
(2008) 09 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 683 of 1987

Surinder Kumar

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1), 25F

Citation : (2009) 2 ILR (P&H) 30

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Jang Bahadur Singh, for the Appellant; Vivek Singla, for C.B. Goel, for the Respondent

Judgement

Harbans Lal, J.—This petition has been moved by Surinder Kumar under Articles 226/227 of the Constitution of India for quashing the award dated 24th March, 1986 as well as the order dated 4th October, 1980 passed by Respondent No. 2 (Annexures P. 2 and P. 1 respectively).

2. The facts giving rise to this petition are that the Petitioner was appointed as a Rewinder in Chitra Talkies, Inside Hall Gate, Amritsar about 22 years back and had put in 16/17 years at the time of this termination, which took place on 4th October, 1980 and was drawing Rs. 291 per mensem. His services were terminated,--vide order dated 4th October, 1980 (Annexure P. 1) passed by the Management of the Chitra Talkies. A false story was fabricated by the Management later on in order to justify their action of passing such order. The Petitioner moved the authorities for reconciliation after having received the termination orders but none had appeared before the said authorities for such purpose. Thus, the matter was referred to the Labour Court by the Labour Commissioner, Punjab, Chandigarh u/s 10(I)(c) of the Industrial Disputes Act, 1947 (for short, "the Act") for determining the justification for termination of his services. The Presiding Officer of the Labour Court-Respondent No. 1 proceeded

in hasty manner and passed a cryptic order upholding the aforesaid termination order. Only one witness from the Management side appeared as MW-1. He reiterated the stand taken in the affidavit Ex. M. 1. Before passing the termination order, admittedly, no domestic inquiry was held by the Management, which was a pre-requisite. In this order, it has been mentioned that the services of the Petitioner are being terminated due to loss of confidence in him. It is well settled that when the services are terminated on the basis of loss of confidence, the order does not amount to one with stigma. The Petitioner has not been given the retrenchment compensation as required under the law at the time of termination of his services nor a notice as required u/s 25F of the Act has been served. The impugned award is liable to be set aside on the grounds as embodied in the petition. The main law points involved in the petition read as under;--

(i) Whether without holding domestic inquiry the services of an employee having 16/17 years of service can be terminated on the basis of misconduct ?

(ii) Whether the Management, taking the stand of losing the confidence in the employee, while terminating services of the employee which attaches a stigma, without holding inquiry, which is a condition precedent to the infliction of termination as a measure of punishment, is sustainable ?

3. As is borne out from the record, Respondent No. 2 did not file written statement to the petition. I have heard learned Counsel for the parties, besides perusing the impugned award with due care and circumspection. Mr. Jang Bahadur Singh, Advocate appearing on behalf of the Petitioner, making short-shrift of his arguments maintain that; (a) admittedly no domestic inquiry was held by the Management-Respondent No. 2 before passing the termination order though this order attaches stigma to the Petitioner; (b) if the termination has to be based upon the conduct attaching stigma (loss of confidence) then the disciplinary proceedings are necessary as a condition precedent to the infliction of termination by way of punishment as ruled Chandu Lal Vs. Management of Pan American World Airways Inc., , (c) the termination of service on the ground of loss of confidence does not amount to retrenchment and holding of domestic enquiry is a condition precedent; (d) if the present impugned award is struck down, the Petitioner is entitled to be reinstated with full back-wages as has (1) been held by Hon'ble the Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, (e) The Petitioner has been deprived of the opportunity of cross-examination the persons who have submitted their affidavits and representations as they have not appeared in the witness box to stand the test of cross-examination; (f) No retrenchment compensation has been awarded to the Petitioner as required u/s 25-F of the Act. (g) No. notice in the prescribed manner has been served upon the appropriate Government as is required u/s 25-F(c) of the Act which render the proceedings illegal and in view of these flaws, impugned award is liable to be set aside.

