
(1996) 12 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2505 of 1984

Virnarpinder Singh and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25, 25F

Citation : (1997) 116 PLR 104

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : B.N. Sehgal, for the Appellant; Amar Singh, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—By this judgment I dispose of four Civil Writ Petitions Nos. 2505, 2200, 2207 and 2298 of 1984 as common questions of law and fact have arisen in all the four writ petitions.

2. First of all I would like to take the facts from C.W.P. No. 2505 of 1984 (Virnarpinder Singh and Ors. v. State of Punjab and Ors.), and in this writ petition the petitioners have prayed for the issuance of a writ of certiorari quashing the impugned award (Annexure P-I) and have prayed for issuance of direction that they be reinstated in service with full backwages. The case set up by the petitioners is that they worked as workmen with respondent No. 3, The Doraha Cooperative Marketing Society Ltd., Doraha, District Ludhiana (for short "the Society"), on regular basis since 1973 and their services were terminated on 30.11.1979 without payment of any notice pay and retrenchment compensation. Since they were drawing more than Rs. 250/- per month, their services could not be terminated without taking prior approval of the Registrar under Rule 36 of the Bye-laws of the Society/They served a demand notice upon the Society (respondent No. 3), which refused to accept their demands. After the failure of conciliation proceedings, respondent No. 1 referred the matter to the Labour Court for adjudication u/s 10 of the Industrial Disputes Act, 1947 (for

short "the Act"). The impugned award (Annexure P-I) was passed on 11.4.1984 and it was held that though the termination of the petitioners was illegal, yet they are not entitled to full back-wages. The Labour Court, on the contrary, ordered for the payment of retrenchment compensation only. The award has been attacked by the petitioners on the ground that once their termination from services amounted to retrenchment within the meaning of Section 2(oo) of the Act, the labour Court was duty bound and was under obligation to order the reinstatement of the petitioners into service with benefit of continuity of service and full backwages and by not doing so, the Labour Court has committed the illegality.

3. The writ petition has been contested by respondent No. 3 and it has been admitted that the petitioners were retrenched on 30.11.1979. According to this respondent, the petitioners were offered retrenchment compensation in view of Section 25-F of the Act, but they refused to accept the same. It is the stand of this respondent that the petitioners were retrenched being surplus under the directions of the Registrar Cooperative Societies, Punjab. Moreover, Bye-law No. 36, as referred to by the petitioners, will apply only where any punishment is awarded to them. In this case the answering respondent has not awarded any punishment to the petitioners. Rather they have been retrenched from service being surplus and junior-most in the category. On merits, the stand of this respondent is that the award (Annexure P-I) of this writ petition is perfectly legal and valid and it has been rightly held by the Labour Court that the retrenchment of the petitioners was bona fide.

4. In other three writ petitions, i.e. C.W.P. No. 2200 of 1984, C.W.P. No. 2207 of 1984 and C.W.P. No. 2298 of 1984, the petitioners were employees of the Punjab State Small Industries Corporation Limited, Chandigarh (for short the Corporation)) and they have filed separate writ petitions under Articles 226/227 of the Constitution of India, praying for the quashment of the respective awards to the extent that they be reinstated into service with benefit of continuity of service with full backwages. The case of the petitioners in these three writ petitions is common and for the purpose of facts I am referring to the facts of C.W.P. No. 2200 of 1984, in which it has been alleged that the petitioners worked as workmen with the Government Hosiery Work Centre, Industrial Area-B, Ludhiana, which is under the control of respondent No. 4, on regular basis and their deductions were made towards General Provident Fund and Employees State Insurance. They had rendered services of not less than five years with respondent No. 3 but their services were terminated without any notice, charge-sheet or inquiry. Upon this they served a demand notice upon respondent No. 3, which refused to accept their demands for reinstatement with continuity of service and full back wages. After the failure report, respondent No. 1 referred the matter for adjudication to the Labour Court u/s 10 of the Act and vide separate awards the Labour Court held that the termination of the petitioners was illegal and unjustified. Instead of awarding reinstatement into service and full back wages with benefit of continuity of service, the Labour Court granted

some compensation to the petitioners for their illegal termination of services. The award of the Labour Court has been challenged by the petitioners on the ground that once it is held by the Labour Court that the termination of the services of the petitioners amounted to retrenchment, it was duty bound to reinstate the petitioners into service with full back wages and continuity of service and by not doing so, the Labour Court had committed a great illegality, which should be rectified by issuing necessary directions in the present writ petitions.

5. The stand of the management in all the aforesaid three writ petitions is common. According to these respondents, there is no error in the impugned awards, much less error apparent on the face of the record. The Labour Court has passed a legal award by awarding compensation in accordance with law and the reference made by respondent No. 1, i.e., the State Government. The services of the petitioners were terminated on account of their absence from duty. The petitioners were working on piece rate basis and as and when the work was available and they were paid according to the work done by each of the petitioners. The petitioners did not press their claim of reinstatement before the Labour Court and as the reference was also made by the Government for compensation, therefore, the Labour Court rightly awarded the compensation. The petitioners are making a new case for reinstatement. The award is legal, proper and rightful and within jurisdiction. The establishment has been closed. In the end it is submitted that reinstatement could not be granted with full back wages.

6. I have heard Shri B.N. Sehgal, Advocate on behalf of the petitioners, and Shri Amar Singh, Advocate, on behalf of respondent No. 3 in C.W.P. No. 2505 of 1984, and with their assistance I have gone through the record of this case. There is no representation on behalf of the respondents in the other three writ petitions.

