
(2003) 05 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4197 of 1986

Teja Singh and Others

APPELLANT

Vs

Nihal Singh Wala Cooperative Agriculture Service Society Ltd.
and Another

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Citation : (2003) 135 PLR 95

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Jagdev Singh, for the Appellant; Amar Singh, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—I have heard the learned counsel for the parties at length and perused the record of the case.

2. The petitioners were employed with respondent No. 1-Nihal Singh Wala Cooperative Agriculture Service Society Ltd. At the relevant time, the workers of the various societies in Punjab were agitating for framing of common cadre rules. The workers were also demanding better conditions of service. The notices were sent by their Unions to the Registrar, Cooperative Society; Chief Minister of Punjab; Secretary to the Government of Punjab Co-operation Department, setting out the demand charter. It was stated in the notice of demand charter that in a meeting dated 16.04.1981, the undersigned are the authorised representatives for serving the demands of the employees of the Cooperative Societies on the State Government. It was also stated that if the demands of the employees are not accepted before 10.5.1981, the employees of the Punjab State Cooperative Agricultural Service Societies Employees Union will stage a Dharna in order to get demands accepted with effect from 11.05.1981 in front of the office of the Registrar, Cooperative Societies, Punjab, Chandigarh. It was also stated that non-cooperation movement will start with effect from 1.5.1981 till 10.5.1981. Copies of the notice were sent to the labour Secretary, labour

Commissioner, Punjab; Chandigarh Distt. Labour and Welfare Officer; SSP, Chandigarh; Deputy Commissioner U.T., Chandigarh; Chief Commissioner, Chandigarh; all the Deputy Commissioners in Punjab and the J.R.'s in the fields. The demands of the Union were not met and the workers went on strike. The services of the petitioners were terminated alongwith large number of other workers without issuing any charge-sheet, payment of any compensation under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), and without holding any departmental enquiry. The petitioners raised an industrial dispute. After reference of the Industrial Dispute, the Presiding Officer, Labour Court, Bhatinda, has given the award dated 28.8.1985. The reference made to the Labour Court was as follows:-

" Whether termination of services of the above workmen is justified & in order ? if not, to what relief/exact amount of compensation are they entitled?

3. On the pleadings of the parties, the following issues were framed by the Labour Court on 19.4.1984:-

1. Whether the orders of termination of the workmen is justifiable at law and in order?

2. Whether the reference is not maintainable for the reasons mentioned in the preliminary objections of the written statement?

3. Relief.

4. On issue No. 1, the representative of the management contended that the workmen are guilty of serious misconduct because they went on strike, they even courted arrest and remained in jail. S. Markaran Singh, Secretary of the Society, MW-1, has stated that the workmen went on strike without any notice, demand notice and without handing over the charge of the society. They did not get any leave sanctioned.

5. On the other hand, S. Teja Singh, WW-1, representative of the workmen stated that they went on a legal strike in May, 1981. It was sought to be argued by the respondent-management that the Cooperative Society is not an industry. This argument was rejected by the Labour Court in view of the law laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . It was then contended by the management that the strike was illegal. The workmen were not permitted to go on strike as the Cooperative Society falls within the definition of a public utility service. In support of this contention, the management relied on a notification No. 7 (2) 80-SLAB-1/3069 dated 29.10.1980, whereby the manufacture, sale and supply of chemical fertilizer was declared a public utility service with effect from the date of publication of this notification in the Government Gazette i.e. from 7.11.1980, for a period of six months which covered the first weeks of May, 1981, in which the employees of the Cooperative Societies went on strike. Sub Section 1 of Section 22 of the Act, reads as under:-

"(1) No person employed in a public utility service shall go on strike in breach of contract.

a) without giving to the employer notice of strike as hereinafter provided within six weeks before striking;

b) within fourteen days of giving such notices; or

c) before the expiry of the date of strike specified in any notice as aforesaid" or

d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings".

6. The Labour Court held that the workmen have not led any evidence to show any justification for the strike. The representative of the workmen has not mentioned as to what were their demands and as to whether the same were reasonable. Therefore, the justification for strike does not stand proved. Consequently, it has been held that the strike was illegal as well as unjustified. The representative of the workmen had argued that the aforesaid notification declaring the manufacture, sale and supply of chemical fertilizer as a public utility, was not in force at the relevant time. The notification expired on 7.5.1981 whereas the workmen went on strike in the second week of May, 1981. This argument of the workmen has been negatived by the Labour Court on account of the fact that another notification was issued on 15.5.1981. Since the strike was continuing on 15.5.198, it became illegal from that point of time. In any event, it would not become legal simply because notification was not in force on the date when the workmen proceeded on strike. Having held that the strike was illegal and unjustified, the labour Court rejected the plea of the respondent-Cooperative Society that the workmen could have been dismissed without issuance of any charge-sheet, followed by a departmental enquiry. The Labour Court held that the termination of services of the workmen being by way of punishment was illegal, as rules of natural justice had been violated. Consequently, the Labour Court has held that the termination of the services of the workmen were not justified. The issue was decided against the management. Having held that the termination of workmen was unjustified, the Labour Court denied the relief of back wages to the petitioners in the following words:-

"Relief"

In view of my findings on the issues above, it is held that workmen Bachitr Singh, Dial Singh and Teja Singh are entitled to reinstatement. The respondent society had to employ fresh hands for continuing the work of the society which was public utility service at the time when the workmen went on strike and for that reason the workmen are not entitled to back wages. The references are answered accordingly. No order as to costs."

