

(2005) 10 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 169 of 2005

Punjab State Cooperative Supply and Marketing Federation
Limited

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 25, 25F

Citation : (2006) 142 PLR 233

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : Mr. Govind Goel, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned Counsel and have perused the paper book as well as the records of the appeal. The appellant, Punjab State Cooperative Supply and Marketing Federation Limited, hereinafter referred to as the Management, had challenged the award passed on 31.10.1988 by the learned Presiding Officer, Labour Court, Bhatinda, in C.W.P. No. 2693 of 1989. After admission, aforesaid writ petition came up for hearing before the learned Single Judge and the same has been dismissed vide judgment dated 31.8.2005. After noticing the entire evidence and the conduct of the Management, the learned Single Judge has dismissed the writ petition inter alia making the following observations:

According to the concerned Workman, this was an order which was mala-fide in nature and amounted to an Order of transfer posting him 300 kilometers away. He could not accept this order for the simple reason that he was a daily wager and therefore, he could not be posted beyond a reasonable distance from the place of his appointment and the reasonable distance should be where such a daily wager can reach by an ordinary mode of conveyance and can go back

home. The concerned workman further stated that he was a poor daily wage employee drawing Rs. 1,179/-per month as salary and this being a meager sum, it was difficult for him to serve at a long distance away from home. The concerned Workman had also stated in the aforementioned CM. No. 6045 that he was the father of three daughters, out of which, two were school going and one was an infant. With such a meager salary, it was difficult for him to join at Gurdaspur.

In paragraph 8 of the aforementioned civil miscellaneous application, this concerned Workman had stated unequivocally that he would have no objection to being posted out provided he was regularised and given a regular scale of pay which is given to a Stenotypist. He also stated that otherwise he was ready and willing to work in the place of his appointment.

In the backdrop of the aforementioned statements made by the concerned Workman in C.M. No. 6045, this Court does not find any fault with him if he firstly withdrew C.M. No. 6045 of 1993 for challenging the Order dated 4.6.1993 on the writ side and thereafter, chose not to do so for want/paucity of funds as submitted by the learned Counsel for the concerned Workman.

It is evident that the concerned Workman was a low paid employee. A Court of equity exercising jurisdiction under Article 226 of the Constitution of India, will reach out to undo injustice wherever such injustice is found to have been meted out. In the facts and circumstances of this case, this Court finds that gross miscarriage of justice and/or injustice was meted out to the concerned Workman. When he was keen to join duty, the Management prayed for stay, they paid him a certain sum of money but later on wanted to recover a major chunk out of it. It was then that this Court had to step in staying recovery proceedings. Thereafter, the management, having realised that there was no way out, sought to use the weapon of transfer upon such a poor paid employee who had two school going daughters and one infant to look after and maintain. The concerned Workman was already facing the rigors of litigation which included lawyers' fees, expenses etc. Having found no option, he came to us complaining about the order dated 4.6.1993 and gave very good and substantial reasons for doing so but perhaps due to technicalities or want of funds, he withdrew so that he could file a separate writ petition. Should a court of equity close its doors to seekers of justice merely because a person, for financial constraints, could not undertake the rigors of a fresh round of litigation which includes, amongst others, the engagement of a professional lawyer, meeting the expenses including fees for such professional lawyer? This Court is inclined to accept the explanation given by the learned Counsel appearing for the concerned Workman to the effect that financial constraints did not permit him to file another writ petition.

In that background, this Court is firmly of the view that such a technical objection should not allowed to be taken so as to close the doors of this Court to seekers of justice. On the contrary, while exercising powers of judicial review and being a Court of equity and justice under Article 226 of the Constitution of India,

every attempt must be made to prevent miscarriage of justice and while doing so, sometimes to even, mould the relief.

This Court has already held that gross injustice had been caused to the concerned Workman. Therefore, merely because he did not accept the offer of employment made on 4.6.1993 and merely because he withdrew Civil Miscellaneous Application No. 6045 of 1993, these by themselves do not become a ground for the Management to say that even if there be violation of Section 25 of the Act, the concerned Workman would still not be entitled to be reinstated in service.

For the same reasons, it does not also allow the Petitioner Management to say that after so many years, the benefit of back wages would be heavy on the State Exchequer. The Petitioner Management should have been more cautious in their approach and should have acted like a model employer instead of like a pavement boxer fighting de hors the rules. The manner in which they have dealt with the concerned Workman goes to show that they have been extremely unfair and unjust to him.

