
(2014) 03 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3340 of 2012

Sushil Kapoor

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 25G

Citation : (2014) 3 SCT 237

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Amarjit Singh, Advocate for the Appellant; Deepak Suri, Advocate for the Respondent

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the award dated 14.07.2011 (Annexure P7), passed by the Labour Court, Amritsar, which answered the reference against the workman and in favour of the Management. A perusal of the paperbook would go on to show that the petitioner-workman filed his demand notice dated 13.02.2003 (Annexure P2) and raised industrial dispute that he had been working since June, 2000 as a Senior Chemist and was being paid Rs. 6800/- per month. The workers junior to him were still working and the termination on 30.01.2003 was in violation of 25-F, 25-G and 25-H of the Industrial disputes Act, 1947 (for short, the "Act"). Plea was also taken that wages from 01.01.2003 to 29.01.2003 had not been paid. In the claim statement also, same plea was taken that the respondent No. 2-Management, at that point of time, was M/s. Bhagat Industrial Corporation Ltd., which had taken the plea that the workman had left the job on his own. In accordance with the terms the conditions of the employment, he was bound by the contract inter se parties and could not claim any right. The post of Senior Chemist had been abolished and so the reference could not be continued, as not being maintainable. The provisions of the Act were not applicable, in such circumstances.

2. From the pleadings of the parties, the Labour Court framed the following

issues:

1. Whether the disputant is a "workman" as defined in Section 2(s) of the Act?
2. Whether the disputant had left employment of his own accord on 29.1.2003?
3. Whether the post against which the disputant was employed, had been abolished by the management?
4. Whether the termination of the services of the workman is justified and in order?
5. Relief.

3. The petitioner examined himself as WW 1 and deposed in his favour and specifically averred that his juniors, Mr. Verma, Sr. Chemist and Mr. Mann, Senior Chemist, were working at the time of his termination of service and he remained unemployed. He denied the suggestion in his cross-examination that he had left the service and stated that he was appointed on a permanent post and he could not find a job. He also denied that the job was supervisonal in nature and there was no requirement of any workman under him.

4. The Management examined Tarsem Singh, as MW 2, Accountant and the plea taken was that the workman was in gainful employment of M/s. K.D. Public School, as a Manager and his wife was employed as Principal of the School and he had left the job on his own. The appointment letter was placed on record as Exhibit M6. He feigned ignorance that the Management had made any enquiry regarding the absence of the worker and he had not brought any record of enquiry.

5. The Labour Court came to a conclusion that the workman was appointed on probation and his services could be terminated by giving 24 hours notice and therefore, the Management had the right to terminate his services. It was also held that the Management had abolished the post of Senior Chemist and accordingly, a finding was recorded that the workman had left the job on his own and the three issues were decided against the workman, whereas the issue No. 1, whether the petitioner was a workman, as defined u/s 2(s) of the Act, was decided in his favour.

6. After hearing counsel for the parties, this Court is of the opinion that the finding recorded by the Labour Court is absolutely without any basis and not justified. A contradictory plea was taken in the written statement that the post had been abolished and that he had left the job on his own. A reference was made to the fact that the workman was bound by the terms of the appointment letter. It was not specifically pleaded that it was during the probation period that his services were dispensed with on the ground that his services were not satisfactory. But a finding was recorded that his services were dispensed with as a probationer and therefore, the appointment letter would be binding inter se the parties. Thus, a finding has been recorded, without there being a specific plea

and evidence on the said issue. No officer on behalf of the Management was produced to depose regarding the said fact and therefore, in the absence of the material on record, the Labour Court was not justified to come to such a conclusion. Even otherwise, a perusal of the appointment letter would go on to show that the appointment was in January, 2000 and the termination was only in the month of January, 2003. As per the appointment letter, the period of probation was for 6 months and could be extended and would continue till it was not confirmed in writing. Counsel for the petitioner has been right in submitting that the said clause could not be used to the detriment of the workman and the workman would continue on probation for all times to come, in the absence of any order. The reasoning given by the Labour Court, thus, cannot be upheld.

