

(2006) 08 P&H CK 0505
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9297 of 1987

Nachhattar Singh

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Evidence Act, 1872 — Section 106

Punjab Civil Services (Punishment and Appeal) Rules, 1970 — Rule 8(11)

Citation : (2006) 144 PLR 443 : (2007) 1 SLJ 396

Hon'ble Judges : Arvind Kumar, J

Bench : Single Bench

Advocate : Meenakshi Verma, for the Appellant; Poonam Josan, A.A.G. for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—This petition filed under Articles 226/227 of the Constitution prays for modification of the award dated 15.5.1985 passed by the Labour Court by virtue of which the Labour Court ordered re-instatement of the petitioner-workman with continuity of service but denied back wages to him.

2. What emerges out from the records is that the petitioner-workman, who was working as conductor with respondents No. 2 and 3 was charge sheeted containing the allegations of embezzlement. An enquiry was held and ultimately his services were terminated on 28.8.1981. The petitioner-workman, challenged his termination by serving a demand notice. The dispute was referred to the Labour Court for adjudication. Respondents No. 2 and 3 resisted the claim of the workman and justified the order of his termination by submitting that the workman was held guilty of serious misconduct. Their further stand was that the enquiry conducted against the workman was fair and proper.

3. The Labour Court vide the impugned award, with regard to the issue of fairness of enquiry, held that the same suffers from violation of the provisions of

Rule 8(11) of the Punjab State Civil Services (Punishment and Appeal) Rules and accordingly decided the same against respondents No. 2 and 3. So far as issue regarding termination of service of the workman is concerned, the same was also decided against the management by observing that the management has failed to prove any misconduct on the part of the workman as may warrant termination of his services and that there was some bonafide mistake of calculation on the part of the workman. It accordingly ordered re-instatement of the workman with continuity of service. However, back wages were denied on the ground that the action taken by the management in terminating the services of the workman was not entirely malafide.

4. It is only due to this, the petitioner has knocked the doors of this Court by filing the instant petition claiming full back wages.

5. Upon notice of the writ petition, written statement was filed by respondents No. 2 and 3 jointly submitting therein that the Labour Court has passed the impugned award legally and it was justified in declining back wages to the petitioner. Thus, dismissal of the petition has been sought.

6. It has been argued by learned Counsel for the petitioner that once the enquiry, on the basis of which the services of the petitioner were terminated, has been held to be illegal and the petitioner has been ordered to be re-instated with continuity of service, it was incumbent upon the Labour Court to grant him back wages as well as a natural corollary. In support of her contention, she has referred to a judgment rendered by a Division Bench of this Court in the case of *The Patiala Central Cooperative Bank Ltd., Patiala v. Mehar Chand* 1998 (1) R.S.J. 297. It has also been argued that the management has not established that the petitioner-workman had remained gainfully employed during the period he remained out of service. Thus, the petitioner-workman is entitled to back wages. She has further referred to the cases of *Prem Singh v. Presiding Officer, Industrial Tribunal, Ambala and Anr.* 1990 (4) S.L.R. 375 and *Sukhdev Singh v. General Manager, Punjab Roadways, Tarn Taran* 2004 (2) R.S.J. 184. The contentions are meritless. A bare perusal of the concluding para of the impugned award shows that the Labour Court had opined that the action of the management was not entirely malafide and thus, in order to keep a balance denied the back wages. Secondly, it is no more obligatory upon the management to prove that the workman was gainfully employed during the period interregnums. It is now settled preposition having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto that instead of employer, the plea is required to be raised by the workman that he was not gainfully employed during termination period. In other words, the initial burden is on the workman to show that he was not gainfully employed. However, in the instant case, no such plea has been raised by the workman. A bare perusal of the award also shows that the workman has not uttered even a single word to prove that he was not gainfully employed or remained idle.

7. In the case of *General Manager, Haryana Roadways Vs. Rudhan Singh*, ,

although the termination of service of workman was held to have been made in violation of Section 25-F of the Act, a three Judge Bench of Hon''ble Supreme Court, considering the length of service of a workman which was less than a year and having regard to his educational qualification etc. denied back wages. Therefore, applying the norms laid down by Hon''ble the Apex Court in Rudhan Singh's case (supra) in the present case, I am of the considered view that the petitioner has been rightly declined back wages.

8. For the reasons aforementioned, this petition fails and the same is accordingly dismissed. However, in the facts and circumstances of case there shall be no order as costs.