

(1975) 10 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 111 of 1973 in Civil Writ No. 29 (sic) 4 of 1970

Harbhajan Singh and others

APPELLANT

Vs

Assistant Labour Commissioner and others

RESPONDENT

Date of Decision : 16-10-1975

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1975) 10 P&H CK 0025

Hon'ble Judges : R.S. Narula, J; Harbans Lal, J

Bench : Division Bench

Advocate : Surjit Bindra, for the Appellant; D.S. Nehra and Mr. Arun Nehra, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narula, C.J.—Though the facts leading to the filing of this appeal under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court allowing the writ petition of the present Appellants and granting them substantial relief are rather complicated, the ultimate question that calls for decision in this appeal is simple. The facts may first be surveyed. The Appellants are the employees of the Bhakra Management Board Respondent No. 2 (hereinafter called the Board). An order of retrenchment of the Appellants was passed by the Board in January 18, 1968. The workers objected to the order on the ground that it had been passed without taking permission requisite u/s 33(sic) of the Industrial Disputes Act as certain disputes between the workers of the Board were pending before the Assistant Labour Commissioner. As soon as that objection was taken, the Board cancelled the order, dated January 18, 1968, and applied to the appropriate authority for permission to retrench the Appellants. A sitting was held by the Assistant Labour Commission on March 18 1968, in that connection and some discussion also took place, but no decision was given. At that stage on April 10, 1968, a fresh order of retrenchment of the

Appellants was passed by the Board. On April 11, 1968, the workers union of the Appellants complained to the Assistant Labour Commissioner against the order of retrenchment. On April 22, 1968, that officer issued notices of hearing of the objections to both the sides that is to the Secretary of the Appellants' workers' union as well as to the Board for April 30, 1968. Whereas notice was served on the Board well within time, the notice issued to the workers' union was served on its Secretary on May 1, 1968, that is a day after that fixed for hearing the objections. In spite of the fact that notice of hearing on April 30, 1968, had not been served on the Secretary of the Appellants' union within time, the Assistant Labour Commissioner proceeded to decide the matter ex-parte against the workers on April 30, 1968. He granted permission to the Management to retrench the Appellants. Having obtained the ex-parte permission, the Board issued notices of retrenchment to the Appellants effective from May 1, 1968, which would have resulted in their actual retrenchment on May 31, 1968 that is after one month of the service of the notice. Before the expiry of the period of the notices of retrenchment and before their actual retrenchment, the Appellants on May 28, 1968, filed Civil Writ Petition 1810 of 1968, challenging the ex-parte order of the Assistant Labour Commissioner granting to the Board permission to retrench them. At the time of admitting the writ petition on July 29, 1968, the Motion Bench of this Court did not grant any order staying operation of this retrenchment notices relief in that respect had been asked for. Ultimately by judgment, dated October 8, 1969, the learned Single Judge of this Court allowed Civil Writ Petition 180(sic) of 1968, quashing the order of the Assistant Labour Commissioner, dated April 30, 1968, and directing the said officer to hear and redetermine the matter. In pursuance of the order of remand passed by the High Court, the Assistant Labour Commissioner passed a fresh order on March 17, 1970. This time he held that no permission was necessary to be taken by the Board for retrenching the Appellants. It was to impugn and quash the above-said order of the Assistant Labour Commissioner, dated March 17, 1970, that the petition from which this appeal has arisen (that is Civil Writ Petition 2974 of 1970) was filed by the Appellants on September 16, 1970. The writ petition was contested by the State as well as by the Board. During the pendency of the writ petition on October 3, 1972, the Appellants filed Civil Miscellaneous 7326 of 1972 for leave to amend the writ petition so as to take up an additional ground in support of their claim. The additional ground which was sought to be taken up was that the order of retrenchment passed by the Board was in any case illegal as the said order had been passed without complying with the mandatory requirement of Section 25-F of the Industrial Disputes Act, that is without paying to the Appellants retrenchment compensation to which they were entitled under the law.

