
(1982) 10 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5364 of 1974

Padam Singh

APPELLANT

Vs

The Labour Court Haryana Rohtak and another

RESPONDENT

Date of Decision : 07-10-1982

Acts Referred:

Citation : (1982) 10 P&H CK 0051

Hon'ble Judges : I.S. Tiwana, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—The petitioner workman who admittedly was employed on six months" "probation on March 13, 1969 impugns the order of the Labour Court dated April 10, 1974 (Annexure P. 3) whereby termination of his services by the respondent Municipal Committee vide order dated August 7, 1969, has been upheld. The challenge on behalf of the petitioner before that Court was that though he had been appointed on six months" probation, yet even during that period the respondent Municipal Committee could not terminate his services except on the ground of his misconduct or other sufficient reason He also maintained that the order of termination was by way of victimisation and amounted to unfair labour practice. As already indicated, this stand of the petitioner has been negated by the Labour Court

2. Before me the same two contentions have been repeated by Mr. R.S. Mittal, learned counsel for the petitioner. In support of his first contention he squarely relies on the following observations of the Supreme Court in The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another, .

It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired-except on the ground of misconduct or

other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. He also points out that the Labour Court has wrongly observed in the impugned award that no plea of victimisation or unfair labour practice had been raised by the petitioner. In support of this claim of his he makes a reference to paragraph 6 of the statement of claims (Annexure P 4) filed by him before the Labour Court wherein it has been so stated :--

The termination of the unblemished services of the workman by the respondent is illegal unjustified and amounts to unfair labour practice. The workman is fully entitled to reinstatement with full back wages. So far as the later mentioned factual aspect of the matter is concerned, it is no doubt true that in the impugned order the Labour Court has observed that the petitioner had not raised any plea of victimisation or unfair labour practice before that Court, yet I find that the assertion made in paragraph 6 of Annexure P. 4 is nothing more than a mere allegation without any factual foundation. The expression "unfair labour practice", though has not been defined anywhere in the industrial law, yet is frequently used in matters relating to labour cases. Whether any act would constitute "unfair labour practice" is essentially a question of fact dependent on the circumstances of each case Thus I am clear that mere assertion of victimisation or unfair labour practice without the statement supporting facts and circumstances is of no avail to the workman impugning termination of his services on that ground. In the instant-case the Labour Court in spite of the above noted observation has held thus :--

So taking into consideration all the facts and the circumstances of the case, I am convinced that the management (Municipal Committee, Bhiwani) was not actuated by arty motive of victimisation, mala fide or unfair labour practice in passing this impugned order of termination of the service of Shri Padam Singh workman concerned and the same is therefore held to be justified and in order. Though the learned counsel for the petitioner seeks to assail this factual finding on the basis of certain material referred to in the petition yet this Court not being a Court of appeal, I decline to go into this aspect of the matter any further The stand of the Municipal Committee, on the other hand, before the about Court as well as here is that the petitioner was given a purely temporary appointment pending the approval of the budget by the Deputy Commissioner, Hissar, which approval was ultimately not granted by him. I am of the considered view that in the absence of the statement of facts by the petitioner indicating that the termination of his services was the result of an unfair labour practice, the mere assertion to that effect on his behalf would not render the action of the Municipal Committee unsustainable.

3. So far as the above noted judgment of the Supreme Court in The

Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another, is concerned, the same has been noticed and explained in a still later judgment of that Court in The Management of Brooke Bond India (Private) Ltd. Vs. Y.K. Gautam, . While noticing that the rule of law laid down by the Supreme Court in The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co., in the case of termination of service of permanent employees had been extended to probationers by the Supreme Court in The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another, , it has been held that it makes no difference to the principle that the employer cannot terminate the services even of a probationer on any grounds which have not been recognised as a justification for such termination. The Court observed that even in such a case when the validity of such termination is challenged in an industrial adjudication, it would be competent to the Industrial Tribunal to enquire whether the order of termination has been effected in bona fide exercise of powers conferred by the contract. There can, therefore, be no doubt that the Labour Court can go into the question of validity of the order of termination even in the case of probationer whose services have been dispensed with before the probation period expired without assigning any reason. In the case in hand, as already pointed out, the Labour Court in its impugned award has found that the employer Municipal Committee is not guilty of any such malice or unfair or ulterior motive, I, therefore, find no infirmity in the factual and legal conclusion recorded by the Labour Court in the impugned award.

4. For the reasons recorded above this petition fails and is dismissed but with no order as to costs.