
(1998) 02 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1279 of 1991

Siri Ram

APPELLANT

Vs

Pepsu Road Transport Corporation and Another

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Citation : (1998) 119 PLR 204

Hon'ble Judges : N.C. Khichi, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.S. Gill and G.S. Gill, for the Appellant; Charu Tuli, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The appellant was appointed as a conductor with the Pepsu Road Transport Corporation in October, 1979. On April 6, 1981, his services were terminated. He raised an industrial dispute. The Labour Court rejected his claim vide its award dated April 26, 1984. The appellant filed a petition under Article 226 of the Constitution. The learned Single Judge having dismissed the petition, he has filed the present Letters Patent Appeal.

2. Mr. H.S. Gill, learned counsel for the appellant has submitted that the judgment of the learned Single Judge has been over-ruled in Pepsu Road Transport Corporation v. Presiding Officer and Anr. 1995(1) R.S.J. 309. That being so, the appeal should be allowed. It has been further submitted that the Labour Court had erred in upholding the termination of the appellant's services. It had travelled beyond the order of reference. Thus, the learned Single Judge had erred in dismissing the writ petition. Counsel has referred to certain decisions.

3. The appellant's services were terminated vide order dated April 6, 1981. In this order, it was mentioned that he is "absent from duty since 12.3.1981 unauthorisedly without prior sanction of leave from the competent authority."

Thus, it was concluded that he is "deemed to have lost his lien from the services of the Corporation from the aforesaid date". When the appellant raised the dispute and filed a statement of claim, the management had inter alia pleaded as under :-

"That the contents of para No. 2 of the Statement of claim of the workman is admitted to the extent that his services were terminated on 6.4.1981 w.e.f. 12.3.1981. Rest of the para is wrong and denied. The workman intentionally and wilfully abandoned the services of the Corporation as he has failed to report for duty despite two registered letters bearing No. 7191 and 7505 addressed to him at his last known address. The workman was to report for duty on 12.3.1981 but he failed to resume duty on the said date without any sanctioned leave till his termination of service. Moreover, the workman was to deposit his ticket box which he has failed to deposit and misappropriated the Corporation's money to the tune of Rs. 2202.80 by not depositing the ticket box."

4. The Government had referred the following question for adjudication to the Labour Court :-

"Whether termination of services of Shri Siri Ram workman, is justified and in order? If not, to what relief/exact amount of compensation is he entitled.?"

5. After considering the pleadings of the parties, the Labour Court had actually framed the following two issues:-

1. Whether the workman had abandoned the services of the respondent and the termination of services of the workman is justified and in order?

2. Relief.

6. After consideration of the matter and examination of the evidence, the Labour court observed that "the order of termination of services of the workman is being justified on two accounts. Firstly, the workman wilfully absented himself from duty and secondly that he did not deposit the ticket box and thereby misappropriated the money of the respondent to the tune of Rs. 2202.80. Even if the first alleged misconduct of the workman is ignored, I think, the second allegation of misconduct against the workman stands proved". Furthermore, the Labour Court noticed that the workman "admitted that he had not deposited Rs. 2202.80. In view of this admission of the workman, the statement of Shri Krishan Chand MW-1 in my opinion, must be accepted as correct and sufficiently proves that the workman has not accounted for Rs. 2202.80". Thus, the Labour Court concluded that the workman "had misappropriated the amount, which is a serious charge of misconduct and as such the order of termination of the services of the workman on account of this charge of misconduct.....cannot be held to be justified and in order". Resultantly, the issue was decided against the workman and the reference was answered accordingly.

In the writ petition, the learned Single Judge, affirmed the above finding with the following observations: -

"It cannot be disputed that the management can justify its action before the Labour Court. The Management led evidence regarding the misconduct of the workman, which was accepted by the Labour Court. The award of the Labour Court is based upon evidence and suffers from no infirmity."