7. In C.W.P. No. 2505 of 1984 reference made to the Labour Court was whether the termination of the services of the workmen concerned was justified and in order. If not, to what relief exact amount of compensation were they entitled? The reference proceeded on the following issues :-

"1. Whether the order of termination of services of the workmen is justified and in order?

2. Relief."

The parties led evidence in support of the issues framed by the Labour Court. Under Issue No. 1 the Labour Court categorically held that there was no sufficient evidence to prove that retrenchment compensation as required u/s 25-F of the Act was paid to the workmen at the time when their services were terminated and as such the order of termination of services of the workmen was on this account illegal. In spite of this finding, the Labour Court proceeded with the assumption that it could see if the retrenchment was otherwise justified and as such whether the workmen could be ordered to be reinstated or not.

8. The attack of the learned counsel for the petitioners is that once the Labour Court had held that the retrenchment was illegal, it was duty bound to order the reinstatement of the petitioners into service with full back wages and the petitioners should also be granted the benefit of continuity of service. There is a force in the argument raised by the learned counsel for the petitioners because there is a categorical finding that the management did not comply with the provisions of Section 25-F of the Industrial Disputes Act on the date of the termination of the services of the petitioners. The termination in this case took place on 30.11.1979. The definition of "retrenchment" u/s 2(oo) of the Act clearly lays down that the termination of the services of the workmen for any reason, whatsoever, is a retrenchment. Even if it is assumed for the sake of argument that the act of the management while terminating the services of the petitioners was a bona fide one and was due to the decrease of the work, still the action on the part of the management would come within the mischief of "retrenchment" as defined u/s 2(oo) of the Act and in that regard the compliance of Section 25-F of the Act was a pre-requisite before terminating the service of each of the workmen.

9. In these circumstances now it is to be seen whether Section 25-F of the Act in this case has been complied with or not. Firstly, there is a finding of fact given by the Labour Court itself that there was no sufficient evidence to prove that retrenchment compensation was paid to the workmen as required u/s 25-F of the Act and this question of fact cannot be decided in the writ jurisdiction when there is no counter objection/writ petition from the side of the management.

10. Faced with this situation, learned counsel Shri Amar Singh, appearing on behalf of respondent No. 3, submitted that there was enough evidence before the Labour Court to arrive at the conclusion that on 30.11.1979 the management offered the retrenchment compensation and in support of his contention, the learned counsel drew my attention to the statement of Kamikar Singh, Cashier of respondent No. 3, who appeared before the Labour Court as M.W.2. Learned counsel submitted that as per the statement of the witness, as on 30.11.1979 there were Rs. 33,625.69 with the Society as per cash book. In fact, the retrenchment compensation was offered along with pay in lieu of the notice, but the workmen had refused to accept the same and in these circumstances the Labour Court was justified in awarding the compensation only by holding that the retrenchment of the petitioners was bona fide.

11. I am not convinced with the argument of Shri Amar Singh, Advocate. The statement of Kamikar Singh nowhere states that on 30.11.1979 any retrenchment compensation along with the notice pay was offered to each of the workmen or the said amount was remitted to each one of them while passing the orders of termination. In the absence of such evidence, it cannot be inferred that the management complied with the..... knowledge about the funds and that he was making his statement on the basis of the record. From the statement of Kamikar Singh I have not been able to formulate this impression that the

retrenchment compensation along with the notice pay was offered/tendered to each of the workmen. Rather this witness has stated that the compensation was sent by way of money order. The management has not led any evidence to that effect. Even the written statement filed by respondent No. 3 in the present writ petition does not contain the averments on which the learned counsel Shri Amar Singh wants to rely. This Court finds a patent illegality on the part of the Labour Court when it has held that the retrenchment of the workmen must be held to be bona fide. The law under the Industrial Disputes Act does not recognise any distinction between bona fide retrenchment or mala fide retrenchment so long as the act on the part of the management remains a "retrenchment". In this case the Labour Court adopted a procedure unknown to the law by calculating the compensation for each of the retrenched employees by declaring that the management would pay the retrenchment compensation to each of the workmen. By returning the finding that the provisions of Section 25-F of the Industrial Disputes Act were not complied with, the Labour Court ought to have ordered for the reinstatement of the workmen with full backwages and by further awarding the incidental benefits, such as the benefit of continuity of service etc.

12. In the other three writ petitions, the impugned awards suffer from illegality also. The Labour Court categorically returned the finding that since no compensation or notice pay was given to the workers, their termination was held to be illegal and unjustified. The material issue was decided against the management and in favour of the workmen. The reference in these cases to the Labour Court was whether the termination of services of the workmen was justified and in order? If not, to what relief/amount of compensation were they entitled. It is erroneous on the part of the management to say that the workmen did not press for their reinstatement before the Labour Court. The entire stress before the Labour Court on the contrary, on the part of the workers was that their retrenchment was bad for the reason that the provisions of Section 25-F of the Act were not complied with. Overwhelming evidence was led and thereafter the Labour Court gave the findings on this material issue in favour of the workmen and against the management. After returning this finding the Labour Court was duty bound to reinstate the workmen with full backwages and with the benefit of continuity of service. While granting relief, the Labour Court adopted patently illegal reasons by holding that since the production Section of the management had been stopped and that the workmen could not be provided with any other work, therefore, the reinstatement of these workers would not lead to further industrial peace as the management would not be able to provide them with work. The reasons advanced by the learned Labour Court, being patently illegal and wrong, cannot be endorsed.

13. Resultantly, all the four civil writ petitions are hereby allowed. The impugned award of each of the writ petitions is hereby quashed/modified and directions are given to the management to reinstate each of the petitioners into service with benefit of continuity of service. The management shall also be duty bound to pay full backwages to the said workmen from the date of the demand notice. There

shall, however, be no order as to costs in all the writ petitions.