
(2014) 04 P&H CK 0091
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 27720/2013

Jitender Kumar

APPELLANT

Vs

Presiding Officer, Industrial Tribunal-cum-Labour Court

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(oo)(bb), 25F, 25-F, 25-I

Citation : (2014) 3 LLJ 629 : (2014) LLR 985 : (2014) 3 SCT 753

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Pankaj Jain, Advocate for the Appellant; Adharsh Jain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Gurmeet Singh Sandhawalia, J.—This judgment shall dispose of CWP Nos. 27720 of 2013 and 4132 of 2014, involving common questions of facts and law. However, to dictate order, facts have been taken from CWP No. 27720 of 2013 titled Jitender Kumar v. Presiding Officer, industrial Tribunal-cum-Labour Court-I, Gurgaon & another. The petitioner-workman is aggrieved against the award dated 7.6.2013 (Annexure P13) whereby the Labour Court, Gurgaon has decided the reference against the workman and in favour of the Management, by holding that he was a probationer and was discharged from service during the period of probation and therefore, the said order could not be held to be stigmatic.

2. A perusal of the paperbook would go on to show that the petitioner was appointed initially on 12.01.2001, after 2 years of training. As per the letter of appointment (Annexure P1), he was to be on probation for a period of 6 months which was liable to be extended at the sole discretion of the Management and he was deemed to be on probation unless confirmed in writing. The period of probation was, thereafter, extended for 3 months on 12.07.2001 till 11.10.2001 (Annexure R6), after advising him to be more careful in future by considering his appraisal report and asked him to improve his work and conduct. Thereafter, on

09.10.2001 (Annexure P5), the respondent-Management discharged him by holding that his work and conduct was not found upto the expectation of the Management. Compensation and notice of pay, along with the letter of termination of service was also sent to him and the discharge was after the Management had reviewed the working of the probationers on 08.10.2001 (Annexure P8) wherein it was noticed that the said probationers were remaining absent and were adversely affecting the working of the Company and were doing illegal activities at the gate of the Company and were affecting the industrial peace of the Company. The matter was, thereafter, referred to the Labour Court on account of the demand notice dated 21.01.2002 (Annexure P10), issued by the petitioner-workman u/s 2-A of the Industrial Disputes Act, 1947 (for short, the "Act").

3. The Management, in its written statement, took the plea that the reference was without jurisdiction and since he had joined service on probation and during the probation period, after assessing the work, he was discharged. In order to substantiate his allegations, the petitioner-workman examined himself as PW4 and also examined Babu Lal as P.W. 1, Attar Singh as PW2 and Sandeep Kumari as PW3. One Ramesh Kumar from the Labour Commissioner's office at Chandigarh was also examined as PW5. The plea of the workman that due to his taking part in agitation against the Management, led to his termination of service and therefore, the order was stigmatic, was rejected while placing reliance upon the judgment of the Apex Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and Progressive Education Society and Another Vs. Rajendra and Another, It was found that the probation had been extended upto 11.10.2001 and he had absented from work from 01.08.2001 and therefore, failed to report for duty and he was ultimately discharged from duty without any stigma vide letter dated 09.10.2001.

4. Counsel for the petitioner very vehemently submits that the discharge order dated 09.10.2001 was passed in a meeting held on 08.10.2001 of the Management and a perusal of the same would go on to show that the discharge was stigmatic in nature, which was done without any enquiry being held and therefore, the termination was bad and not sustainable. It was contended that as per the Model Standing Orders, a workman who continued after the expiry of probation period would be deemed to have been confirmed automatically and therefore, it was in such circumstances, compensation had been paid. It was submitted that the matter of suspension of the services of the workers was pending before the Labour Court as the same was sent to it on 27.08.2001 by the State Government and was still pending when the order of discharge was passed and therefore, there was violation of Section 33 of the Act and the employees interests were protected whose reference were pending before the Labour Court, the petitioner being one of them. It is submitted that compensation itself being offered u/s 25F and therefore, the Management could not turn around and say that the provisions of the Act would not apply to a probationer.

5. Counsel for the respondent-Management/Caveator, on the other hand, submitted that it was a case u/s 2(oo)(bb) of the Act and the workman was on probation and there was no question of retrenchment and as per the exception clause, a person could be discharged without any enquiry or notice, within the period of probation and therefore, the order of the Labour Court was justified. It was further submitted that the proceedings dated 08.10.2001 were not, as such, forming part of the order dated 09.10.2001 vide which the workman was discharged and therefore, it could not be held that it was stigmatic in nature. It was, thus, submitted that provisions of Section 25-I would not come into play, in such circumstances and if any compensation had been given as per Annexure R8, it was a matter of abundant caution. Thus, it is submitted that Section 33 would not come into play since on 27.08.2001, the services of the petitioner had not been terminated and the said issue was never raised before the Labour Court and it could not be raised before this Court, for the first time, without the factual foundation being laid. It was submitted that there was nothing to show that the petitioner was suspended and was part of the reference pertaining to suspension proceedings which were allegedly pending before the Labour Court.

