
(2009) 02 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1671 of 1987

Harnek Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Citation : (2009) 2 ILR (P&H) 195 : (2009) 5 SLR 343

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : J.C. Verma and Meenakshi Verma, for the Appellant; V.S. Dogra, for the Respondent

Final Decision : Allowed

Judgement

Augustine George Masih, J.—The challenge in the present writ petition is to award dated 24th April, 1986 (Annexure P-7) passed by the Labour Court, Bathinda,—vide which the reference has been answered against the Petitioner-workman holding therein that the Management has been able to establish the workman's misconduct and, therefore, the order of termination of services of the workman is justified.

2. Counsel for the Petitioner contends that the Labour Court has totally overlooked the evidence on record and has proceeded on assumptions and presumptions while coming to the conclusions which have been recorded in its impugned award. He contends that the finding that the workman was on strike and further that the said strike was illegal, is totally contrary to the evidence and, therefore, cannot be sustained. He contends that the resolution terminating the services of the workman is dated 3rd June, 1981 (Annexure P-I) wherein the ground taken for terminating his services is that he has been absenting from duty. He was issued registered notice and was also told verbally and when he came to the office of the Sabha on 2nd June, 1981 he was given an opportunity to join duty on 3rd June, 1981. Despite all this, he remained absent and as the recovery cases of the Sabha were suffering, the workman was removed from

service. Counsel relying on this, contends that before the Labour Court, there was no allegation of the workman having gone on strike or that the strike was illegal as neither any reply to the statement of claim was filed by the Respondent-Management reflecting the reason of the workman going on strike, to be a ground for termination nor the oral evidence or other documentary evidence produced before the Labour Court proved that the workman had gone on strike, rather the workman in his cross-examination specifically stated that he did not participate in the strike. He, therefore, contends that the observations of the Labour Court with regard to the workman going on strike is totally beyond pleadings and evidence on record. He further contends that the allegations levelled against the workman that he has embezzled the amount of the Society, was not a ground for terminating his services as is apparent from the resolution dated 3rd June, 1981 (Annexure P-I) whereby his services were terminated. Counsel contends that even if it is accepted that the misconduct on the part of the workman could be proved by the Management in the proceedings before the Labour Court, then also the said allegations have not been proved against the workman as neither the original records nor any complaints from the members whose money is alleged to have been misappropriated/embezzled by the workman have been produced. No member has been produced to state that his money has been embezzled, nor any original registers have been produced, nor the records on which the allegations were based, have been produced. Further, the arbitration awards which were alleged to have been passed against the workman in the arbitration proceedings, were not produced. All this goes to show that the allegation with regard to the embezzlement of the money of the Society is based on no evidence at all which would justify the finding given by the Labour Court against the workman. So much so, the signatures which are alleged to be that of the Petitioner on photostat receipts, which were denied by the workman, have not been proved by producing original records or confronting the workman with such receipts. Counsel relies upon a judgment of the Hon'ble Supreme Court in the case of Makhan Singh Vs. Narainpura Co-operative Agricultural Service Society Limited and Another, , to contend that the said judgment covers on all fours the case of the workman as the facts, that allegations and the evidence which has been taken against the workman, were the same as in the above-mentioned case. The Hon'ble Supreme Court had held that the award of the Labour Court was not sustainable and was therefore, set aside and the workman has been held entitled to reinstatement in service with all consequential benefits including full back wages from the date of termination of his services till the date of reinstatement. He further relies upon a judgment of this Court in C. W.P. No. 4033 of 1985 Sardar Ali v. Presiding Officer, Labour Court, Bathinda and another, decided on 19th January, 2005 wherein this Court had held that if there is an allegation of absence without leave, it would constitute misconduct and it is not open to the employer to terminate the service without notice and enquiry or at any rate, without complying with the minimum principle of natural justice. It has further been held that no enquiry was held, nor any show cause notice was given before resorting to termination of services of

the workman. Therefore, in the light of this judgment also, the workman deserves to be reinstated in service. He further relies upon a judgment of the Hon"ble Supreme Court in the case of Burn and Co. Limited v. Their Workmen and Ors. AIR 1959 S.C. 529, to contend that even if it is held that the workman had gone on strike and the said strike was illegal, then also in the light of the above judgment, the termination of the services of the workman cannot be upheld as neither any enquiry, nor show cause notice, nor any compensation was granted to the workman and, therefore, he was entitled to reinstatement in service. Counsel further relies upon a judgment of this Court in the case of Hardial Singh v. The Presiding Officer and another in C.W.P. No. 1005 of 1988 decided on 8th December, 2008.

