

(2017) 01 SHI CK 0032
In the High Court Of Himachal Pradesh
Case No : 5958 of 2010

Punjab Laminate Private Limited

APPELLANT

Vs

Sh. Gurdas Ram

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Industrial Disputes Act, 1947, Section 10(1), Section 25F, Section 25B - Reference of disputes to Boards, Courts or Tribunals - Conditions precedent to retrenchment of workmen - Definition of continuous service

Citation : (2017) 01 SHI CK 0032

Hon'ble Judges : Sandeep Sharma

Bench : Single Bench

Advocate : Divya Raj Singh, Kulbhushan Khajuria

Final Decision : Dismissed

Judgement

1. Instant petition under Article 226/227 of the Constitution of India, is directed against Award dated 3.6.2010 passed by the learned Presiding Judge, Industrial Tribunal-cum-Labour Court, Dharamshala (HP) in Ref. No. 92/2016, whereby learned Tribunal below while allowing reference made by appropriate Government in favour of the respondent-workman (here in after, "workman") held termination of the workman bad and accordingly, ordered his reengagement with full back wages, continuity in service and seniority from the date of his termination. Present petitioner-employer (herein after, "employer") being aggrieved and dissatisfied with the aforesaid award has filed instant petition praying therein for quashing and setting aside the award dated 3.6.2010.

2. "Key facts" as emerge from the record are that appropriate Government made following terms of reference under Section 10(1) of the Industrial Disputes Act to the learned Industrial Tribunal-cum-Labour Court for adjudication:

"Whether the termination of services of Sh. Gurdas Ram S/o Sh. Lakhu Ram workman by the Management of M/s. Punjab Laminates (Pvt.) Ltd., 9-10, Industrial Area, Mehatpur, District Una, H.P. w.e.f. 4.6.97 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

3. Workman, by way of statement of claim, filed before learned Tribunal below claimed that he was working as Unskilled Mazdoor with the employer since 27.7.1997, uninterruptedly. He further stated that on 16.6.1996, while discharging his duties, he met with an accident, as a result of which, he suffered multiple injuries on his legs as well as head and as such remained under treatment in ESI Dispensary, Government Hospital, Bharatgarh, Una and also at PGI. As per workman, after the accident, he worked for two months but again due to pain and disability remained under treatment. However, the fact remains that the employer treated him to have abandoned the job and terminated his service vide order dated 29.9.1997 with effect from 4.6.1997, without resorting to the provisions of the Industrial Disputes Act. Workman further claimed that since his termination was in violation of the provisions contained in the Industrial Disputes Act, as well as principles of natural justice, he may be ordered to be reinstated with consequential benefits.

4. On the other hand, employer by way of reply to the aforesaid statement of claim, opposed the claim as set up by the workman, by raising preliminary objections of cause of action, locus standi and estoppel etc. Further, on merits also, employer denied the claim by stating that at no point of time, services of workman were terminated, rather workman, himself, sent a letter stating therein that he is unable to do his job and his dues may be cleared. Employer specifically denied that the services of the workman were ever terminated/ retrenched and claimed that in fact, workman had abandoned the job. Workman also filed rejoinder to reply reaffirming his claim as set up in the petition and controverted the contents of reply. Record suggests that the workman tendered his evidence by way of filing affidavit reiterating averments made in the statement of claim.

5. Workman tendered his evidence by filing affidavit reiterating averments made in the statement of claim. Rejoinder to reply was also filed by the workman. Employer produced one witness on its behalf. Learned Tribunal below, on the basis of pleadings of the parties, framed following issues:

"1. Whether the disengagement from service of the petitioner is proper and justified? OPP

2. If the above issue No.1 is proved in affirmative to what relief the petitioner is entitled from the respondent? OPP

3. Whether the claim petition is maintainable before this Court? OPR

4. Relief."

6. Subsequently, the learned Tribunal below, vide Award dated 3.6.2010, allowed the reference and held the termination of the workman to be bad and accordingly, quashed the same. Learned Tribunal below while allowing claim of the petitioner, directed the employer to reengage him forthwith alongwith continuity in service and seniority from the date of termination with back wages. In the aforesaid background, employer has assailed the award by way of present petition.

