

(2013) 07 P&H CK 0220

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17687 of 2009

Shree Pal Kaushik

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 18(1)

Citation : (2014) LLR 178 : (2013) 3 SCT 774

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Pankaj Jain, for the Appellant; Alok Jain, Advocate for the Respondent No. 2, for the Respondent

Judgement

Rajiv Narain Raina, J.—The challenge, in this petition, is to an award dated 26.11.2008 passed by the Presiding Officer, Labour Court-I, Gurgaon in Industrial Reference No. 323 of 1996 declining relief to the petitioner. The Labour Court has accepted the plea of the management that the petitioner resigned from service after accepting full and final dues. It has been held that the resignation was not obtained by coercion and the workman was not forced to resign. The consideration said to be accepted by the workman was for a sum of Rs. 7500/- representing monetary consideration for severance of employment. The plea of the workman before the Labour Court was to the contrary. It was his case that he was an elected Vice President of the employees Union and protected workman and he was shunted out of service under duress and third degree treatment in the Police Station where he was forced to resign on 19.4.1995, in what is classified as a human rights violation in the rule book. The facts briefly stated are that the petitioner was appointed on 6.12.1990 as an Assistant Fitter with the respondent which, a private limited company is running a factory. He was placed under suspension on 17.2.1995 and his services were dispensed with on 19.4.1995 through the Management calls it resignation but in pleadings admits he was dismissed during workers strife. The Management relies on a receipt which the workman Shree Pal Kaushik signed on 20.4.1995 accepting the

settlement between the parties. It is not disputed that the alleged settlement was arrived at outside conciliation proceedings.

2. During the course of adjudication before the Labour Court, the petitioner filed an application dated 3.4.2008 for permission to produce a letter written by the Management to the SHO, Police Station Sadar, Gurgaon (Haryana) dated 20.4.1995 which had material bearing on the case and that he should be permitted to produce the same before the Labour Court. In the letter dated 20.4.1995, the Management informed the police that in February, 1995, the workers in the factory stopped production and in the agitation, the Management had to suspend some workers and Shree Pal Kaushik was dismissed. This letter is found at page 71 of the paper book. The application dated 3.4.2008 was resisted by the Management. The Management prayed for dismissal of the application in that it was frivolous and was moved to delay the matter. However, in the reply to the application, they asserted that the settlement Ex. M-2 affirmed that the workman was "dismissed" from service on 3.5.1995 and full and final settlement was executed, thereafter. It was urged that since the resignation letter was dated 19.4.1995, therefore, the letter written by the Management, on the next day, in the meeting that the workman was dismissed, has no bearing on the facts of the case. The Labour Court by a peculiar order dated 24.4.2008, placed at Annexure P-15 to the petition, rejected the application. The Labour Court noticed that there is some ambiguity with regard to the date of resignation as mentioned in the reply dated 11.4.2008 to the application for production of the letter dated 20.4.1995, yet held that the letter dated 20.4.1995 was not mentioned in the demand notice dated 19.4.1995 submitted one day earlier to the letter of the Management. The Labour Court held that the application was made to delay the proceedings which have been referred to adjudication in 1996. In this manner, a material piece of evidence was shut out from further examination by the Labour Court for reasons best known to it.

3. Shree Ram Phal, Deputy Superintendent of Police, filed an affidavit (Annexure P-12) casting serious shadow on the alleged settlement. It reads as follows:-

I, Shree Ram Phal, Deputy Superintendent of Police resident of Madanpuri Gurgaon, do hereby solemnly affirm and declare as under:-

1. That I know that the complaint Shree Pal Kaushik son of Ram Dia resident of village Ghuna, Tehsil and District Sonipat at present resident of Laxman Vihar, Phase-XI, Gurgaon.

2. That settlement dated 20.04.1995 and receipt dated 20.04.1995 was got executed by Shree Pal Kaushik in Police Station Sadar Gurgaon by R.K. Hooda, G.M. and Liladhar Verma, Personnel Officer, Dominant Offset. At that time I was posted in that Police Station as S.H.O. Shree Pal was arrested in Police Station on the complaint of the aforesaid company.

