

(1993) 11 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3184 of 1993

The Punjab State Co-op. Supplies
and Marketing Federation Ltd.

APPELLANT

Vs

Sh. Kartar Singh and Another

RESPONDENT

Date of Decision: Nov. 19, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 10(1)(C)

Citation: (1994) 106 PLR 563

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: Anil Malhotra, for the Appellant; P.S. Goraya, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.K. Bali, J.

The Punjab State Co-op Supplies and Marketing Federation Limited, Chandigarh, through its Managing Director Challenges the Award rendered by the Labour Court, Gurdaspur on June 2, 1992 vide which while allowing the reference, respondent-workman was reinstated with continuity of service and half wages from the date of demand notice i.e. February 25, 1988 till reinstatement.

2. Brief facts of the case reveal that respondent-workman served as Chowkidar purely on temporary daily wage basis w.e.f. October 26, 1984 to May 25, 1985 i.e. only for 212 days. He was so appointed as the regular Chowkidars were temporarily transferred to newly created Focal Point Godowns. Vide order dated June 26, 1984 Piara Singh, Charan Dass and Ajit Singh, who were working as regular chowkidars, were transferred from Dhariwal to Sidhwan, Langah Jattan and Wadala Banger. Workman-respondent, thus, came to be appointed purely on temporary basis

against one of the Chowkidars at Dhariwal. However, when the permanent incumbent of the post, came back at Dhariwal, respondent-workman was relieved of his duties w.e.f. May 26, 1985 in accordance with the terms and conditions of his appointment letter. The muster roll in respect of daily wage employees posted in the office for the month of May, 1985 clearly records that respondent-workman had worked only upto May 26, 1985, on which date he was relieved of his duties. After being relieved, he received his wages in cash amounting to Rs. 359/- for 26 days of the month of May, 1985 vide voucher of payment dated June 4, 1985. Thus, it is proved, as per the case set-up by petitioner, that respondent workman was no more in its employment thereafter. However, vide demand notice dated February 25, 1988, that is, after about a period of three years, workman claimed reinstatement by claiming that he was retrenched without payment of any compensation. On the failure of the conciliation proceedings, the Government made reference u/s 10(1)(c) of the Industrial Dispute Act for adjudication of the dispute between petitioner-management and respondent-workman by the Labour Court.

3. After receiving the claim application on behalf of respondent-workman, reply of the management and recording their evidence, the learned Labour Court ordered reinstatement of the workman with continuity of service but with half back wages. It is this order, as indicated in the earlier part of this judgment, that has been challenged in this petition.

4. It is so pleaded and argued by learned counsel appearing on behalf of the petitioner-management that there is no question of compliance of the provisions of Section 25F of the Industrial Disputes Act as the workman as per his own showing had worked only for a period of 212 days.

5. Respondent-workman has contested the matter and has filed written statement in which, interalia, he pleads that neither the attendance register nor the muster roll was produced before the Labour Court. He had been working as Chowkidar till September 15, 1985 and was a victim of unfair labour practice. Petitioner adopted the role of hide seek with a view to frustrate his just claim. He had completed 240 days service and his services, thus, could not be terminated after complying with condition contained in Section 25F of the Industrial Disputes Act.

6. The crucial question as is apparent from the pleadings briefly referred to above was as to whether the respondent-workman was in employment of petitioner-management for a period of over 240 days. Even in the statement of claim filed before the Labour Court Gurdaspur, it was pleaded by the workman that he joined he service on 26.10.1984 in Dhariwal Branch as Watchman and worked upto 15.9.1985 continuously.

7. The aforesaid claim was contested by pleading that even though respondent-workman joined in October 1984 but he was relieved in May 1985. Respondent-workman chose to file replication and only reiterated his stand that he

served as Chowkidar with effect from 26.10.1984 to 15.9.1985. It was nowhere his case in the statement of claim or replication that he had worked from May 1985 to September 1985 but he was made to sign or thumb mark against the name of one Partap Singh although the payment of wages had been made to him. That apart, the management produced on the records of the Labour Court muster rolls Exhibits W1 to W6 in respect of daily wage employees posted at Dhariwal in the month of May 1985 which unmistakably show the presence of Partap Singh after 26.5.1985. The petitioner-management also proved Exhibit M/1/3 which is a voucher for cash payment which is signed by respondent-workman and it manifests that an amount of Rs. 350/- was paid to Kartar Singh, daily wage Chowkidar i.e. respondent-workman as salary for the month of May 1985. The Labour Court, however, believed the statement of respondent-workman that he had worked upto September 1985 and he was made to thumb mark against one Partap Singh although payment of wages was made to him as Vasudev Accountant who appeared as WW1 on behalf of petitioner-management did not know whether Piara Singh was working as Chowkidar or not, nor could he deny that Kartar Singh respondent was made to put his thumb mark impression against the name of Partap Singh at the time of payment of wages. The Labour Court further drew an adverse inference against the petitioner-management for its not producing before the Court the attendance register or the muster roll. The Labour Court also took into consideration the documents Exhibits W1 to W6 wherein payment of salary from June 1985 to September 1985 was shown to have been made to one Partap Singh.

8. After hearing the learned counsel for the parties and going through the records of the case, I am, however, of the opinion that the Labour Court after appraisal of evidence that was led in the case, did not come to a correct conclusion and its findings are, thus, vitiated not only because it did not appreciate the evidence in its proper perspective but basically on the ground that it came to draw adverse inferences on account of non-production of documents which in fact had been produced. As referred to above Exhibit MI/2(Annexure P2) is the muster roll in respect of daily wage employees posted at Dhariwal for the month of May 1985 and the same clearly manifests that Kartar Singh respondent-workman had worked only upto 26.5.1985. At this stage itself, it requires to be mentioned that if the case set up by respondent-workman to the effect that he had worked after May 1985 to October 1985 is correct there was no question for the management not to mark his presence after 26.5.1985. Exhibit M/1/3 (Annexure P3) further gives credence to the pleadings of petitioner-management that the respondent has worked only upto May 1985. He had received payment of Rs. 359/- for the month of May 1985. That apart, the Labour Court while returning finding aforesaid in favour of respondent workman completely missed and, thus, did not refer to the pleading of the parties. The management had contested the claim of workman that he had worked upto September, 1985. The respondent-workman who had chosen to file replication should have immediately come up with the plea that even though he was paid in his

own name upto May, 1985, thereafter, wages were given to him by getting his thumb impressions on the bills prepared in the name of Partap Singh. Evidence of the workman was, thus, not in consonance with his pleadings and it appears that it was an after thought simply with a view to prop up a claim which was otherwise totally hollow. He knew that it was impossible for him to have asked for any relief till such time he was able to prove that he worked under the management for 240 day and for that precise reason, he coined a story which was not at all convincing. The Labour Court, also ignored the facts that demand notice was given to the management after nearly three years, to be precise two years and nine months from the date of alleged termination of respondent-workman. It is true that delay in giving demand notice and asking for reference is not always fatal but while appreciating the plea of respondent-workman that he had worked upto September 1985 which was hotly disputed by the management, the Labour Court ought to have taken into consideration the delay in giving demand notice to the petitioner-management.

9. For the reasons stated above, the writ petition succeeds and is, thus, allowed, Award of Labour Court, Annexure P1 is quashed. Parties are however, left to bear their own costs.