(3) On the other hand, counsel for the Respondent contends that although the resolution dated 3rd June, 1981 (Annexure P-I),--vide which the service of the workman have been terminated, does not use the word "strike" but the absence of the workman from duty was on account of his participation in the strike. He contends that in the reply to the claim statement of the workman, the management has taken a specific stand that the workman was absent from duty for about one month continuously prior to his termination and till his termination, he was absent from duty. He submits that the Petitioner has resorted to illegal strike and absented himself from duty and apart from that, had committed embezzlement in service, the details whereof were given by the management witness Shri Balbir Chand, Secretary of the Respondent-Society. He further submits that the photostat copies of the receipts of the amount which the workman had received from the members of the Society were produced before the Labour Court which goes a long way to prove that the workman had embezzled the amount as the same was not reflected in the records of the Society. He further contends that the workman has in his cross-examination submitted that his services were terminated on 3rd June, 1981 and he has further admitted that he was arrested on 11th June, 1981 and released after 72 days which shows that the workman had associated himself with the trade union activities and his earlier absence from duty before his termination for a period of one month was also because of his trade union activities and, therefore, it is apparent that he had participated in the strike leading to his absence from duty. He contends that the word "strike" and AIR 1959 S.C. 529 "absence from duty" are interchangeable words having the same meaning which looking at the interpretation of the resolution,--vide which the services of the workman had been terminated. He further contends that the workman has not denied about his awareness of the arbitration proceedings pending against him as he admitted that he was summoned by Shri Sadhu Ram, Arbitrator on 7th November, 1985. Therefore, the embezzlement having been proved against him, so as his absence from duty, the order of his termination was fully justified and the findings recorded by the Labour Court deserve to be upheld.

4. I have heard counsel for the parties and have given my thoughtful consideration to the submissions put-forth by them and have also perused the

records of the case as well as the impugned award. Firstly, a perusal of the resolution dated 3rd June, 1981 (Annexure P-1) terminating the services of the workman clearly shows that there is no reference of any embezzlement or misappropriation of any of the funds of the Society by the Petitioner-workman. It further also does not speak of the workman having gone on strike or having participated therein. The said resolution terminating the service of the workman only refers to his absence from duty. The contention, therefore, of the counsel for the Respondent that the termination of the workman was based on his participation in strike is totally misconceived. This, I conclude on the basis of the pleadings and evidence which has been brought before the Labour Court. It is an admitted position that the reply which was given to the statement of claim does not speak of the workman having gone on strike and participated in the same. The suggestion in this regard put to the workman in his cross-examination has been specifically denied rather the workman has gone to the extent of saying that he had not absented for one month before his termination. The Respondent-Management has totally failed to prove that the workman had gone on strike or had participated therein as no cogent evidence has been led by the Management in this regard. That being so, the findings of the Labour Court that the workman has participated in the illegal strike, is totally devoid of any merit. In any case, in view of the judgment of the Hon"ble Supreme Court in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , it has been clearly spelt out that even if a workman has participated in an illegal strike, then also when a punitive action is to be taken against a workman, an enquiry before awarding punishment is obligatory and if the same is not done, then the orders of termination are bad on this ground alone. It is not in dispute that in the present case, neither any enquiry has been held nor any notice has been issued before terminating the services of the workman nor any compensation granted to him. So, on this ground alone, the order of termination which was based upon absence from duty, cannot be sustained for the reason that even if the absence from duty is taken as a ground for terminating the services that would again amount to misconduct leading to holding of a proper enquiry. Since no enquiry has been held, as has been admitted by the Management, the un-sustainability of the order of termination cannot be disputed. This conclusion of mine is supported by a judgment of this Court in Sardar Ali's case (supra) wherein it has been held that absence without leave, constitutes misconduct and it is not open to the employer to terminate service without notice or enquiry or at any rate without complying with the minimum principle of nature justice. No justifiable explanation has been given by the Management for non-production of original records.

