
(2000) 09 P&H CK 0176

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11944 of 2000

Guru Jambheshwar University, Hissar

APPELLANT

Vs

Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Citation : (2000) 09 P&H CK 0176

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Ravi Kapur, for the Appellant;

Judgement

S.S. Sudhalkar, J.—By this writ petition, the employer has challenged the award dated 9.2.2000 (copy Annexure p/1) passed by the Labour Court, vide which respondent No. 2 was ordered to be reinstated with continuity of service and all consequential service benefits. However, the back wages were restricted to 25% only from the date of termination.

2. Case of respondent No. 2 workman was that he had continuously worked with the respondents on daily wages as unskilled labourer from 21.11.1995 to 4.8.1996 and his services were orally terminated w.e.f. 5.8.1996 without following any procedure as prescribed under the Workmen Compensation Act and that termination of his service was illegal and he be reinstated.

3. Petitioner filed reply before the Labour Court in which it was contended that respondent No. 2 did not complete 240 days in any calendar year during the service with the petitioner and that he had worked only for 203 days as unskilled labourer on daily wages from 21.11.1995 to 13.7.1996 and thereafter he left the job and did not turn up. After waiting for him another mate was appointed on the muster rolls. Regarding the work, the learned counsel for the petitioner argued that respondent No. 2 has not completed 240 days in the calendar year preceding the date of alleged termination. Labour Court has considered this

contention and held that if the rest days were added, then as per the records of the Management, respondent No. 2 has worked for 235 days. However, the Labour Court considered the fact that there was a specific and categoric pleading of respondent No. 2 that Chhabil Dass and Raj Kumar were not engaged in place of respondent No. 2. However, it is not the case of respondent No. 2 that they were engaged in his place. The case of respondent No. 2 is that though they were juniors, they were retained and violation of principle of "last come first go" has not been maintained. The Labour Court has observed as under :-

"Specific and categoric pleaded case of Gopal Singh that Chhabil Dass and Raj Kumar, juniors to him were retained, is not specifically disputed or denied in the written statement. So, the same would be deemed to have been admitted. According to the pleadings of the respondents management, Chhabil Dass was engaged in Store department, whereas Raj Kumar in Boys Hostel. It is nowhere pleaded in the written statement that Gopal Singh was employed for any particular work of construction of residence of Vice Chancellor, or that his employment has nothing to do with the employment of Chhabil Dass and Raj Kumar. But is is simply pleaded that Chhabil Dass and Raj Kumar were not engaged in place of Gopal Singh. It is not the case of Gopal Singh that these two persons were engaged in his place. Therefore, this vague plea in the written statement is of no material help to the management. Specific and categoric testimony of Gopal Singh that they were juniors to him and were retained is also not challenged in his cross-examination. On the other Hand, no evidence, whatsoever is led to prove that they were not juniors to Gopal Singh. Rather, on the other hand, even Rajbir MW1, could not deny that they were juniors to Gopal Singh. In these circumstances, irresistible conclusion is that Chhabil Dass and Raj Kumar were juniors to Gopal Singh and they were working at the time of termination of Gopal Singh. Therefore, there is violation of principle "first come last go."

4. Learned counsel for the petitioner relied on the case of M/s Crystal Electrical v. State of Punjab and others 1997(2) SLR 426 : 1997(3) SCT 62 (P&H) and The Haryana State Cooperative Land Development Bank Ltd., Chandigarh v. Sanjiv Srivastava and another 1998(4) SLR 432 : 1998(2) SCT 155 (P&H). It has been held therein that as the workman had not completed 240 days of service Section 25F of the Industrial Disputes Act (hereinafter referred to as "the Act") is not attracted. However, these judgments are of no use to the petitioner because in this case, the Labour Court ordered reinstatement because of not following the policy of "First come last go". No reason is given as to why the procedure as prescribed u/s 25G of the Act is not followed. Moreover, there is another contention of the petitioner, which has been negated by the Labour Court. It is regarding respondent No. 2's himself having stopped coming to the work. The Labour Court has considered this fact and has observed that quite inconsistent to the pleaded case, the petitioner Management has led evidence that respondent No. 2 was engaged in the construction work of Vice Chancellor of the university and that work was finished on 13.7.1996 and he himself stopped coming to the

work. As per the pleaded case, after respondent No. 2 has stopped working on 13.7.1996, petitioner waited for him for quite some time and then another Mate was engaged in his place as the work was in progress. Therefore, these pleas have been self-contradictory. There is no infirmity in the finding of the Labour Court. There is also no documentary evidence to show that respondent No. 2 was employed for a particular work and that particular work finished on 13.7.96. Labour (Court) has observed that the copy of Muster roll for the month of July, 1996 shows that respondent No. 2 was being marked absent from 13.7.1996 onwards. If he had left the work, there was no question of marking him absent. Therefore, the plea of abandonment of workman is not accepted and the Labour Court has rightly done so.

In view of the above reasons, we do not find any infirmity in the award of the Labour Court. This writ petition is, therefore, dismissed.

5. Petition dismissed.