So far as the arguments of Mr. Govind Goel is concerned, the same being based on events which took place after 4.6.1993, this Court has already held that the concerned Workman was absolutely justified in refusing to accept the offer of employment. In fact, this Court proceeds to hold that the action of the Management in transferring the concerned Workman in the garb of an offer of employment was really intended to be used as a weapon in their hands to harass him.

This Court was inclined to take a very serious view against the Petitioner Management and was considering the imposition of very heavy costs upon them for harassing and causing mental agony to the concerned Workman but taking into consideration that upon dismissal of this Writ Petition, the effect would be reinstatement, continuity in service and payment of back wages to the concerned Workman strictly in terms of the impugned Award, this Court therefore, did not proceed to do so and let the matter rest at that.

2. The aforesaid observations make it abundantly clear that the learned Single Judge has meticulously examined all the arguments submitted on behalf of the Management. The approach adopted by the learned Single Judge is in consonance with the law laid down by the Supreme Court in the case of Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, . In the aforesaid case, the Supreme Court observed as follows:

Ordinarily, a workman whose service has been illegally terminated either by dismissal, discharge or retrenchment will be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is normal rule. When the termination of service was found to be neither proper nor justified, it would not show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wage for the

same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

3. These observations have been followed by a Full Bench of this Court in the case of Hari Palace, Ambala City v. The Presiding Officer, Labour Court and Anr. (1979)81 P.L.R. 720. Chief Justice S.S. Sandhawalia speaking for the Full Bench observed as under:

There is no gain saying the fact that there has been some divergence of opinion in the various High Courts on the point earlier, varying views had been expressed as to where precisely the onus lay with regard to the claim to back wages and also with regard to the striking of the issues or the necessary point for determination thereof by the Labour Court itself. Within this Court a Division Bench in Daljeet and Ca Private Ltd., Ropar v. The State of Punjab and Ors. AIR 1964 Pb. 313 has held that the dismissed employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal, and it is for the employer to raise this matter and prove that the employee had been earning wages for the whole or any part of the period in question. The aforesaid view has been consistently followed in this Court and reaffirmed in Harbans Singh and Ors. v. The Assistant Labour Commissioner and Ors. (1976)78 P.L.R. 221. The Allahabad High Court was inclined to take a similar view in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow (1971) Lab.L.J. 327 and the same tenor is the judgment of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971)1 Lab.L.J. 508.

However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in Hindustan Tin Works Pvt. Ltd. v. The Employees of Hindustan Tin Works Pvt. Ltd and Ors., wherein the appeal by Special Leave was expressly limited to the question of grant of back wages. It has been held therein in no uncertain terms:

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.

And again:

Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure.

The aforesaid view has then been reiterated by their Lordships in G.T. Lab and Ors. v. Chemicals and Fibres India Ltd. 1979 Ind. Cases 298". Mr. Govind Goel, however, submitted that the ratio of the Full Bench decision has been diluted and the petitioner would not be entitled to full back wages as he had not joined when an offer of re-employment was made to him on 4.6.1993. He further submitted

that the workman had served the Management only from 2.1.1986 to 10.4.1987, therefore, he would not be entitled to full back wages. In support of his submission, the learned Counsel relies on the latest judgment of the Supreme Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, . We have perused the aforesaid judgment. In paragraph No. 8 thereof, the Supreme Court has held as follows:

There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment through it may be for 240 days in a calendar year.

4. In our opinion, the aforesaid observations do not lay down an absolute proposition that full back wages are not to be granted in case the employee had only served for a short period. The judgment clearly lays down that one of the important factors which has to be taken into consideration is the length of service which a workman had rendered with the employer. In the present case, the learned Single Judge has meticulously extracted injustice which had been meted out to the workman. It has been categorically noticed that the workman was prevented from joining his duty due to the harsh and vindictive attitude of the Management. The observations of the learned Single Judge cannot be said to be based on no material or unreasonable. In our opinion, the law laid down by the Supreme Court in the case of M/s Hindustan Tin Works (supra) would be fully applicable to the facts and circumstances of this case. The aforesaid judgment has been followed by a Full Bench of this Court in the case of Hari Palace (supra). We are of the considered opinion that no injustice has been done to the appellant.