7. Mr. Divya Raj Singh, learned counsel representing the employer, vehemently argued that the impugned award passed by the learned Tribunal below is not sustainable in the eyes of law as the same is not based upon correct appreciation of evidence adduced on record by the respective parties. As per Mr. Singh, it is ample clear from the document Ext. RW-1/A that the workman himself abandoned the job and at no point of time, his services were either retrenched or terminated by the employer. Mr. Singh further contended that pursuant to aforesaid request of workman to clear his dues, employer paid entire payment in full and as such there is no merit in the claim of the workman and same is required to be rejected. Mr. Singh further pointed out that the learned Tribunal below fell in grave error while entertaining reference having been made at the behest of the workman, because, admittedly, same was belated as the alleged termination, if any, was made on 4.6.1997, whereas reference was made on 17.11.2003, and, as such, on this sole ground, impugned award passed by learned Tribunal below deserves to be set aside.

8. Mr. Kulbhushan Khajuria, learned counsel representing the workman, supported the award passed by learned Tribunal below. Mr. Khajuria, while referring to the impugned award passed by the learned Tribunal below, vehemently argued that there is no illegality or infirmity in the impugned award, rather same is based upon correct appreciation of evidence adduced on record by the respective parties as well as law and there is no scope of interference, whatsoever, by this Court, especially when learned Tribunal below has dealt with each and every aspect of the matter meticulously. While refuting contentions having been put forth by the learned counsel representing the employer, Mr. Khajuria contended that Ext. RW-1/A as being relied upon by the employer, is of no help to the employer since the same was written on 29.5.1999. He further stated that the same can not be termed as resignation from service because bare reading of same suggests that vide this letter, workman had simply asked for clearing his dues. Mr. Khajuria further contended that more over, as per own case of the employer, services of the workman were terminated with effect from 4.6.1997 and as such no reliance could be placed on letter Ext. RW-1/A, which is dated 29.5.1999. While concluding his arguments, Mr. Khajuria strenuously argued that there is no document available on record suggestive of the fact that employer paid all the dues to the workman and as such there is no illegality or infirmity in the impugned award passed by the learned Tribunal below, whereby employer has been directed to reengage the workman with all consequential benefits.

9. I have heard the learned counsel representing the parties and also gone through the Award and records.

10. During proceedings of the case, this Court had an occasion to peruse pleadings of the parties as well as documents available on record, perusal whereof clearly shows that there is no illegality or infirmity in the findings returned by the learned Tribunal below, whereby it concluded that employer has failed to prove that the workman had abandoned the job. It emerges from the record that there is no dispute with regard to the fact that workman was working with the employer since 27.7.1992. Similarly, there appears to be no dispute with regard to the alleged accident of workman on 16.9.1996, during the course of his employment, wherein he suffered multiple injuries. Similarly, there is no dispute with regard to the fact that workman remained under treatment because it is admitted case of the employer that after recommendation of the medical board, it had offered light job to the workman. As per the case set up by the workman, his services came to be terminated by the employer with effect from 4.6.1997 in violation of provisions of Industrial Disputes Act, whereas, employer, while refuting stand taken by the workman, stated that due to ill health, workman himself, abandoned the job. Employer further claimed that though it offered opportunity to the workman to join light duties, but he failed to report for duty and consequently, his services came to be terminated. Employer, by way of placing on record certain documents i.e. RW-1/B dated 10.7.1997, Ext. RW-1/D dated 13.8.1997 and Ext. RW-1/E dated 22.12.1997, made an attempt to demonstrate that it had sent communications to the workman advising him to perform duties. Employer, with a view to prove that the workman, himself, abandoned the job, heavily relied upon document Ext. RW-1/A i.e. letter dated 29.5.1999, written by workman. Perusal of Ext. RW-1/A suggests that there is overwriting of date. It appears that letter was dated 24.12.1997 but the fact remains that employer claimed it to be dated 29.5.1999. If version put forth by the employer is taken to be correct, that workman had expressed his desire to abandon the job on 29.5.1999, it is not understood that how his services were dispensed with by employer with effect from 4.6.1997 that too, without resorting to provisions of Industrial Disputes Act. Rather, this Court, after examining stand having been taken by the employer in the reply to the claim, has no hesitation to conclude that workman was on the rolls of the employer till 29.5.1999, when, for the first time, he expressed his desire to abandon the job. Hence, termination / disengagement of the workman with effect from 4.6.1997, can not be termed to be in accordance with law because, admittedly, there is nothing on record suggestive of the fact that at the time of disengaging services of workman on 4.6.1997, notice, if any, under Section 25 F of the Act was ever issued to the workman. If, for the sake of arguments, stand taken by the employer is taken to be correct that vide communication dated 29.5.1999, workman, himself abandoned the job, even in that eventuality, termination order with effect from 4.6.1997 can not be allowed to sustain because, admittedly, no evidence worth the name has been led on record by the employer to demonstrate that while

disengaging /terminating workman on 4.6.1997, it had taken recourse to the provisions of Industrial Disputes Act.

