

(2014) 11 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 24299 of 2014

KRBL Limited

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151
Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 2 SCT 137

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Vikas Bahl, Senior Advocate, Aman Bansal and Somiya Singh,
Advocates for the Appellant

Judgement

Tejinder Singh Dhindsa, J.—Challenge in the instant writ petition is to the award dated 10.9.2014 passed by the Presiding Officer, Industrial Tribunal, Patiala whereby the reference has been answered in favour of the workman/respondent No. 2 and he has been held entitled to reinstatement with continuity in service with 50% backwages. Mr. Vikas Bahl, learned Senior Counsel appearing for the Management, would submit that respondent No. 2 had left the job of his own volition and had submitted his resignation on 20.8.2007, which was accepted on 26.8.2007. It has been argued that the finding of the Tribunal with regard to the resignation letter being forged and fabricated is perverse inasmuch as no evidence in the nature of a report of any handwriting expert nor any independent witness had been produced to discharge the onus which was on the workman who had denied the existence of such document. In furtherance of such submission, it has been contended that the workman in his cross-examination had himself admitted that he had left the job and by virtue of such admission, it was clearly discernible that his services had never been terminated and rather he had resigned from service.

2. It has also been argued that the Tribunal has erred in drawing an adverse

inference against the employer by observing that the attendance record from 9.4.2007 to 20.8.2007 had not been produced. In this regard, learned counsel would advert to the application dated 26.8.2011 preferred by the workman before the Tribunal whereby the attendance record from 16.7.2005 to 7.4.2007 only had been sought for. It is contended that the record pertaining to the period mentioned in the application had been duly produced before the Tribunal. Further submission raised is that while recording a finding as regards non-compliance of Section 25-F of the Industrial Disputes Act (for short "the Act"), the Tribunal has not taken the relevant period into consideration i.e. twelve preceding months from the date of acceptance of resignation dated 26.8.2007. In this regard, it has been argued that the workman had absented continuously after 7.4.2007 and subsequently submitted his resignation on 20.8.2007 and which was duly accepted on 26.8.2007. It is also the pleaded case of the Management in the instant petition that the workman is an incorrigible and unscrupulous person who used to create problems for the Management and co-workers and as such, he cannot be retained in service as his very presence would spoil the congenial atmosphere and working of the petitioner-Company.

3. By way of last resort, an argument has also been raised that even if there be violation of Section 25-F of the Act, reinstatement could not have been directed as a matter of routine and more so, in view of the fact that the workman had to his credit, length of service of only two years approximately and a considerable period of time having elapsed since the alleged date of termination. In support of such contention, reliance has been placed upon two decisions of Hon'ble Supreme Court i.e. Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, and B.S.N.L. Vs. Bhurumal, as also recent Full Bench decision of this Court in Municipal Council Vs. Presiding Officer, Labour Court, .

4. Having heard learned Senior Counsel at length and having perused the paper book, this Court is of the considered view that no basis for interference in the impugned award dated 10.9.2014 at Annexure P7 is made out.

5. The case of the workman before the Tribunal was that he had been appointed on the post of Personal Assistant on 16.7.2005 and had put in continuous service upto 7.4.2007 and whereupon his services were terminated without any notice, enquiry or compensation having been paid. Claim of the workman was resisted by the Management taking a plea that he had left the job of his own accord and had submitted his resignation letter on 20.8.2007 and which was duly accepted w.e.f. 26.8.2007.

6. The following issues were framed by the Tribunal on 19.11.2010:

1. Whether the services of workman were terminated illegally by the respondents? OPW
2. If the Issue No. 1 is proved, whether the workman is entitled to consequential relief as claimed in the claim statement? OPW

3. Whether the reference is not maintainable as the workman has himself resigned on 20.8.2007? OPM

4. Whether the workman has got no locus standi to seek relief the Industrial Disputes Act? OPM

5. Relief.

7. While taking up Issues No. 1 to 4 together, the Tribunal has disbelieved and discarded the resignation letter Exhibit W5 and Exhibit M2 on the reasoning that if it was the case of the Management that the workman had absented from 9.4.2007 to 20.8.2007, then the relevant attendance record should have been produced and brought on file to prove the factum of such absence during the relevant period of time. Tribunal has further noticed that the Management did not issue any letter/communication to the workman for this entire period i.e. 9.4.2007 to 20.8.2007 calling upon him to join back and report for duty.

8. As regards non-issuance of communication to the workman to report back for duty, the same is admitted even by the learned Senior counsel during the course of hearing today.

9. This Court finds it difficult to reconcile to a situation whereby an employee holding the post of Personal Assistant would not have reported for duty for a period in excess of four months and yet the employer would have made no efforts to call upon him to attend to his duty or to have taken steps to initiate disciplinary action against such erring employee. Undoubtedly, the application dated 26.8.2011 moved by the workman/respondent No. 2 before the Tribunal for production of the attendance record was for the period 16.7.2005 to 7.4.2007, yet since it was the categoric plea and stand of the Management that the workman had absented after 7.4.2007, the onus was squarely on the Management to have produced the attendance record/relevant material from 7.4.2007 onwards till 20.8.2007 i.e. the date the alleged resignation letter was submitted to prove absence of the workman from duty. Concededly, such record was never produced and was withheld. Under such circumstances, this Court does not find any infirmity with the view taken by the Tribunal in discarding the resignation letter dated 20.8.2007 and such view is based on valid and cogent reasoning.