2. Notice of the application, dated October 3, 1972, was ordered by the learned Single Judge on October 4, 1972, to issue to the counsel for the Board as well as to the Advocate General for the State of Punjab for October 9, 1972. Ultimately by order, dated October 13, 1972, the amendment prayed for by the Appellants

was allowed. In pursuance of the permission granted by the Court, the amended petition taking up the additional ground was filed by the Appellants on October 18, 1972. After the filing of the amended petition and before the final hearing of the petition, the Board took back Appellant No. 3 into its service on Appellant No. 3 agreeing not to claim back wages. This is so stated in paragraph 2 of the affidavit of the Executive Engineer of the Board, dated November 10, 1972. On the other hand Harbhajan Singh Appellant No. 1 accepted the retrenchment compensation which was due to him and was offered to him. There is nothing to show that retrenchment compensation was ever offered to Kartar Chand Appellant No. 2 but it is stated in the same affidavit of the Executive Engineer of the Board that he was offered re-employment on his producing the discharge certificate, but that he could not be actually reemployed as he failed to produce the requisite certificate. The writ petition was ultimately disposed of on November 25, 1972, by Tuli, J. It was conceded before him that the order retrenching the Appellants from service was illegal on account of non-compliance with the requirement of Section 25-F in view of the authoritative pronouncements of their Lordships of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , and *Workmen of Subong Tea Estate Vs. The Outgoing Management of Subong Tea Estate and Another*, . The learned Judge, therefore, allowed the petition, set aside the order of retrenchment of the Appellants and directed their reinstatement with continuity of service, benefits of seniority and in remnant, but without any liability to pay back wages from June 1, 1968, to the date on which each of them actually joined the duty. No decision was given by the learned Judge on the initial question of validity of the order dated March 17, 1970 whereby the Assistant Labour Commissioner had held that his permission was not necessary for retrenching the Appellants.

3. The first argument that was advanced before the learned Single Judge on behalf of the Board for disallowing back-wages was that the only ground on which the writ petition was being allowed had not been taken up by the Appellants in their earlier petition, i.e , Civil Writ 1810 of 1968, and this barred the Appellants from claiming the said relief on the principles of constructive res judicata. No decision was, however, recorded on that plea of the Board. The claims for back wages was disallowed in the following words:-

It is further submitted that if this plea had been then taken (plea u/s 25-F of the Industrial Disputes Act), Respondent No. 2 the (the Board) would have immediately taken back the Petitioners into service without any further ado, and in this matter they would not have become liable to pay back-wages, to the Petitioners without getting any work from them. I find considerable force in this submission.

The Petitioners have prayed for reinstatement with continuity of service. They have not specifically asked for back wages.

Besides the above-mentioned two grounds which appears to have appealed to the learned Single Judge, his decision also appears to have been influenced by

the offer made by the Board at the stage of the final hearing of the writ petition to reinstate the Appellants with continuity of service and to give them their seniority and increments but not the back wages from the date of retrenchment to the date of reinstatement. It is this part of the judgment denying back wages to the Appellants that has been appealed against by them before us.

4, It is not worthy that the offer that had been made by the Board before the learned Single Judge was addressed to the Court and not to the Appellants, and that it is nobody's case that the Appellants ever accepted such an offer or that the order of the learned Single Judge was based on any express or implied agreement or understanding.

5. Though it appears to us that the learned Single Judge did not held that the claim for back-wages was barred on the principles of Constructive res judicata, it has been submitted by Learned Counsel for the Appellants that a mention about such a plea having been made, she wished to show that the claim in dispute in the circumstances of this case could not possibly have been barred on any such principle. She has emphasised that the earlier writ petition having been filed on May 28, 1969, that is three days before the date on and with effect from which the Appellants had been directed to be retrenched by the Board, no cause of action had arisen for the Appellants to claim any back-wages when they filed Civil Writ Petition 1810 of 1968. This appears to be correct. One month's notice pay had to be given to the Appellants in addition to the retrenchment compensation, and inasmuch as their entitlement to get wages till May 31, 1968, was never in dispute, and no other wages had become due to them till they filed their earlier petition on May 28, 1968, no question of their claiming any back wages could have arisen at that time. Mrs. Bindra, Learned Counsel for the Appellants, has relied on *Kanamathareddi Seetamma v. Kanamathareddi Kothareddi A.I.R 1949 Mad. 586*, in support of the proposition that no claim for which cause of action had not arisen at the time of filing the earlier action can be said to be barred by constructive res judicata. The counsel for the Respondents has not contested this proposition. We, therefore, hold that the claim for back wages pressed by the Appellants at the hearing of the writ petition before the learned Single Judge was not barred by constructive res judicata on account of such a claim not having been made in their earlier writ petition which had been filed in May, 1968.

