
(2007) 10 P&H CK 0142
In the Punjab And Haryana At Chandigarh

Pritam Dev Sood

APPELLANT

Vs

Kewal Krishan Puri

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 2, 3

Citation : (2008) 116 FLR 718 : (2008) 2 LLJ 59 : (2008) 149 PLR 85 : (2008) 2 RCR(Civil) 501

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This judgment shall dispose of six Civil Revision petitions bearing Nos. 211 to 216 of 1988, which are arising from the common judgment, whereby six appeals filed by petitioner Pritam Dev Sood against six separate orders of the Prescribed Authority under the Payment of Wages Act, 1936 (hereinafter referred to as "the Act") have been dismissed by the Appellate Authority.

2. Petitioner Pritam Dev Sood claiming himself to be the employee of M/s Puri Brothers, Bahadurgarh, filed six different applications before the Prescribed Authority u/s 15(2) of the Act for recovery of his salary for different periods from 5.4.1981 to June, 1985. He claimed his salary at the rate of Rs. 930/- per month.

3. In the applications, it was stated by the petitioner that when he was posted at Bahadurgarh, on 25.3.1981, while on duty, he met with an accident in Delhi. He remained hospitalised till 4.4.1981. Thereafter, Shri Kewal Krishan Puri, the Managing Partner of M/s Puri Brothers offered him to shift to a branch of the firm at Moga, where he was to get the consolidated salary of Rs. 930/- per month. The petitioner submitted that thereafter, he shifted to Moga, but no salary was paid to him for the subsequent period till his retirement on 30.6.1985.

4. Undisputedly, in the applications filed by the petitioner u/s 15(2) of the Act

before the Prescribed Authority, he did not implead M/s Puri Brothers, Bahadurgarh, as respondent. He only impleaded Kewal Krishan Puri, Managing Director of M/s Puri Brothers Factory, Gandhi Road, Moga.

5. The respondent contested the said applications by raising the preliminary objections to the effect that the applications are bad for mis-joinder of the parties. It was alleged that the petitioner was employed by M/s Puri Brothers, Bahadurgarh, District Rohtak (Haryana) and the Sub Divisional Magistrate, the Prescribed Authority under the Act, at Moga has no jurisdiction to adjudicate the matter. On merits, it was pleaded that in October, 1981, services of the petitioner were terminated by M/s Puri Brothers, Bahadurgarh, on the ground that he remained absent from duty. It was categorically stated that since the petitioner was not employed by the respondent at Moga, therefore, no relationship of employer and employee exists between them.

6. On the pleadings of the parties, the Prescribed Authority framed the following issues for determination:

- 1) Whether the application is bad for mis-joinder of parties? OPR
- 2) Whether Sh. K.K. Puri Managing Partner of M/s Puri Brothers, Gandhi Road, Moga is liable to pay the wages? OPA
- 3) How much amount is due from the respondent? OPA
- 4) Whether this Court has jurisdiction to try this petition? OPA
- 5) Relief.

7. On the basis of evidence led by both the parties, the Prescribed Authority held that the petitioner was an employee of M/s Puri Brothers, Bahadurgarh, and he has failed to prove that he was appointed by Kewal Krishan Puri at Moga after his accident. It was also held that the petitioner has not impleaded the necessary parties, therefore, it was held that the application is liable to be dismissed for non-joinder of necessary parties. It was further held that the petitioner had been paid salary upto 5.4.1981 and his services were terminated in October, 1981 by his employer M/s Puri Brothers, Bahadurgarh. It was held that the contention of the petitioner that his services were illegally terminated could not be gone into by the Prescribed Authority. In view of these findings, the applications filed by the petitioner were dismissed.

8. Against the aforesaid orders, the petitioner filed six separate appeals. The Appellate Authority dismissed all the appeals by a common judgment, while confirming the finding of the Prescribed Authority on issues No. 1 and 2. However, the findings on issue No. 3 were reversed and it was held that services of the petitioner were wrongly terminated by his employer. It was further held that since services of the petitioner were wrongly terminated, therefore, his employer is liable to pay wages to him at the rate of Rs. 930/- per month for the claimed period. However, keeping in view the findings on issues No. 1 and 2, the

appeals filed by the petitioner were dismissed. Hence these six revision petitions have been filed by the petitioner.