3. That the settlement and receipt dated 20.04.1995 for Rs. 7,500/- was got executed by Shree Pal Kaushik against his will by R.K. Hooda, G.M. and Shri

Liladhar Verma.

Deponent

Verification

Verified that the aforesaid affidavit is true and correct as per my knowledge and belief.

Deponent

Verified at Gurgaon Dated: 30.04.2003 Under Seal of Notary Govt. of Haryana

4. The affidavit is dated 30.04.2003. It is past cavil that the settlement and receipt dated 20.4.1995 was procured in a Police Station by the Management in extra legal fashion.

5. The short question which requires to be determined, in this case, is whether the so called settlement and receipt of Rs. 7,500/- as a full and final payment is a genuine document signed without coercion and on the free will of the workman. The Management witness-4 appeared in the witness box but failed to produce any record or account to prove payment to the petitioner. There is no evidence on record to show that the money was offered and accepted without duress or coercion or at all. It is also not disputed that at the behest of the Management, the petitioner was arrested by the Police and he was present in the Police Station on the fateful day of the settlement. The petitioner was an elected Vice President of the Dominant Offset Workers Union which is a registered workers union. It also can-not be discounted that there was an industrial strike in the factory run by the Management in which the petitioner worked as an Assistant Fitter.

6. The Labour Court in paragraph 12 of the award has so callously held that when the settlement Ex. M-2 has been exhibited and proved on record, then no oral evidence can be led to prove its terms and conditions to the contrary. In these circumstances, this Court would have to look closely at the settlement Ex. M-2 (Annexure P-8). It would need reproduction in its full text together with the receipt which reads as follows:-

Ex. M-2

Settlement u/s 18(1) of the Industrial Disputes Act, 1947.

Details of the Settlement

That the workman Shree Pal Kaushik S/o Sh. Ram Diya resident of Village Guhna, Police Station Sonipat, Tehsil and District Sonipat was employed in the company as Fitter since 01.01.1992. On the basis of misconduct dated 11.02.1995 and 21.02.1995 committed by him management dismissed him on 03.04.1995. Shree Pal Kaushik directly negotiated with the management and requested for retrenchment compensation. During the mutual negotiation settlement has been arrived at between management and Shree Pal Kaushik

today on 20.04.1995 on the following conditions:-

Conditions of the Settlement:

1. That the workman has received his full and final amount of Rs. 7,500/-. This includes his earned wages, earned leaves and all other legal dues and gratuity. The workman has executed receipt of this amount separately.
2. That the workman has no claim/dues against the company and nor the workman has any right for reinstatement in the company. That any dispute pending between the worker and company in any court Civil Court or before any officers shall be deemed to have been filed.
3. That the worker himself or any union or any other organization will have no right to continue the dispute.
4. Copies of the settlement are being sent to the concerned officers for registration.
5. That the settlement have been implemented w.e.f. today i.e. 20.04.1995 and both the parties have signed this settlement today on 20.04.1995 so that the proof can be preserved.

Sd/- Representative of the Management Sd/- Shree Pal Worker Witnesses.

Receipt

I Shree Pal Kaushik S/o Ram Deya resident of village Guhna, Police Station Sonipat, Tehsil and District Sonipat received Rs. 7,500/- as full and final settlement from M/s. Dominant Offset Pvt. Ltd. today on 20.04.1995. Now I have no recoverable dues against the company.

Sd/- Shree Pal 20.04.1995

7. It follows that the Management admits that the workman was dismissed on 3.4.1995. The thread of employment was snapped on 3.4.1995. The settlement is stated to be u/s 18(1) of the Industrial Disputes Act, 1947 (in short, "the Act"). The settlement is a private document since it has not been arrived at in the conciliation proceedings. Its genuineness cannot be allowed to be disputed in the face of the affidavit of the Deputy Superintendent of Police, Gurgaon reproduced above that it was obtained against the will of Kaushik in a police station. There is an inverse admission that the workman was dismissed without serving a charge sheet or holding an enquiry to establish misconduct which was stated by the management to have been committed on 11.2.1995 and 21.2.1995. After arriving at a settlement on 20.4.1995 itself, the Management issued a certificate to the General Public that the workman has taken his full and final payment from the Company on 20.4.1995 and they wish him all success in life. When the Management witness K.L. Goel appeared in the witness box, he stated that he had made an entry of payment of Rs. 7,500/- in the cash book in the name of the workman which he had not brought to court. The witness in

defense said that he was not informed about it. He also did not produce any evidence to establish his presence on 20.4.1995 by stating that he had not brought the same. He deposed that the settlement was arrived at around 12/12.30 around lunch time.