6. After hearing counsel for the parties, this Court is of the opinion that no case is made out for interference in the present facts and circumstances of the case. As per the fetter of appointment (Annexure P1), the petitioner was to be on probation for a initial period of 6 months and thereafter, deemed to be on probation till he was confirmed. Further, as per Clause 12, it was provided that his services could be terminated without assigning any reason and could be also terminated by giving one month's notice, by giving salary. Relevant clause read as under:

"1. You will be on probation for an initial period of six months from the date of your joining. If found necessary, the probation period may be extended at the sole discretion of the management. During the period of initial probation or the extended period of probation, your services can be terminated without assigning any reason and without any notice or notice pay. However, if your services are found satisfactory and you are found suitable to our requirement on completion of the probation period, you will be confirmed in employment, in writing. Unless confirmed in writing, you will be deemed to be on probation even after expiry of the probation period or the extended period of probation.

xxxx xxxx xxxx

12. During the probationary period/periods your services are liable to termination without assigning any reason.

13. After confirmation your services will be liable to termination on giving you one month's notice or salary in lieu thereof."

7. There is no denying the fact that the petitioner was absenting himself from 01.08.2001 and was asked to join duties vide letter dated 14.09.2001 (Ex. R42). The petitioner being on probation and his probation period coming to an end, a

decision was, Thus, to be taken by the Management on 08.10.2001 where it was noted that the petitioner along with other probationers were remaining absent and were affecting the work and discipline of the Company and were doing illegal acts at the gate of the Company. The order of termination cannot be held to be a stigmatic decision as the Company had to decide whether the petitioner had lived upto the expectation of the Management. As per terms of appointment, as reproduced above, it was within the ambit of the Management to take a call as to whether they wanted to continue with the workman or not. Keeping in view his act and conduct, they chose to discharge him from duty and therefore, the said decision cannot be stigmatic decision. The factum of the ground for discharge in the meetings was never part of the letter dated 9.10.2001 which reads as under:

"You were engaged on probation in terms of your appointment letter dated January 12, 2001. The period of probation was extended. Appraisal reports reveals that your work and conduct has not been found upto the expectation of the management. With the completion of time of probation your services are discharged with immediate effect. You are being offered compensation, notice pay along with this letter as a matter of abundant caution. A cheque of the due amount is enclosed for ready reference."

8. In Pavenendra Singh Verma (supra), while placing reliance upon the celebrated case of Samsher Singh Vs. State of Punjab and Another, the Apex Court discussed the law governing the services of a probationer and held that the employer has to satisfy himself as to the competence of the probationer before confirmation. It was, accordingly, held that the order must be in a language which imputes something over and above mere unsuitability for the job. Relevant observations read as under:

"29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationers appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationers appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

The Apex Court in Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, held that during the period of probation, the suitability of the appointee/recruit is to be seen. If the termination is without any reason, the order could be challenged on the ground of being arbitrary. Thus, the services of a probationer which have been terminated would normally not show the reason why the services were terminated since if any such reason is given, the order

would cast a stigma.

9. In *Municipal Committee, Sirsa Vs. Munshi Ram*, it was held by the Apex Court that even if there was a misconduct prior to the discharge of the service, the same could not be termed as misconduct regarding the enquiry and may be a ground for the employer to "assess the workman's capability. Relevant observations read as under:

"16. From the above, it is clear assuming that there was some sort of misconduct, as noticed in the evidence of the witnesses of the management in the cross-examination, the same could not be used as evidence by the Labour court or by the Appellate court for coming to the conclusion that an order of termination which is otherwise simpliciter in nature is motivated by any consideration other than the decision of the management as to the satisfactory nature of the workman concerned.

17. As noticed above in the instant case, the respondent having been appointed as a probationer and his working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot be ipso facto be termed as misconduct "requiring an inquiry. It may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge.""

10. Thus, keeping in view the above said observations, this Court is of the opinion that the order dated 09.10.2001 is not stigmatic, in any manner. A decision was taken by the Management in view of the conduct of the workman not to retain him in service during his period of probation and thus, they were well within their right to discharge him.