9. Counsel for the petitioner submitted that the Authorities below have wrongly dismissed the applications of the petitioner u/s 15(2) of the Act on the ground of non-impleading of necessary party. He submitted that though technically M/s Puri Brothers, Bahadurgarh, a partnership firm, should have been impleaded as respondent to the application through its Managing Partner Shri Kewal Krishtan Puri, but even if in the application Shri K.K. Puri was impleaded as Managing Partner of M/s Puri Brothers Factory, Gandhi Road, Moga, which was a branch of M/s Puri Brothers, Bahadurgarh, it did not make any difference and cause any prejudice, therefore, this fact should not have been taken by the authorities as mis-joinder of necessary parties. While referring to the definition of employer" u/s 2(ib) and Section 3(1)(b) of the Act, learned Counsel submitted that the word "employer" includes the legal representative of a deceased employer and every employer shall be responsible for the payment of all wages required to be paid to an employee under the Act. He submitted that a person responsible to the employer for the supervision and control of the industrial or other establishment is liable to pay the wages to the employee. He further submitted that Kewal Krishan Puri, who was the Managing Partner of M/s Puri Brothers, Bahadurgarh, was liable to pay wages of the petitioner for the period from 5.4.1981 to 30.6.1985. Therefore, if he was impleaded as respondent in the applications, no illegality was committed. He submitted that even if the petitioner did not implead the right person, he should be permitted to implead M/s. Puri Brothers, Bahadurgarh and the matter be remanded back to the Prescribed Authority under the Act for fresh adjudication of the matter.

10. During the course of the aforesaid arguments, counsel for the respondent pointed out that the petitioner himself filed a civil suit against M/s Puri Brothers, Bahadurgarh, Kewal Krishan and M/s Puri Brothers, Oil Factory, Moga, for declaration that the order dated 28.10.1981, whereby his services were terminated, was illegal, null and void and against the principles of natural justice. In the said suit, he also took the plea that after the accident, he was shifted to Moga on a monthly salary of Rs. 930/- and he remained in service upto his retirement. Learned Counsel for the respondent submitted that the said suit filed by the petitioner was dismissed vide judgment and decree dated 30.1.1993 and it was held that services of the petitioner were validly terminated vide order dated 28.10.1981. The appeal filed by the petitioner against the said judgment and decree has also been dismissed by the first appellate court, on 4.11.1996. I have been informed by counsel for the respondent that the said judgment and decree has become final between the parties. The petitioner, who was present along with his counsel at the time of arguments, did not controvert this factual position.

11. In view of the aforesaid facts, in my opinion, no relief can be granted in favour of the petitioner in the instant petitions. Undisputedly, the petitioner was

the employee of M/s Puri Brothers, Bahadurgarh. After 25.3.1981, he did not join duty as he met with an accident and he remained hospitalized till 4.4.1981. Admittedly, he has been paid salary upto 5.4.1981. Thereafter, his services were terminated because of his absence. It is the case of the petitioner that after the accident, he was shifted to a branch of M/s Puri Brothers at Moga, where the wages were not paid to him. His plea was not accepted by the Prescribed Authority and it was found that he has failed to prove that he was shifted to Moga under the instructions of Kewal Krishan Puri and his applications were dismissed on all the issues including the issue that he did not implead his employer, who was necessary party. The Appellate Authority reversed the finding of the Prescribed Authority on issue No. 3 and held that services of the petitioner were illegally terminated. In spite of that finding, the appeals filed by the petitioner were dismissed by the Appellate Authority in view of the findings on issues No. 1 and 2. In my opinion, the authorities under the Payment of Wages Act have no jurisdiction to decide the question of validity of termination of service, as has been held by the Supreme Court in *State of Punjab and Others Vs. Baldev Singh, Conductor*, . The validity of the order of termination or dismissal from service of an employee can be questioned either before the Labour Court or the Civil Court, as the case may be. In the instant case, the petitioner himself challenged the order of termination of his service before the Civil Court by filing suit for declaration, which has been dismissed and the order of his termination has been held to be valid.

12. It has not been disputed before me that M/s Puri Brothers, Bahadurgarh, was employer of the petitioner, though technically the said firm was not impleaded as respondent. Even if the prayer of the petitioner is accepted and he is permitted to implead M/s Puri Brothers, Bahadurgarh, as his employer and the matter is remanded back to the Prescribed Authority for fresh adjudication, it will be a futile exercise and no useful purpose will be served, because the petitioner has already lost his case in the civil court, where his termination by his employer has been held to be legal and valid. The judgment and decree passed by the civil court has become final, which is binding on him. The judgment of the civil court is binding on the Authorities under the Act. Since claim of the petitioner pertains to the period subsequent to his termination order, therefore, when his termination is held to be legal and valid, he will not entitle for any wages. Therefore, I do not find any ground to interfere in the impugned orders.

13. Dismissed with no order as to costs.