
(2004) 04 P&H CK 0089
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5170 of 1986

Joginder Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 28-04-2004

Acts Referred:

Citation : (2004) 102 FLR 1005 : (2005) 1 LLJ 1008 : (2004) 137 PLR 867

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Advocate : Jagdeep Bains, for the Appellant; Vikas Singh, for the Respondent

Final Decision : Allowed

Judgement

Viney Mittal, J.—The present order shall dispose of two writ petitions being CWP No. 5170 of 1986 and CWP No. 9004 of 1987 as the same facts and common questions of law are involved in the two cases.

2. For the sake of convenience, the facts are taken from CWP No. 5170 of 1986.

3. Petitioner-workman Joginder Singh has approached this Court through the present writ petition filed under Articles 226/227 of the Constitution of India. The prayer made in the petition is for quashing of the award dated March 3, 1986 passed by the learned Labour Court, Patiala. Copy of the aforesaid award has been appended as Annexure P.4 with the present petition.

4. The petitioner was employed as a Secretary of the Bhikhi Khatra, respondent No. 2. He joined his services with respondent No. 2 with effect from October 5, 1978. The services of the petitioner were subsequently terminated vide order dated June 17, 1981. The said termination order was passed on the basis of Resolution of the same date. A copy of the Resolution has been appended as Annexure P-1 with the present petition.

5. The case set up by the petitioner is that the Secretaries of the various co-operative societies in the State of Punjab were demanding that common cadre

service rules be framed for them and security of service be provided to them. The union of the employees of the Co-operative Societies had served a notice that if their demands were not accepted, they would go on strike. Accordingly, the employees went on strike on May 1, 1981.

6. An industrial dispute was raised by the petitioner. The petitioner was duly referred to the learned Labour Court, Patiala for adjudication.

7. Before the learned Labour Court, the parties led their evidence. The management produced certain documents to show that notices had been served upon the workman and he had refused to accept the said notices. However, all the aforesaid notices were allegedly sent by the management under postal certificate only.

8. The management also led some evidence before the Labour Court showing that an amount of Rs. 517/- had been received by the workman from one Dalip Singh, who was a member of the Cooperative Society. However, the aforesaid amount had not been deposited by the workman with the office of Society. On that basis, it was sought to be shown that the workman had embezzled the amount belonging to the Cooperative Society.

9. On the basis of the aforesaid facts, the learned Labour Court held that the order of termination passed by the management was wholly justified inasmuch as the workman had absented from duty with effect from May 11, 1981 and had also embezzled an amount of Rs. 517/-. On that basis, the claim made by the workman challenging the order of termination and also for his reinstatement was rejected.

10. The copy of the award dated March 3, 1986 passed by the learned Labour Court has been appended as Annexure P4 with the present petition. The aforesaid award has been impugned by the workman-petitioner before this Court through the present writ petition.

11. I have heard Ms. Jagdeep Bains, the learned counsel for the petitioner and Shri Vikas Singh, the learned counsel for respondent No. 2 and with their assistance have also gone through the record of the case.

12. In my considered opinion, the award of the Labour Court is not legally sustain-able.

13. It is not in dispute that before passing of the order of termination, the petitioner was not served with any notice. No departmental proceedings were held against him.

14. It is the admitted position between the parties that the impugned action against the workman had been taken by the management merely because of his absence from duty. Although, a charge of embezzlement had also been levelled against him but no inquiry with regard to the aforesaid charge was also held.

15. Thus, obviously the termination of the petitioner was on the basis of a mis-

conduct.

16. The Hon^{ble} Supreme Court of India in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, has held even in the case where the workman had gone on illegal strike, it was incumbent on the management to comply with the rules of natural justice. The following observations made by the Apex Court may be noticed.

"65. In our opinion, the facts of the case before up speak for themselves. Here are workman on strike. The strike is illegal. The Management is hurt because production is paralysed. The strikers allegedly indulge in objectionable activities. The exasperated management hits back by ordering their discharge for reason set out "in several pages in the appropriate contemporaneous proceeding. Misconduct after misconduct is flung on the workers to justify the drastic action. In all conscience and common sense, the discharge is the punishment for the misconduct. The Management minces no words. What is explicitly stated, is not a colourless farewell to make way for fresh hands to work the factory until the strike is settled but a hard hitting order with grounds of guilt and penalty of removal.

66. The inference is inevitable, however, ingenious the contrary argument, that precisely because the Management found the workmen refractory in their misconduct they were sacked. May be the Management had no other way of working the factory but that did not change the character of the action taken. Once we hold the discharge punitive the necessary consequence is that enquiry before punishment was admittedly obligatory and confessedly not undertaken. The orders were bad on this score alone."

17. Reverting to the facts of the present case, it is obvious that neither the principles of natural justice were kept in view nor any inquiry against the petitioner was held by the management. The observations made by the Labour Court in the award Annexure P.4 that he was absent from duty and also that he had embezzled the amount cannot be taken to be a sufficient compliance with the aforesaid requirement. Even otherwise, the perusal of the award passed by the Labour Court does not show that the management has been able to prove the alleged misconduct of the workman or that the aforesaid two charges had been proved.

18. It is obvious that the absence of the petitioner was merely on the basis of a strike. In such a situation also, as held in Gujarat Steel Tubes Ltd."s case (supra) the management was bound in law to comply with the rules of natural justice and hold a domestic inquiry. No such domestic inquiry had been conducted. Nor the aforesaid charges against the workman could be taken to have been proved before the Labour Court.

19. In view of the aforesaid discussion, the present petition is allowed and the award Annexure P4 is set aside. Consequently, the order of termination passed against the petitioner is held to be illegal. The petitioner would be entitled to his

reinstatement with continuity of service. As a consequence of the aforesaid reinstatement, the petitioner would also be entitled to the back-wages for the period he has remained out of service as also held in 2003(3) S C T523.

No costs.