

(2010) 08 P&H CK 0391
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2522 of 2010

Punjab State Electricity Board Workers Union, Gurdaspur	APPELLANT
Vs	
Industrial Tribunal, Chandigarh and others	RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Citation : (2010) 127 FLR 687

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : B.D. Sharma, for the Appellant; M.S. Virk and Puneet Kaur Sekhon for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Punjab State Electricity Board Workers Union has filed this writ petition to challenge the award dated 16.9.2009 passed by Industrial Tribunal, Punjab, Chandigarh, dismissing the claim of the petitioner for grant of promotion to the post of Work Charge T-mate.

The workman in question was employed on daily wages by the Punjab State Electricity Board (respondent No. 2) during March, 1987. Services of the workman were illegally terminated on 1.1.1989.

The dispute in regard to termination was referred for adjudication by the Punjab Government on 29.11.1995. The Labour Court, Gurdaspur, passed an award dated 6.4.2000, directing reinstatement of the workman with continuity of service with back wages. Upon reinstatement of the workman, the petitioner Union raised an industrial dispute, pleading that workman Sukhdev Singh be promoted as work-charge T-mate w.e.f. 4.6.1993 i.e. from the date his juniors were promoted. When the prayer was declined, it led to a dispute, which was again referred by the State Government to an Industrial Tribunal for adjudication. This claim has been rejected on 16.9.2009, which is under challenge through the present writ petition.

2. The whole basis for the claim for promotion flows from the earlier award passed in favour of the workman, whose cause was espoused by the petitioner-Union. While allowing the reference in regard to dismissal of the workman, the Labour Court, Gurdaspur, has directed his reinstatement with continuity of service with back wages from the date of reference i.e. 29.11.1995 till reinstatement. It is on this basis that the workman claiming seniority over his juniors that he has made a claim for his promotion to the post of T-mate.

3. The Tribunal, however, went into the statement made by the workman to observe that the same did not throw any light regarding his entitlement for promotion except that the others promoted as work-charged T-mate w.e.f. 4.6.1993. Their seniority and date of appointments were not disclosed in the evidence.

4. In fact, the earlier award passed by the Labour Court apparently has been misread by the Tribunal. It is observed by the Tribunal that the earlier award Ex. WW2/A provides for reinstatement of the workman with continuity of service and 25% back wages with effect from the date of demand notice, namely, 29.11.1995 and as such, his continuity of service would start with effect from 29.11.1995 and not from a date prior thereto. The seniority of the workman was accordingly taken as 29.11.1995. This apparently is misreading the direction contained in the earlier award dated 6.4.2000. Having considered the fact that there was some delay in filing the demand notice, though it would not effect the reinstatement but would have effect on the back wages, the Presiding Officer, Labour Court directed reinstatement of the workman in the following terms:--

"order for reinstatement with continuity of service with back wages from the date of reference i.e. 29.11.1995 till reinstatement."

5. It is, thus, clear that the Labour Court had reinstated the workman with continuity of service but had restricted the back wages from the date of reference ie. 29.11.1995 and the back wages were ordered till the date of reinstatement. This would be clear if we read above part of the award in the light of observations made just preceding the said directions as noted above. The Labour Court has observed:--

"Moreover, there is also some delay in filing the demand notice though it does not effect the reinstatement but it definitely effects the back wages."

Thus, the reinstatement was ordered with continuity of service from the date of termination but back wages were restricted from the date of reference.

6. In fact, that would be the legal position also. Once a reinstatement is ordered with continuity of service, depriving a person would amount to break in service and as such, would be contrary to the relief of reinstatement in service. In this regard, reference can be made to the case of Gurpreet Singh v. State of Punjab 2002 (92) FLR 838 (SC) In this case, the Hon"ble Supreme Court has observed as under:--

"Having heard the learned Counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate Court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary/stands affirmed and this appeal stands allowed in part to the extent indicated above."

7. Thus, the denial of back wages on the ground that the reference was sought with delay, may be justified but once a reinstatement is ordered, this perhaps has to be with continuity of service as otherwise it will lead to break in service. The difference between reinstatement and appointment is required to be understood. Reinstatement in service in itself means continuity in service as the workman is put back in the same position and on the same post on which he was working, when his services were terminated, which were not in accordance with law. The case of fresh appointment may have to be viewed differently but the word "reinstatement" would in itself connote continuity of service.

8. Though this aspect, as already noticed, is clear from the award but the other interpretation to the order of reinstatement would also be illegal and hence, not sustainable. The only meaning that has to be assigned to the reinstatement is that the same has to be with continuity of service. As already noticed and can not so stated at the cost of repetition, that the Labour Court, Gurdaspur, had directed reinstatement of the workman with continuity of service but had only restricted the back wages from the date the reference was sought. Accordingly, the view taken by the Industrial Tribunal that the service of the workman had to be taken with continuity with effect from 29.11.1995 cannot be sustained. This is not only against the factual position that would emerge from, the record but would also be against the legal position as settled by the Hon'ble Supreme Court. A workman thus, is required to be taken in service with continuity from the date he was appointed and that would be effect of his reinstatement ordered by the Labour Court through awarded dated 6.4.2000. In the light of this legal position, the claim of the workman would require to be re-considered. Accordingly, while setting-aside the impugned award, directions are issued to the respondent-Board to re-consider the claim of the workman for his promotion to the post of T-mate by taking him to be in service with continuity from the date of his. appointment and not to count his seniority w.e.f. 29.11.1995 as has been held by the Industrial Tribunal.

The writ petition is accordingly disposed of.