
(2003) 07 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 2153 of 1987

Kitab Singh and Others

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A, 25FF

Citation : (2003) 135 PLR 263

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Rajnish Dadwal, for the Appellant; Gurinderpal Singh, for Respondent No. 2, Anil Rathee, for Respondent No.3-Co-operative Society and S.S. Dalal, for Respondent No.4, for the Respondent

Judgement

Satish Kumar Mittal, J.—This order shall dispose of Civil Writ Petitions No. 2153, 2154, 2983, 3574 and 3575 of 1987. Civil Writ Petitions No. 2153 and 2154 of 1987 have been filed by Kitab Singh and Ved Singh workmen against part of the award made by the Labour Court, Rohtak, vide which they have been awarded a compensation of Rs.5,000/- in lieu of reinstatement with back wages, whereas the other three writ petitions have been filed by the Management-Society for setting aside the award made by the Labour Court, Rohtak, vide which the termination of the services of the workmen were held to be illegal. Since in all these five writ petitions common questions of facts and law are involved, therefore with the consent of learned counsel for the parties, the same are being disposed of by this common order. The facts are being taken from Civil Writ Petitions No. 2153 and 3575 of 1987.

2. Kitab Singh, petitioner in Civil Writ Petition No. 2153 of 1987, was appointed as Salesman on 27.5.1981 by the Haryana State Federation of Consumers Cooperative Wholesale Stores Limited (Confed), Chandigarh, respondent No. 2, on a consolidated salary of Rs.350/- per month. On 19.10.1982, respondent No. 2 transferred the services of the petitioner-workman to Kohla Cooperative

Agriculture Credit Society Ltd. Kohla, respondent No. 3. At that time, the petitioner workman was told that he was being sent on deputation to respondent No. 3 and he shall remain employee of respondent No. 2 on the same terms and conditions. Ultimately, respondent No. 3, vide its order dated 18.5.1983, terminated the services of the petitioner workman without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The petitioner workman raised an industrial dispute and the same was referred by the appropriate Govt. to the Labour Court, Rohtak for its adjudication. Originally, the reference was made against respondent No. 2 only, but sub-sequently on an application made by the petitioner workman, respondents No. 3 and 4 were also impleaded as it was deemed necessary for proper and effective adjudication of the dispute between the parties. Respondent No. 2 and respondents No. 3 and 4 filed separate written statements.

3. In its written statement, respondent No. 2 stated that under the order of the Registrar, Co-operative Societies, Haryana, all the retail outlets of respondent No. 2 along with their staff were transferred to respondents No. 3 and 4 and thereupon the petitioner workman joined services with respondent No. 3. According to the written statement filed by respondents No. 3 and 4, it was alleged that the petitioner workman was appointed purely on temporary basis vide its resolution on 19.10.1982 and his services were terminated on 18.5.1983. Since he had not completed 240 days in its employment, therefore, the question of complying with the provisions of Section 25-F of the Act did not arise. It was further alleged that since the respondent Society was running in heavy losses, therefore, it was decided to close its retail outlet and consequently, the petitioner workman was retrenched.

4. The Labour Court, vide its award dated 31.7.1986 (Annexure P-1), has held that services of the petitioner workman were transferred to the Mini Bank respondent No. 3 (SIC) taken by respondent No. 3 that the petitioner workman was appointed afresh after his transfer from respondent No. 2 was not accepted because he was transferred by the Registrar, Co-operative Societies, Haryana, on the same terms and conditions. The contention of respondent No. 3 that the petitioner workman did not complete 240 days of actual work, was also not accepted and it was held that his services were illegally terminated by respondent No. 3 without complying with the provisions of Section 25F of the Act. The termination of the services of the petitioner workman was held to be illegal, however the learned Labour Court awarded a compensation of Rs.5,000/- to the petitioner-workman in lieu of reinstatement with back wages. The reason for awarding the compensation was given that the society was running in losses, due to which the retail outlet of the society was to be closed and the reinstatement of the petitioner workman would amount to saddling the society with an unwanted employee, who would have to be paid back wages without any work being done by him.

5. The petitioner-workman as well as the Management Society were not satisfied with the aforesaid award. The petitioner-workman filed Civil Writ Petition No. 2153 of 1987 for setting aside part of the award, vide which a meagre amount of Rs.5,000/- was awarded as compensation in lieu of reinstatement and the Management Society filed Civil Writ Petition No. 3575 of 1987 challenging the finding of the Labour Court with regard to holding the termination of the services of the petitioner workman to be illegal.

6. I have heard the arguments advanced by learned counsel for the parties. Learned counsel for the Management Society, while assailing the award passed by the Labour Court, has submitted that the award made by the Labour Court against the Management Society is wholly illegal and without jurisdiction as in the original reference the matter was referred only against respondent No. 2. The Labour Court, subsequently, has im-pleaded respondents No. 3 and 4 as party on an application filed by the petitioner-work-man. He submitted that the Labour Court was having no jurisdiction to implead respondents No. 3 and 4 as parties. In this regard, he has referred to the decisions of the Calcutta High Court in *Kesoram Cotton Mitts Ltd. v. Second Labour Court and ors.* AIR 1963 Calcutta 848 and *Assam Railway Trading Co. v. Central Government Industrial Tribunal*, 2 1970 Lab.I.C., 488. Secondly, learned counsel for the Management Society submitted that the petitioner workman has joined the services with respondent no.3 only on 19.11.1982 and his services were terminated on 18.5.1983. By that time, he did not complete 240 days, therefore, he was not entitled to the protection provided u/s 25-F of the Act. He further submitted that the Labour Court has wrongly relied upon Section 25-FF of the Act as the petitioner workman was not transferred to respondent No. 3, rather he was being given a fresh appointment by the Management Society.

