
(1993) 10 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8052 of 1989

Punjab State Seeds Corpn. Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1995) 1 LLJ 118 : (1993) 105 PLR 534

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Arun Walia, for the Appellant; Hemant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner is aggrieved by the award of the Labour Court by which it was held that the retrenchment of the workman was in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947 and that he was entitled to be reinstated with continuity of service and full back wages. A few facts may be noticed.

2. The workman was appointed as Sales As-sistant-curn-Store Keeper on December 26, 1984. He had actually joined on January 4, 1985. He was retrenched on July 11, 1986. At the time of termination of service, the workman was paid a sum of Rs. 1, 137.1 Ops. being one month's pay in lieu of the notice and Rs. 567.35 ps. towards 15 days pay as retrenchment compensation. Aggrieved by the action of the petitioner-management, the workman served a notice of demand. The appropriate Government referred the matter to the Labour Court. It appears that the reference was received in the Registry of the Labour Court on March 29, 1988. On April 28, 1988, the Labour Court passed an ex-parte order declining the relief to the workman on the ground that he had failed to file a statement of claim. The workman moved an application on May 23, 1988, a copy of which has been produced as Annexure P.5 with the writ petition, for setting aside of the ex parte award. Vide order dated June 16, 1988,

a copy of which has been produced on record as Annexure P. 16, the learned Labour Court set aside the ex parte award. Finally on November 16, 1988, the Labour Court gave the impugned award in favour of the workman. This award has been challenged on the ground that the Labour Court had no jurisdiction to review its earlier order and that even the application for the setting aside of the ex parte award has been wrongly entertained. It has been further stated that the award of the back wages by the Labour Court was wholly unjustified.

3. I have heard learned counsel for the parties. Mr. Arun Walia contends that the Labour Court having declined the relief to the respondent-workman by its award dated April 28, 1988, it had become functus officio and had no jurisdiction to either set aside this award or to examine the matter de novo. He submits that the Act does not confer any power of review on the Labour Court and that the impugned award is wholly without jurisdiction. It has also been urged that the application filed by the workman for setting aside of the ex parte award has not even been properly verified and as such it could not have been entertained. The claim made on behalf of the petitioner has been controverted by the learned counsel for the respondent.

4. It is the admitted position that the ex parte award given by the Labour Court on April 28, 1988, had not even been published when the respondent had moved the application, dated May 23, 1988, praying that the award be set aside. This application was allowed by the Labour Court vide its order dated June 16, 1988. No objection to its acceptance appears to have been raised. Thereafter, proceedings as contemplated under the provisions of the Act were held. The evidence was led by the parties. On consideration of the entire matter, the Labour Court delivered the award on November 16, 1988. Strictly speaking, the case had not been decided on merits vide orders dated April 28, 1988. Consequently, no review was involved. In any event, proceedings under the Industrial Disputes Act, 1947 on a reference u/s 10(1)(c) do not conclude till after the expiry of 30 days from the date of the publication of the award. During this interregnum, an aggrieved party is entitled to move an application for the setting aside of an ex parte award and the Labour Court does not become functus officio. This matter is concluded by the judgment of a Division Bench of this Court in *The Warring Coop. Agri Services Socy. Ltd v. The State of Punjab and Ors.* 1989 (3) S.L.R. 586. Their Lordships were pleased to inter alia observe as under:

"Proceedings in a reference u/s 10 of the Act are not deemed to be concluded until the expiry of 30 days after the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and upto that date it has the power to entertain an application in connection with such dispute. Impliedly thereafter it becomes functus officio and cannot entertain an application for setting aside an ex parte award."

In view of the above pronouncement of the Division Bench, the primary contention raised on behalf of the petitioner cannot be accepted.

5. Equally lacking in merit is the contention that the application filed by the respondent workman for the setting aside of the ex parte award was wrongly entertained. Learned counsel submits that the application had not been properly verified. No such objection appears to have been raised before the Labour Court. Consequently, it cannot be allowed to be raised at this stage when the decision has finally gone against the petitioner. A party to a cause cannot be allowed to sit on the fence. It cannot raise a new plea which has not been raised before the Labour Court for the first time in a writ petition unless it affects the jurisdiction of the Court. The contention is consequently rejected.

6. As for the claim that the back wages should not have been awarded to the workman, it only needs to be noticed that the retrenchment was in violation of the provisions of Section 25F of the Act. It has not been shown that the finding recorded by the learned Labour Court in this behalf is either perverse or untenable. In such a situation, there is no ground for holding that the workman is not entitled to the payment of back wages. The retrenchment having been found to be in violation of the provisions of Section 25F, the workman shall be deemed to have been in continuous service and the wages should be deemed to have automatically accrued to him.

7. No other point has been urged.

8. There is no infirmity in the award given by the Labour Court. Moreover, the petitioner has already reinstated the workman. In this situation, no interference whatsoever is called for in this writ petition. It is dismissed. In the circumstances of the case, the parties are left to bear their own costs.