
(2011) 04 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12098 of 1992

Ram Chander Peon

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (2012) 2 LLJ 142 : (2011) LLR 1217

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—The contour of the facts, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, is that Petitioner Ram Chander-workman (for brevity "the workman") was appointed as a Peon on ad hoc basis by the Managing Director of The Haryana State Federation of Consumer's Coop. wholesale Stores Ltd. (Respondent No. 2) (for short "Confed"). He continuously worked with the Confed from 1.5.1984 to 30.11.1986 and earned two increments on account of his good work and conduct. However, the services of the workman were stated to have been illegally and abruptly terminated by the Confed, without payment of any retrenchment compensation, as contemplated u/s 25F of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act") and without holding any departmental enquiry. Even his juniors were retained in service. It necessitated him to raise an industrial dispute, which was referred to the Presiding Officer, Labour Court (for brevity "LC") (Respondent No. 1) by the appropriate Government. In the wake of industrial dispute, the Petitioner submitted his statement of claim before the LC in the manner and on the grounds indicated hereinabove.

2. The Management of the Confed contested the claim of the workman and filed

its written statement denying his continuous service. It (Management) has also stoutly denied the entitlement of the workman and other allegations contained in his claim petition and prayed for its dismissal.

3. Controverting the allegations contained in the written statement and reiterating the pleadings of the claim petition, the workman filed the replication.

4. From the pleadings of the parties, the LC framed the following issues for proper adjudication of the case:

(i) Whether this Court has no territorial jurisdiction to entertain and try the dispute? OPM

(ii) Whether the Respondent is not an industry? OPM

(iii) Whether the services of the workman were terminated illegally by the management. If so, to what effect and to what relief, he is entitled to, if any? OPM

(iv) Whether the workman remained gainfully employed? OPM

(v) Relief.

5. The parties to the lis, brought on record oral as well as documentary evidence, in order to substantiate their respective pleas. The LC, after considering the entire material on record, came to the conclusion that services of the workman were illegally terminated by the Management of the Confed and he was liable to be reinstated with benefit of continuity of service. However, the workman was awarded only 50% back wages by the LC, by virtue of impugned award dated 1.4.1991 (Annexure P1), the operative part of which is as under:

In view of my findings on issues No. 1 to 4, this reference succeeds and it is adjudicated that the services of Shri Ram Chander were terminated illegally by the Respondent and the Petitioner is liable to be reinstated into service with benefit of continuity thereof w.e.f. 1st December, 1986. However, the workman shall be paid back wages at the rate of 50% per cent only. The appropriate Government be informed.

6. Although the Management of the Confed did not challenge the award and LC reinstated the workman with continuity of service, but still he (workman) did not feel satisfied with the impugned award (Annexure P1), declining 50% of back wages and preferred the instant writ petition, invoking the provisions of Articles 226 and 227 of the Constitution of India.

7. Having heard the learned Counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

8. As is evident from the record, that LC came to the conclusion that the services of workman were illegally terminated and he was reinstated with continuity of

service, but 50 % of the back wages were awarded by the LC.

9. Above being the position on record, now the short and significant question, though important, that arises for determination in the present petition is, as to whether the workman is entitled to full back wages or not ?

10. Having regard to the rival contentions of the learned Counsel for the parties, to me, the answer must obviously be in the affirmative.

11. It is not a matter of dispute that the LC has specifically framed the following issue No. (iv) in this regard: "Whether the workman remained gainfully employed? OPM"

12. While deciding this issue in favour of workman, the LC recorded the following finding of fact based on the evidence:

The onus of this issue was upon the Respondent which was under obligation to convince me that the workman remained gainfully employed after 1st December 1986 till today and in these circumstances he is not entitled to any back wages. On the contrary the Petitioner has alleged in his statement of claim that he had been getting the assistance from his friends and relatives in order to maintain his life. These allegations have also been reiterated by the Petitioner in his statement made before this Court. In the absence of any rebuttal evidence, it has to be held that the workman did not remained gainfully employed after 1st Dec.1986. This issue is decided against the management and in favour of the Petitioner.

13. Meaning thereby, once the LC has recorded the finding of fact that the workman did not remain gainfully employed after 1.12.1986, then, to my mind, there was no occasion for declining the 50% of back wages, that too, without assigning any reasons whatsoever and the LC appears to have slipped into legal error. Therefore, the workman is held legally entitled to full back wages and the impugned award deserves to be modified in this relevant connection.

14. In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned award (Annexure P1) is hereby modified and the workman is granted full back wages during the period he remained out of service, as he did not remain gainfully employed. The impugned award is accordingly modified to that extent in the manner depicted here in above.