
(2001) 09 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17656 of 1997

Gandharab Singh

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Industrial Disputes Act, 1947 — Section 10, 10(1), 11, 2
Industrial Disputes Regulations — Regulation 14, 16

Citation : (2001) 09 P&H CK 0036

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mr. D.S. Patwalia, for the Appellant; H.S. Sran, DAG, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This writ petition under Articles 226/227 of the Constitution of India seeks the issuance of a writ in the nature of certiorari quashing the award dated 19.8.1997 passed by Presiding Officer, Labour Court, Jalandhar (hereinafter referred to as "the Labour Court").

2. Few facts as pleaded may be noticed.

The name of the petitioner (hereinafter referred to as "the workman") was registered with the Employment Exchange vide Registration No. 1271/88 dated 7.4.1988. He was appointed as Chowkidar for the Cycle Stand by the Principal of Government Arts and Science College, Talwara, District Hoshiarpur (hereinafter referred to as "the Management") by order dated 30.8.1989. The workman continued working to the entire satisfaction of the Management. He was also issued certificate dated 25.1.1992 to the effect that his work and conduct is satisfactory. On 8.4.1992, the Director Education Department, Punjab issued memo No. 14/8-91/Am:a(i). This memo was addressed to all the Principals of the State Government Colleges and other institutions mentioned therein. This

memo was issued with regard to appointment of fixed/daily/salaried persons on the Class IV posts lying vacant. It was provided in the instructions that when ever any Class IV posts (except, Laboratory Attendant) fall vacant, then the daily wages/fixed salaried employees who are working in the institution may be considered against these posts on the basis of their seniority. It was further provided that these employees should have been from the approved Employment Exchange and have other qualifications for appointment. Although the petitioner was fully eligible to be considered for regular appointment against a class IV post, yet in a totally illegal and arbitrary manner his services were ordered to be terminated vide order dated 13.3.1993. It is further pleaded in the writ petition that after the termination of the services of the workman, the Management appointed one Smt. Raksha Devi, a widow, as chowkidar on 22.10.1993. This fact is also noticed in the judgment of the Division Bench in CWP No. 15531 of 1994. Aggrieved against the order of termination, the workman served a demand notice dated 10.5.1993. The Labour Commissioner rejected the demand notice dated 10.5.1993 on the ground that he was appointed as chowkidar for 29 days and had not rendered continuous service. The workman approached this court by way of Civil Writ Petition No. 15531 of 1994 seeking a direction to the State Government to refer the industrial dispute for adjudication to the Labour Court u/s 10 of the Industrial Disputes Act (hereinafter referred to as "the Act"). The writ petition was disposed of by a Division Bench of this court by order dated 25.8.1995 by issuing a direction to the respondents to reconsider the matter. Consequently, the Government referred the industrial dispute to the Labour Court u/s 10(1)(c) of the Act. The reference was in following terms :- "Whether termination of services of Gandharb Singh workman by the employer was justified and in order ? If not, to what relief is workman entitled ?" 3. The workman reiterated the facts narrated above in the statement of claim. The Management opposed the reference and stated that the workman was appointed as Cycle Chowkidar to be paid out of the cycle fund collected from the students on "no profit no loss" basis as provided in Pupil's Fund Rule 13 for 29 days. He was given one day break after every 29 days of service. He had not completed 240 days of continuous service as he had a break of one day after every 29 days of service. He was not appointed through Employment Exchange. His work and conduct was not to the entire satisfaction of the Principal. Reference was made to letters No. 2151 dated 6.11.1991 and 2154 dated 7.11.1991. No certificate was issued by respondent No. 3 regarding work and conduct of the workman being satisfactory by the Principal. The workman was not entitled to the benefit of letter dated 8.4.1992 issued by the D.P.I. Punjab (Colleges) as the workman was not appointed through the Employment Exchange. No one junior to the workman was retained in service. The misconduct of the workman has been pleaded in extenso. It is stated that the workman was found absent from duty on 6.11.1991, 12.2.1993, 13.2.1993, 4.3.1993, 10.3.1993 and 13.3.1993. By letter No. 2154 dated 7.11.1991, the workman was asked to explain his absence on 6.11.1991. Vide letter No. 441 dated 15.2.1993, he was asked to explain his absence on 12.2.1993 and 13.2.1993. The workman submitted his explanation.

