
(1976) 04 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1247 of 1974

Morinda Co-Operative Sugar Mills Ltd.	APPELLANT
Vs	
Om Parkash Jyosthi and others	RESPONDENT

Date of Decision : 20-04-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c)

Citation : (1976) 04 P&H CK 0020

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Advocate : V.K. Koura and Girdhar Govind, for the Appellant; Kuldip Singh, R.S. Mongia and G.R.P. Singh and Nemo, for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh Bains, J.—The Petitioner is a cooperative society (hereinafter referred to as Petitioner-mill) registered under the Punjab Co operative Societies Act, 1955 for the principal purpose of establishing and running a sugar mill for the economic development of the State of Punjab. The Sugar Mill was established by the Petitioner at Morinda in the year 1962. It has employed about 230 permanent employees, with additional hands totalling about 700 to 750 during the season. Respondent No. 1 was employed by the Petitioner-mill in the year 1963 and his services were terminated by the Petitioner mill from 30th September, 1969. Demand notice was issued on behalf of the worker by its Union and also individually by the workman and ultimately the dispute was referred by the labour Commissioner, Punjab, vide order dated July 10, 1970, to the Labour Court, Ludhiana, for adjudication u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Industrial Act")-The reference was in the following terms: -

Whether the termination of services of Om Parkash workman is justified and in order ? if not, to what relief/exact amount of compensation is he entitled ?

It was alleged before the Labour Court by the workman that he was working since 1962, and his services were wrongly retrenched and that his retrenchment is unjustified ; firstly on the ground of malafide and secondly for non-compliance with the mandatory provisions of Section 25-F of the Industrial Act; and he prayed that he may be reinstated with full back wages. His claim was resisted by the Petitioner-mill and the parties contested on the following issues before the Labour Court:

(1) Whether the present references are illegal and without jurisdiction as alleged in the preliminary objections of the written statement ?

(2) Whether the termination of services of the workmen concerned in each case is justified and in order ?

(3) If issue No. 2 is found against the Respondent, to what relief/exact amount of compensation are the workmen concerned entitled.

2. Since the representatives of the Petitioner-mill did not advance any argument on issue No. 1, it was decided against them. Regarding issue No. 2 it was held that retrenchment was bona fide and not malafide but since it was in contravention of the provisions of Section 26-F of the Industrial Act it was illegal and invalid. Under issue No. 3 the Labour Court directed the Petitioner-mill to reinstate the workman with continuity of service and back wages for the unemployed period. Dissatisfied with the award of the Labour Court the Petitioner-mill filed the present petition.

3. Mr. V. N Koura, Learned Counsel for the Petitioner-mill, argued that the Petitioner-mill is a co operative society registered under the Punjab Co-operative Societies Act, hence the provisions of the Industrial Act are not applicable to them. Since it is a dispute between the employee and the management it squarely falls within the scope of Section 55 of the Punjab Co-operative Societies Act, 1961.

4. The argument of the Learned Counsel is that the Petitioner-mill is registered under the Punjab Co-operative Societies Act and that a dispute between the workman and the management could only be referred to the Registrar, Cooperative Societies u/s 55 of the Punjab Co-operative Societies Act, 1961. I do not find any merit in this contention. Section 55 is reproduced below:

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises

(a) among members, past members or persons claiming through members, past members and deceased members, or

(b) between a member, past member or persons claiming through a member, past member and deceased member and the society, its committee or any officer, agent or employee of the society, or liquidator past or present, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator or another society or between the liquidator of one society and the Liquidator of another society such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of Sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representative of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not.

(c) any dispute arising in connection with the election of any officer of the society

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

The reading of this section shows that only a dispute, touching the Constitution, management or business of the co operative society which arises among members, or between a member and employee of the Society or between the society and employee are referable to the Registrar for decision but the present dispute regarding the termination or retrenchment of the services of the workman cannot be termed as touching the Constitution, management or business of the Petitioner mill and referred to the Registrar This aspect of the matter is concluded by a Division Bench judgment of this Court in M/s The Bhatia Central Cooperative Bank Ltd., Bhatinda v. The State of Punjab L.P.A. No. 312 of 1969. L.P.A. No. 312 of 1962, decided on 16th July, 1970 and The The Jullundur Transport Co-operative Society Vs. The Punjab State and Another, In Jullundur Transport (supra) case it has been held by this Court as under:

The disputes contemplated by Section 50 are not intended by the Legislature to cover all of kinds of disputes and this provision is not meant to be all embracing. A reading of Sub-section (1) of Section 50 clearly shows that though the words "touching the constitution of business of the society" are unqualified and extremely wide and comprehensive, still the Legislature did not intend to include

in this expression" industrial disputes" for the adjudication of which the Parliament has enacted the Industrial Disputes Act. The proviso to Sections 50(1) supplies a key to the intention of the Legislature and it almost conclusively suggests that it is only such disputes as are capable of being tried by a regular suit which are covered by the provisions of Section 50. It is also significant that there is no provision in the Co operative Societies Act which excludes the applicability of the Industrial Disputes Act to the Industrial Disputes which may arise between co-operative societies and their workmen Besides, the Industrial Disputes Act is a special enactment dealing with the special subject of industrial disputes and special provisions have been made in this statute for setting up Tribunals qualified for adjudicating upon them. The Punjab Cooperative Societies Act, when considered in this light is, on the other hand, a general enactment and its provisions must yield to the provisions of the Industrial Disputes Act whenever the provisions of the latter Act are by their language clearly applicable to a particular dispute

