
(2013) 10 P&H CK 0284
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16733 of 1995

Radhey Sham

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 141 FLR 1060 : (2014) 1 LLJ 102 : (2014) 1 LLN 530 : (2014) 2 PLR 423 : (2014) 1 SCT 527

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Parambir Singh, for the Appellant; Y.P. Khullar, for the Respondent

Final Decision : Allowed

Judgement

Bharat Bhushan Parsoon, J.—Petitioner-workman Radhey Sham, in this writ petition, seeks quashing of Award dated 25.7.1995 (Annexure P-1) passed by the Labour Court, Jalandhar vide which reference of the petitioner for reinstatement with continuity of service and back wages claimed by the petitioner was declined. Petitioner-workman was appointed as waterman on D.C. rates on 28.4.1987. He was given work of Cycle Attendant on 30.11.1987. He was served with a retrenchment notice on 23.7.1990. He was terminated on 23.8.1990 without payment of retrenchment compensation. Claiming his termination to be in violation of Sections 25(F), 25(G) and 25(H) of the Industrial Disputes Act, 1947 (hereinafter called the Act), demand notice was served by the petitioner whereafter dispute was referred to the Labour Court vide reference made under the Act by the Government of Punjab.

2. The Labour Court had proceeded to answer the reference on the following issues framed by it on 5.8.1993:

- (i) Whether the reference is bad in law for non-joinder of the necessary parties?
- (ii) Whether termination of services of the workman is justified and in order?

(iii) Relief.

3. After receiving oral as well as documentary evidence from the parties and providing a hearing to their representatives, the Labour Court decided issues No. 2 and 3 against the petitioner-workman while holding that after impleadment of respondent No. 2, issue No. 1 had become redundant, the reference was answered against the workman.

4. In this petition, challenging the Award, many grounds have been taken by the petitioner. Prominently, these are as under:

(i) Compliance with provisions of Section 25(F) of the Act had not been made as retrenchment compensation was not paid to the workman along with termination order;

(ii) Juniors to the petitioner were retained in service whereas services of the petitioner-workman were terminated. Principle of "Last come, first go" thus was violated; and

(iii) Post against which the petitioner-workman was working still existed but in violation of Section 25 of the Act, the respondents had employed some other workman after terminating services of the petitioner resulting in unfair labour practice.

5. Praying for reversal of the impugned Award, acceptance of the petition with reinstatement of the petitioner with full back wages, has been sought.

6. While hearing learned counsel for the parties, paper book has been gone through.

7. Learned counsel for the petitioner has contended that the petitioner was terminated in violation of provisions of the Act while paying good-bye to the principle of "Last come, first go" and that too, without making payment of retrenchment compensation. It is claimed that post against which he was working was still existing but somebody else had been accommodated, whereas he was unceremoniously shown the exit-gate. It is thus claimed that approach of the respondents was wrong and has visited the petitioner with prejudice.

8. Counsel for the contesting respondents, on the other hand, claims that parity sought by the petitioner with other employees of the respondents is not available to him as there is no similarity of profiles of the jobs held by them. Dismissal of the petition was sought.

9. When rival claims of the parties are evaluated, it transpires that it is an admitted case of the parties that the petitioner was terminated without payment of retrenchment compensation in terms of Section 25(F) of the Act. During the course of proceedings before the Labour Court, petitioner- workman Radhey Sham was examined as W.W. 1. He was neither made aware of the quantum of retrenchment compensation payable to him nor was told as to from whom the same was to be received. Relevant portion of statement of the petitioner qua this

aspect is as under:

No charge-sheet or notice was given to me before termination. No inquiry was ever conducted against me, nobody asked me to receive the retrenchment compensation. I do not know if ever such retrenchment compensation was ever drawn/bill prepared.

XXX

I do not know whether any retrenchment compensation amount had been prepared and passed. I did not go to receive the compensation as I did not know about it at all.

10. The workman had no inkling of retrenchment compensation payable to him and had no knowledge either from whom it was to be received.

11. Even otherwise, it was for the contesting respondents to make payment of retrenchment compensation simultaneously with retrenchment of service of the petitioner. However, the respondents, in fact, left the workman in lurch and was expected to go begging retrenchment compensation here and there. Exit of the workman should have been in strict compliance of the provisions of Section 25(F) and that too with grace, but it was not so. Learned Labour Court went wrong in verdicting compliance of Section 25(F) of the Act by the contesting respondents, as the workman was not paid retrenchment compensation. Leaving the workman to collect the amount of retrenchment compensation at some later date and too without even disclosing him from where, at what time and when, cannot be said to be in compliance of Section 25(F) of the Act.

12. Labour Court also dealt with the aspect of "Last come, first go" in a very casual manner. During the course of arguments, learned counsel for the workman had brought to the pointed notice of this Court details of reference No. 406 of 1992 answered by the same Labour Court on 21.3.1995. The said Award was published in Punjab Government Gazette dated 4.8.1995.

13. Vide the said Award rendered by the Labour Court, order of termination of services of Baldev Singh was quashed and he was ordered to be reinstated with continuity of service and with full back wages.

14. Now, let us see who is this Baldev Singh in whose favour Award (Reference No. 406 of 1992) had been answered by the Labour Court? This petitioner and said Baldev Singh had been terminated on the same day i.e. 23.8.1990. Annexure R-2 reveals that Baldev Singh was junior to petitioner-workman Radhey Sham. Reinstatement of Baldev Singh had been ordered by the Labour Court on the premise that a workman even junior to Baldev Singh was still continuing in the job of the respondent. When petitioner-workman is senior to them all, he could not have been left out particularly when the Labour Court has very clearly recited in the Award that both i.e. the petitioner and Baldev Singh held the same category of post. Merely because at the relevant time, Baldev Singh had been put on duty as a Cycle Attendant, whereas the petitioner was

performing functions of a Chowkidar would not make any difference because all the three viz. Ms. Balwinder Kaur, Baldev Singh and the petitioner were class-IV employees and golden principle of "Last come, first go" was fully applicable in their case. Statement of Radhey Sham W.W.I in this regard is to the following effect:

Baldev Singh and Balwinder Kaur junior to me were working at that time. I am class-IV employee. Baldev Singh and Balwinder Kaur were also class-IV employees.

15. Despite pointed cross-examination, his credit on this count could not be shattered. It is thus clear that there is violation of Section 25(G) of the Act.

16. It is also to be pointedly noticed that post against which the petitioner was working had not been abolished. Statement of the petitioner in this regard is as under:

Respondents have appointed one person in my place (after my termination) on regular basis I was not intimated nor informed when this person was appointed.

17. When the post was available and some other person had been recruited in his place without any information to the petitioner, this is also violation of provisions of Section 25(H) of the Act.

18. Keeping in view the above facts and circumstances of the case, learned Labour Court was wrong in verdicting issue No. 2 against the petitioner whereas it should have been decided in his favour. Reversing findings on issue No. 2 of the Tribunal, this issue No. 2 is decided in favour of the petitioner.

19. Sequelly, the impugned Award (Annexure P-1) being neither factually correct nor legally tenable, is quashed. Consequently, respondents No. 2 and 3 are directed to reinstate the petitioner into service within one month from the date of the receipt of certified copy of this judgment. If with passage of time, he has already crossed the age of superannuation, then deeming him to be in service, making computation he would be entitled for payment of monetary benefits with full back wages from the date of his termination. Arrears would be paid with interest @ 9% per annum within two months. If the payment is not made within two months, interest would be charged @ 12% per annum. The writ petition is allowed to the extent as indicated above.