After considering the reply, he was given last warning vide letter No. 455 dated 16.2.1993 and he was told that if he repeated this misconduct his services would be terminated. Despite last warning, the workman absented from duty on 4.3.1993, 10.3.1993 and 13.3.1993. It is further stated that the balance amount of cycle fund in March, 1993 came down to Rs. 98/60 only which was much below Rs. 798/40 required to be paid to be workman and his salary for the month of March, 1993, there was no source of collecting funds from the students before the commencement of next academic session which commenced in July, 1993. Therefore, keeping in view the previous conduct of the workman of remaining absent from duty and paucity of funds, the workman was terminated from service on 13.3.1993. On these pleadings, the following issues were framed by the Labour Court :-

"(i) Whether the workman concerned remained absent from duty as alleged ?

(ii) Whether termination from service of workman concerned was justified and in order ?

(iii) Relief."

4. After considering the entire evidence and the submissions made by the parties, the Labour Court decided both the issues against the workman. It has been held that in the initial appointment letter dated 30.6.1989, the workman was appointed for 29 days on fixed wages of Rs. 575/-. The payment was to be made from cycle fund according to the Education Department (K), Punjab Local Funds Regulations. It is further held that the workman was appointed without being sponsored by the Employment Exchange. Therefore, it cannot be said that the workman was recruited on regular basis. He was not to be paid out of the Government revenue. The collection of the cycle funds depends on the number of students who would avail the facility of cycle stand. Adverting to the evidence produced by the Management, it is noticed that Vinod Sharma; MWI found the workman to be absent from duty when he went on a routine check on 4.3.1993. Again on routine check on 10.3.1993 at 10 a.m. and 2.30 p.m., the workman was found absent. On 30.3.1993 again in a routine check at 12 noon, the workman was found absent from duty. Rajinder Ku-mar MW2 deposed that on 4.3.1993 at 12.30p.m. on being directed by the Principal, he went to the cycle stand and found the workman absent from duty. He reported the matter to the Principal. Thereafter, the Labour Court has noticed the deposition made by the workman. In cross-examination, the workman admitted that he got his name enrolled in the Employment Exchange once, but did not get it renewed. He admitted that he was employed on 29 days basis at fixed salary. He admitted the fact of his absence from duty on 12.2.1993, but stated that on that date his mother-in-law had died. He did not say that he had applied for leave. Regarding 13.2.1993, he said that he resumed duty, but did not say at which time he went to attend to his duty. He admitted that he was given show cause notice dated 15.2.1993 and that he was informed that he was found absent from duty on 12.2.1993 and 13.2.1993. He admitted that his explanation in reply to letter No.

441 dated 15.2.1993 was not found to be satisfactory. He also admitted that he had been warned that in case he repeated this misconduct, his services would be terminated. On the basis of the aforesaid material, the Labour Court has held that the workman has remained absent from duty as alleged and that the action of the Management is justified. The submissions made before the Labour Court have been reiterated by the counsel for the petitioner. It is submitted that the Labour Court has wrongly held that the workman was appointed for a fixed period and that his services stood automatically terminated at the end of the period of contract, Case of the workman does not fall u/s 2(oo)(bb) of the Act, but falls u/s 25F of the Act. Since admittedly Section 25F has not been complied with the order of termination is void ab initio.

5. I have considered the submissions made by the learned Counsel.

6. In the case of Haryana State Cooperative Supply and Marketing Federation v. The State of Haryana and others 1996(4) SCT 44 (P&H) : 1995(4) RSJ 369, a Division Bench of this Court has held that giving of notional breaks with the object of preventing a workman from getting the benefits of labour legislation would amount to unfair labour practices.

7. I am of the considered opinion that the aforesaid ratio is squarely applicable to the facts and circumstances of the present case. The workman has been given repeated appointments of 29 days. In fact it was specifically pleaded that the workman has not put in 240 days of continuous service as he had a break of one day after every 29 days of service. The Labour Court has wrongly held that the appointment was for a fixed term. The services of the workman could not have been terminated without complying with Section 25F. The Labour Court has also wrongly held that Section 25-F would not be applicable because the petitioner had been appointed for a specified job. It is not even denied by the Management that Raksha Devi, a widow had been appointed in place of the workman, after his services had been terminated. In such circumstances, it would not be possible to hold that the workman had been appointed only for specified period and that his services were automatically terminated. Thus the case of the workman would not come within the purview of Section 2(oo)(bb) of the Act, but would fall squarely within, the ambit of Section 25F of the Act. Had the case of the workman rested here, the award could have been set aside.

8. The workman, however, proceeded to challenge the order, in addition to the above grounds, on the ground that the order has been passed as a measure of punishment, without charge-sheet or enquiry. The Management justified the order of termination on the ground of unauthorised absence of the workman. After considering the entire matter, the Labour Court has held that absence of the workman is proved. Since the order of termination is held to be punitive, it was not necessary to comply with Section 25F. The term "retrenchment" has been defined in Section 2(oo) of the Act, as follows :-

"2.....

