
(1996) 11 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14175 of 1991

Gursewak Singh

APPELLANT

Vs

The Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1997) 115 PLR 418

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : N.K. Joshi, for the Appellant; None, for the Respondent

Judgement

R.L. Anand, J.—Gursewak Singh petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India against the respondents praying for the issuance of a writ in the nature of certiorari and has prayed for the quashment of award Annexure P.1 passed by respondent No. 1 vide which this respondent held that the services of the petitioner (work-man) were not terminated in an illegal manner by respondent No. 2 and as such the petitioner is not entitled to either reinstatement or any back was as prayed for in the present writ petition.

2. The case set up by the petitioner is that he was working as a cashier with respondent No. 2 - Society since 1978. Respondent No. 2 terminated his services in an illegal manner vide resolution No. 2 passed on 12.4.1988 on the ground of absence from duty. The petitioner challenged his termination and a reference was made to the Labour Court, Bhatinda by the appropriate Government for the adjudication of the disputes and the learned Presiding Officer, respondent No. 1 passed the award dated 5.11.1990 against the petitioner and it was held that the termination of the services of the petitioner was justified. The petitioner has given challenge to the award dated 5,11.1990 on the ground that respondent No. 2 did not hold any enquiry against him. No retrenchment compensation was paid to him. He further averred in the application that he moved application for the

leave without pay w.e.f. 19.9.1987 to 18.9.1988. He even gave replies to the notices is used by respondent No. 2 by registered post, but those registered letters were not accepted by respondent No. 2. All these facts were not properly considered by respondent No. 1 while passing the impugned award dated 5.11.1990. Even prior to the passing of the present orders dated 12.4.1988, respondent No. 2 terminated the services of the petitioner on 25.9.1982 and those orders were set aside by the Labour Court, Bhatinda vide award dated 10.11.1986. The major ground taken up by the petitioner while giving challenge to the award dated 5.11.1990 are that no enquiry was conducted against him on the ground of wilful absence from duty, that respondent No. 1 committed a manifest error of law apparent on the record in enquiring the documents of the workman; that it was the management who did not receive the replies to the notices; that the management failed to afford any proper and reasonable opportunity to the petitioner before terminating his services, when he had already completed 9-1/2 years of service.

3. Notice of the petition was given to the respondents. Respondent No. 2, the Society did not give appearance and vide orders dated 9.10.1991 passed by the Motion Bench it was proceeded *ex parte*.

4. I have heard Shri N.K. Joshi, Advocate, on behalf of the petitioner with whose assistance I have been able to go through the record of this case.

5. Vide paras No. 6 and 7 of the impugned award dated 5.11.1990, the respondent No. 1, Labour Court held that petitioner was served with notice to explain his absence from duty and in spite of that he did not furnish any explanation. It was also observed by the Labour Court in para No. 6 of the impugned award that petitioner was charge-sheeted vide copy of charge-sheet Annexure M.16. The original of M-16 was received by the workman and in spite of that he did not submit any reply to the charge-sheet and thereafter the impugned order dated 12.4.1988 was passed. In para No. 7 of the award, the Labour Court held that continuous absence from duty without permission or leave by the petitioner was a misconduct and the respondent-management would proceed to terminate the services of the workman on that short ground. Finally, the Labour Court by placing the reliance on *The Tata Engineering and Locomotive Company Ltd. Vs. The Presiding Officer, Industrial Tribunal and Another*, and *Pyare Lal Sharma Vs. Managing Director and Others*, passed the award against the petitioner.

6. The operative of the award as contains in para No. 7 is reproduced as follows:-

"Sh. C.L. Garg, authorised representative of the respondent has contended that absence without leave or permission would justify discharge from service of the workman. In support of this contention he has relied upon the decision of Patna High Court in case between the *The Tata Engineering and Locomotive Company Ltd. Vs. The Presiding Officer, Industrial Tribunal and Another*. I have considered this contention of the representative of the respondent. In the instant case, the

workman wilfully absented from duty and did not submit any explanation to the notices issued to him. Continuous absence without permission or leave is a misconduct and the respondent management can proceed to terminate the services of the workman on that ground. This view finds support from the decision of apex court in case Pyare Lal Sharma Vs. Managing Director and Others, ".

7. A perusal of the impugned award would show that no domestic enquiry was conducted against the petitioner. Even if, it is assumed for the sake of argument and taken from para No. 6 of the award that workman did not submit any reply to the alleged charge-sheet, still it was incumbent on the part of the management to establish that the petitioner abandoned his job so as to bring its case out of the purview of retrenchment as defined u/s 2(oo) of the Industrial Disputes Act. In the absence of any proof before the Enquiry Officer, it cannot be said that proper enquiry was conducted against the petitioner holding that he abandoned the job. In this regard a reference is made to the letter dated 19.9.1987 Annexure P.2 which establishes that the petitioner Gursewak Singh made a request to respondent No. 2 for granting him the leave and he categorically stated that on account of the death of his father he was not in a position to attend to his duties. It has also been stated in the application that the domestic responsibilities had fallen on his shoulder and, therefore, he could not attend to his duties for one year as he was only the male surviving member in the family. Petitioner prayed for the grant of leave for one year without pay. This would show that the petitioner never wanted to abandon his job. Vide Annexure P.3 dated 23.11.1987 the petitioner has again reverted back to the respondent No .1-Society. That reference was to the show cause notice dated 16.11.1987 that he gave replies to the various communications and the registered letters were received back. Vide letter dated 14.1.1988 Annexure P.4, the petitioner has again reverted to respondent No. 2 and denied the allegations against him about his committing default to the loan of the Society. From the perusal of the documents Annexure P.2, 3 and P.4 (his Court has formulated the opinion that respondent No. 2 wanted to shut that the petitioner abandoned the job or that the enquiry was conducted in such a manner which could be presumed as reasonable. In the absence of a proper enquiry, the impugned resolution dated 12.4.1988 terminating the services of the petitioner could not be held as a valid one. All these aspects of the case have not been properly appreciated by respondent No. 1 while passing the impugned award dated 5.11.1990. Admittedly, in this case no retrenchment compensation was ever paid to the petitioner. The termination of the petitioner this is in violation of provisions of Section 25-F of the Industrial Disputes Act and in these circumstances the award dated 5.11.1990 is held to be illegal and his hereby quashed.

8. The ancillary point in this case would be whether the petitioner is entitled to full back wages or not? The learned counsel for the petitioner during the course of arguments stated that his client would be satisfied if the relief of back wages to the extent of 50 percent is granted to him. In this view of the matter, the writ

petition stands disposed of with the directions that the impugned award Annexure P.1 dated 5.11.1990 passed by respondent No. 1 is hereby quashed and petitioner is reinstated into service and directions are also given to respondent No. 2-Society to pay the back wages to the petitioner at the rate of 50 percent from the date of issuance of the demand notice. The petitioner, however, will be entitled to other benefits of service such as continuity of service. There shall be no order as to costs in the present writ petition which stands disposed of in above terms.