5. Rest of the contentions raised by the Learned Counsel for the Petitioner-mill are inter connected and can be disposed of together. His main argument is that the Labour Court could not travel beyond the matter which was referred to it by the Government u/s 10(1)(c) of the Industrial Act. His objection is that only a dispute regarding termination and not retrenchment of services of the workman-Respondent was referred to the Labour Court. He says that termination and retrenchment are two distinct terms. His argument is that u/s 10(1)(c) of the industrial Act only those matters could be referred to the Labour Court for adjudication which are specified in second schedule and under item 3 of the second schedule the discharge or dismissal of workman including reinstatement of, or grant or relief to, workmen wrongfully dismissed, could be referred. He further contends that retrenchment is mentioned under item No 10 of the third schedule which is within the jurisdiction of Industrial Tribunal and the Labour Court could not go into the same. In order to appreciate the argument of the Learned Counsel it is necessary to reproduce below Section 10(1) (c) of the Industrial Act:

Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing -

(a) * * *

(b) * * *

(c) refer the dispute or any matter appearing to be connected with or relevant to the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication, or

(d) * * * Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c).

Provided further * *.

A plain reading of this section shows that a dispute or any matter connected with or relevant to the dispute if it relates to any matter specified in the second schedule can be referred to the Labour Court for adjudication. The second schedule deals with matters within the jurisdiction of the Labour Court and the relevant item No. 3 is reproduced below:-

Discharged or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed " The third schedule deals with matters within the jurisdiction of the Industrial Tribunal and the relevant provision for our purpose is item No. 10, which is as under:

Retrenchment of workmen and closure of establishment." The term "retrenchment" is defined in Section 2(oo) of the Industrial Act as under:

retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) voluntary retirement of the workman ; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of a workman on the ground of continued ill-health.

6. A reading of the section shows that retrenchment means termination of the service of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action ; and it shall not include voluntary retirement or retirement on reaching the age of superannuation or termination on the ground of continued ill-health. The term "termination" is not defined any where in the Act. In the second schedule item No. 3 clearly indicates that a matter relating to discharge or dismissal of workman including reinstatement of, or grant of relief to, workman wrongfully dismissed falls within the jurisdiction of the Labour Court. The term "discharge", "dismissal" or "termination" is not defined anywhere in the Act and these terms do fall under the definition of "retrenchment" as noticed earlier, and as such termination of service of a workman is within the scope of the Labour Court. It is also relevant to refer to first proviso to Section 10(1) of the Industrial Act which is in the the following terms

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c).

Proviso makes it clear that where the dispute relates to any matter specified in Third Schedule and is not likely to affect more than one hundred workmen, the

appropriate Government may made a reference to the Labour Court under Clause (c) of Section 10(1) of the Industrial Act. Thus a matter, though specified in Third Schedule, yet can be referred to the Labour Court. In the instant case admittedly the present dispute does not affect more than 100 workmen. In this view of the matter I do not find any merit in the contention of the Learned Counsel for the Petitioner mill and hold that the Labour Court was competent to decide this dispute u/s 10(i) (c) of the Industrial Act. The next argument of the Learned Counsel for the Petitioner-mill that the reference was with regard to only termination and not retrenchment is also fallacious. As observed earlier, retrenchment includes termination and termination is not defined anywhere in the Act, hence the Labour Court was competent to decide the matter in all its aspects and in the instant case it has rightly decided the matter. Although specifically the word "retrenchment" is not used while making reference to the Labour Court but it is implicit in the reference and the Labour Court could go into all incidental matters.

7. The next argument of the Learned Counsel is that Respondent No. 1 was only a seasonal workman and his case does not come within the scope of retrenchment, as such Section 25-F of the Industrial Act is not applicable to his case. Section 25-F reads as under:-

No workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for termination of service ;

(b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months: and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

It will be seen that Section 25-F of the Industrial Act applies only to those workers, who have been in continuous service for not less than one year under an employer and not to other workers. The term "continuous service" is defined in Section 25 B of the Industrial Act which is in the following terms: -

For the purposes of this Chapter:

(1) a workman shall be said to be in continuous service for a period if he is for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not

illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer, (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, actually worked under the employer for not less than:-

(i)

(ii)

(b)

(i)

(ii)

Explanation:-For the purposes of Clause (2) the number of days in which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement of as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave, does not exceed twelve weeks.

8. A reading of this provision shows that a workman shall be deemed to be in continued service if his service is uninterrupted but it includes service which may be interrupted on account of sickness, authorised leave, an accident, a strike which is not illegal, a lock-out or a cessation of work which is not due to any fault of the workman. Where he is not in such continuous service, he shall be deemed to be in continuous service under an employer for a period of one year if he had worked, for 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made. In the instant case admittedly Respondent No. 1 was employed for more than one year. He is in employment since 1963, and admittedly he is paid full wages for the on season and half wages, for the off season. Right from 1963, till the termination of his services he remained in continuous service for more than one year. Hence I hold that the case of Respondent No. 1 falls within the definition of workman and Section 25-F is applicable to him as he is in continuous service of the Petitioner-mill for more than one year.