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or"

Since the Labour Court has found the absence to be proved, the order of termination would not fall within Section 2(oo). The finding on absence has been given on the specific case put forward by the workman, in the proceedings before the Labour Court. In the deemed notice dated 10.5.1993, the workman had pleaded that "I had already completed more than three years of service, but provisions of Industrial Disputes Act, 1947 were not complied before terminating my services. I was not issued any memo show cause notice charge- sheet and no retrenchment compensation was paid to me at the time of my services were dispensed with". The plea was reiterated in the statement of claim as follows :-

"6. That neither the workman was charge sheeted nor any enquiry held and without affording any opportunity his services were illegally terminated."

9. Again in the rejoinder to the written statement, it is pleaded as follows :-

"6. That para No. 6 of the written statement is wrong and the same is specifically denied. The respondent has admitted that the order of termination of the workman was passed on account of his absence without holding any enquiry. The absence from duty, if any, is misconduct for which an enquiry is mandatory if penal action has to be taken against the workman. Since no charge-sheet was issued to the workman nor any enquiry against his alleged absence held and as such the impugned order of termination of the workman is void ab initio and has no effect on the rights of the workman. Corresponding para of the statement of claim is reiterated."

10. After considering the pleadings and the evidence led by the parties, the Labour Court has held as follows:-

"12. For the foregoing reasons, I feel satisfied that the workman remained absent from duty on the dates mentioned in the written statement and despite warning he did not improve his conduct. However, he having been appointed for specified job, to be paid out of cycle fund only, he could be terminated from service and provisions of Section 25-F of the I.D. Act is not applicable to him. Both the issues are decided against the workman and in favour of the respondents."

11. Although rather clumsily worded, the finding of the Labour Court is clear that the order of termination had been passed by way of punishment and also because the workman was appointed for a specific job to be paid out of the cycle fund only. Both the issues have been decided against the workman and in favour of the respondents by holding that Section 25-F of the Industrial Disputes Act is not applicable. Although it has been held earlier in this judgment that the Labour Court has wrongly held that the appointment was for a fixed term or that his services could be automatically terminated, the award cannot be set aside, in view of the finding of the Labour Court that the order of termination has been passed for composite reasons. One of the reasons being that the services of the workman had been terminated on account of misconduct, clearly Section 25F of the Act would not be applicable.

12. Mr. Patwatia submitted that the award of the Labour Court suffers from an error apparent on the face of the record as it has upheld the termination of the workman on account of misconduct in the, absence of a charge-sheet or departmental enquiry. I am unable to accept the submissions made by the learned Counsel. It is admitted by the Management that no departmental enquiry was held before passing the order of termination. Since no charge- sheet was given to the workman nor any enquiry was held against him, it was open to the Management to justify its action before the Labour Court. As noticed earlier, the Management led evidence before the Labour Court for the first time to justify its disciplinary action. After appreciating the pleadings and the evidence led by the parties, the Labour Court has recorded a finding of its satisfaction that the workman remained absent from duty on the dates mentioned in the written statement and despite warning, he did not improve his conduct. It is submitted by Mr. Sran that the Management was within its right to justify its action before the Labour Court by leading evidence before the Labour Court itself. In support of this submission, the learned Counsel has relied on the judgment of the Supreme Court in the case of Bharat Forge Company Limited v. A.B. Zodge and another 1996(4) SCT 44 (P&H) : 1996(3) SCT 848 (SC) : 1996(2) SLR 492. It was submitted in that case that even after the introduction of Section 11-A, the employer is entitled to adduce evidence for the first time, before the Tribunal even if the employer has held no enquiry or the enquiry held by the employer is found to be perverse. On the other hand, it was submitted that proviso to Section 11-A expressly bars introduction of any fresh materials before the Labour Court. The Supreme Court, however, after considering the rival submissions observed as follows :-

"7. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised....."

13. In fact the Supreme Court in the case of The Workmen of Firestone Tyre and

Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, has clearly held in paragraph 27 as follows :-

"(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective,

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective....."

14. In view of the clear ratio of law laid down by the Supreme Court in the aforesaid judgment, it would not be possible to accept the submission of Mr. Patwalia that the award of the Labour Court suffers from an error apparent on the face of the record merely because the Management has been permitted to lead evidence to prove the misconduct. A perusal of the award shows that the Management adduced evidence on each and every issue which was raised in the reference. It has come in evidence that the workman had admitted that he got his name enrolled in the Employment Exchange once, but did not get it renewed. Thus he was not entitled to be appointed on regular basis under the instructions dated 8.4.1992. No fault can be found with the finding of the Labour Court that the workman had not been appointed on the recommendation of the Employment Exchange. Thereafter, the Labour Court considered the evidence led by the parties on the question of absence from duty. The workman admitted the fact that he remained absent from duty on 12.2.1993, but stated that on that date his mother-in-law had died. He did not say that he had applied for leave. Regarding his absence on 13.2.1993, the workman said that he attended duty, but did not say on which time he went to attend the duty. He admitted that he was given the show-cause notice dated 15.2.1993. He also admitted that he was asked to give an explanation for absence from duty on 12.2.1993 and 13.2.1993. It is also a matter of record that the workman had been warned against his absence from duty. He was specifically warned that if he repeated the misconduct, his services would be terminated. The Labour Court has held that the absence of the workman has been proved.