11. In view of the aforesaid, this Court sees no illegality in the order passed by the learned Tribunal below whereby it has held termination of workman bad. Though, perusal of Ext. RW-1/A suggests that workman Gurdas Ram informed the employer that he has been declared 40% disabled by medical board, and he is incapacitated to do job, as such, made request for clearing his dues but certainly there is nothing in this letter which could suggest that by way of aforesaid communication, workman tendered his resignation. Moreover, employer has not led on record any evidence, be it ocular or documentary, suggestive of the fact that pursuant to aforesaid alleged request having been made by workman vide letter dated 29.5.1999, action, if any, was taken by it and admissible dues were paid to the workman. Learned Tribunal below has specifically recorded that there is no evidence on record that what amount was paid and to whom such amount was paid and there is no receipt qua the same. Learned Tribunal below has further observed that there is no explanation that why compensation was granted and what were the dues paid to the workman. Hence, this Court sees no illegality or infirmity in the findings recorded by learned Tribunal, whereby it has specifically concluded that document dated 29.5.1999 Ext. RW-1/A is doubtful. As has been noticed above, this letter was originally dated 24.12.1997 and after cutting date has been changed to 29.5.1999. But otherwise also, aforesaid letter dated 29.5.1999 Ext. RW-1/A is of no help to the employer, especially when employer has specifically claimed that the workman abandoned job with effect from 4.6.1997. Had the workman abandoned job with effect from 4.6.1997, where was the occasion for him to write communication on 29.5.1999, rather, this Court is of the view that after acknowledging letter dated 29.5.1999, purportedly written by workman, employer has acknowledged that workman was on its rolls till 29.5.1999 and as such termination order with effect from 4.6.1997 can not be allowed to sustain. Manager of the Company, Naseeb Kumar, while deposing as RW-1, admitted that the workman was employed with the company on 27.7.1992. He also admitted that the workman met with an accident. Though aforesaid witness by placing reliance upon communications dated 10.7.1997, (Ext. RW-1/B), dated 13.8.1997 (Ext. RW-1/D) and dated 22.12.1997 (Ext. RW-1/E) made an attempt to demonstrate that, after receipt of the opinion of the medical board, employer had offered light duties to the workman and in this regard, had sent communication to the workman to join duty but, interestingly, aforesaid communications have been sent after 4.6.1997, when allegedly workman had abandoned the job. Once, as per employer, workman had abandoned the job on 4.6.1997, it is not understood where was the occasion for the employer to send communications as mentioned above, calling upon the workman to join duties, which action on the part of employer, clearly belies its stand taken in written statement, which compels this Court to draw adverse inference that alleged documents were manufactured to defeat the genuine claim of the workman. Hence, this Court,

after carefully examining entire evidence on record, has no hesitation to conclude that plea of abandonment, that too on the basis of Ext. RW-1/A dated 29.5.1999, is not sustainable at all and was rightly rejected by the learned Tribunal below.

12. It is settled law that plea of abandonment taken by employer may not be sufficient to prove abandonment, rather it is necessary for the employer to place on record that specific notice was issued to the workman before alleged abandonment asking the workman to join duty within a stipulated period. In this regard, reliance is placed upon the judgment passed by Bombay High Court in case titled Ocean Creations Vs. Manohar Gangaram Kamble 2013 SCC Online Bom 1537:2014)140 FLR 725. It is profitable to reproduce paras No.8,9 and 10 of the judgment herein:-

"8. The legal position is also settled that "abandonment or relinquishment of service" is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf. This is a question of fact which is to be determined in the light of surrounding circumstances of each case. It is well settled that even in case of abandonment of service, unless the service conditions make special provisions to the contrary, employer has to give notice to the workman calling upon him to resume duties and where he fails to resume duties, to hold an enquiry before terminating services on such ground.

9. In somewhat similar circumstances a Division Bench of this court comprising P.B.Sawant, J.(as he then was) and V.V.Vaze, J. in the case of Gaurishanker Vishwakarma v. Engle Spring Industries Pvt. Ltd. Observed thus:

".....it is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer has done neither. It was for the employer to prove that the workman had abandoned the service.....

