

(2013) 08 P&H CK 0213

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15160 of 2005

Satish Kumar

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2014) 173 PLR 342

Hon'ble Judges : Mahavir Singh Chauhan, J

Bench : Single Bench

Judgement

Rameshwar Singh Malik, J.—The workman impugns the award dated 6.10.2004 (Annexure P-1) passed by the learned Labour Court, whereby the petitioner-workman was ordered to be reinstated with continuity of service, but without back wages. Shorn of the detailed background of the case, it would suffice to refer to the basic facts of the case, which are necessary for disposal of this writ petition. Having been terminated from service for causing a fatal accident, petitioner raised industrial dispute. The respondent Management had to pay the compensation to the family members of the victims, as directed by the learned Motor Accident Claim Tribunal. A show cause notice was issued to the petitioner workman by the punishing authority for rash and negligent driving. He submitted his reply. Thereafter, he was given an opportunity of being heard. After perusal of the reply submitted by the petitioner-workman, the punishing authority found it unsatisfactory and terminated services of the petitioner. A departmental appeal was also dismissed. A criminal case was registered against the petitioner under Sections 279/337/338/427/304A IPC. However, the petitioner came to be acquitted in the criminal case. The learned Labour Court, vide impugned award dated 6.10.2004 ordered reinstatement of the petitioner with continuity of service, but back wages were denied. Hence, this writ petition only qua the claim of back wages.

2. The writ petition was admitted for regular hearing and pursuant thereto, respondent Management filed its reply, controverting the allegations leveled by

the petitioner.

3. The solitary argument raised by the learned counsel for the petitioner was that the learned labour court failed to record any cogent reason while denying the benefit of back wages. He further submits that once the petitioner stood absolved of the charges in the criminal case, he was entitled for reinstatement with continuity of service and full back wages. He concluded by submitting that since no departmental enquiry was held in the present case, the petitioner was entitled for full back wages. He prays for allowing the writ petition by suitably modifying the impugned award. To substantiate his arguments, he relies upon the judgment of this Court in CWP No. 3076 of 2009 (Jarnail Singh v. Presiding Officer, Labour Court, Ambala and others,) decided on 9.11.2009.

4. On the other hand, learned counsel for the State submits that the petitioner caused fatal accident by rash and negligent driving. Due opportunity of being heard was granted to the petitioner. Service record of the petitioner was also not unblemished as claimed. He had been awarded the punishment on earlier occasions, as well. Service of the petitioner were rightly terminated. No departmental inquiry was warranted in such a matter. Simply because the petitioner was acquitted of the criminal charge, he will not be entitled for full back wages. Finally, he prays for dismissal of the present writ petition.

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned order is not based on sound reasoning thereby denying the benefit of back wages to the petitioner, this writ petition deserves to be partly allowed. To say so, reasons are more than, which are being recorded hereinafter.

6. In view of the above said undisputed facts available on record, it was not appropriate on the part of the respondent Management to terminate the services of the petitioner only on the basis that he was found involved in a fatal accident. A departmental enquiry was still required to be conducted. Admittedly, no departmental enquiry was conducted in the present case. Services of the petitioner were terminated simply because of his involvement in a case of alleged rash and negligent driving. The employer was under legal obligation to conduct a departmental enquiry, so as to prove the misconduct on the part of the petitioner, before terminating his services. Having said that, this Court feels no hesitation to conclude that termination of services of the petitioner were illegal and has been rightly set aside by the learned Labour Court.

7. The above said view taken by this Court also finds support from a Division Bench judgment of this Court which has been rightly relied upon, in the above said judgment dated 9.11.2009 passed in CWP No. 3076 of 2009. The relevant observations made in the judgment which can be gainfully followed in the present case read as under:--

The degree of proof that is necessary before the Motor Accident Claims Tribunal

for upholding the claim is totally distinct from a misconduct that has to be proved in order that the termination of service is effected. It has also been held by the Hon"ble Supreme Court in Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others, , where the Hon"ble Supreme Court held that the Motor Vehicles Act being social welfare legislation, it shall be so construed as not to defeat the rights of lawful claimants of persons arising out of death and injury in motor accidents by looking for extracting standards of proof of negligence. The findings of the Motor Accident Claims Tribunal cannot supplant the procedural requirement which a management had perforce to undertake to be satisfied that there had been a misconduct. This issue has also been dealt with by a Division Bench of this Court in State of Haryana through General Manager, Haryana Roadways, Ambala v. Sat Pal Sharma and another, (Civil Writ Petition No. 12577 of 2004) where the Bench had held as under:--

There can be no doubt, that it is not open to an employer to terminate the services of an employee on the basis of misconduct unless a regular domestic enquiry is conducted against him, wherein the charges leveled against him are proved. It was not open to the petitioner Management to simply rely on the judgment rendered by the Motor Accident Claims Tribunal, Ambala, for the simple reasons, that the petitioner Management itself had adopted the stands before the Motor Accident Claims Tribunal, Ambala that the accident on 29.9.1996 was not the result of the negligence of the respondent-workman in the aforesaid view of the matter, unless an independent departmental enquiry was conducted against the respondent-workman wherein the charge of negligence was proved, the respondent-workman could not have been subjected to the punishment of dismissal from service.

8. So far as the claim of the petitioner qua the back wages is concerned, the learned Labour Court has failed to record any sound reason in this regard. The relevant concluding part of the impugned award reads as under:--

In view of the above facts, circumstances, evidence and my findings on issue No. 1, the order terminating the services of the workman is hereby set aside. Workmen is ordered to be reinstated with continuity of service but without back wages, as he did not utter a word to prove that he was not gainfully employed during the period in question.

9. While appearing in the witness box, petitioner was cross-examined wherein he denied the suggestion that during this period he had been working and earning Rs. 4,000/- to 5,000/-. On the other hand, no convincing evidence as such, has been led by the respondents, so as to clearly establish that the petitioner had been employed during this period. In view of the evidence available on record, the above said conclusion recorded by the learned labour Court would be contrary to the record, not being factually correct. Further, once the termination of services of the petitioner has been found to be illegal and rightly set aside, this Court feels that petitioner was entitled to some back wages also.

10. No doubt, the petitioner has been found involved in a fatal accident which took place due to alleged negligent driving by the petitioner. It is also a matter of record that the previous record of the petitioner was also not unblemished. Thus, keeping in view the totality of facts and circumstances of the cases, this Court is of the, considered view that interest of justice would be adequately met, if the petitioner is granted 50% back wages. It is, so said, because it has not been conclusively proved, whether the petitioner, during the interregnum, remained employed somewhere else or not. The conclusion arrived at by the learned Labour Court, denying the back wages in toto, has also not been found to be based on sound reasoning.

11. No other argument was raised.

12. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned award is liable to be modified.

13. Consequently, the respondent Management is directed to pay 50% back wages to the petitioner which are to be calculated from the date of award. The amount shall be paid to the petitioner within a period of three months from the date of receipt of a certified copy of this order, failing which he shall be entitled for interest @ 9% per annum from the date of award till the actual payment. Resultantly, with the modification made hereinabove in the impugned award, the instant writ petition stands partly allowed, however, with no order as to costs.