7. After hearing the arguments of learned counsel for the parties on the aforesaid two points, I do not find any substance in the same. In the instant case, the Labour Court impleaded respondent No. 3 and 4 on the application filed by the petitioner-work-man, while it was found that respondent No. 2 had legally and validly transferred the services of petitioner workman to respondent No. 3 and 4 under the orders of the Registrar, Co-operative Societies, Haryana. The Labour Court has the jurisdiction to implead such employer to whom services of the employee were legally and validly transferred. In *Hochtief Gammon v. Industrial Tribunal*, 3 AIR 1964 S.C. 1946, the Apex Court has I held as under: -

"If the Industrial Tribunal, while dealing with an industrial dispute, came to the conclusion that persons other than those mentioned as parties to the industrial dispute were necessary for a valid determination of the said dispute, it had the power to (SIC) the side of the employer, or on the side of the employee, it may direct that other person should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully present the interests of the employer as such other person who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in

the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions at it may deem necessary. The test always must be is the addition of the party necessary to make adjudication itself effective and enforceable? In other words, the test may well be, would the nonjoinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited."

8. The judgments cited by the learned counsel for the Management Society are neither relevant nor applicable in the facts and circumstances of the case. Both these judgments pertain to the power of the appropriate Govt. to add parties after the reference has already been made to the Labour Court. In that situation, it has been held that the appropriate Govt. has no power to add the parties after the reference has already been made. The appropriate Govt. can only correct the mistakes in the reference if the same are apparent on the face of the record but it has no jurisdiction to add any other work-man in the list of parties to an industrial dispute already referred. Though the appropriate Govt, cannot add the party, but it has power to make a second reference in respect of those parties. This is not the position here. In the instant case, no workman has been added as a party, The Labour Court, on the application made by the petitioner workman, after filing of written statement by respondent No. 2, has added respondents No. 3 and 4 being necessary party for just, proper and effective adjudication of the industrial dispute referred to it. I do not find any infirmity or illegality in this aspect of the matter. Secondly, there is no force in the second contention of learned counsel for the Management Society that the petitioner-workman had not completed 240 days in service at the time of termination of his service by respondent No. 3. The petitioner-workman was initially appointed on 27.5.1981 by respondent No. 2. His services were transferred to respondents No. 3 and 4 on the transfer of all retail out let of respondent No. 2 under order of the Registrar, Co-operative Societies, Haryana, with the same terms and conditions. Learned Labour Court has rightly come to the conclusion that the appointment of the petitioner workman with respondent No. 3 cannot be termed as fresh or *denovo* appointment. The provisions of Section 25-FF of the Act are clearly applicable in the present case and the Labour Court has rightly come to the conclusion that at the time of termination of the services of the petitioner workman, he had already completed 240 days and his services were terminated in gross violation of the mandatory provisions of Section 25-F of the Act. I do not find any infirmity or illegality in the said finding of the Labour Court.

9. In view of the aforesaid discussion, Civil Writ Petitions No. 2983, 3574 and 3575 of 1987 filed by the Management Society are hereby dismissed with no order as to costs.

10. I have heard learned counsel for the parties on Civil Writ Petitions No. 2153 and 2154 of 1987 filed by the workmen against part of the award vide which a compensation of Rs.5,000/- has been awarded to them in lieu of reinstatement

with back wages. I am of the opinion that the awarding of compensation of Rs.5,000/- in lieu of the reinstatement is wholly unreasonable and inadequate. Once the termination of the services of a workman is held to be illegal, then normally he should be reinstated in service with back wages, though in exceptional circumstances, the Labour Court had discretion to award reasonable and adequate compensation to the workman in lieu of reinstatement. Section 11-A of the Act vests the industrial adjudicators with discretionary jurisdiction to give such relief to the workmen in lieu of reinstatement as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper. The reason given by the Labour Court for not ordering the reinstatement of the workmen was the financial position of the Management Society. In my opinion, the amount of Rs.5,000/- awarded as compensation in lieu of reinstatement of a workman is totally unreasonable, unjustified and inadequate. It is totally illusory. The services of the workmen were illegally terminated on 18.5.1983 and the Labour Court made its award on 3.7.1986. The termination of the services of the workmen was held to be illegal and totally in violation of the mandatory requirement of Section 25-F of the Act. Keeping in view the services rendered by the work-men, the grounds of termination of their services, the duration of termination of their services, date of impugned award, the quantum of back wages receivable by the work-men, compensation for deprivation of the job with future prospect and obtainability of alternative employment, capacity of the employer to pay the nature of the employer's business and the gainful employment, I am of the opinion that it will be just and appropriate if the compensation payable to the workman is determined as Rs. 35,000/- instead of Rs.5,000/-. It will be just and fair compensation in lieu of the reinstatement. Accordingly, Civil Writ Petitions No. 2153 and 2154 of 1987, filed by Kitab Singh and Ved Singh workmen, are partly allowed and both the petitioners workmen are held to be entitled for a compensation of Rs.35,000/- each in lieu of their reinstatement in the service of the Management Society.

No order as to costs.