
(1996) 11 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8693 of 1995

Jogi Industries

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 04-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 4

Citation : (1997) 115 PLR 579

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Sumedh Mahajan and Kultar Singh, for the Appellant; Rajesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—M/s. Jogi Industries has filed the present writ petition under Articles 226/227 of the Constitution of India, against the Presiding Officer, Labour Court, Jalandhar (respondent No. 1), and Chur Ram (respondent No. 2), praying for the issuance of a writ in the nature of certiorari for the quashment of the impugned award dated 23.12.1994 passed by respondent No. 1 by giving directions to it to reinstate respondent No. 2 into service by giving him the benefit of half of the wage., with effect from 25.8.1989, i.e. the date of the demand notice.

2. The case set up by the petitioner firm is that it never employed respondent No. 2 Chur Ram as its servant and as such there does not exist say relationship of master and servant. However, on 25.8.1989 respondent No. 2 issued a demand notice upon it alleging that his services were illegally terminated on 4.8.1989 without notice, charge-sheet or enquiry or compensation in lieu of retrenchment. Respondent No. 2 also alleged that his service had been terminated on account of trade union activities. The petitioner-Firm replied to the said demand notice by denying the relationship of master and servant between it

and respondent No. 2. In spite of the conciliation proceedings, the matter could not be reconciled and as a result of that the matter was referred to the Labour Court, Jalandhar, for determination. The parties put pleadings in the shape of the statement of claim and written statement. It was specifically pleaded by the petitioner-firm that there did not exist any relationship of master and servant. In spite of the categorical denial by the petitioner, respondent No. 1 passed the award dated 23.12.1994 and ordered reinstatement of the workman (respondent No. 2) into service by giving him back wages to the extent of one-half with effect from 25.8.1989 and the award of the Labour court has been challenged by the petitioner on the ground that respondent No. 1 has failed to consider the vital aspect and the statements of the witnesses that there did not exist any relationship of master and servant and that respondent No. 2 was never employed by the petitioner-firm. The conclusion drawn by the Labour Court are erroneous and are liable to be set aside in the present writ proceedings.

3. Notice of the writ petition was given to respondent No. 2 who filed written statement and denied the allegations made by the petitioner-firm. Respondent No. 2 submitted that the award of the Labour Court was well reasoned, based on facts and this Court could not exercise its writ jurisdiction. It was also pleaded that the petitioner-firm was violating the Labour Laws and resorting to unfair labour practice by not showing the attendance of the workers properly. In a similar case, with regard to a workman, namely, Chhinder Pal alias Sarinder Pal, similar and identical plea was taken against the award of the Labour Court in an industrial reference No. 314 of 1990 decided on 14.2.1995 by filing a written statement before the Labour Court by M/s. Jogi Industries (petitioner herein). In that case also the petitioner firm denied the relationship of master and servant, but failed. The award was given in favour of Chhinder Pal alias Surinder Pal. The petitioner filed C.W.P. No. 8692 of 1995 against the said award and the writ petition was dismissed by this Court on 22.1.1996. The petitioner is in the habit of denying the relationship of master and servant and does not mark the presence of the workmen. The record maintained by the petitioner-firm is not complete. It was also pleaded by respondent No. 2 that he served the petitioner-firm and his services were terminated without any charge-sheet, inquiry and without payment of retrenchment compensation. The award has been rightly made by respondent No. 1 by holding that there existed relationship of master and servant. The findings of fact cannot be challenged in the writ jurisdiction. Finally prayer has been made by respondent No. 2 for dismissal of the writ petition.

4. The petitioner firm filed a rejoinder to the written statement filed by respondent No, 2 in which it reiterated the allegations made in the writ petition by denying those of the written statement.

5. It may be mentioned that the Labour Court framed the following issues for the disposal of reference No. 50 of 1990 :-

1. Whether there was relationship of master and servant between the parties?

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

3. Relief.

6. After giving opportunity to both the parties to lead evidence, all the issues were decided against the present petitioner and in favour of respondent No. 2 by the Labour Court.

7. I have heard Shri Sumeet Mahajan, Advocate, on behalf of the petitioner-firm, and Shri Rajesh Sharma, Advocate, on behalf of respondent No. 2 and with their assistance have gone through the record of the case.

8. It was argued by the learned counsel for the petitioner that respondent No. 1, i.e. the Labour Court fell in error in holding that there existed relationship of master and servant between the petitioner and respondent No. 2. The award is based on non-appreciation of evidence and is liable to be struck down in the present proceedings. In support of his contention, learned counsel for the petitioner has drawn my attention to the statement of workman Chur Ram (respondent No. 2), besides the statement of Om Parkash, who appeared on behalf of the management before the Labour Court. With the assistance of these statements it was vehemently submitted before me that it stood proved categorically on the record that there did not exist any relationship of master and servant. Moreover, the workman has not been able to prove on record any letter of appointment in his favour. Even from the attendance register brought by the witness of the management it stands proved that respondent No. 2 was never employed by the petitioner-firm.

9. On the contrary it was submitted by the learned counsel appearing on behalf of respondent No. 2 that the award is based on proper appreciation of evidence. The Labour Court rightly discussed the evidence by holding that there existed relationship of master and servant and the findings of fact cannot be disputed or interfered in the writ jurisdiction.

