
(2003) 09 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Petition No. 5074 of 2001

Punjab Digital Industries System Limited

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2

Citation : (2004) 1 CivCC 453 : (2004) 136 PLR 328 : (2004) 1 RCR(Civil) 758

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Advocate : Arun Palli, for the Appellant; Rajesh Punj, for the Respondent

Final Decision : Dismissed

Judgement

Nirmal Singh, J.—The relevant facts for the disposal of this petition are that respondent No. 2 was appointed as Chowkidar on daily wages by the petitioner Company (hereinafter called "the Management") on 27.6.1978. Thereafter, the respondent No. 2 was appointed as Helper on probation for one year on 27.7.1979 and was confirmed in service on 21.6.1982. The respondent was redesignated as Assistant II (Stores) vide letter dated 7.6.1986. The Management issued a show cause notice to explain the work and conduct to the respondent on 3.12.1986. His annual increment was withheld for six months. The Management served charge-sheet dated 16.6.1990 against respondent No. 2 on various charges of misconduct levelled against him. Another charge sheet was issued on 16.3.1991 for remaining absent from duty without permission from 18.5.1990 onwards. Respondent No. 2 filed reply which was found unsatisfactory. Regular departmental enquiry was conducted against respondent No. 2. Respondent No. 2 was duly served but he refused to join the proceedings. The Management found guilty to the charge. After submitting the enquiry report by the Enquiry Officer, the Management dismissed respondent No. 2 from service vide letter dated 10.6.1991. Respondent No. 2 raised an industrial dispute and the matter was referred to the Labour Court, Patiala for adjudication by the

appropriate government.

2. The Management appeared and contested the reference. On the pleadings of the parties, following issues were framed:-

"1. Whether there has been a fair and proper enquiry?

2. Whether the order of termination of service of Workman is justified and in order?

3. Relief.

3. Thereafter, the case was fixed for the evidence of the Management. Two witnesses were examined. Thereafter, the petitioner moved an application for treating issue No. 1 as preliminary. The Workman contested the application and pleaded that the Management is moving the application one after the other only to prolong the case and to harass the Workman. After perusing the pleadings and the documents on record and hearing the Workman and representative of the Management, the application was dismissed.

4. Aggrieved by the order of the Presiding Officer, Labour Court dated 15.6.2001, the present revision petition has been filed.

5. Mr. Arun Palli, learned counsel for the petitioner submitted that a regular domestic enquiry was held by the Enquiry Officer against the respondent. He further submitted that the notice was sent by the Enquiry Officer to the workman-respondent to join the enquiry proceedings and in spite of the service of notice, the workman-respondent did not join the enquiry proceedings. He contended that the petitioner was found guilty of the charge and his services were terminated due to his misconduct and he raised an industrial dispute which was referred to the Labour Court, Patiala for adjudication. He further submitted that the petitioner challenged the order of termination on the ground of non-issuing of show cause notice and for not supplying copy of the enquiry report. He contended that the Labour Court in view of the pleadings of the workman-respondent and the plea raised by the petitioner that a full and proper opportunity was given to the workman, therefore, before deciding the case on merits, it was incumbent upon the Labour Court to frame a preliminary issue with regard to the validity and fairness of domestic enquiry. He submitted that if issue No. 1 would be treated as preliminary issue and it is decided in favour of the petitioner, it would save the time to produce the evidence on merit by the parties and would also save the time of the Court. He further submitted that the application filed by the petitioner for framing the preliminary issue has been declined on conjectures and surmises without looking into the provision of the Industrial Disputes Act.

6. I have heard the learned counsel for the parties and perused the record.

7. The sole question that arises for consideration in this revision is whether Issue No. 1 can be treated as preliminary issue?

8. Under Order 14 Rule 2 C.P.C. it provides:-

[2. "Court to pronounce judgment on all issues: (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2) pronounce judgment on all issues.

(2) where issues both of law and of fact arise of the issues of fact until after the issues of law have been determined.

9. Before the amendment, all the issues of law were required to be tried as preliminary issues but after the 1976 amendment in Order 14 Rule 2, the issue can be tried as preliminary issue subject to discretion of the court.

10. After the 1976 amendment, Order 14 Rule 2 C.P.C. reads as under:-

[2. "Court to pronounce judgment on all issues: (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2) pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

11. A perusal of the above rule shows that discretion has been given to the court to try an issue as preliminary issue where the question relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force.

12. In Major S.S. Khanna Vs. Brig. F.J. Dillon, the Apex Court has held as under:

"18. Under Order 14 Rule 2 where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues, Normally all the issues even of law depends upon the decision of issues of fact, would results in a lop-sided trial of the suit."

13. As per the law laid down by the Apex Court in K.K. Khanna's case (supra) the Code does not confer any jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. This judgment was rendered by the

Apex Court before the amendment (in 1976) in Order 14 Rule 2 C.P.C.

14. While interpreting Order 14. Rule 2 C.P.C. the Full Bench of Allahabad High Court in Sunni Central Waqf Board and others Vs. Gopal ingh Vishrad and others, has observed as under:-

"Under Order 14, Rule 2 as it stood prior to 1976 amendment, once the court came to the conclusion that the case or any part thereof could be disposed of on the issues of law only, it was obliged to try those issues first and the other issues could be taken up only thereafter, if necessity survived. The court had no discretion in the matter. This flows from the use of the words "it shall try those issues first". The word "shall" used in Order 14 Rule 2 has been replaced in the amended Rule by the word "may". Thus now it is discretionary for the Court to decide the issue of law as a preliminary issue or to decide it along with the other issues. It is no longer obligatory for the Court to decide an issue of law as a preliminary issue."

15. In the instant case, issue No. 1 which the petitioner has claimed is mixed question of law and fact. Therefore, this issue cannot be treated as preliminary issue. Further-more, a party should claim the preliminary issue before the settlement of the issues on the basis of which the entire suit is disposed of. The issues in this case were framed in the year 1997. The evidence of respondent-workman has already been recorded. The petitioner-Management has examined two witnesses. Their cross-examination has been deferred. Then the Petitioner-Management moved an application for treating the Issue No. 1 as preliminary issue. The learned Presiding Officer, Labour Court has rightly held that the application has been filed by the management only to prolong the litigation, as the management has not raised any plea of preliminary issue either at the time of filing written statement or before the settlement of the issues. As it has been observed above, that after the settlement of the issues and recording the evidence of the parties, the preliminary issue cannot be claimed.

16. For the reasons recorded above, there is no merit in this revision petition. Same is dismissed with costs of Rs. 3000/-. The Labour Court is directed to dispose of the reference within three months on receipt of copy of this order.