4. Mr. Vivek Singla, Advocate representing the Respondent No. 2 urged with

great eloquence that in view of the observations made by the Apex Court The Binny Limited Vs. Their Workmen, , which is also relied upon by the learned Presiding Officer of the Labour Court, the impugned award is liable to be maintained and this petition deserves to be dismissed.

5. I have given a deep and thoughtful consideration to the rival contentions. The termination order Annexure P. 1 reads in the following terms:

While working on projector on 2nd October, 1980 at Matinee show while the show of picture "Dharmatma" was on half an hour before the movie could end you abruptly stopped the projector at 6.00 P.M. in mid picture and after locking the machine room you slipped away from picture hall which resulted in an unprecedented disorder and huge hue and cry and anguish in the cinegoers who were watching the movie and resulted in defamation of picture House.

That thereafter you did not turn up till date to explain your mischief. The management cannot have any reliance on your this mischievous attitude and have lost confidence in you.

Therefore, we have no alternative but to terminate your service with effect from 7th October, 1980 and one month wages as notice pay are being remitted to you separately by MO.

6. The learned Presiding Officer of the Labour Court has observed in paragraph No. 6 of the impugned award in the following terms:

The only thing to be determined now is whether the management was justified in getting rid of a person like Surinder Kumar by issuing him a notice it did. My answer is in the positive. Cinematograph operators have to do team work which is of sensitive character. A small mishap is apt to result in fire and such other tragedy. The discontinuance of the picture even for a few minutes is bound to create an uproar in the public seeing the picture. Thus, the job in the cabin is one of great responsibility and confidence. An incident of the nature mentioned above, is bound to result in loss of confidence in the workman. The judgment of Supreme Court The Binny Limited Vs. Their Workmen, , applies to the present case with full force. The management has fully proved the incident as equally the responsibility of the workman therefor. It must, therefore, be held that the management had no other way out. It was impossible to keep a man of such tendencies in the job. The act of the management in terminating the services of the workman was, therefore, fully justified. The issue is held against the workman.

7. At the very outset, it deserves to be pointed out here that the pleas taken up by the Petitioner in the petition has gone uncontroverted due to non-filing of the written statement. So, as a matter of fact, these pleas are deemed to have been admitted. There is no gainsaying the fact that no domestic inquiry was held before passing the termination order. It is the specific case of the Petitioner that he was appointed as a Rewinder in Chitra Talkies about 22 years back and had

put in 16/ 17 years service at the time of termination and he was drawing Rs. 291 per month as his salary At this juncture, Mr. Singla pointed out that as transpires from the observations made in paragraph 4 of the award, Hazara Singh, Lakhan Pal Electrician and as many as 11 other employees of the Management had also condemned the act of the Petitioner. Such act has been depicted in Annexure P.1. It is apt to be borne in the mind that as revealed by Annexure P. 1, the services of the Petitioner were terminated on the ground that the Management has lost confidence in him. In re: Chandu Lal (supra), the Apex Court observed as under:

Where the services of a workman were terminated on grounds that the workman was being involved in an act of smuggling, on basis of loss of confidence, without holding any domestic enquiry, the order of termination was vitiated as it did amount to be one with stigma and warranted a proceeding contemplated by law preceding termination.

Want of confidence in an employee does not point out to an adverse facet in his character as true meaning of allegation is that the employee has failed to behave up to expected standard of conduct which has given rise to a situation involving loss of confidence. In such circumstances, termination would not amount to retrenchment and disciplinary proceedings were necessary as condition precedent to infliction of termination as measure of punishment.

8. It can be culled out from the above observations that if the services of a workman are to be terminated on the ground of loss of confidence, the disciplinary proceedings are necessary as a condition precedent to infliction of termination as a measure of punishment as the termination would not amount to retrenchment. Here in this case, admittedly, no domestic inquiry was held. Thus, this termination is in teeth with the afore-extracted observations. The Labour Court has relied upon the observations made in re: The Binny Ltd. (supra). in that case, the workman had proceeded on leave on the pretext of going to his village. Instead of going there, he joined the hunger strike with others. On finding that he had obtained special leave of absence under a false pretext, the Management had informed him that the leave which had been granted to him was being cancelled. He was directed to return to duty at once. However, he continued his hunger strike and did not join duty. The Apex Court observed that "It was quite clear that on his own admission, he had acted in a manner by which the management could possibly have no confidence in him for the future."