6. We are also not inclined to uphold the finding of the learned Single Judge to the effect that the Appellants should be deprived of the normal relief of back wages to which they would be entitled on reinstatement consequent upon the order of their retrenchment being set aside merely because the order of retrenchment had not originally been attacked for want of compliance with Section 25-F of the Industrial Disputes Act at the time of filing the present petition, but that the said attack was levelled only by way of the subsequent amendment. From the very beginning the Appellants had claimed reinstatement in so many words. There is no doubt that the original claim for reinstatement was based on an attack against the validity and legality of the order of the

Assistant Labour Commissioner, dated March 17, 1970, declaring that the Board did not require any permission from him for retrenching the Appellants. Nevertheless they had claimed for being reinstated. Mr. Bindra is correct in submitting on the authority of the decisions in AIR 1926 668 (Lahore) , Raman Nair Gopaian Nair v. Lekshmi Amma Bharathi Amma AIR 1952 T.C 96 and Gurbinder Singh and Others Vs. Lal Singh and Others, that the normal rule is that when an illegal order of retrenchment is set aside and the workmen are ordered to be reinstated, they are entitled to back wages and the same should be ordered to be paid. A Division Bench of the Andhra Pradesh High Court held in the Management of Andhra Scientific Company, Masulipatnam v. The Presiding Officer, Labour Court, Government of A.P. Guntur 1971 Lab. IC 513, that "benefit" based on existing rights takes within its amplitude all relevant and incidental benefits such as not only the back-wages but also the benefit of revision of pay-seals during the period for which the backwages are allowed.

7. Similarly in M/s. Daljeet and Company, Private Ltd Rupar v. The State of Punjab AIR 1964 P&H 313, Falshaw C.J. and Harbans Singh, J. (as they then were) held that the normal order to be passed in a case where dismissal is set aside and the dismissed employee is reinstated with continuity of service is for payment of full wages from the date of dismissal held to be wrongful to the date of reinstatement, and that this is so where the dismissed employees is a Government servant or employed in a private industry. It was further held that if an employer wishes the normal order to be departed from on the ground that during the period in question the dismissed employee had obtained employment and had been paid wages by some other employer, it is for the employer to raise the matter in the course of the inquiry and prove that the employee has been earning wages for the whole or any part of the period in question. No such allegation was made by the Board at any stage in the case before us.

8. The Madhya Pradesh High Court has similarly held in Madhukar v. Bhilai Steel Project (by General Manager), (1966) 2 LLJ 745 that the legal effect of the industrial Court's order setting aside the order of termination of service of an employee is that he continued in service up to the date of the decision of the industrial Court as if there never was a termination of his employment, and, therefore, such an employee is entitled to get back-wages for the period between the date of his termination and the date of his actual reinstatement. It is unnecessary to multiply authorities on this point and it appears to us that whenever reinstatement on the ground of the order of termination by dismissal or retrenchment is claimed by a workman and is allowed by a Tribunal of a Court with community of service, he must also be allowed back-wages for the relevant period unless there are in a given case some such extraordinary circumstances which may disentitle the workman to get that normal relief. The only such circumstance which suggests itself to us at the moment is that the workman was in fact earning wages for the relevant period under some other employer. May be that there can be some other conduct of a workman which may disentitle him to back wages, but it is unnecessary to lay down any exhaustive list of such

circumstances as in the case before us there is nothing at all which could disentitle the Appellants to their legal right of getting the back wages on being reinstated with continuity of service.

9. For the foregoing reasons we hold that the mere fact that the Appellants did not specifically ask for back wages in so many words in their present writ petition though they clearly asked for reinstatement with continuity of service cannot disentitle them from getting back wages to which they are otherwise entitled, as a necessary consequence of the order of termination of their service having been set aside.

