
(2013) 01 P&H CK 0254
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4667 of 1994

Mansa Co-Operative Spinning Mills Ltd. APPELLANT
Vs
Presiding Officer and Another RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2013) 137 FLR 830 : (2013) LLR 766

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Puneet Kansal, for the Appellant;

Final Decision : Partly Allowed

Judgement

Ritu Bahri, J.—This writ petition u/s 226 /227 of the Constitution of India is for issuance of a writ of Certiorari for quashing the award dated 10.2.1994 (Annexure P6).

Petitioner-The Mansa Co-operative Spinning Mills Limited, Mansa, is a registered society. Respondent No. 2 joined the Management as a Sider on 12.1.1988. His services were terminated on 7.10.1989. He raised a demand notice and the Management contested the demand notice and took a stand that he had absented himself from duty with effect from 7.10.1989. Before the Labour Court, the following two issues were framed:

1. Whether the reference is not maintainable as alleged in legal objections taken in written statement?
2. Whether the order of termination of services of the workman is justified and in order?

The case pleaded by L.S. Sangha MW1 was that the workman was absented himself from duty continuously from 7.10.1989 without any leave and notices Ex. M/1, M/2 and M/3 were sent to him. During conciliation proceedings the

Management made an offer of reinstatement of the workman before the Labour-cum-Conciliation Officer. As per the record, after termination on 7.10.1989 the demand notice was served on 23.11.1989. A complaint was filed by the workman on 23.11.1989 before the Labour-cum-Conciliation Officer. After noticing the above facts, the Labour Court gave an award dated 10.2.1994 (Annexure P-6) in favour of the workman holding that the termination was against the provisions of the Industrial Disputes Act.

2. The Labour Court came to a conclusion after going through the facts that the Management had made a feeble attempt to offer reinstatement during the conciliation proceedings. Reference was answered in favour of the workman that the termination was against the provisions of the Industrial Disputes Act. The workman was reinstated with continuity of service and back wages with effect from 23.11.1989.

3. Mr. Puneet Kansal, Counsel for the petitioner, has referred to a judgment passed by this Court on 2.2.2010 in the case of The Punjab Co-operative Cotton Marketing and Spinning Mill Federation limited v. S.P. Dahiya and others, (L.P.A. No. 194 of 2003 in C.W.P. No. 13244 of 2000) wherein the petitioner has been removed from service and his termination was quashed and he was reinstated with full back wages. The workman was appointed on 17.12.1995 and was removed from service on 8.4.1997. The LPA Bench had set aside the order of reinstatement with full back wages. However, the reinstatement order was affirmed.

4. The Supreme Court in Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, held that grant of full back wages on reinstatement was not an automatic order. The employee has to show that he was not gainfully employed so as to enable him to full back wages. The initial burden was on him. The employer is at liberty to bring on record material to rebut the claim of the workman that he was not working during the period he was out of service.

5. The Supreme Court in Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, has observed that a law in absolute terms cannot be laid down as to in which cases and under what circumstances full back wages can be granted. This relief has to be granted by the Industrial Tribunal keeping in view the facts and circumstances of each case. The plea has to be raised by the workman that he was not employed in the integrum period for seeking full back wages.

6. In the matter of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, the Supreme Court has reiterated its earlier view that the payment of full back wages cannot be a natural consequence in proceedings challenging termination under the Industrial Disputes Act. In J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, the Supreme Court has observed that there was a misconception that whenever reinstatement was directed continuity of service and full benefits should follow as a matter of course. The disastrous effect of granting consequential benefit which resulted into several promotions to a person

who has not worked for 10-15 years is seldom visualize while granting consequential benefits automatically.

7. After going through the award passed in the present case no evidence has been led by the workman to show that he had been unemployed during the integrum period with effect from 23.11.1989 till 10.2.1994 when the award was passed. The Supreme Court in a recent case in Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, had granted Rs. 40,000/- as monetary compensation to a workman who had been reinstated with consequential benefits after a gap of 25 years. In that case, the workman had worked for 2 to 3 years and relief of reinstatement with full back wages was not found to be justified. In paragraph 9 the Supreme Court has observed as under:--

9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

8. The Supreme Court in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, has made similar observations in paragraph 7 as under:--

7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

9. The services of the present workman were terminated way back in the year 1989. After the award was passed he was taken back in service but subsequently he absented himself again from duty. This was evident from the order dated 5.3.1997 passed in C.M. No. 922 of 1997. The petitioner had made an application u/s 17-B of the Industrial Disputes Act for directing the Management to pay back wages. The Management in the reply by way of affidavit dated 2.3.1997 of Shri Pawan Kumar Garg Chief Executive Mansa Cooperative Spinning Mill Ltd., Mansa, has stated that he had been gainfully employed by opening a shop of fruits and vegetables in the Sabzi Mandi, Mansa. After reinstatement he had been paid wages from May, 1994 to July, 1995 vide order dated 5.3.1997. In CM. No. 922 of 1997 in view of the fact that the workman had absented himself from duty the petitioner-Management was granted liberty to pass appropriate orders in accordance with law. Keeping in view that the respondent-workman has not been working with the Management after July 1995 and in view of the judgment of the Supreme Court the award dated 10.2.1994 (Annexure P-6) is

modified and instead of reinstatement and full back wages the workman is held entitled for a compensation of Rs. 30,000/-. With the above observations, the writ petition is partly allowed.