
(2010) 04 P&H CK 0289
In the Punjab And Haryana At Chandigarh

Sukhbir Singh

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 25, 25F, 25G, 25H

Citation : (2010) 04 P&H CK 0289

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Through this writ petition, the challenge has been posed by the petitioner/Workman to the Award dated 05.04.2001 (Annexure-P-7), passed by the Labour Court, Ambala, vide which the reference had been answered against the petitioner/Workman, holding him not entitled to any benefit.

2. As per the demand notice dated August, 1996 (Annexure-P-1) served upon the respondent/Management by the petitioner/Workman, it was contended by the petitioner/workman that he had joined the services of respondent/Management as a Chowkidar in January, 1984 and he continued as such till June, 1993, when his services were terminated in violation of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act?'). He contended that on the date of his termination, i.e., 15.06.1993, persons junior to him, namely, Balraj son of Shao Chand and Tek Chand were retained in service. He contended that on the muster rolls/pay rolls, names of some other persons were written, but as the petitioner/Workman was performing the work, his thumb impression or signatures were taken on the said muster rolls/pay rolls. At times, names of his two brothers, namely, Dilbagh and Jai Bhagwan, who were studying in the school, were also mentioned in the muster rolls/pay rolls and the petitioner/Workman was asked to sign in their names. He further contended that after his termination, he is unemployed and thus claimed

reinstatement with all consequential benefits.

3. The respondent/Management in their response to the statement of claim submitted by the petitioner/Workman before the Labour Court, contended that the petitioner/Workman worked with the respondent/Management from January, 1984, to March, 1988. He worked for 58 days in the year 1985, then 60 days in the year 1986, 78 days in the year 1987, and 89 days in the year 1988. He did not complete 240 days in any calendar year. He was not engaged through employment exchange or after issuance of the advertisement nor was any interview held. It was denied that the services of the petitioner/Workman were terminated in June, 1993. An objection was raised with regard to the delay in raising the demand notice, which is eight years from the date of his termination, i.e., March, 1988. The demand notice is dated August, 1996. On the basis of the pleadings, the Labour Court framed the following issues:

1. Whether the termination of the services of Shri Sukhbir is valid and justified? If not so to what relief is he entitled? OPW.

2. Whether the demand notice is bad and is liable to be dismissed on the ground of delay and laches as alleged? OPM.

3. Whether the workman did not render 240 days in service in the last preceding year prior to the date of his termination as alleged? OPM.

4. Relief.

4. On the basis of evidence led by the parties, the Labour Court proceeded to decide issues No. 1 and 3 by taking them together and returned finding that the provisions of Section 25F of the Act had not been violated as the muster rolls/pay rolls produced by the respondent/Management from July, 1992, to July, 1993, (Ex.M-15 to Ex.M-23) showed that the petitioner/Workman had not worked with the respondent/Management as his name did not figure in the muster rolls/pay rolls. As regards the contention of the petitioner/Workman with regard to violation of Section 25F of the Act, the Labour Court held that no juniors were retained by the respondent/Management and, therefore, there was no violation of Section 25G of the Act as the petitioner/Workman had failed to prove that any person junior to him had been appointed after termination of his services without giving an opportunity of re-employment, the said provision had not been violated. On issue No. 2, which was with regard to delay of eight years in submission of the demand notice, the Labour Court decided the said issue in favour of the respondent/Management, holding the demand notice as delayed. Resultantly, the reference was answered against the petitioner/Workman, holding him not entitled to any relief.

5. Counsel for the petitioner/Workman contends that the Labour Court has failed to appreciate that the provisions of Section 25F of the Act even if not violated, but if the provisions of Section 25G of the Act stood violated, the petitioner/Workman was entitled to reinstatement in service with all consequential benefits.