10. At this stage, learned Senior counsel would submit that an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for producing and proving on record Annexures P10 to P12 in additional evidence has been filed along with the instant petition. In this regard, it is submitted that the relevant attendance register for the months of March and April 2007 has now been traced after a thorough search and the relevant entries pertaining to March 2007 and April 2007 have been produced on record at Annexures P11 and P12 respectively. On the strength of such documents, it is submitted that the workman had absented himself after 7.4.2007 and has been marked absent. As per learned counsel, the diagonal lines in the attendance register reflect that an

employee is absent from duty."

11. To test the veracity of such contention, the original attendance register for the months of March and April 2007 has been perused by this Court at the time of hearing today. Suffice it to observe even such contention raised on behalf of the Management is mis-leading. In the month of April 2007, the workman has been shown present for a period of six days i.e., upto 7.4.2007 and 8.4.2007 has been marked with alphabet "R" i.e. Rest day. Thereafter, a diagonal red line has been entered for the entire month except for 15th, 22nd and 29th April having been shown as Rest days with alphabet "R" and 13th April having been shown as a holiday and marked with alphabet "H". Perusal in detail of the original register would also reveal that wherever an employee is on leave, the same is marked with alphabet "L" and in the case of absence, the same is depicted by alphabet "A". This would be clear from the entries for the month of April 2007 in the case of Balwinder Singh and in the entries for the month of March 2007 pertaining to Harvinder Singh. No plausible explanation has come forth from the learned counsel as to why the petitioner had not been marked absent with alphabet "A" after 8th April, 2007 as was the practice with all the other employees. The Management, as such, cannot be permitted to derive any weightage from the documents sought to be proved and produced as additional evidence at Annexures P10 and P11.

12. Even the contention as regards the workman having himself admitted in his deposition of having left the job is without merit. The deposition of WW 1 i.e., the respondent-workman and in cross-examination has been placed on record at Annexure P6. The opening sentence was to the following effect:

"I left my job under pressure made by Shri M.M. Bhatt, CEO of the respondent/Management."

13. In the later part of the deposition, workman stated as under:

"It is wrong to suggest that I have submitted my resignation due to the said misconduct. I never resigned from the job."

14. The deposition of the workman would have to be read as a whole. No inference can be drawn therefrom which could be construed as an admission on his part as regards having resigned from service. To the contrary, there is a categoric denial with regard to resignation.

15. The falsity of the stand and plea of the Management as regards the workman having resigned from service would even reflect if the deposition of Management witness MW 1, Sagar Sidhu, Deputy General Manager is adverted to. His deposition has been reproduced in para 7 of the petition and he has stated before the Tribunal to the following effect:

"That it is also pertinent to mention here that he is totally unscrupulous and incorrigible person and always creates problem for the management and Co. CIVIL workers. He was warned so many times but he could not improve his

conduct. Rather he remained absent from his duty from 09 April 2007 to 20.8.2007 and the date of receipt of his resignation letter is dated 20.8.2007."

16. Even in the present petition, the pleaded case of the Management is that the workman is incorrigible and unscrupulous and his retention in service would spoil the congenial atmosphere and working of the Company. No evidence/record has been adduced as regards any disciplinary action having been initiated against the workman and in which findings may have been returned to label respondent No. 2 as "unscrupulous" and "incorrigible". The deposition of MW 1 holding the post of Deputy General Manager in the petitioner-Company as also the pleadings on record are clearly reflective of the intent of the Management to get rid off the workman.

17. In view of the discussion above, this Court concurs with the findings returned by the Tribunal that it is a case of termination and not resignation.

18. To examine compliance of Section 25-F of the Act, the relevant period would have to be reckoned as the twelve preceding months from the date of termination i.e. 9.4.2007.

19. The Tribunal has noticed the deposition of Management witness Sagar Sidhu, MW 1, who in cross-examination admitted that as per record, the workman had worked continuously from 16.7.2005 to 9.4.2007. In other words, he had completed more than 240 days in the twelve preceding months taken from the date of termination. Workman had not been served any notice neither paid wages in lieu of notice period or compensation. Finding of the Tribunal as regards non-compliance of Section 25-F of the Act is well-founded and also does not call for any interference by this Court under its supervisory jurisdiction.

20. The reliance placed by learned Senior counsel upon the judgment in Jagbir Singh's case, Bhurumal's case and Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur's case (supra) is also wholly mis-placed. In Jagbir Singh's case (supra), the appellant therein was engaged as a daily wager and while holding that an order of retrenchment passed in violation of Section 25-F of the Act though may be set aside, but an award of reinstatement should not be automatically passed, the Apex Court had distinguished between a daily wager who does not hold a post as opposed to a permanent employee. Likewise, in Bhurumal's case (Supra), it was held that where the termination of a daily wage worker is found illegal because of the procedural defect i.e. violation of Section 25-F of the Act, reinstatement with backwages is not automatic and instead workman should be given monetary compensation. The Full Bench of this Court in Municipal Council, Dina Nagar, Tehsil & Distt. Gurdaspur's case (supra) was also considering a question as to whether persons appointed on public posts without following proper procedure would be entitled for reinstatement on account of violation of the provisions of Section 25-F of the Act.

21. In the present case, learned Senior counsel has candidly conceded that the workman was a confirmed employee and had been appointed on the post of

Personal Assistant in pursuance to a regular selection process. The judicial precedents relied upon on behalf of the Management would, as such, have no applicability to the present case. For the reasons recorded above, the impugned award dated 10.9.2014 at Annexure P7 is affirmed and the writ petition is dismissed.