

(2006) 08 P&H CK 0484
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11198 of 2005

Gurmeet Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 17-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (2007) 113 FLR 731 : (2006) 144 PLR 447

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : B.D. Sharma, for the Appellant; Rahul Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing award dated 1.10.2004 Annexure P-8, vide which termination of his services have been found to be justified and a writ of Mandamus directing respondents No. 2 and 3 to take him back in service with continuity of service and grant all consequential benefits.

2. As per the case of the petitioner-workman, he was employed as Turner by respondent No. 2, namely, Bhogpur Co-operative Sugar Mills Tehsil and District Jalandhar. He continued to work as such till 2.2.1991 when he was appointed as Turner-II on permanent basis. However, vide order dated 7.2.1991 passed by respondent No. 3, namely, Punjab State Federation of Co-operative Sugar Mills Limited (in short the Sugarfed) his services were terminated. Petitioner-workman challenged the said order by filing a civil suit but on an objection taken by the respondents with regard to jurisdiction to try the suit, withdrew the same with liberty to approach the Labour Court for challenging the afore-stated order. Petitioner then issued demand notice to respondents 2 and 3, where after the matter was referred to the Labour Court for adjudication. Before the Labour

Court, the petitioner-workman filed his claim statement. Upon notice of the same, written statement was filed by the respondent-management. On issues being struck, the parties led their respective evidence.

3. On appreciation of oral as well as documentary evidence so led by the parties, the learned Labour Court vide award dated 1.10.2004 (Annexure P-8) dismissed the claim statement. Hence, the present writ petition by the petitioner-workman.

4. On notice of the writ petition, written statement has been filed on behalf of respondent No. 2-sugar mill taking therein various grounds including the one that there was no order of termination of services and as such, the reference of the workman-petitioner was pre-mature.

5. Learned Counsel for the parties have been heard.

6. Certain facts are not in dispute. Petitioner was already working as Turner when he was again appointed as Turner-II on permanent basis on 2.2.1991 by the Managing Director of the respondent-management. The said order was cancelled/rescinded vide order dated 7.2.1991 passed by the Punjab State Federation Co-operative Sugar Mills Limited (in short the Sugarfed). It is also not in dispute that the petitioner-workman and other workmen had challenged order dated 7.2.1991. However, petitioner-workman had withdrawn the suit on 13.11.1999. A bare perusal of the impugned award shows that there is no denying the fact that the Civil Court in the cases of other workmen had upheld order dated 7.2.1991 passed by the respondent No. 3-Sugarfed. The said order dated 7.2.1991 is not the subject matter of the present reference. However, petitioner-workman alleges that his services had been terminated on 12.3.1991 on the basis of order dated 7.3.1991. On the contrary the stand of the respondent-management is that he himself had absented on 12.3.1991 and abandoned the service. Thus, the controversy is whether it is a case of termination or abandonment of service. Petitioner-workman has miserably failed to prove termination of his service at the hands of respondent-management.

7. Learned Counsel for the petitioner-workman has argued that the Labour Court has misread the evidence of the petitioner-workman, to say that he himself left the job. The contention is meritless. In his cross-examination so annexed along with his affidavit (before the Labour Court), Annexure P-6, the workman himself has admitted in this manner. "It is correct that Sugarfed refused to implement the orders of promotion and we came out of the mill after leaving our job". On bare perusal of the said admission, the learned Labour Court has rightly concluded that the workman himself left the job when the orders of promotion and appointment were not implemented by Sugarfed. There is, thus, no misconception in reading the words "after leaving our job". No doubt, prior to the said appointment as turner-II on 2.2.1991, he was working as Turner qua which he claims to be working for the last 15 years. His averment is that he had worked for more than 240 days preceding 12 months from the date of termination of his services on 12.3.1991. However, there is no evidence to substantiate the

said plea. It is settled proposition of law, as has been held by the Hon''ble Supreme Court in *The Range Forest Officer Vs. S.T. Hadimani*, that onus is on the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. The Hon''ble Supreme Court has also gone to the extent of observing that filing of an affidavit is only a statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. In the instant case, petitioner-workman has neither brought nor summoned any evidence to substantiate the said plea. Therefore, in view of decision in *S.T. Hadimani* 's case (supra), it is held that the petitioner-workman has miserably failed to prove having worked for more than 240 days preceding 12 months from the date of his termination and so, he cannot avail any protection so contained in Section 25-F of the Act *ibid.* 8. Keeping in view the facts and circumstances of the case, we are not inclined to interfere with the just and reasoned award of the Labour Court. The writ petition is dismissed.