She submits that the petitioner/Workman had specifically stated in his evidence before the Labour Court that after his termination, Balraj and Tek Chand were retained in service. Despite specifically naming two persons, who were junior to the petitioner/Workman, the Labour Court had wrongly observed that there was no evidence in order to establish that any person, who was junior to the petitioner/Workman, was retained in service. She contends that the respondent/Management had adopted unfair means with an intention to deprive the petitioner/Workman of his right as conferred u/s 25 of the Industrial Disputes Act. She contends that the names of his two brothers, namely, Dilbagh and Jai Bhagwan, who were studying in school, were intentionally incorporated by Umed Singh, F.I. at HAFED, Kaithal, and he was forced to sign in the names of Dilbagh and Jai Bhagwan, which he did. Her further submission is that in the light of incorporation of the names of Dilbagh Singh and Jai Bhagwan (petitioner's brothers) in the muster rolls/pay rolls, the evidence which had been produced by the respondent/Management did not reflect the name of the petitioner/Workman in the muster rolls/pay rolls from 1988 onwards, although, the petitioner/Workman had performed the duties with the respondent/Management till 05.06.1993. She, therefore, contends that the finding returned with regard to non violation of Section 25F of the Act also cannot be sustained and, thus, prays for setting aside of the Award, passed by the Labour Court, impugned herein. In support of this contention, counsel for the petitioner/Workman has relied upon the Division Bench judgment of this Court in the case of Ved Parkash Versus Presiding Officer, Labour Court, Panipat, 2000 (4) S.C.T. 1060, and the Order dated 14.01.2009 passed in L.P.A. No. 218 of 2008 (arising out of C.W.P. No. 5318 of 2004) titled as Gurnam Singh v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and Anr.

6. On the other hand, counsel for the respondent/Management submits that the onus to prove that the petitioner/Workman had completed more than 240 days in service in the 12 preceding months from the date of his termination was upon the petitioner/Workman. The respondent/Management had produced muster rolls/pay rolls from the period from July, 1992 to June, 1993, i.e., 12 preceding months from the alleged date of his termination, wherein the name of the petitioner/Workman does not find mention. Even if the contention of the petitioner/Workman that names of Dilbagh and Jai Bhagwan, brothers of the petitioner/Workman, were mentioned in the muster rolls/pay rolls, the same also does not find mention in the said muster rolls/pay rolls and, therefore, the contention of the petitioner/Workman about the use of unfair labour practice by the respondent/Management cannot be sustained. As regards, the retention of the junior persons to the petitioner/Workman in service by the respondent/Management, while terminating the services of the petitioner/Workman, i.e., Balraj and Tek Chand, is concerned, counsel for the respondent/Management contends that the onus to prove that the junior persons to the petitioner/Workman, were retained, was upon the petitioner/Workman, but he had failed to discharge his onus. He contends that neither the records were summoned by the

petitioner/Workman nor any question in this regard was put to the Management Witness in his cross examination. He, therefore, contends that the finding recorded by the Labour Court is fully justified and does not call for any interference by this Court.

7. In support of this contention, counsel for the respondent/Management relied upon a judgment of Division Bench of Rajasthan High Court in the case of Ram Gopal Saini Versus Judge, Labour Court No. II, Jaipur and Ors. 2001-I-L.L.J. 1230.

8. I have heard counsel for the parties and have gone through the records of the case.

9. It is now well settled that the onus to prove that the Workman had continuously worked for 240 days in service in 12 preceding months from the date of his alleged termination is on the Workman himself. The initial onus is on the Workman. In the present case, the respondent/Management has taken a specific stand that the petitioner/Workman was appointed in July, 1985, and he continued work till March, 1988 as a Chowkidar. Muster Rolls Ex.M-1 to Ex.M-12 were produced by the respondent/Management in support of this fact. It had also been deposed that the petitioner/Workman was engaged subject to availability of work and his name was not sponsored by the employment exchange nor was any advertisement issued, while appointing him. The effect thereof is that the petitioner/Workman was not appointed in accordance with the statutory Rules, governing the service. Shri Umed Singh, Junior Field Inspector, HAFED, Kaithal who appeared as MW-1 before the Labour Court, produced the muster rolls/pay rolls for the 12 preceding months from the date of alleged termination of the petitioner/Workman, i.e., from July, 1992 till June, 1993 (Ex.M-15 to Ex.M-23), but the name of the petitioner/Workman does not find mention in the muster rolls/pay rolls, which shows that the petitioner/Workman had not worked with the respondent/Management in the 12 preceding months from the alleged date of termination as asserted by the petitioner/Workman in his demand notice. The documents, thus, show that the petitioner/Workman had failed to prove that he had completed more than 240 days in the 12 preceding months with the respondent/Management from the date of his termination.