8. Petitioner Shree Pal Kaushik appeared as his own witness and his deposition recorded on 16.3.1999 runs into 8 vivid pages. He deposed that he was arrested and detained in the Police Station for 3 days from 19.4.1995 to 21.4.1995. He was given third degree treatment by the police on 19.4.1995 and was threatened to death on 20.4.1995. Under coercion, he was forced to sign the resignation at gun point on some blank papers. Though, he admitted signing on the dotted line but he insisted that he never received any payment. He was arrested and released on bail on 21.4.1995 after which he complained to the Deputy Commissioner, Gurgaon against the General Manager and the Assistant General Manager and all the three Inspectors and narrated the incident in person as well that he was subjected to torture. He stated that being a Vice President of the Union, he was a protected workman under the Industrial Disputes Act, 1947. He was elected by a resolution of the Union dated 31.12.1994. The Union was registered bearing No. 1107 and he brought the registration certificate in original Ex. WW-1/7. The Union is affiliated to AI-TUC. He also brought the affiliation certificate at the time of his examination. He also stated that he had filed a criminal case against the SHO Shri Ramphal, General Manager Shri R.K. Hooda and Shri Leela Dhar Personnel officer of the company. They have been summoned by the trial court and the case was pending in the Court of Shri R.P. Goel who was transferred and the case is pending before another Judge. I have read the deposition of the petitioner in great detail and this Court has been left with a feeling that there are no lies in it. Ram Phal has spoken the truth in 2003 on affidavit because of trial pending against him at the instance of complainant Kaushik-petitioner. This lends further credence to it.

9. The Labour Court unfortunately records in the award that the statement of the workman cannot be believed since it is a self-serving statement. The logic behind this is hard to discern coming from a judicial officer of the rank of Additional District Judge well experienced in civil law.

10. I have heard the learned counsel for the parties at length since I thought the issues raised were of considerable importance even from the point of view of a human rights violation and whether this Court should protect a man who has been apparently victimized or not? In case, victimization is established, it would be an unfair labour practice hit by the 5th Schedule of the Act and nothing further would remain to be decided, in this case. I have read and re-read the laboured award passed by the Labour Court and I am left with a distinct feeling that the Presiding Officer has not done justice, in this case. I find no appreciation of evidence of any worth in the impugned award. The workman had been dismissed prior to the settlement. If he was dismissed on 3.4.1995, there was no occasion to settle the matter or treat it as a case of resignation. The Labour

Court agrees that the date of dismissal mentioned in the reply to the application dated 3.4.2008 as 3.4.1995 was wrong. He casually observes that it was a mistake. In case, where the Management admits that the workman has been dismissed for misconduct, then it has not been preceded with a charge sheet or enquiry. I have also no reason to disbelieve the affidavit of the Deputy Superintendent of Police that the settlement was got executed by the petitioner against his will by Shri R.K. Hooda and Shri Leela Dhar, servants of the management. The Labour Court observes that though a number of complaints had been made by the Union against the illegal confinement of the workman and that "he was forced to obtain resignation by force", yet holds that none of the union members was examined. The labour Court says that these complaints cannot be relied upon. The Labour Court observes that the workman never took a plea that he was served with a charge sheet dated 21.1.1995 and one Mr. Om Kaushal was appointed as an Enquiry Officer. I am startled that this plea of appointment of Enquiry Officer and charge sheet has not even been pleaded by the management before the Labour Court in its written statement. I am sorry to say the Labour court has deliberately twisted the entire case in favour of the management and caught words from the scruff of their neck and plastered them into the award predetermined against the workman-self serving statement of the man, rather strange. If this were true all statements of witnesses should be discarded.

