
(1999) 02 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14795 of 1993

Jaswinder Kaur

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1999) 122 PLR 191 : (2000) 1 RCR(Criminal) 33

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Ravinder Chopra and Shiv Kumar, for the Appellant; S.K. Sharma, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Petitioner Jaswinder Kaur had served the respondent-management since 1.2.1986. Her services were terminated w.e.f. 1.12.1986. She raised an industrial dispute that her services had been terminated without any notice. She prayed for reinstatement, continuity of service and back wages. The matter was referred to the Labour Court. The Labour Court had framed the issues and held that the plea of the management that the petitioner had abandoned her service is not correct. It was held that her services had been terminated in flagrant violation of the provisions of Section 25F of the Industrial Disputes Act, for short "the Act". In other words, it was concluded that the termination of the services was illegal. The Presiding Officer, Labour Court, however, held, that there is no case for reinstatement of the petitioner. He referred to the statement made by Gurcharan Singh that the work for which the petitioner was inducted had come to an end and there was no vacancy to accommodate her, particularly when even the area where the work was in progress stood transferred remained un rebutted. The learned Labour Court allowed 12 months pay at the rate of Rs. 670/- per month towards compensation.

2. The petitioner by virtue of the present writ petition seeks quashing of the

award of the Labour Court whereby continuity of service and back wages had been declined. It has been asserted that once it is held that the mandatory provisions of Section 25F of the Act have not been complied with, the Labour Court had no choice except to reinstate the petitioner with full back wages and continuity of service. It was alleged that the post against which the petitioner was working had not been abolished and in any case there was no such plea that had been taken.

3. In the written statement filed, this assertion that the petitioner is entitled to reinstatement with full back wages had been controverted.

4. During the course of arguments, the sole plea raised was that once it has been held that the provisions of Section 25F of the Act have not been complied with, the Labour Court had no option but to direct the reinstatement with full back wages.

5. In this regard, the said submission of the learned counsel, indeed is without any merit. The Supreme Court considered this question in the case of *M/s Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors.* AIR 1977 S C 31. Therein, the Labour Court had awarded full back wages to the workman. In paragraph 5 of the judgment, the Supreme Court held as under:-

"Another point made on behalf of the appellant was that the Presiding Officer of the Labour Court was wrong in awarding full back wages to the respondents without satisfying himself that they had been unemployed after they were released from service by the appellant and, further that they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court has found that it had not been proved that the respondents had any alternative employment. In the writ petition filed by the appellant in the High Court, the finding that the respondents had no alternative employment was not challenged. From the judgment of the High Court it appears that the submission on the propriety of awarding full back wages to the respondents was confined to the ground that the respondents had not proved that they had tried to mitigate their losses during the period of unemployment. In the SLP also what has been urged is that the High Court should have held that the respondents were not entitled to full back wages unless they succeeded in proving that they tried to secure alternative employment but failed. The Labour Court awarded full back wages to the respondents on the finding that they had been illegally retrenched. It does not appear that the question of mitigation of loss for deprivation of employment had at all been raised before the Labour Court "

6. A perusal of the same shows that the question in controversy was as to whether full back wages could be awarded without satisfying himself that they had been unemployed after they were released from service by the employer management and whether they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court had found that it has not been so proved. This is not the question here. Therefore, the ratio decidendi

of the cited decision will not come to the rescue of the petitioner.

7. Full Bench decision of this Court in the case of Hari Palace, Ambala City v. The Presiding Officer, Labour Court and Anr. (1979)81 P.L.R. 720, was also pressed into service. Full Bench had referred to the decision of the Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, and held that ordinarily when services of a workman had been illegally terminated, he would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. It was further held that it was a normal rule and exceptions could always be there. In this regard, one can conveniently refer to the decision of the Supreme Court in M/s Hindustan Tin Works Pvt. Ltd.'s case (supra) relied by the Full Bench of this Court. In paragraph 9 of the judgment, it was held by the Supreme Court as under:-

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid."

Thereafter, the Supreme Court went on to hold and conclude as under: -

" 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....."

8. This decision of the Supreme Court had been taken note of in the subsequent decision rendered by the Supreme Court in the case of Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, . Once again it was reiterated that it was a normal rule that when the services had been terminated illegally in violation of Section 25F of the Act, reinstatement with full back wages should be allowed but there can be exceptions. In para No. 6 of the judgment, Supreme Court held as under: -

" Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an

impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

9. Indeed, the question is as to if there is an exception in the present case or not. The Labour Court had found on the basis of evidence on the record that the work for which the workman had been inducted had come to an end. Even the area where the work was in progress had since been transferred. Thus, keeping in view the said important fact, the normal rule that the workman should be reinstated with full back wages must give way to the exception. The Labour Court, in these circumstances, did not direct reinstatement with full back wages. There is, thus, no ground to interfere in the impugned award.

10. For these reasons, the petition being without merit must fail and is dismissed.