It is therefore difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It has also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. In the circumstances, it is difficult to believe that he would refuse the offer of work when it was given to him before the Labour Officer...."

10. Again a learned Single Judge of this court R.M.Lodha, J(as he then was) in the case of Mahamadsha Ganishah Patel v. Mastanbaug Consumers" Co-op. Wholesale & Retail Stores Ltd. Observed thus:-

"....The legal position is almost settled that even in the case of abandonment of service, the employer has to give notice to the employee calling upon him to resume his duty. If the employee does not turn up despite such notice, the employer should hold inquiry on that ground and then pass appropriate order of termination. At the time when employment is scarce, ordinarily abandonment of service by employee cannot be presumed. Moreover, abandonment of service is always a matter of intention and such intention in the absence of supportable evidence cannot be attributed to the employee. It goes without saying that whether the employee has abandoned the service or not is always a question of fact which has to be adjudicated on the basis of evidence and attending circumstances. In the present case employer has miserably failed to discharge the burden by leading evidence that employee abandoned service. The Labour Court has considered this aspect, and, in my view rightly reached the conclusion that the employer has failed to establish any abandonment of service and it was a clear case of termination. The termination being illegal, the Labour Court did not commit any error in holding the act of employer as unfair labour practice under Item-I, Schedule IV of the MRTU & PULP Act....."

13. It is admitted case of the parties that workman sustained injuries during the course of his employment and as such there is no illegality in the findings returned by the learned Tribunal below that the absence of workman was because of accident arising out of and in the course of employment and this period was required to be counted as continuous service as per requirement of provisions contained in Section 25B of the Act. In the instant case, employer before terminating services of the workman, has failed to resort to the provisions of Section 25 F of the Act because no notice has been issued and as such termination of workman can not be held to be valid. Otherwise also, if it is presumed that workman after suffering injuries in the accident failed to resume duties, despite there being notices, at best, it could be a case of misconduct and services of employees on the ground of misconduct can not be terminated without resorting to the provisions as contained in the Act and after holding an inquiry. As such, learned Tribunal below rightly concluded that termination of the workman on the ground of absence from duty is bad. Since, termination of the workman was held to be bad, there is no illegality in granting benefit of continuity in service with back wages, especially when on the basis of the evidence adduced on record learned Tribunal came to the conclusion that the termination is bad being in violation of various provision of the Act. Learned Tribunal could not deny the benefit of back wages, especially when the petitioner was granted the benefits of continuity in service and seniority. The benefit of continuity in service and seniority could only be granted by the Court if it was satisfied that workman/petitioner was not allowed to work during the retrenchment period despite there being sufficient work available with the management.

14. In this regard reliance is placed on the judgment of the Hon'ble Apex Court in Raghbir Singh vs. General Manager, Haryana Roadways, Hissar, 2014(6) SLR

6 (S.C.), wherein the Court held:

"39. Now, it is necessary for this Court to examine another aspect of the case on hand, whether the appellant is entitled for reinstatement, back wages and the other consequential benefits. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors.,(2013)10 SCC 324: [2013(6) SLR 642 (SC), this Court opined as under:-

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three Judge Bench in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. (supra).....The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may

not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages..... In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.....

24. Another three Judge Bench considered the same issue in *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi* (supra) and observed: Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too.....In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

(Emphasis supplied by this Court)"

(pp.23-25)

15. Hence, this Court, after carefully examining the Award passed by the Tribunal below, sees no reason to interfere in the findings recorded by the Tribunal, which

are otherwise also based upon correct appreciation of evidence led on record by the parties, as such, impugned award deserves to be upheld. It is well settled law that the Courts while examining correctness and genuineness of award passed by Tribunal have very limited powers to re-appreciate the evidence led before the Tribunal below, especially the findings of fact recorded by the Tribunal below. Apart from above, findings of fact recorded by learned Tribunal below on the basis of appreciation of evidence cannot be questioned in writ proceedings and writ court cannot act as an appellate court. In this regard, reliance is placed upon the judgment passed by Hon''ble Apex Court in case titled Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd. 2014 AIR SCW 3157. It is profitable to reproduce paras 16, 17 and 18 of the judgment herein:

"16.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals: these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is no entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened for questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

16. In view of above, the present petition lacks merit, deserves dismissal and is

accordingly dismissed. The award passed by the learned Tribunal below is upheld.

17. Pending applications, if any, are disposed of.