11. The argument pertaining to Clause 3(ii) of the Industrial Employment (Standing Order) Punjab Rules, 1978 also do not help the petitioner since as per the letter of appointment, the period of probation was to be 6 months which could be extended for a period of 3 months and the maximum period of probation could not extend beyond a period of one year. In the present case, appointment on probation was made on 12.01.2001, which was extended after six months, on 12.07.2001 and thereafter, 3 months, till 11.10.2001 and the discharge was prior to the workman completing one year. Therefore, the deeming clause "having been confirmed in his appointment" on completing the probation period would not be applicable in the facts and circumstances of the present case. Once the termination was as per the terms and conditions of the letter of appointment and keeping in view the provisions of Section 2(oo)(bb) which provided an exclusion clause whereby the termination of the service of the workman can be on the ground of the stipulation contained in the contract inter se the parties would come into play and the provisions of Section 25-F would not

be attracted in such circumstances. The provisions of Section 2(oo)(bb) were also subject matter of consideration by the Apex Court in *Municipal Council, Samrala v. Raj Kumar*, 2006 (3) SCC 81. Relevant observation read as under:

"10. Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the respondent came to be appointed have been noticed by us hereinbefore.

11. The appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services in disputably are governed by the provisions of the relevant Municipal Act and/or the rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorised therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it wherefore the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the respondent came to be appointed on the terms and conditions approved by the Municipal Council. We have noticed hereinbefore that the respondent understood that his appointment would be shortlived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so."

12. The submission of the counsel for the petitioner that Section 33 was violated and it was during the pendency of the reference before the Labour Court and therefore, without taking permission from the Labour Court, the services of the petitioner could not be dispensed with, is also without any basis. A perusal of Section 2A of the notice which was treated as a claim petition would go on to show that no such plea was taken and no evidence was led to this effect that the petitioner was under suspension and he was part of the reference which was dated 27.8.2001. The said reference order reads as under:

"1. Whether the strike resorted to by the workers of M/s. Okegawa Precision Forgings Ltd. Gurgaon is justified or not? If justified to what relief the workers are entitled to?

2. Whether the termination of services of trainees as well as probationers by the management is legal? If not, to what relief these workers are entitled to?

3. Whether the suspension of workers by the management is justified? If not, to what relief they are entitled to?"

13. Perusal of the above would go on to show that termination of certain employees who were working as trainees and probationers had already done and some workers had been suspended. A factual foundation had, thus, to be made that the petitioner was part of the workers who were affected by the reference order. In the absence of any factual foundation being laid, the workman's contention would be in thin air. It is settled principal of law that this Court is to scrutinise the award of the Labour Court and examine as to whether the same has been passed without lack of jurisdiction or in excess of jurisdiction. In the present case, the petitioner has failed to show that by the said award of the Labour Court has failed to exercise its jurisdiction in any manner.

14. The judgment in Parmanand Vs. Nagar Palika and Others, referred to by counsel for the petitioner, is not applicable as in the said case, the Apex Court, while examining the evidence on record, came to the conclusion that the sole witness of the employer itself admitted that there was nothing to show that the service of the appellant was in any way unsatisfactory. Similar was the observation in Syed Azam Hussaini Vs. Andhra Bank Ltd., in which the Apex Court held that in the absence of any material to show reasonable cause to terminate the services of the appellant, the Division Bench of the High Court was not justified in upsetting the finding recorded by the authorities and the Labour Court. The judgment in Mohindergarh Central Co-op. Bank Ltd. Mohindergarh v. State of Haryana & others, 2004 (1) RSJ 758 is also of no help to the petitioner on the ground that in the said case the workman was appointed on 25.08.1977 and his services were terminated on 21.03.1979. The plea of the bank that he had been appointed on probation was rejected on the ground that it was an ad hoc appointment. Once he had completed 240 days, reinstatement was ordered and the said order was upheld by this Court.

15. In M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another, the workman who was on probation, his services were terminated and the Labour Court held that the termination order was bad and ordered reinstatement with full back-wages on the ground that it was not an order of discharge simpliciter and it was necessary to hold domestic enquiry before passing such an order. The Management challenged the order before the High Court which upheld the order of the Labour Court. The Apex Court while examining the evidence, came to the conclusion that 2 witnesses had been examined by the Management to prove that the work was not satisfactory and thus, there was enough evidence to show that the work was unsatisfactory and accordingly, set aside the order of reinstatement.

16. Similarly, in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center

for Basic Sciences, Calcutta and Others, the Apex Court set aside the termination on the ground that it was not a simple order of termination but a lengthy order and it was a stigmatic order. It was held that the stigma need not be contained in the order of termination but the contents might be referred to in the termination orders or its annexures. Such a document could be asked for by the future employer of the probationer and thus, such a termination would be vitiated on the ground that no regular enquiry was conducted. The facts in the present case do not show that there was any such additional document along with the discharge order.

17. Merely because the respondent-Company had offered compensation as a matter of abundant caution, would not mean that the provisions of Section 25F would be attracted. This Court has already held that the exception clause u/s 2(oo)(bb) would come into play in view of the contract inter se the parties and therefore, no notice, notice pay and retrenchment compensation was liable to be paid. Thus, this Court is of the opinion that there is no scope for interference in the well reasoned order passed by the Labour Court. Accordingly, the present writ petitions are dismissed.