
(1989) 05 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 825 of 1987

Presh Chand Gupta

APPELLANT

Vs

Joint Labour Commissioner and Others

RESPONDENT

Date of Decision : 04-05-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Industrial Employment (Standing Orders) Act, 1946 — Section 10, 13A

Citation : (1991) 2 LLJ 536

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Abha Rathore, for the Appellant; J.L. Gupta and K.L. Chopra, for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This petition is directed against the order of Labour Court, Faridabad, dated October 22, 1986, Annexure P-2, passed u/s 33C(2) of the Industrial Disputes Act, 1947.

2. Petitioner P.C.Gupta, workman of the respondent management of Messrs. Bhartia Cutler Hammer Limited, Faridabad, was transferred from Faridabad to Bombay, vide order dated October 27, 1984. He failed to join there and when he was reminded on November 5, 1984, to proceed to Bombay, that was also ignored by him. Then he was charge-sheeted on January 4, 1985, to which he submitted his explanation. Shri B.R. Grover was appointed as the enquiry officer against him and despite repeated letters and reminders, Sri Gupta did not appear before him and he had to proceed ex parte against him and thus submitted his report, on February 25, 1985. On the basis of the report, Mr. Gupta was punished, vide order dated August 20, 1985, and was placed in a lower scale. Admittedly, he never challenged that order of his reversion. However, he filed a civil suit for a declaration and permanent injunction challenging his transfer. The said civil suit was filed on July 1, 1985. In that suit, the ad interim order of

injunction was declined by the trial Court and was maintained in appeal. Having failed to obtain the ad interim order of injunction, he got the suit dismissed as withdrawn on October 15, 1985. Copy of the order declining the ad interim injunction by the trial Court dated September 3, 1985, is Annexure P-1.

3. Having failed in the civil suit and getting the suit dismissed as withdrawn, he filed the present application u/s 33C(2) of the Industrial Disputes Act for computing the money or benefit which he was entitled to receive from his employer-respondent. According to his claim, the wages for the period from January 1, 1984 to October 31, 1985, have not been paid to him. He also claimed bonus for the year 1984-85, utensils for Holi festival and leave travel allowance also for 1984-85. In this manner, the amount calculated by him comes to Rs. 15,930. This application was contested by the management. According to the reply filed, the workman was entitled to Rs. 650 as bonus, Rs. 35 towards utensils and Rs. 360 for LTA and in this manner a total sum of Rs. 1,048 was admitted. The other claim was denied. It was pointed out that the workman had filed a civil suit at Faridabad seeking injunction about his transfer order and his application for temporary injunction was dismissed by the trial Court on September 18, 1985, and then on October 15, 1985, he had withdrawn the suit and after that he had made the present application to harass the management. The said application was not maintainable and was also barred by the principles of res judicata. The Labour Court framed the following two issues:

(i) Whether the application is barred by the principles of res judicata.

(ii) Whether the applicant is entitled to the amount claimed for?

4. The Labour Court found that the present application was barred by the principles of res judicata since the workman had already filed a civil suit which was ultimately dismissed as withdrawn. It was observed by the Labour Court that "it is the sad end of the application filed by Shri Gupta and for that he himself is responsible since he had been concealing even published facts of his past litigation". Under issue No. 2 the amount of Rs. 1,048 as admitted by the management was found due to the workman. Thus, the said application u/s 33C(2) was disposed of, vide order dated October 22, 1986, copy whereof is Annexure P-2.

5. The main challenge in this writ petition on behalf of the petitioner is to Clause 22 of the Standing Orders relating to the transfer of the workman on the allegation that the same was unreasonable, void and against the rules of natural justice. In support of this contention several rulings were cited by learned counsel for the petitioner. However, one of the preliminary objections which has been raised on behalf of the respondent management is that no such challenge could be made by the petitioner in this writ petition and the writ petition as such was not maintainable. The Industrial Employment (Standing Orders) Act, 1946, provides the procedure for modification of the standing orders and if any question arises as to the application or interpretation of a standing order, the

matter may be referred to the Labour Court. Section 10 provides the duration and modification of standing orders, whereas Section 13A provides for interpretation, etc., of standing orders which reads as under:

"13-A. Interpretation, etc. of standing orders: If any question arises as to the application or interpretation of a standing orders certified under this Act, any employer or workman may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

6. Admittedly, in the claim application u/s 33C(2) filed by the workman, no such reference was made as to challenge clause 22 of the Standing Orders. That being so, the petitioner could not be allowed to challenge the said standing orders in this writ petition. As a matter of fact, this is the indirect attempt by the petitioner to challenge the transfer order for which he had already filed the civil suit which was dismissed as withdrawn on October 15, 1985. In fact, he never challenged his reversion order dated August 20, 1985, at any time earlier nor in this writ petition. Moreover, the standing orders could be modified or interpreted in the manner provided under Sections 10 and 13A of the Act. No such reference was ever claimed by the workman for interpretation of the standing orders. The remedy by way of this writ petition to challenge the said standing orders is misconceived. As a matter of fact, the very application u/s 33C(2) claiming his wages for the period from November 1, 1984 to October 31, 1985, was misconceived as there was no adjudication of that claim by any competent authority. It appears that by virtue of this claim, the petitioner really wanted to challenge the transfer order in this application u/s 33C(2) which he could not be allowed to do as that was not the proper forum. It was all the more so when the said transfer order was already challenged in a civil suit. Thus, it was rightly held by the Labour Court that the application was barred by the principles of res judicata.

7. Consequently, this petition fails and is dismissed with costs.