
(1995) 02 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4856 of 1994

Gidderbaha Co-operative Marketing-cum-Processing Society Ltd. APPELLANT

Vs

Presiding Officer, Labour Court and Another RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1995) 71 FLR 370 : (1996) 1 LLJ 644 : (1995) 110 PLR 374

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : U.S. Sahni, for the Appellant; Vinod Sharma, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order can conveniently dispose of Civil Writ Petitions No. 3274 and 4856 of 1994 as both these petitions are directed against the same award of the Labour Court whereby the reference made to it at the instance of the workman was partly decided in his favour holding that termination of his services was justified though not in order and he was, therefore, awarded compensation in lieu of reinstatement. Civil writ petition No. 3274 of 1994 has been filed by the workman claiming that he is entitled to reinstatement whereas the other petition has been filed by the management alleging that the compensation paid to the workman is highly excessive.

2. On a consideration of the evidence led by the parties, the Labour Court - respondent has found that Ranjit Singh (for short, the workman) was employed by the Gidderbaha Co-operative Marketing-cum-Processing Society Ltd., Gidderbaha (hereinafter called the management) as a truck driver and after he had put in 22 years of service, his services were terminated when he was drawing a salary of Rs. 1,960 per month. It was held that the management had only one truck which it disposed of as a result whereof the workman became surplus. Consequently, the management terminated his services; by way of

retrenchment. He was paid a sum of Rs. 3,920 only as retrenchment compensation which according to the Labour Court was inadequate as he should have been paid a sum of Rs. 21,560.

The issue regarding the validity of termination was partly decided in favour of the workman and partly in favour of the management. The termination was held to be justified but not in order because the provisions of Section 25-F of the Industrial Disputes Act, 1947 (referred to hereinafter as the Act) were violated as the retrenchment compensation paid was less than the amount to which the workman was entitled to. Relying on the judgment of this court in *The Punjab State Electricity Board and Ors. v. State of Punjab and Ors.*, C.W.P.No. 17628 of 1991 decided on August 6, 1992, the Labour Court awarded a sum of Rs. 50,000 as compensation to the workman in lieu of reinstatement and answered the reference accordingly. It is this award that has been impugned by the workman and also by the management.

3. The only argument that was advanced by Mr. U.S. Sahni, Advocate on behalf of the management was that the workman was on probation and since he had never been confirmed as was required by the service regulations governing his employment, he all through continued to remain a probationer and his services having been terminated in terms of his contract of employment, the same was not retrenchment as it fell within the exception contained in Clause (bb) of Section 2(oo) of the Act. According to the learned counsel, the Labour Court was not justified in holding that the action of the management was not in order because Section 25-F of the Act was not available. The argument is being noticed only to be rejected. It was never the case of the management before the Labour Court that the workman was on probation and such a question cannot be allowed to be raised for the first time in proceedings before this Court under Article 226 of the Constitution. Even otherwise, it is common case of the parties that the workman had put in 22 years of service when his services were terminated by way of retrenchment. No employee can remain on probation for such a long period and nothing could be shown from the service rules to support the contention. Rule 17 of the service rules for the Co-operative Marketing Societies to which a reference was made by Mr. Sahni does not show that an employee can continue as a probationer for as long as period of 2 years. The judgment of the Supreme Court in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*,) on which strong reliance was placed by Mr. Sahni is not applicable to the facts of this case.

4. Now, Ideal with the claim of the workman, Mr. Vinod Sharma, learned counsel appearing for him contended that on earlier occasions when the truck used to become unoperational, the workman was made to work as weighment Clerk by the management and, therefore, when the truck was disposed of he should have been deployed on this post rather than being retrenched from service.

5. Although there is nothing on the record to, show that the workman worked as weighment Clerk but even if that be so, the workman cannot as a matter of right

claim appointment as a weighment Clerk when his services as a truck driver became surplus. The management was well within its rights to retrench him on his having become surplus.

6. The next argument of the learned counsel for the workman is that Section 25-F of the Act having been violated as found by the Labour Court, the termination was void ab initio and, therefore, the only relief which the Labour Court should have granted to the workman was reinstatement and not compensation in lieu thereof. I find no merit in this submission. The Labour Court has found that the management was justified in retrenching the workman as he had become surplus. The only default committed was that less compensation than what was due u/s 25-F of the Act had been paid to the workman. In such a situation, the workman cannot in every case claim that he should be reinstated with full back wages. Labour Courts/ Industrial Tribunals have discretion in the matter of granting relief where termination is found to be justified but not, in order due to a technical breach of some mandatory provision of law and it is open to the adjudicating authority to award compensation in lieu of reinstatement. In the present case, the truck has been disposed of by the management and there is no post of a truck driver. How can the workman be reinstated against a post which does not exist. In my opinion, the Labour Court rightly exercised its discretion in awarding compensation in lieu of reinstatement. Keeping in view the length of service rendered by the workman, the amount of Rs. 50,000 awarded as compensation appears to be fair and reasonable in the circumstances of the present case. Consequently, I find no merit in the petition filed by the workman either.

7. In the result, both the writ petitions are dismissed leaving the parties to bear their own costs.