory having been L.P.A. No. 126 of 2008-4-closed after closure notice given to all concerned workers and allied departments, there was nothing foul therein. It is claimed that even during pendency of proceedings before the Labour Court, the other unit viz. foundry unit had also been closed and then, the appellant was no more engaged in any activity. It is, rather, alleged that there is a complete closure of the appellant-firm and reemployment is not possible. It is further claimed that the entire material on record has not engaged the attention either of the Labour Court or of the learned Single Judge.

6. Stand of the workman, on the other hand, is that the entire exercise of the appellant-firm is a camouflaged one with an effort to show the exit gate to inconvenient employees. It is contended that even when the unit was functioning well, the appellant had planned to turn the workers out without following legal provisions of the Act.

7. We have heard learned counsel for the parties while going through the paper book.

8. At the outset, it may be mentioned here that there is no dispute that there could even be a partial closure of a unit. When the evidence produced by the appellant-firm was evaluated by the Labour Court, it was found from the income tax returns furnished by the appellant firm that there were neither losses nor any economic crisis, as projected by the employer for closure of the workshop-unit. Rather, it was found that the unit had always been in profits. The main plea of the appellant that the workshop unit had to be closed in terms of closure notice dated 28.9.1984 as it was generating losses and had become non-viable as also

uneconomical thus was proved to be false.

9. Deposition of Ved Mitter (AW3) a witness for the appellant firm brought out the hollowness of the case of the appellant-firm even further. This witness was produced by the appellant-firm to prove that the premises of the workshop had been converted into shops, one shop out of L.P.A. No. 126 of 2008-5-which had been rented out to him. It was found that the rent note produced by him was, in fact, a paper transaction. He had no knowledge about the activities being conducted in, near and around the premises allegedly under tenancy with him. Apaar Singh PW appearing for the appellant-firm had admitted that when Labour Inspector Sudhir Kakkar had made a visit on 7.10.1985, the workers were doing their job and thus, the factory was functional.

10. Plea of sale of machinery by the appellant-firm has also been proved to be false because no documents including sales tax return pertaining to alleged sale of machinery had been produced or proved. One Balbir Singh PW appearing for the appellant had produced lease deed dated 28.9.1984. He was carrying on the work in the factory. He had conceded that raw-material was provided by the appellant-firm and after doing the job work, he was providing finished goods to the owners.

11. In his cross-examination, it was found that he was a liquor vendor and was associated with the liquor vends of one of the partners and thus, was closely connected with him. Taking these aspects as also many more into consideration, the Labour Court had come to a firm finding that claim of the management had no merit. Following observations of the Labour Court leading to passing of Award dated 2.3.1998, are of significance:

However, in the instant case, the facts and circumstances elicited from the overwhelming evidence establish that closing of the workshop section of the industry was only a ruse on the part of the management and that the respondent has not closed the workshop deptt. of the factory. The statement of Balbir Singh, MW1, does not inspire any trust and credibility as that he had intimate relations with the management and he is also engaged in the business of liquor vending. More so, licence deed Ex. M1 has not been proved by any of the attesting witness. Apar Singh, MW2, had never stated that the workshop deptt. had been given on licence to Balbir Singh. Balbir Singh MW1, states that pig iron is supplied by owner of the factory and after doing the moulding work, L.P.A. No. 126 of 2008-6-unfinished goods are supplied to the owner against payment of bills issued by him and that he employed four persons and also maintained their attendance register. The owner of the factory then finishes the same and sell the same in the market. It is not understood how the respondent closed down the factory abruptly on 28.9.1984 itself and notice of the same was pasted on the same day on the notice board. The licence deed was strangely executed on the same day. Had the transaction been real and genuine, then it must have been conceived earlier to 28.9.1984 and obviously notice should have been issued much earlier.

12. It was further observed by the Labour Court as under:

Another militating factor is quite discernible that the workshop section of the factory of the respondent was not independent unit. Rather, it would appear that it was an integral part of the factory. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. The moulding of raw material is an important process of producing goods. If an undertaking in its ordinary meaning and sense is part of an establishment so that both taken together constitute one establishment, then it cannot be said that the undertaking has been closed. Since the workshop section is a department of the factory which produces goods as per the pleadings of the respondent, therefore, it is an integral part of the factory and the moulding work is still being done.

13. Cumulatively, taking into consideration all the facts and circumstances, the Labour Court had accepted the Reference on 2.3.1998 vide Award (Annexure P-7).

14. The impugned judgment, dismissing the writ petition filed by the management after taking into consideration the entire spectrum of facts and circumstances had not found any material militating against the impugned Award. Following observations made in the impugned judgment are noteworthy:

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 L.P.A. No. 126 of 2008-7-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.

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 Vs. Babita Arora and Others, 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.

15. Taking into account the fact that long delay had taken place regarding claim of the workman, the back wages were considerably reduced and restricted to 25% of back wages by assigning the following reasoning:

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. 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.

16. At the end, it may be noticed that since the dispute raised by the respondent started on 28.9.1984 when closure notice was given by the appellant-firm and now, almost 30 years have gone by and consistent claim L.P.A. No. 126 of 2008-8-of the appellant is that neither the factory nor the workers are there and no work is being carried out, though findings recorded by the Labour Court as also by learned Single Bench are in favour of the workmen and are against the appellant-firm, instead of reinstatement with 25% back wages as was ordered vide the impugned judgment, it would be appropriate to quantify the compensation payable by the employer to the workman. Keeping in view the totality of above facts and circumstances, affirming the impugned Single Bench judgment to the extent as mentioned earlier, the appeals are disposed of restricting the claim of the workmen to the extent of Rs. 5 lacs each instead of reinstatement and back wages.