10. Before I deal with the submissions raised by the learned counsel for the parties, I would like to reproduce para No. 9 of the award passed by the Labour Court, Jalandhar, dated 23.12.1994, for the purpose of appraisal as to how issue No. 1 was dealt with by it :-

"It was no doubt a difficult job for the workman to prove the relationship of master and servant between the parties. But MW1 has almost helped the workman to prove this issue. In his examination-in-chief, MW1 has deposed that he brought attendance register from which he made the statement that Chur Ram never worked with the respondent nor his name was entered in the attendance register. He also stated that Provident Fund Act was applicable on the respondent and also the Bonus Act. However in the cross-examination, he stated that Surinder Pal, Mohinder Pal, Deep, Chinder Pal etc. were not workers under the respondent. He then stated that the averments of denial of relationship of master and servant between the parties in the written statement was written at

the instance of the respondent. He submitted that the names of the workers were mentioned in the attendance register. He then stated that he has not brought the attendance register in the Court. He further stated that the respondent did not give any writing in the employees working with it and that only their attendance was marked. As already stated in his examination-in-chief, Om Parkash stated that he had brought the attendance register but in the cross-examination he stated that he had not brought the attendance register-obviously he made false statement in his chief. In the absence of said register it could not be said if the attendance of the workman had not been marked in the register. It has been held in *H.D. Singh v. L.B.I.*, 1985 L.I.C. 1733 (S.C.), that where the workman claimed to have worked for 240 days and the bank failed to bring the record of attendance, an adverse inference against the management had to be drawn. In the case in hand, since the respondent did not produce the attendance register, it has to be presumed that the workman was employed by the respondent and that the denial of the respondent was not correct. I, therefore, hold that there is relationship of master and servant between the parties. This issue is decided in favour of the workman."

A perusal of the above would show that the Labour Court has rightly drawn the conclusions that the management had tried to withhold the best evidence and that the testimony of Shri Om Parkash could not be believed. To supplement the reason given in the award, this Court can further say that it does not stand to human probability that respondent No. 2 would implicate the petitioner by raising the industrial issue without any time and reason. In huge industrial establishments, respondent No. 2 would be the last person to pick up the petitioner by claiming himself that he was a workman under the petitioner-firm. This part of the reasons has not been successfully refuted by the learned counsel for the petitioner. The petitioner-firm had already adopted unfair means by not in, maintaining the proper and true record in its business dealings. From the statement of Om Parkash it stands proved that he made defunct statement without the help of the attendance register and this aspect of the case has been correctly taken note of by the Labour Court calling no interference on the part of the High Court. In this regard the conduct of the petitioner-firm becomes relevant once I have a glance on the judgment dated 22.1.1996 passed by a Division Bench of this Court in C.W.P. No. 8692 of 1995 2 (*Jogi Industries v. Chhinder Pal alias Surinder Pal*). In the said case also the present petitioner took a similar stand that there did not exist any relationship of master and servant and the same type of evidence as to the attendance register was produced and relied upon by the petitioner. The statement of Om Parkash was also pressed into service in the said writ petition, as in the present one and all these aspects were considered by the Labour Court and it was held that there existed relationship of master and servant between M/s. Jogi Industries and the workman. It appears that the present petitioner is in the habit of denying the relationship of master and servant so as to deprive the workman of his legitimate dues and this action on the part of the petitioner cannot be encouraged; rather it requires to be

deplicated, being an act of unfair labour practice. I have already reproduced above the operative part of the award and it is impossible to say that the findings recorded by the Labour Court were based on no evidence. A mere remote possibility of this Court recording a different finding on the basis of reappraisal of evidence cannot be a ground for holding that the impugned award suffers from an error of law.

11. At this stage I may refer to the decision of the Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan and Ors.* AIR 1965 S.C. 477, wherein the Hon'ble Supreme Court was pleased to hold that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of facts reached by the inferior court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. The petitioner can succeed only if he is in a position to say that the labour Court erroneously refused to admit admissible and material evidence, which had influenced the impugned findings. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. However, a finding of fact recorded by the Tribunal or Labour Court cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant material evidence before the Tribunal was insufficient or inadequate to sustain the finding of fact on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal such points cannot be agitated before a writ court.

12. Learned Counsel for the petitioner has relied upon an authority of the Calcutta High Court reported as *Swapan Das Gupta and Ors. v. The First Labour Court of West Bengal and Ors.* 1976 Lab. I.C. 202, and submitted that the burden of proof regarding employment of workman was upon respondent No. 2 who had asserted that he was a workman of the petitioner-firm when that assertion had been denied. Learned counsel for the petitioner further derived the support of this very authority by alleging that the evidence led by both the parties was equally balanced and it was not clear-cut from the evidence as to which version was correct. This authority is not applicable to the facts in hand. It has been categorically held by the Labour court on the appreciation of evidence led by both the parties that respondent No. 2 was in the employment of the petitioner-firm, which has adopted unfair labour practice by not maintaining the proper record with regard to the attendance of the workman. Against the oral evidence led by the management, the oral evidence led by the workman had been relied upon and given weightage which is a question of appreciation of evidence and not a question of law. The award of the Labour Court was not based on no evidence, rather it was based on evidence led by both the parties. The Labour Court after rightly appreciating the evidence of the workman and of Om Parkash, who appeared on behalf of the management rightly came to the conclusion that there existed relationship of master and servant. It has rightly drawn the legitimate inference against the petitioner firm and has rightly acted

upon the evidence of the workman when he categorically deposed that he was employed by the petitioner firm and he served it for more than 240 days and that his services were terminated without any inquiry, charge-sheet or without payment or reinstatement compensation. The evidence led by the management was rightly held to be unconvincing.

13. In this view of the matter, I do not see any good ground to interfere with the award of the Labour Court nor do I see any merit in the present writ petition, which is hereby dismissed, leaving the parties to bear their own costs.