
(2013) 08 P&H CK 0477
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 99 of 2013

Gurbax Singh

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0477

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : Divik Sharma, for the Appellant; M.S. Bedi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—The present writ petition, filed by the workman, is directed against the award dated 02.12.1991 (Annexure P6) wherein the relief of back wages to the workman have been denied though he was held to be entitled for reinstatement. It is pertinent to mention here that the said award was also challenged by the Management by way of CWP No. 4717 of 1992 which was dismissed on 29.05.1992. Perusal of the award passed by the Labour Court would show that petitioner was working as a Clerk in the Central Cooperative Bank Ltd. Mandi Gohindgarh since January, 1980 and was drawing Rs. 1100/- per month. He was removed from service on 21.02.1986. It was his case that the chargesheet served upon him was illegal and therefore, the enquiry proceedings were also vitiated.

2. The Management, on the other hand, took the plea that the workman had willfully absented himself from duty and accordingly, chargesheet was served upon him and enquiry proceedings were conducted and it was proved that he was running a private business under the name, M/s Peerless Finance Corporation and was earning better wages.

3. In support of their case, the Management examined Joginder Singh, enquiry

officer, Avtar Singh Bedi, Senior Accountant and one Ashok Kumar Gupta, Establishment Clerk whereas, the petitioner examined himself to take the plea that his absence was on account of illness of his mother and he had submitted his leave application but the same was not sanctioned and he was suspended on 22.11.1986.

4. The Labour Court, after examining the documents on record, came to the conclusion that the workman was chargesheeted on two counts; firstly, that he made willful absence from duty on 21.10.1984 and secondly, that he indulged in private business for gaining profits, in violation of departmental rules. However, it came to the conclusion that the workman was not properly allowed to cross-examine the witnesses, Avtar Singh Bedi and Sohan Singh, Branch Manager in the enquiry proceedings and that the enquiry conducted by Joginder Singh (MW 1) was not fair and proper. The finding was on the basis that Management had closed its evidence but thereafter also, Sohan Singh was allowed to be examined and therefore, dismissal order was illegal, null and void. However, back wages were denied on the ground that no reason had been given by the workman to show his BONA FIDES regarding his absence from duty w.e.f. 21.10.1984 to 14.10.1985. Accordingly, reinstatement was ordered but without back wages. It is admitted by the petitioner that he has been reinstated in pursuance of the said award.

5. Counsel for the petitioner has relied upon the Full Bench decision of this Court in Hari Palace, Ambala City Vs. The Presiding Officer, Labour Court & another 1979 PLR 720, Karnail Singh Vs. State of Punjab & others 1981 (1) SLR 606, Tarsem Singh Vs. The Presiding Officer, Labour Court, Jullundur & another 1981 (1) SLR 646 & The Amritsar Central Co-operative Consumers Store Ltd., Amritsar Vs. The State of Punjab & others 1982 (2) SLR 274, to submit that once the workman was held entitled for reinstatement and the enquiry was bad, then he was, as a matter of right, entitled for back wages.

6. Counsel for the respondent-Bank, on the other hand, has submitted that there was sufficient material on record to show that the workman was gainfully employed and therefore, no back wages should be awarded.

7. Perusal of representation dated 01.03.1986 (Annexure P4), appended with the writ petition would go on to show that the workman had redressed his grievances against the enquiry report submitted by Joginder Singh, Assistant Manager and taken the plea that his mother was suffering from serious illness and he had given an application which was received by the bank for the period of leave and that he had submitted a joining report on the expiry of his leave on 14.11.1985. A perusal of the termination order dated 22.02.1986 (Annexure P5) would show that notice was served upon Gurbax Singh on 07.01.1986 that he never submitted any reply till 21.02.1986 and therefore, the bank took the decision to terminate his service and it was only thereafter that the reply dated 01.03.1986 (Annexure P4) was filed. As noticed above, the matter was referred, accordingly, on 19.08.1988 to the Labour Court, Patiala and no demand was made prior to

that.

8. The Labour Court, after examining the material on record, came to the conclusion that the workman had nowhere brought on record anything to show the factum of illness of his mother for a period of one long year. In such circumstances, the Labour Court was justified in denying the back wages to the workman.

9. The judgments relied upon by the petitioner would be of no help as the benefit of back wages is not to be given as a matter of right which is being claimed, as has now been held by the Apex Court. The categorical case of the Management was that petitioner was doing business under the name of M/s Peerless Finance Corporation and in such circumstances, he was not reporting for duty from 21.10.1984 till his removal on 21.02.1986. The Apex Court in *Laxmi Rattan Cotton Mills Ltd. Vs. State of U.P. and Others*, held that back wages are not to be granted with retrospective effect in all situations and the discretion is to be exercised judiciously. Similar view was also taken in *P.V.K. Distillery Ltd. Vs. Mahendra Ram*, and it was held that such right is not an absolute right and the award of the Labour Court was modified to the extent of 50% of the back wages. The evidence which has been adduced on behalf of the Management and the fact that the workman was doing a private funding business has been appreciated by the Labour Court and it was also noticed that nothing has been brought on record to show the proof of illness of his mother which was the cause of action for the alleged absence and which was admitted by the petitioner. In such circumstances, the discretion exercised by the Labour Court, denying the back wages, cannot be interfered with as admittedly, the workman had not contributed to the Management in any manner till his reinstatement. Reliance in this regard can be placed upon the observations made by the Hon'ble Supreme Court in *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, wherein it was held that relying on the principle of "no work no pay", back wages could be denied while placing reliance upon *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, . In *U.P.S.R.T.C. Vs. Mitthu Singh*, the Apex Court recognized the principle that back wages is a discretionary power which has to be exercised by the Tribunal keeping in view the facts in its entirety and no strait-jacket formula can be evolved nor a rule of universal application could be laid down that the workman was entitled to back wages in all cases of reinstatement. The relief of back wages granted to the workman by the Labour Court and upheld by the High Court, in that context, were set aside. The relevant portion of the judgment reads thus:

12. Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equality and good conscience have to be kept in view by an appropriate Court/Tribunal.

13. In the instant case the record clearly reflects that the services of the

respondent-workman were never found to be satisfactory. In fact, before more than 30 years, his services were terminated but he was taken back by giving a chance to improve. Unfortunately, however, the respondent did not utilise it. Even prior to the three incidents in question, at several times, the respondent-workman was warned. It was, therefore, not a fit case to grant back wages and the Labour Court and the High Court were not right in granting the said prayer. To that extent, therefore, the order deserves interference.

14. For the foregoing reasons, the appeal is partly allowed. The order passed by the Labour Court and confirmed by the High Court is set aside to the extent of granting back wages and it is held that the respondent-workman is not entitled to back wages. The appeal is accordingly disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.

In the facts and circumstances of the present case, this Court is of the opinion that the Labour Court was justified in denying the back wages to the workman who remained away from his place of work and never explained the reason for his absence and did not contribute to the Management, in any manner and thus, cannot benefit from his willful absence. Accordingly, finding no merit in the writ petition, the same is dismissed.