10. With regard to the use of unfair labour practice by the respondent/Management to deprive the petitioner/Workman of his right u/s 25F of the Act, the onus was again on the petitioner/Workman to prove the said assertion by leading cogent evidence in support of it. Although, it had been stated by the petitioner/Workman that the respondent/Management had with a mala fide intention entered the names of his two brothers, namely, Dilbagh and Jai Bhagwan, in the muster rolls/pay rolls and forced the petitioner/Workman to wrongly sign in their names or put thumb mark, but no evidence had been produced by the petitioner/Workman either by summoning the records or producing some handwriting expert or fingerprint expert. So much so that the muster rolls/pay rolls of the 12 preceding months produced by the respondent/

Management does not reflect the names of Dilbagh and Jai Bhagwan. That being so, the contention of the petitioner/Workman that unfair labour practice was invoked by the respondent/Management to deprive the petitioner/Workman of his right u/s 25F of the Act, cannot be accepted.

11. As regards the contention raised by counsel for the petitioner/Workman that junior persons to the petitioner/Workman, i.e., Balraj and Tek Chand, were retained in service by the respondent/Management on termination of services of the petitioner/Workman, this fact had also not been proved by the petitioner/Workman by producing any cogent evidence. This onus was again on the petitioner/Workman, which he had failed to discharge. It is true that the respondent/Management is the custodian of the records, especially in case of daily rated workmen, but, when the contention raised by the petitioner/Workman is disputed by the respondent/Management, the onus shifts on the petitioner/Workman to prove his assertion and for doing so, the petitioner/Workman can resort to taking the help of the Labour Court for summoning the records of the respondent/Management. In the present case, it is an admitted position that no effort in this regard was put by the petitioner/Workman as no application for summoning the records was made. Not only this, when the Management Witness appeared before the Labour Court, not a question was put to him with regard to the retention of junior persons after the termination of the services of the petitioner/Workman, what to say of suggesting the names of Balraj and Tek Chand, which according to the petitioner/Workman were junior persons to him and were retained in service. The muster rolls/pay rolls produced by the respondent/Management before the Labour Court from July, 1992, to June, 1993 (Ex.M-15 to Ex.M-23) do not contain the names of Balraj and Tek Chand. Since the petitioner/Workman did not summon any records subsequent to his termination, it cannot be said that Balraj and Tek Chand, were retained in service or were continuing in service after the termination of the services of the petitioner/Workman. The judgments, thus, relied upon by counsel for the petitioner/Workman, i.e., Ved Parkash's case (supra), wherein the seniority list was not produced by the Management, cannot be pressed into service in favour of the petitioner/Workman. As regards, Gurnam Singh's case (supra), suffice it to say that as the petitioner had failed to prove that junior persons to him were retained in service after his alleged termination, the said judgment can also not help the case of the petitioner/Workman.

12. As regards issue No. 2, which related to delay on the part of the petitioner/Workman in submitting his demand notice, the contention of the petitioner/Workman was that his services were terminated in June, 1993, whereas the respondent/Management had stated in the response to claim statement that the petitioner/Workman had worked from July, 1985, till March, 1988, and in support of this contention, the respondent/Management had produced muster rolls/pay rolls Ex.M-1 to Ex.M-12. No evidence was brought on record by the petitioner/Workman that he had worked with the respondent/Management after March, 1988, so much so that no records were summoned from the respondent/

Management in support of his contention that he had worked till June, 1993, as alleged by him. As a matter of fact, the respondent/Management had produced muster rolls/pay rolls before the Labour Court from July, 1992 to June, 1993 (Ex.M-15 to Ex.M-23) to show that the petitioner/Workman had not worked with respondent/Management in the 12 preceding months from the date of his alleged termination. The petitioner/Workman had given no plausible explanation regarding the delay of 8 years in raising the dispute. The unexplained delay itself shows that there did not exist any dispute between the parties as with the lapse of time, the same has lost its relevance and had become stale. Reliance at this stage can be made to the judgment of Hon"ble the Supreme Court in the case of The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , in para-6, which reads as follows:

6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers u/s 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference u/s 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made u/s 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex facie bad and incompetent.

13. Thus, the findings recorded by the Labour on issued No. 2 also cannot be faulted with.

14. Hon"ble the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, , has in para-7 explained the limits of jurisdiction of the High Courts in exercise of its writ jurisdiction, which reads as follow:

7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as

for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, : *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*, .

15. In view of the above, there cannot be said to any illegality committed by the Labour Court, which would call for any interference by this Court in exercise of its writ jurisdiction.

16. Finding no merit in the present writ petition, the same stands dismissed.