9. It was then argued that even if Section 25-F of the Industrial Act is applicable, its requirements are not contravened by the management and the Labour Court has erred in deciding otherwise. This argument is also without merit. The Labour Court has dealt with this argument in detail. Vide retrenchment notice annexure "P. 1" it was intimated to the workman that his services stood retrenched with effect from 30th September, 1969, and he was advised to collect the compensation and other dues from the Accounts Department of the Petitioner mill on 30th September, 1969. This notice was sent by registered post on the home address of the workman and it was received by, the workman 30th September, 1969. The Labour Court had, thus held that it was extremely difficult for the workman to collect the amount of compensation and other dues from the Accounts Department of the Petitioner-mill situated at Morinda on the same day. Moreover, it is in the evidence of Sardara Singh M.W. I. Assistant Accountant of the Petitioner-mill (before the Labour Court) that although the workman was retrenched on 30th September, 1969, but he was offered the retrenchment compensation on the 3rd October, 1969. In this situation the Labour Court had held that retrenchment compensation and one month's wages in lieu of notice were neither paid nor tendered to the workman before he was retrenched. Two conditions are to be satisfied before a workman can be retrenched u/s 25-F of the Industrial Act firstly he should be given one month's notice in writing indicating the reason for his retrenchment or paid one month's wages in lieu of notice ; and secondly he should be paid retrenchment compensation which is equivalent to 15 days average pay for every completed year of continuous service at the time of retrenchment. If either of these two conditions are not fulfilled then the retrenchment or termination of service of a workman is invalid and void. In the instant case these two conditions are not satisfied. Admittedly the workman was served with notice of termination of service on 30th September, 1969, and was offered retrenchment compensation only on 3rd October, 1969, as deposed by Sardara Singh M.W. 1 (before the Labour Court). Hence, I do not find any reason to differ from the conclusions arrived at by the Labour Court. It is held in *M/s. National Iron and Steel Company, Ltd. v. The State of West Bengal* AIR 1967 SC 1206, as under:-

The third point raised by the Additional Solicitor General is also not one of substance. According to him, retrenchment could only be struck down if it was mala fide or if it was shown that there was victimisation of the workman etc. Learned Counsel further argued that the Tribunal had gone wrong in holding that the retrenchment was illegal as Section 25-F of the Industrial Discuses Act had not been complied with. Under that section a workman employed in any industry should not be retrenched until he had been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman had been paid in lieu of such notice, wages for the period of the notice. The notice in this case bears the date November 15, 1958. It is to the effect that the addressee's services were terminated with effect from the 17th November and that he would get one month's wages in lieu of notice of

termination of his service. The workman was further asked to collect his dues from the cash office on November 20, 1958 or thereafter during the working hours. Manifestly, section 25-F, had not been complied with under which it was incumbent on the employer to pay the workman the wages for the period of the notice in lieu of the notice. That is to say, if he was asked to go forthwith he had to be paid at the time when he was asked to go and could not be asked to collect his dues afterwards.

The Learned Counsel for the Petitioner relied upon The workman of the Shilong Hydro Electric Ltd. v. The State of Assam AIR 1964 Ass 66. But in view of the Supreme Court authority Assam authority is of no avail. In Senior Superintendent Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, it is held as under:-

The proviso of Rule 5 is capable of the only interpretation that the order of termination can be upheld if the requisite amount in terms of the rule was paid into the hands of the employee or made available to him at the same time as he was served with the order. It does not lend itself to the interpretation that the termination of service becomes effective as soon as the order is served on the Government servant. The operative words of the proviso are " the services of any such Government servant may be terminated forthwith by payment." Therefore to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him.

10. Although It was not a case under the Industrial Disputes Act but in more or less similar circumstances it is held that since the employee was not paid on 25th November, 1968, when his services were terminated, the order is bad.

11. Another point raised by the Learned Counsel for the Petitioner-mill is that the relief of reinstatement could not be granted to the workman by the Labour Court. This argument is also without any merit. The reference is quite clear and unambiguous. Once it is found by the Labour Court that the mandatory provisions of Section 25-F of the Industrial Act had not been complied with and the termination was wrongful to that extent, it was within the competence of the Labour Court to grant the relief of reinstatement to the workman.

12. His last argument is that Labour Court was in error in granting relief of back wages to the workman. This point was never raised before the Labour Court. Moreover, it was open to the employer to prove that the workman was not entitled for the back wages for a period during which he was employed. In this case no evidence is led by the Petitioner-mill that the workman was employed for a certain period. It is stated that in one of the connected case on application was made by the management that the workman was not in employment but it was subsequently withdrawn. In this view of the matter this argument also fails.

13. For the reasons recorded above I find no merit in this petition and the same is dismissed with costs. Counsel's fee Rs. 300/-.