7. Counsel for the petitioner was well justified in relying upon the certified standing orders and clause 3 of Schedule II of the Model Standing Orders of Industrial Employment (Standing Order) Punjab Rules, 1978. The same defines that a permanent workman means one who has completed 6 months of the probation period and whose services have not been discharged or terminated, on completion of the said period and provides that ordinarily, the period of probation shall be 6 months, which can be extended for a period of 3 months and the maximum probation period shall not extend beyond one year. As per clause 3(ii), after the expiry of the period of probation and the extended period of probation, the workman shall be deemed to have confirmed, on the date on which he completed the minimum period of probation. Relevant provisions read as under:

3. Classification of Workmen: (The workmen shall be classified as under:-

- a) Permanent
- b) Probationer
- c) to (f) xx xx xx

(2) A. Permanent workman means one who has completed six months satisfactory service having been appointed in a permanent vacancy or the "probationer" who has completed the period of his probation and whose services are not discharged or terminated on the completion of such period of probation.

xxxx xxxx xxxx

(3) "Probationer" is a workman who is provisionally employed to fill a vacancy in a permanent post and has not been confirmed as permanent in accordance with these standing orders. Ordinarily the period of probation shall be six months, but it may be extended by a period of three months at a time, at the discretion of the management, if the management considers it necessary in any case to further adjudge the work and merits of a workman. The maximum probation period shall, however, in no case, extend beyond one year;

xxxx xxxx xxxx

ii) If a workman continues in service after the expiry of the period of probation,

or extended period of probation, he shall be deemed to have been confirmed in his appointment on the date on which he completed the minimum period of probation;

8. Another aspect which is to be kept in mind is that an averment was made that juniors were still working and thus, there was violation of Section 25G of the Act and the said fact also finds mention in the deposition of the workman. The names of the said persons find mention in the deposition of the petitioner and in view of this fact, the workman was also entitled to continue and his services could not have been dispensed with, as has been done by the Management, without following the principle of last come first go.

9. Resultantly, the issue that, now, arises is whether the workman is entitled to be reinstated, after a period of 9 years, when the relationship was severed. The petitioner was a regular employee and it was case of the Management that the post has been abolished. The Management of the industrial establishment has changed hands and the written statement has been filed by M/s. Digvijay Chemicals Ltd., through its Director and it would not be proper to foist a worker upon a new establishment. However, the establishment would be liable to pay the liabilities of the earlier industrial establishment. The petitioner, who was appointed on a regular post, initially as a probationer, would, thus, in view of this Court, be entitled to adequate compensation due to the illegal termination of his services and due to the fact that he has been out of job for the last more than a decade. The Apex Court, in *Ashok Kumar Sharma Vs. Oberoi Flight Services*, while dealing with various judgments, in the similar situation, where the regular employee's services had been dispensed with on account of carrying some spoons belonging to the establishment, was granted a compensation of Rs. 2 lacs, in lieu of reinstatement, keeping in view the fact that the termination was in the year 1986 and the matter was decided long after his termination, i.e., on 06.11.2009.

10. In similar circumstances, this Court in *M/s. International Tractors Limited, Hoshiarpur & another v. Presiding Officer, Labour Court, Jalandhar & another*, 2011 (2) RSJ 653 has granted compensation of Rs. 4 lacs and set aside the award of reinstatement with 40% back wages, after taking into account the fact that the worker had worked with the Management from 11.10.1996 to 01.07.1998 and matter was decided after a long period. So relief of reinstatement could not be held to be appropriate in such circumstances. Resultantly, this Court is of the opinion that in the present case, a sum of Rs. 3 lacs would be adequate compensation, which can be paid to the workman, keeping in mind the fact that the petitioner was appointed as Senior Chemist. Accordingly, the present writ petition is allowed and the award dated 14.07.2011 (Annexure P7) is set aside. The erstwhile Management, which is now represented by M/s. Digvijay Chemicals Ltd. would be liable to pay Rs. 3 lacs to the workman. The said amount be paid within a period of 6 weeks from today, failing which, it shall carry interest @ 9% per annum, from the date of the order.