
(2003) 04 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2200 of 1987

Jarnail Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(F)

Citation : (2003) 134 PLR 685

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Meenakshi Verma, for the Appellant; H.S. Sran, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner was working as ,a Conductor with respondent No. 2 when his services were illegally terminated on 06.10.1977. Initially, perhaps on the wrong advise of his advocate, the petitioner filed a civil suit challenging the order of termination of his service. The respondents took a preliminary objection to the maintainability of the civil suit on the ground that the petitioner would have to seek a reference as provided under the Industrial Disputes Act (hereinafter referred to as "the, Act"). The suit was dismissed on 05.05.1980 by the learned Senior Sub Judge, Amritsar, holding that the civil Court had no jurisdiction to try this suit. The plaint was returned to be presented to the appropriate Court if the petitioner so desires. Immediately, on the plaint being returned, on 30.5.1980, i.e. after 25 days of the return of the plaint, the petitioner served a demand notice on the respondents under the Act. The reference was duly made.

2. On the pleadings of the parties, the following issues were framed:-

1. Whether termination of the services of the workman is justified and in order?
2. Relief.

3. After due appreciation of evidence, the Labour Court decided the issue in favour of the petitioner. The Labour Court held that no fresh appointment could be offered to the petitioner who was already in service. Therefore, the order of termination was held to be void. It was directed that the petitioner be given the benefit of past service and the same be treated as continuous. However, when it came to the granting of back wages, the Labour Court has held as follows;-

"In view of my findings above, the workman is reinstated with continuity of service. However, so far as back wages are concerned, the demand notice was issued on 30th May, 1980 more than two and half years after the termination of services and more than two years and three months after the order dated 11th February, 1977 was passed by the General Manager. He had also been cultivating the land alongwith his brothers. He did not make any effort for a job anywhere etc. For these reasons, no back wages are awarded. The parties are left to bear their own costs. The management shall reinstate the workman as soon as the award becomes enforceable.

H.S.Bakshi Dated the Presiding Officer 14th July, 1986. Labour Court, Amritsar."

4. I have heard the learned counsel for the parties and perused the record of the case.

5. It is settled proposition of law that ordinarily a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule and the party objecting to it must establish the circumstances necessitating departure. The aforesaid ratio of law can be culled out from a decision of the Full Bench of this Court in the case of Hari Palace, Ambala City v. The Presiding Officer Labour Court and Anr. (1979)81 P.L.R. 120. (F.B.) After analysing the legal position, on the basis of principle as well as the precedent, S.S. Sandhawalia, Chief Justice, speaking for the Bench has observed as follows:-

"5. There is no gain saying the fact that there has been some divergence of opinion in the various High Courts on the point earlier. Varying views had been expressed as to where precisely the onus lay with regard to the claim to back wages and also with regard to the striking of the issues or the necessary point for determination thereof by the Labour Court itself. Within this Court, a Division Bench in Daljeet and Co. Private Ltd., Ropar v. The State of Punjab and Ors. AIR 1964 P&H. 313, has held that the dismissed employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal, and it is for the employer to raise this matter and prove that the employee had been earning wages for the whole or any part of the period in question. The aforesaid view has been consistently, followed in this Court and reaffirmed in Harbans Singh and Ors. v. The Assistant Labour Commissioner and Ors. (1976)78 P.L.R. 221. The Allahabad High Court was inclined to take a similar view in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow (1971) Lab.L.J. 327, and the same tenor is the

judgment of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971) I L.L.J. 508.

6. However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, wherein the appeal by Special Leave was expressly limited to the question of grant of back wages. It has been held therein in no uncertain terms:-

"Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is" the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer".

And again:

"Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure". The aforesaid view has been reiterated by their Lordships in G.T. Lad and Ors. v. Chemicals and Fibres India Ltd. 1979 L I C 298".

6. In view of the aforesaid enunciation of law, it becomes apparent that the matter is concluded in favour of the petitioner so far as the grant of back wages is concerned.

7. The next question that arises, however, is as to whether the benefit of back wages could have been curtailed on account of delay as held by the Labour Court. The Labour Court has denied the back wages by holding that the demand notice was issued on 30.05.1980 more than two years and six months after the termination of the service and more than two years and three months after the order dated 11th February, 1977, when the petitioner was offered a fresh appointment. It is again a settled proposition of law that the benefit of back wages can be curtailed to the date of the issuance of demand notice, provided the inordinate delay in issuing the demand notice is unexplained by the petitioner. In the present case, the petitioner, even though ill advisedly, was prosecuting the remedy of civil suit. No circumstances have been brought on the record by the respondents to show that the petitioner had deliberately filed civil suit just to cause delay the adjudication of the matter. This could not possibly be the reason for the petitioner for filing the civil suit as he has nothing to gain by delaying the proceedings. If anything, it would be the respondents who would be interested in delaying the proceedings. Therefore, I am unable to hold that the petitioner has been guilty of deliberate delay in issuing the demand notice. On this ground, therefore, it would not be possible to uphold the part of the award restricting the wages to the date of the demand notice.

8. Faced with this situation, Mr. Sran, learned counsel for the respondents, has argued that even if the demand notice is held to have been issued without any delay, the petitioner would only be entitled to wages from the date of filing of the

civil suit. There is no explanation for the delay in filing the civil suit after a period of two years and six months. The civil suit was decided at the threshold. There was hardly any time consumed in the civil Court. The delay was on the part of the petitioner in filing the civil suit. According to the learned counsel, at best, the date of the issuance of demand notice can be read as the date of the filing of the civil suit. Therefore, the petitioner cannot be, in any event, granted the benefit of wages from the date of termination till the date of the filing of the civil suit.

9. I am unable to accept the aforesaid submission made by the learned counsel. Three years period of limitation is provided for filing a civil suit. Once an action is initiated within the period of limitation, the period prior to its initiation, cannot be taken note off, for the purpose of deciding the question of delay and laches.

10. In view of the above. I am of the considered opinion that the award of the Labour Court suffers from an error apparent on the face of the record to the extent that the benefit, of back wages has been restricted to the date of issuance of the demand notice. The writ petition is allowed. The finding of the learned Labour Court on issue No. 2 is set aside. It is held that the petitioner is entitled to back wages from the date his services were illegally terminated. No costs.