
(2001) 05 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 11103 of 1999

Gurdaspur Cooperative Sugar Mills Ltd., Gurdaspur

APPELLANT

Vs

Presiding Officer, Industrial Tribunal, Punjab

RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2, 2A

Citation : (2001) 05 P&H CK 0148

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

Bench : Single Bench

Advocate : Mr. Vinod Sharma, for the Appellant; Mr. M.L. Singla, for the Respondent

Final Decision : Allowed

Judgement

S.S. Sudhalkar, J.—This writ petition is filed by the employer challenging the award of the Labour Court dated 21.8.1998 (copy annexure P/6) vide which the Labour Court ordered that the respondent was entitled to be considered for promotion from the concerned date according to his qualifications and record of service and entries in his confidential remarks as existed on that date, ignoring the punishments awarded to him subsequent to that date. It was further ordered that in case the respondent failed to qualify on such consideration, he will also be entitled to be considered for promotion when the vacancies were filled on 1st August, 1993 and 17th August, 1996.

2. Counsel for the petitioner has raised three points :-

1. The reference could not have been entertained on the demand raised by single workman.
2. The Labour Court held that the reference was not proper. It could not have agitated in the matter.
3. On facts, the findings are wrong.

3. Learned counsel has read over to me the demand notice issued by the respondent. It is dated 17.5.1995. The same has been produced at Annexure P/1. According to the demand notice, the petitioner was appointed as Security Supervisor but was assigned the duty of Security Inspector. There was internal advertisement for the post of Security Inspector and the respondent applied for the same through proper channel and his application was recommended by the Head of Department of Security Section and that he was most senior and eligible for the post of Security Inspector. Relying on this part of the demand notice, learned counsel for the petitioner argued that the question for promotion did not arise in this case, as according to the workman, the post was advertised and he had applied along with other persons and it was a case of selection and not promotion. Learned counsel also argued that the Labour Court had held that the reference was not proper and it could have modified the relief and granted relief to the petitioner. The reference, as stated in the first paragraph of the award is as under :

"Whether the workman Shri Randhir Singh son of Shri Surain Singh is entitled to the post of Security Inspector ? If so, from which date ?"

4. The Labour Court had held that the reference is a little misconceived because an employee has a right to be considered for promotion as the courts or Tribunals do not normally give direction to the competent authority for giving appointment by promotion or otherwise to the aggrieved employee. This discrepancy has been considered as a minor one by the Labour court.

5. Section 2(k) of the Industrial Disputes Act (hereinafter referred to as "the Act") is reproduced hereun-der :-

"(k). "industrial dispute" means any dispute or difference between employers and employers, or between employers and workman, or between workman and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

6. After it was found that the industrial dispute could not be raised by single workman, to enabling him to do so, Section 2-A was inserted in the Act by Act No. 35 of 1965. The effect is that the single workman, who wants to agitate the termination of service/discharge etc., can raise the industrial dispute. However, this facility is not available to those workman, who approach singly for raising the industrial dispute for other service conditions. Therefore, the Labour Court has erred in allowing the reference of respondent No. 2.

7. It is also not shown that the case of the appointment of others was not of selection and that it was of promotion. The Labour Court has not considered this aspect. In the demand notice, copy of which has been produced at Annexure P/I, it has been mentioned by the respondent that the juniors to him were appointed as Security Inspectors. The Labour Court in its award, has not considered this question. On the contrary, has mixed up the question of appointment and promotion. The award of the Labour Court deserves to be set-aside on this

ground also.

8. In view of the above reasons, I do not go to consider the question whether the Labour Court could order promotion or only consideration for promotion.

9. On the above ground, this writ petition is allowed. The award of the Labour Court dated 21.8.98, Annexure P/6, is quashed.

10. Petition allowed.