11. The precipitation of harsh police action against the petitioner was attributed by the petitioner to Shri R.K. Hooda General Manager of the company who, the petitioner in his replication stated, was a nephew of the Ex-Labour Minister Shri Kishan Murty Hooda and in the past, had also got, Union Leaders such as Shri Keshar and Shri Parveen, arrested by the local police and it was the practice of the Management to implicate inconvenient union leaders in false criminal cases.

12. On going through the record of the case placed before this Court, I have no doubt that the petitioner was victimized by the Management. He was forced to resign but payments of Rs. 7,500/- was never made to him. No evidence was produced by the Management, in this regard. If a charge sheet was issued to him, then, a regular enquiry should have been conducted to establish any alleged misconduct. Besides, the Labour Court failed to exercise its jurisdiction u/s 11-A of the Act. A very vital document in the shape of the letter dated 20.4.1995 was shut out of consideration when it had material bearing on the case. To complete the narration of facts, letter dated 20.4.1995 deserves reproduction verbatim. It reads as follows:-

To

Sh. S.H.O. Sahib

Police Station, Sadar Gurgaon,

Haryana

Sir,

We have been repeatedly informed you through written communications that since February 1995 workers in our factory have deliberately stopped production and the workers willing to work are being apprehended and threatened and there is an atmosphere of fear and terror in the factory. In this regard the management had to suspend some workers and Shree Pal Kaushik was dismissed. The staff and officers of the factory are being threatened continuously. The hand of some outside elements and primarily Shree Pal Kaushik, Sh. Harinder Kumar and some other suspended workers is there in threatening the workers and staff outside the factory. The workers inside the factory premises who are willing to work are threatened by active connivance of Sh. Mohinder Singh and Sh. Gyaninder Pal Singh and some other active workers and they threatened them if they don't work as per their wishes their legs will be broken. There are two workers union in our factory. One union by the name of Dominant Offset Workers Union is affiliated to AITUC. The workers of this union are provoked by Sh. Shradha Nand and Murli by instigating lectures as a result of which there is disturbance in the factory.

You are therefore requested that keeping in view seriousness of the circumstances, necessary action may kindly be taken immediately so that the atmosphere of fear and terror prevalent since February, 1995 may come to an end.

Sd/-

R.K. Hood

General Manager

Head Constable Sh. Satbir Singh Ji Please (sic) the matter and for N/A

Sd/- Office of D.S.P. Gurgaon 20.04.1995

13. The Labour Court has taken a myopic view of the settlement and non-suited the petitioner's case for consideration on that exhibit. It may be true that no oral evidence is permissible to be led to prove contents of a document but when the document itself is clouded by compelling circumstances or *res gestae* the Labour Court had a duty to examine all the attending circumstances leading to the settlement and then to pronounce on it. The settlement has no legal value to my mind as it is mired in, and to put it in parenthesis, self serving interest of the management. The Labour Court has abjectly failed to examine ancillary and incidental disputes and circumstance leading to the settlement. Resultantly, this writ petition is allowed. The award of the Labour Court which is not sustainable stands quashed. The petitioner is held entitled to reinstatement with full back wages and continuity of service and all monetary and promotional benefits from the dates those were given to juniors. The full back wages be now calculated at current rates of each year in between dismissal and reinstatement, the calculation sheet be handed over to the petitioner duly certified by the company

and then arrears paid to the workman within 60 days from receipt of certified copy of this order. Since a calculated fraud has been played on the petitioner and he has been subjected to victimization and worse still human right violations in a police station in police custody, and then forced to litigate to vindicate his rights he would be entitled to costs of Rs. 1 lac in addition. In case, the arrears of back wages are not paid within the time stipulated, the amount would carry 12% interest per annum compounded yearly till realization. Reinstatement and back wages in this case are delinked and both are declared independent rights. The management would not insist in this case that the workman must first join service and then be paid monetary benefits under this order. This last direction is found necessary to secure the ends of justice and to act as a healing touch.