
(2015) 05 P&H CK 0401

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17705 of 2012 (O&M)

Kegg Farma Pvt. Ltd.

APPELLANT

Vs

Ravinder Nath Sharma and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 179 PLR 333

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Harsh Aggarwal, for the Appellant; G.S. Bal, Senior Advocate and A.D.S. Bal, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Amit Rawal, J—The present writ petition has been filed at the instance of the Management challenging the Award dated 02.12.2011 (Annexure P-6), of the Presiding Officer, industrial Tribunal-cum-Labour Court-II, Gurgaon, whereby, the reference has been answered in favour of the workman holding him to be entitled for reinstatement in service with continuity of service along with 50% back wages @ last drawn salary from the date of his termination till his reinstatement in service. Mr. Harsh Aggarwal, learned counsel for the petitioner-Management submits that the Award of the Labour Court is erroneous, much less, perverse as the workman was an employee of M/s. Kafco and M/s. Kegg Farms Pvt. Ltd. has nothing to do with M/s. Kafco and as the order dated 04.09.1997 (Annexure P-4), was passed by M/s. Kafco, therefore, the Labour Court has wrongly and perversely directed the Management to take workman back into service, much less, payment of 50% back wage;. He further submits that after passing of the Award, the letters dated 17.02.2012, Annexure P-7 and 16.03.2012, Annexure P-8, were sent to the workman to join back/report on duty. Despite that-the workman did not join the duty. He further submits that during the pendency of the writ petition, the petitioner superannuated on 30.04.2013.

2. In support of his aforesaid contention, he relied upon the judgment of this Court decided on 31.05.2012 rendered in CWP No. 10979 of 2012 titled as M/s. Gaurav International, Plot No. 506, Phase-III, Udhyog Vihar, Gurgaon v. Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Gurgaon and another to contend that if before passing of the Award, Management wrote letter to the workman to report on duty but he did not do so, thus, he is not entitled to back wages, much less, deemed to have abandoned the job.

3. Mr. G.S. Bal, learned Senior counsel assisted by Mr. A.D.S. Bal, Advocate submitted that Award of the Labour Court is just, fair, legal and in consonance with the evidence brought on record. In support of his contention, he referred to para 10 of the Award, to lend support that the petitioner-Management had offered appointment and M/s. Kamcon and M/s. Kaffco is group of companies and therefore, the petitioner-Management cannot take the benefit of being separate and different entity. He further submits that Annexures P-7 and P-8, whereby, the petitioner-Management had given offer to join in M/s. Kegg Farms Private Limited, was not at the same place but workman was directed to be transferred in Tamil Nadu and such action of Management is nothing but, act of harassment and humiliation.

4. In support of his aforesaid contention, he relied upon the judgment of this Court in Ansal Properties and Industries Limited Vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon and Another, (2013) 1 LLJ 570 : (2012) LLR 1146 : (2013) 1 SCT 314 .

5. I have heard learned counsel for the parties and appraised the paper book and as well as the case law cited at bar.

6. Before advertizing to the respective/rival contentions of the learned counsel for the parties, it would be apt to reproduce para 10 and 11 of the Award of the Labour Court, which read thus:--

"10. In the written statement it is clearly alleged by the management that Kegg Farms (P) Ltd., is a company which had group of companies such as Kamcon; Keffco etc. Ex. R-1 is the copy of letter dated 3.4.1991, which shows that workman was appointed as Store Keeper w.e.f. 1.4.1991 in Kemcon. Ex. R-2 letter dated 5.4.1993 shows that the workman was also assigned the duties as Cashier at Production Division of Keggfarms Pvt. Ltd. w.e.f. 5.4.1993. It, further, shows that these companies were interconnected companies and were not independent to each other. Ex. R-3 letter dated 21.8.1993, shows that Kemcon transferred the workman to Keggfarms Accounts Section at PDO. Ex. PW1/1 is the increment letter issued by Keggfarms Pvt. Ltd. on 31.1.1994 and Ex. PW1/2 is the increment letter dated 12.8.1995 issued by Keggfarms Pvt. Ltd. Ex. R-4 is another copy of letter dated 12.8.1995, which shows that the workman was transferred from Keggfarms Pvt. Ltd. to Kafco. Ex. R-5 is the copy of letter issued by Kafco, which shows that an incident allegedly took place in June, 1997 and it was reported that the workman misbehaved with Vijay Kumar and his one

increment was stopped and he will be marked absent from the duty from 20th June to 20th July, 1997. Ex. R-6 is the copy of letter dated 4.9.1997 issued by Kafco, which shows that as per para 17 of your appointment letter dated 3.4.1991, the Management feels that your services are not more required and hence he will cease to be an employee w.e.f. 20.9.1997.

11. Admittedly the workman has completed more than 240 days of continuous service with the respondent. It is to be clarified that all the companies are inter-connected companies and were part of group of Keggfarms Pvt. Ltd. and such an employee can not be terminated from the services in view of any condition in the appointment letter. No notice or charge sheet was issued to the workman for his alleged misconduct and no enquiry etc. was conducted against the workman to prove the alleged termination."

7. Since the services of the workman had not been terminated in compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947, Management ought to have held inquiry and in case the workman had not responded to show cause notice would have held ex-parte. The plea, that workman had not reported back on duty despite having been issued letters dated 7.02.2012, Annexure P-7 and 16.03.2012, Annexure P-8, workman, is also mis-conceived as is cited in the judgment, the workman was called upon to report back on duty in the same premises, where he was earlier working, whereas, in the instant case, the workman was called upon to report in the Unit at Tamil Nadu i.e. factory premises of the petitioner-Management. Such action, as per the ratio decidendi called out by this Court in Ansal Properties and Industries Limited" case (supra) has been depreciated. It is a device to cause harassment and humiliation to workman who had raised industrial dispute. Award of the Labour Court entitling workman to be reinstated into service along with 50% back wages is wholly legal and justified, as per the demand notice, it has categorically been averred that the workman was not gainfully employed, during the period he remained out of service and thus, the principles culled out in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716 have been complied with. Since the workman has superannuated on 30.4.2013, therefore, from the date of alleged termination i.e. 04.09.1997, till the date of publication of the Award, the workman is entitled to 50% back wages, thereafter, full back wages till he superannuated. The petitioner-Management is directed to pay full compensation to the workman within a period of three months from the date of receipt of a certified copy of this order, failing which, the aforesaid amount shall entail interest @ 12% per annum. With the aforesaid observations, writ petition stands disposed of.