7. Learned counsel for the petitioners submitted that having held the order of termination to be unjustified, the petitioners were entitled to be reinstated in service with continuity and full back wages. On the other hand, learned counsel

for the management has vehemently argued that the workmen went on illegal strike, therefore, the management was fully justified in terminating the services of the workmen. He further submitted that even if the finding of the Labour Court is accepted to the effect that the order of termination is illegal, as it has been passed without complying with the rules of natural justice, it would not entitle the petitioners to the relief of continuity in service and full back wages. The management was put to a great deal of inconvenience. The workmen forced the management to appoint fresh hands as the workmen had voluntarily abandoned the jobs. The Cooperative Society had been declared a public utility service. Therefore, the relief claimed has been correctly denied by the Labour Court. He further submitted that it was for the workmen to prove that during the period in which they remained out of service, they were not gainfully employed. The workmen have led no evidence to show that they were not gainfully employed during the intervening period. Consequently, the workmen has been rightly declined the benefit of back wages. Mere reinstatement of the petitioner u/s 11-A of the Act, would not give any right to the petitioners to claim continuity in service and full back wages.

8. I have anxiously considered the submissions made by the learned counsel for the parties.

9. By now, it is settled that labour legislation is beneficent legislation. Various acts have been enacted for achieving a particular purpose. Broadly speaking, the Industrial Disputes Act was enacted to provide security of service to the workman. It was also enacted to provide a machinery for amicable settlement of industrial dispute which was necessary for the development of the industry. Keeping the aforesaid circumstances in view, the Supreme Court in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, in which it has been held even in the case where the workmen had gone on illegal strike, it was incumbent on the management to comply with the rules of natural justice. In that case, it is held as follows:-

"65. In our opinion, the facts of the cases before us speak for themselves. Here are workmen on strike. The strike is illegal. The management is hurt because production is paralysed. The strikers allegedly indulge in objectionable activities. The exasperated Management hits back by ordering their discharge for reasons set out in several pages in the appropriate contemporaneous proceedings. Misconduct after misconduct is flung on the workers to justify the drastic action. In all conscience and common sense, the discharge is the punishment for the misconduct. The management minces no words. What is explicitly stated, is not a colourless farewell to make way for fresh hands to work the factory until the strike is settled but a hard hitting order with grounds of guilt and penalty of removal.

66. The inference is inevitable, however, ingenious the contrary argument, that precisely because the Management found that workmen refractory in their misconduct they were sacked. May be, the Management had no other way of

working the factory but that did not change the character of the action taken. Once we hold the discharge punitive the necessary consequence is that enquiry before punishment was admittedly obligatory and confessedly not undertaken. The orders were bad on this score alone".

10. Relying on the aforesaid observations, the Labour Court has rightly come to the conclusion that the order of termination was illegal. The order had also been held to be unjustifiable as the punishment is too harsh. In support of this view, the labour Court has rightly relied on another judgment in the case of Caikone Colliary v. Central Govt. Industrial Tribunal 1972 LAB.I.C. 1531. The Labour Court rightly came to the conclusion that the workmen were entitled to reinstatement in service. The Labour Court rightly directed reinstatement of the workmen.

11. However, the Labour Court misdirected himself by declining the relief of continuity in service and full back wages. A perusal of the relief part of the award reproduced above, shows that the workmen had been denied this relief as they went on illegal strike. This was precisely the situation that was considered by the Supreme Court in Gujarat Steel Tube's case (supra). This matter has also been considered by a Full Bench of this Court in the case of Hari Palace, Ambala City v. The Presiding Officer Labour Court and Anr. (1981)83 P.L.R, 720. After analysing the legal position, on the basis of principle as well as the precedent, S.S. Sandhawalia, Chief Justice, speaking for the Bench has observed as follows:-

"5. There is no gain saying the fact that there has been some divergence of opinion in the various High Courts on the point earlier. Varying views had been expressed as to where precisely the onus lay with regard to the claim to back wages and also with regard to the striking of the issues or the necessary point for determination thereof by the Labour Court itself. Within this Court, a Division Bench in Daljeet and Co. Private Ltd. Ropar v. The State of Punjab and Ors. AIR 1964 P&H. 313, has held that the dismissed employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal and it is for the employer to raise this matter and prove that the employee had been earning wages for the whole or any part of the period in question. The aforesaid view has been consistently followed in this Court and reaffirmed in Harbans Singh and Ors. v. The Assistant Labour Commissioner and Ors. (1976)78 P.L.R. 221. The Allahabad High Court was inclined to take a similar view in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow, (1971) Lab.L.J. 327 and the same tenor is the judgment of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971)1 Lab.L.J. 508.

6. However, all controversy now seems to have been set at rest by their Lordship's of the Supreme Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, wherein the appeal by Special Leave was expressly limited to the question of grant of back wages, It has been held therein in no uncertain terms:-

"Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer".

And again:

"Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure". The aforesaid view has been reiterated by the Lordships in *G. T. Lab and Ors. v. Chemicals and Fibres India Ltd.* 1979 L I C 298".

12. In view of the aforesaid enunciation of law, it becomes apparent that the matter is concluded in favour of the petitioners so far as the grant of back wages is concerned.

13. In view of the above, I am of the considered opinion that the award of the Labour Court suffers from an error apparent on the face of the record to the extent that the benefit of back wages has been denied to the petitioners. The writ petition is allowed.

The finding of the learned Labour Court is modified. It is held that the petitioners are entitled to back wages from the date their services were illegally terminated till reinstatement. No costs.