Besides the above the learned Single Judge further observed that "the action of the management in holding that the workman has lost his lien from service of the Corporation can otherwise be justified....."It is undoubtedly correct that the view taken by the learned single judge on the second part of the case has not been approved by the Division Bench in the case of Pepsu Road Transport Corporation v. Presiding Officer (supra). However, in so far as the first part of the order of the learned Single Judge is concerned no observation whatsoever has been made. Thus, the mere fact that a part of the view taken by the learned Single Judge has been disapproved and it has been held that loss of lien tantamounts to retrenchment, it cannot be said that the judgment has been reversed or that the appeal has to be accepted. Only the view that loss of lien would not amount to retrenchment has not been accepted by the Division Bench. Consequently, the second string to the bow is broken. However, in so far as the conclusion of the learned Single Judge with regard to the finding of the Labour Court on the charge of embezzlement is concerned, there is no observation by the Division Bench. Thus, the first contention raised by the counsel for the petitioner cannot be accepted.

7. Mr. Gill then contended that the Labour Court cannot travel beyond the reference. It cannot deliver a judgment on a point which is not in issue. It was also submitted that the charge of embezzlement cannot be proved against the workman. Counsel referred to decisions Management of Wenger and Co. Vs. Their Workmen, , Delhi Electricity Supply Undertaking v. Tara Chand 1978(2) S.L.R. 425, Makhan Singh v. Narainpura Co-operative Agricultural Service Society Ltd. and Anr. 1987(4) S.L.R. 394, and Sukhmander Singh v. Kothe Warring Co-op. Agri. Service Society Ltd. 1992(1) S.L.R. 619, support of his contentions.

8. There is no quarrel with the propositions propounded by the learned counsel. However, the short question is. Did the Labour Court travel beyond the terms of the reference?

9. As already noticed, the question referred to the Labour Court was - whether termination of services of the workman is justified? The Labour court had to determine not merely as to whether or not the workman had been retrenched in violation of the provisions of the Industrial Disputes Act or that he had remained absent from duty and had, thus, abandoned the job. On the contrary, the question referred to the Labour court was very comprehensive. The court had to determine as to whether or not the order was justified. Still further, this is how the parties had actually understood the case. It was on account of this reason that the management had raised both the defence viz. absence of the workman and the embezzlement of the money. At no stage did the workman raise his little finger against the plea advanced by the management. It was not suggested that

such a plea could not be raised. Still, further, when the Labour Court framed issues, it was not merely the question as to whether the workman had abandoned the services of the respondent. In fact, the question whether the termination of services of the workman is justified and in order, was also a part of the issue. In this situation, it cannot be said that the Labour Court had gone beyond the terms of the reference in examining the question of embezzlement by the workman.

10. It is a case where the workman had categorically admitted the charge of embezzlement. The finding recorded by the Labour court in this behalf has already been reproduced above. The workman had admitted that he had not deposited Rs. 2202.80. Such being the facts, the workman cannot now complain that the Labour Court had transgressed its limits in going into the question of embezzlement.

11. In the Management of Wenger and Tara Chand's case (supra), it was undoubtedly held that the Labour Court should not travel beyond the question referred to it. The judgment on a point not in issue is without jurisdiction. However, in the present case, we are unable to take the view that the Labour court had travelled beyond the question referred to it.

12. Mr. Gill also placed reliance on Makhan Singh's case (supra). This was a case where the charge of embezzlement and absence was levelled. The workman had denied the charge of embezzlement. The charge was sought to be sustained on the basis of photostat copies. No reason for failure to produce the original document was given. In this situation, it was held by their Lordship that the finding were recorded by the Labour Court on the basis of evidence which was not legally admissible. The case is clearly different and distinct from the present case. Herein the charge of embezzlement was clearly admitted by the workman. It was supported by other independent evidence. The documentary evidence was not withheld by the management. Thus, Mr. Gill can derive no advantage from the decision relied upon by him.

13. Learned counsel also placed reliance on the decision of a Single Bench in Sukhmander Singh's case (supra). On the basis of this decision, it was contended that the charge of embezzlement cannot be gone into as it did not form the basis of the order of termination. In the facts and circumstances of the present case, we cannot accept this proposition. The issue referred to the Labour Court was comprehensive. It gave the management a chance to prove the validity of its order on the basis of the material in its possession. The pleadings of the parties and the evidence recorded during the course of trial before the Labour Court proved the guilt of the workman.

14. No other question was raised.

15. In view of the above, we find no ground to accept the appeal. It is, consequently, dismissed. However, in the circumstances of the case, there will be no order as to costs.