15. Mr. Sran has submitted that the order of dismissal can be justified on the ground of misconduct, even if the same cannot be justified on the other grounds which were pleaded by the Management before the Labour Court. In support of this submission, the learned Counsel has relied on a judgment of the Supreme

Court in the case of Pyare Lal Sharma Vs. Managing Director and Others, . In the aforesaid judgment, it has been held as follows :-

"20. The learned Single Judge allowed the writ petition on the fourth point though the same did not find favour with the Division Bench. Grounds (c) and (d) in Regulation 16, 14, exclusively and individually, are sufficient to terminate the services of an employee. Once it is established to the satisfaction of the authority that an employee remains on unauthorised absence from duty, the only action which can be taken is the termination of his services. Similar is the case when an employee takes part in the active politics. The finding in the termination order regarding taking part in active politics cannot be sustained because no notice in this respect was given to Sharma but the order of termination can be supported on the ground of remaining on unauthorised absence from duty. This court in State of Orissa v. Vidy-abhushan Mohapatra and Railway Board v. Naranjan Singh has held that if the order can be supported on one ground for which the punishment can lawfully be imposed it is not for the Courts to consider whether that ground alone would have weighed with the authority punishing the public servant. Thus there is no force in this argument."

16. The Judgment in the case of State of Orissa v. Bidyabhushan Mohapatra (supra) has been followed by the Supreme Court in the case of Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, . In this case it has been held as follows :-"8. Before we take up for consideration point No. 2 formulated above, it would be convenient to deal with point No. 3. It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charger and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in Radhakrishnadas Vs. Kaluram, wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question."

17. Thus in the present case, the Management having led evidence to justify the order of termination on account of absence, it would not be possible to hold that the award suffers from an error apparent on the face of the record.

18. From the facts narrated above, it becomes quite evident that the Labour Court has recorded the findings of fact after appreciation of the evidence. It would not, therefore, be possible to hold that the findings of fact recorded by the Labour Court with regard to the workman remaining absent are based on no evidence. This Court, while exercising jurisdiction under Articles 226/227 of the

Constitution of India, does not sit as a Court of Appeal over the findings of fact recorded by the Labour Court or the Tribunal. A Division Bench of this Court in the case of Swaran Singh v. Punjab State Electricity Board and another 2000(2) SCT 558 (P&H) (DB) : 2000(2) RSJ 578, while considering the scope and ambit of the jurisdiction of this Court under Articles 226/227 of the Constitution of India has held as follows :-"7. We have thoughtfully considered the respective submissions. It is trite to say that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals or an error of law apparent on the face of the record. A writ can also be issued where in exercise of jurisdiction conferred upon it, the court or Tribunal acts illegally or improperly, i.e. if it decides a question without giving an opportunity of hearing to the affected party or where the procedure adopted in dealing with the dispute is contrary to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is - not entitled to act as an Appellate Court. This implies that the finding of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned except when it suffers from an error of law apparent on the face of it. What is the meaning of expression "error of law apparent on the face of the record?" The Courts have not given any fixed, meaning to this expression in the context of the findings of fact recorded by the inferior Court or Tribunal but, broadly speaking, a writ of certiorari can be issued for correcting a finding of fact if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced its finding. Similarly, if a finding of fact is based on no evidence then it would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, it has to be kept in "mind that a finding of fact recorded by the inferior Court or Tribunal cannot be challenged on the ground that relevant and material evidence adduced before the inferior Court or Tribunal was insufficient or inadequate to sustain the impugned finding. Likewise, mere possibility of the High Court, on reappraisal of evidence, coming to a different conclusion than the one reached by the inferior Court or Tribunal cannot be treated as an error of law apparent on the face of the record."

19. In view of the above, it would not possible to hold that the award suffers from an error apparent on the face of the record as the misconduct has been held to be proved on the basis of the evidence oral as well as documentary placed before the Labour Court. This evidence having been appreciated by the Labour Court cannot be reappraised by this Court to come to a finding other than the one recorded by the Labour Court.

Consequently, I find no merit in this writ petition and the same is hereby dismissed. No costs.

20. Petition dismissed.