10. Nor are we convinced that the Board would have immediately taken back the Appellants into service without any further ado merely if the plea of non compliance with Section 25-F had been taken up by the Appellants in their writ petition in the very beginning. It is an admitted fact that Kartar Chand Appellant No. 2 was not reinstated even after this plea had been taken up and even re-employment had been refused to him on the pretext that he had not produced the discharge certificate "which was essential for his re employment." This is what the Executive Engineer of the Board has stated in paragraph 3 of his affidavit, dated November 10, 1972. The above-quoted averment clearly shows that the Board was prepared only to "re-employ" and not to "reinstate" Kartar Chand Appellant, and it was on that account that the production of the discharge certificate which had also to be issued by the Board itself was being insisted upon. The learned Single Judge has correctly held that Kartar Chand Appellant is entitled to reinstatement without the production of any such certificate. The application for amendment of the writ petition was made on October 3, 1972. The ground u/s 25-F had been clearly mentioned in that application. Still the Board did not sua motu and voluntarily reinstate all the Appellants after getting notice of the application for amendment and waited till the order of the learned Single Judge was passed on November 13, 1972. From the stand taken by the Board in the aforesaid affidavit of its Executive Engineer it is also clear that the Board would at best have reinstated the Appellants, but were not prepared to pay them the back-wages to which they were clearly entitled on account of the order of their retrenchment being contrary to law.

11. The mere fact that Harbhajan Singh Appellant accepted the retrenchment compensation on September 10, 1968, during the pendency of his earlier petition does not disentitle him to get the back-wages particularly when no objection has been raised to his being now reinstated as a result of the judgment of the learned Single Judge against which the Board has not preferred any appeal. Of course the Board would be entitled to deduct the amount of compensation paid to him out of the back-wages due to him.

12. Nor are we inclined to deprive Jit Singh Appellant of his right to get back wages merely because he had been allowed by the Board to rejoin his original post on November 6, 1972, after the amendment of the writ petition had been allowed. The fact that he did not insist on getting his back wages on that day

does not make any difference to his legal entitlement as the Board did not reinstate him on November 6, 1972, but merely re-employed him. Once it has been found by the learned Single Judge that, he is entitled to reinstatement (and not re-employment) any term on re employment agreed upon between the Board and Jit Singh becomes irrelevant, and Jit Singh would as much be entitled to all reliefs flowing from reinstatement as the other Appellants.

13. We have already dealt with the argument of Mr. Arun Nehra, learned Advocate for the Respondent-Board, about the Appellants having, according to Mr. Nehra, disentitled themselves to back-wages on account of their conduct in not claiming back-wages specifically at the time of filing the petition. Mr. Nehra relied on the judgment of their Lordships of the Supreme Court in *D. Cawasji and Co. and Others Vs. State of Mysore and Another*, in support of the proposition that the learned Single Judge having exercised his discretion in not allowing back-wages to the Appellants, we should not interfere with the same in an appeal against that order. It would be noticed that their Lordships of the Supreme Court did not lay down any such general rule and took particular care to hedge in their non-interference with the discretion exercised by the High Court by the words "in the circumstances of this case", and further "having regard to the conduct of the Appellants" in not having claimed those amounts in the earlier writ petition without any justification. We have already made it clear that there was neither any question nor any occasion for the Appellants to claim back wages in their earlier writ petition . The observations of their Lordships of the Supreme Court in the last ten or twelve lines of paragraph 10 of their judgment (A.I.R. report) in the case of *M/s. D. Cawasji and Company*(10), cannot berefore, help the Respondents.

14. For the foregoing reasons we allow this appeal, reverse the direction of the learned Single Judge for non payment of the back-wages to the Appellants, and direct that in addition to the reliefs granted to the Appellants by the learned Single Judge, they should also be paid by the Board the back wages with effect from June 1, 1968, till the date on which they were actually reinstated by the Board either voluntarily or in pursuance of the order of the learned Single Judge.

Harbans Lal, J.

15. I agree.