
(2011) 04 P&H CK 0212
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11050 of 1992

Nand Lal, Peon

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 28-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 04 P&H CK 0212

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Concisely, the relevant facts, which need a necessary mention for the limited purpose of deciding the sole controversy, involved in the instant writ petition and emanating from the record, are that Petitioner-workman Nand Lal (for brevity "workman") was employed as a Peon by the management of Dr. Ranjit Sagar Dam- Respondent No. 2 (for brevity "management"). As his services were stated to have illegally been terminated by the management on 26.2.1988, without issuing any show cause notice to him or following the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act"), therefore, he raised an industrial dispute u/s 10 of the Act, which was referred to the Presiding Officer of the Industrial Tribunal-cum-Labour Court for adjudication by the appropriate Government.

2. Having completed all the codal formalities, the claim petition of the workman was accepted. He was reinstated with continuity of service and 50% of back wages by the Labour Court, by virtue of impugned award dated 5.2.1991 (Annexure P1).

3. The workman did not feel satisfied, as regards the grant of 50% of back wages, is concerned and challenged the impugned award (Annexure P1),

invoking the provisions of Articles 226 and 227 of the Constitution of India in this respect.

4. After hearing the learned Counsel for the parties, going through the record with their valuable assistance and after considering the entire matter deeply, to my mind, there is no merit in the instant writ petition in this context.

5. Ex facie, the contention of learned Counsel that the workman was entitled to 100% back wages and since the Labour Court fell in error in only awarding 50% of back wages, so, the impugned award is liable to be modified to that extent, is not only devoid of merit but misconceived as well.

6. As is evident from the record that the workman was working purely on temporary and ad hoc basis. He had only worked for 381 days specified in certificate (Ex. A1). Keeping this fact in focus, the Labour Court rightly awarded the back wages to the workman to the extent of 50% only, by means of impugned award (Annexure P1).

7. An identical question came to be decided by the Hon''ble Apex Court in case U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, . Having considered the previous judgments and the relevant provisions of law, it was ruled as under:

Before advertng to the decisions relied upon by the learned Counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act.

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

8. The same view was reiterated by the Hon''ble Supreme Court in case P.V.K. Distillery Ltd. Vs. Mahendra Ram, , Haryana Urban Development Authority Vs. Om Pal, and this Court in case Nirmal Singh son of Surjan Singh v. Labour Court, Bhatinda and Ors. (2011) PLR 54, wherein 50% of the back wages were granted

to the workman under the similar set of circumstances.

9. In this manner, applying the ratio of indicated law laid down by Hon"ble Supreme Court and this Court, to me, the workman is only entitled to half back wages, particularly when no cogent evidence is forth coming on record to prove that he was not gainfully employed or was not earning anything during the period, he remained out of job (unemployed). Therefore, the contrary submissions of learned Counsel for workman "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

10. Meaning thereby, the Labour Court having considered and appreciated the entire relevant material/evidence brought on record by the parties in the right perspective, rightly awarded the 50% of back wages to the workman. Such impugned award containing valid reasons, cannot possibly be interfered with, while exercising the extraordinary writ jurisdiction of this Court, unless and until, the same are illegal and perverse. As no such patent illegality or legal infirmity has been pointed out by the learned Counsel for the workman, therefore, the impugned award is hereby maintained in the obtaining circumstances of the case.

11. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is dismissed as such.