5. Now coming to the allegation with regard to the embezzlement of the funds which is alleged to have been committed by the workman, this ground has cropped up and has been taken by the Management-Society in its reply to the statement of claim put forth by the workman. No doubt, the Management could, as per the provisions of Section 11 -A of the Act, justify its order of termination

before the Labour Court but nevertheless the requirement of proving the allegations as made by the Management were required to be proved by leading cogent evidence. Here the evidence led by the Management before the Labour Court needs to be looked into. Only one witness i.e., Balbir Chand, Secretary of the Respondent-Society whose statement has been attached as Annexure P-6 with the writ petition, appeared as MW-1 who in his deposition before the Labour Court states that the workman has embezzled money. There were two arbitration cases against the workman which were decided on 7th November, 1983 wherein dues were shown against the workman. He admits that he does not have the copies of the awards passed by the Arbitrators and, therefore, was unable to produce them. Thereafter, he deposed that the workman had received different amounts from the members of the Society. He produced certain photocopies of the receipts, which according to him were in the hand of the workman and signed by him. He accepted before the Labour Court that the originals of the photostat receipts which he had been produced as Exhibits M-3 and M-4 before the Labour Court, were not with him. He further admits that the workman did not sign the receipts in his presence. This is the only evidence which has been led against the workman by the Management before the Labour Court. What, therefore, culls out from the statement of this Management witness MW-1 is that no original documents were produced before the Labour Court nor was the workman confronted with the original records. No charge-sheet was issued to the workman with regard to the embezzlement of the money alleged to have been misappropriated by him. The signatures on the documents, basically the receipts which were termed as embezzlement on the part of the workman, were not proved to be of the workman as the management witness has himself admitted that the said signatures were not affixed on the receipts in his presence by the workman. No member of the Society has been produced who could say that the money was given to the workman which has not been reflected in their accounts or the pass-books. No pass-books have been produced by the Management to show that on the basis of the receipts, the money which was received by the workman, has been entered in the pass-books of the members of the Society. Further, no ledgers/registers, what to say of original, have been produced by the management of the Society which would justify that the receipts which were given for the amount by the workman to the members of the Society, have not been accounted for in the accounts of the Society. The Management witness also admits that he does not have the copies of the arbitration awards which are alleged to have been decided by the Arbitrator against the workman. All these factors go to point towards one and only one conclusion i.e. the Management has failed to prove the charge of embezzlement against the workman by leading any cogent evidence. The charge of embezzlement having not been established, the justification put-forth by the Management for terminating the services of the workman falls to the ground.

6. Similar position was in Makhan Singh's case (supra) wherein the Hon'ble Supreme Court in almost identical situation and facts has come to the conclusion

that the order of termination of the workman is totally unjustified. In the said case, like the present case, the services of the workman were terminated on the ground of absence from duty. Therein, the management took two specific grounds apart from others that the workman had gone on strike without obtaining any leave and that he also committed embezzlement of the money belonging to the Society. In that case also, while proving the allegations with regard to the embezzlement, the Management produced three photostat copies of entries in the pass book but the originals were not produced. The workman denied having misappropriated the amount and further alleged that the photostat copies were fabricated documents. No explanation had been put forth by the Management for not producing the originals. On that basis, the Hon''ble Supreme Court came to the conclusion that the evidence which has been led by the Society does not prove the allegations as made by it against the workman. The Hon''ble Supreme Court, therefore, proceeded to set aside the order of termination and ordered for putting back the workman in service with all consequential benefits. Reference to paras 3 and 4 of the said judgment would be beneficial at this stage:

3. Admittedly, no domestic enquiry was held by the management before passing the order of termination of the Appellant's services. Before the Labour Court the management tried to justify the order of termination of Appellant's services on the two grounds, namely, that the Appellant had embezzled certain amounts of the Society and that he had absented himself from duty without obtaining leave. The evidence led by the management in support of the embezzlement alleged by it is very scrappy indeed. It relied upon the evidence of Ram Sarup, who was working as the Secretary of the Society that the Appellant had received a sum of Rs. 125 from one shareholder Bhaga Ram but he had made an entry in the account books stating that only a sum of Rs. 100 had been received and that the Appellant had received a sum of Rs. 1,125 and Rs. 150 from Sat Pal and Jagir Singh, Shareholders of the Society respectively, and had made entries in the account books showing that he had received Rs. 920 and Rs. 125 respectively from them. The management produced three photostat copies of the entries in the pass-books which were marked as Exhibits M/1 to M/3. The originals were not produced. The Appellant denied having misappropriated the amount of Rs. 25 in the first case, Rs. 205 in the second case and Rs. 25 in the third case. He stated that the photostat copies were fabricated documents. The Labour Court however accepted the evidence placed before it by the management. It did not go into the question whether the photostat copies, Exhibits M/ 1 to M/3, could be accepted as evidence in the absence of the originals. The award shows that no explanation had been given by the management for not producing the originals. We are not satisfied with the finding recorded by the Labour Court that the Appellant had embezzled amounts belonging to the Society. The said finding is without any basis and is, therefore, liable to be set aside. The Labour Court has also accepted that the Appellant had absented himself from duty without obtaining leave. It is interesting to note that the case of the Society before the Labour Court was that

the Appellant had gone on a strike without getting any leave. If he had gone on a strike no question of obtaining any leave would arise. The Appellant gave evidence before the Labour Court stating that he was ill and, therefore, he was not able to attend to his duties. He also stated that he had obtained necessary leave sanctioned before absenting himself from duties. Of course, the Appellant could not produce any leave to the management which could only be in the possession of the society. In any event there was no reason at all for rejecting the evidence given by him. The finding on the above question is also not sustainable on the material placed before the Court. We regret to observe that the approach of the Labour Court to the whole case is highly casual and superficial.

4. On a consideration of the whole material placed before this Court we are of the view that the decision of the management in the instant case to terminate the services of the Appellant without holding any domestic enquiry is not a bona fide one. We accordingly hold that the termination of the Appellant's services is unjustified. In the result, we set aside the judgment of the High Court and the award passed by the Labour Court and pass an award directing the Society to reinstate the Appellant in its service with effect from 30th May, 1981, the date on which the Society passed the resolution terminating the Appellant's services. The Appellant shall be treated as being in the service of the Society without any break in his service. He is entitled to all the consequential benefits. We direct the society to pay full back wages to the Appellant from the date of termination of his service till the date of reinstatement.

7. In the light of the above, the submissions as put forth by the counsel for the Respondent with regard to the workman participating in the strike, his absence from duty and indulging in Trade Union activities etc. would be of no consequence as the ground on which the termination order was based i.e. the absence from duty, and assuming it to be based upon strike, and the subsequent ground which was taken by the Management before the Labour Court to justify the order of termination, the alleged embezzlement has not been proved nor has it passed the test of complying with the principle of natural justice which requires for giving full opportunity to the workman to justify his explanation. Therefore, the impugned award dated 24th April, 1986 (Annexure P-7) passed by the Labour Court, Bathinda, cannot be sustained.

8. In view of the above, the present writ petition is allowed; the impugned award dated 24th April, 1986 (Annexure P-7) passed by the Labour Court, Bathinda is hereby set aside and as a result thereof, the workman is held entitled to reinstatement in service with continuity thereof.

9. A perusal of the record shows that the workman during the pendency of the writ petition has expired on 15th August, 1998, therefore, he cannot obviously be put back in service. The records further indicate that he was doing some work to maintain his family and, therefore, it would be just and reasonable to grant him 50% back wages from the date of his termination till the date of his expiry

or superannuation whichever is earlier.