9. Harking back to the facts of the instant case, as already noticed, the Petitioner worked for 16/17 years. During this long tenure, he acted honestly and diligently. Had there been any serious complaint against him and the allegations contained therein found to be true, he would have been shown the exit door much earlier. Obviously, the allegations levelled against him were not got enquired into at any stage. Learned Counsel for Respondent No. 2 has not drawn attention of the Court towards any document showing that the Petitioner had admitted his guilt. The Labour Court has mentioned in paragraph No. 6 of the impugned award that

"a small mishap is apt to result in fire and such other tragedy. The discontinuance of the picture even for a few minutes is bound to create an uproar in the public seeing the picture. Thus, the job in the cabin is one of great responsibility and confidence" but as laid down in re: Chandu Lal (supra), it was imperative upon the Respondent No. 2 to have resorted to the disciplinary proceedings against the Petitioner before passing the termination order, Hazara Singh and Lakhan Pal referred to above were none else but the employees of Respondent No. 2, so, it was not difficult for this Respondent to procure their services for making representation against the Petitioner. To crown it all, either these persons nor the 11 other employees who allegedly made representation to the Management have been kept off the witness box before the Labour Court with the result the Petitioner lost his valuable right to cross-examine them. Only during their cross-examination, their credibility could have been tested.

10. The learned Presiding Officer of the Labour Court misdirected himself by placing abundant reliance upon the observations made in re: The Binny Ltd. (supra), for the reasons that facts of that case are quite poles apart from the one in hand. The facts of Chandu Lal's case {supra} are somewhat identical with the one in hand. In view of the above discussion, it is held that the impugned award suffers from illegality, impropriety and perversity and that being so, it is set aside. In re:Chandu Lal (supra), it was held as under:

In this case, it has been the stand of the Respondent that the management had lost confidence in the Appellant and there has been some pleading about the importance of the role of confidence in the business set-up of the Respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by the Respondent that there has been loss of confidence, we are of the view that while the termination of service of the Appellant is held to be bad, he may not be reinstated in service. On the other hand, he should be adequately compensated.

The quantum of compensation has now to be ascertained. Ordinarily, the Appellant would have gone back into service with full back wages. Admittedly, he has been out of employment from March, 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation, this aspect has to be kept in view. If he was restored to service he would have been assured of employment for a further term of years. Keeping this as also other relevant aspects in view, we quantify the compensation payable to the Appellant at Rs. 2 lakhs.

11. Adverting to the facts of the instant case, in the circumstances of the case, the services of the Petitioner were terminated wayback in 1980 and by now 28 years have gone by. In view of the observations extracted from Chandu Lal's case {supra}, it would not be appropriate to pass the order with regards to the reinstatement of the Petitioner. In the year 1980 at the time of termination of his services, the Petitioner was drawing Rs. 291 RM. There is no material on the record to show that he had not been working anywhere during this period. As

ruled State of M.P. and Others Vs. Arjunlal Rajak, , as well as U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the onus lies on the workman to prove that he had not been gainfully employed during the period for which he claims backwages.

Haryana State Electronics Development Corporation Ltd. Vs. Mamni, , it has been observed that "in view of the settled legal position, as noticed hereinbefore, we modify the impugned order by directing that the Respondent shall be compensated by payment of a sum of Rs. 25,000 instead of the order of reinstatement with backwages."

12. Adverting to the facts of the instant case, by now, the Petitioner would have crossed 58 years of age. In the factual scenario, I am of the opinion that instead and in place of issuing a direction for reinstatement of service, interest of justice shall be sub-served if compensation of rupees two lacs is directed to be paid. Accordingly, the Respondent No. 2 is directed to pay compensation to the stated extent to the Petitioner within three months from today.

13. Disposed of accordingly.