Punjab State Electricity Board and Another Vs The Presiding Officer, Labour Court and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 23, 1997

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 17(2)

Citation: (1998) 118 PLR 73

Hon'ble Judges: M.L. Singhal, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Jasbir Singh, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.
This appeal is directed against the order dated 31.3.1989, passed by the learned Single Judge dismissing C.W.P. No.

3119 of 1981 filed by the petitioners against the award dated 6.2.1981 passed by the Labour Court, Ludhiana in Reference No. 299 of 1979.

2. The necessary facts of the case are that the dispute raised by the respondent No. 2 against the termination of his service was referred by the

Government of Punjab u/s 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) to the Labour Court, Ludhiana for

adjudication.

3. In the statement of claim filed by him, the respondent no. 2 pleaded that he had, served for a period of 1-1/2 years before being thrown out of

job unceremoniously. He also pleaded that the action of the employer was contrary to the principles of natural justice and the provisions of the Act

of 1947. The employer (appellants herein) contested the claim of the workman by asserting that the workman had abandoned the job.

4. After considering the rival pleadings and the evidence produced by the parties, the Labour Court held that the employer has failed to prove its

plea that the workman had voluntarily abandoned the job. It further held that the termination of the service of the workman was unjustified. On the

basis of these conclusions, the Labour Court passed an award for reinstatement of the workman with continuity of service and fullback wages

w.e.f. 18.4.1978.

5. The writ petition filed by the appellants challenging the award of the Labour Court has been dismissed by the learned Single Judge on the ground

of violation of Section 25(F) of the Act of 1947 and the principles of natural justice.

6. Shri Jasbir Singh reiterated the appellants" plea that the respondent no. 2 had voluntarily abandoned the duty and, therefore, the Labour Court

had no jurisdiction to order his reinstatement with back wags. Learned counsel pointed out that due to the non compliance of the direction given by

the Sub Divisional Officer, Doraha on 17.4.1978 and his continued absence from duty, the employer had struck off the name of the respondent no.

2 from its rolls in accordance with Clause 17(2)(v)(m) of the Standing Orders and the Labour Court has erred in directing reinstatement of the

workman.

7. We have thoughtfully considered the submissions, made by Shri Jasbir Singh and, in our opinion, the award passed by the Labour Court as well

as the judgment of the learned Single Judge do not suffer from any error of law warranting interference by the Appeal Bench.

8. Before dealing with the contention of the learned counsel on merits, we deem it proper to out line the scope of certiorari jurisdiction of the High

Court under Article 226 of the Constitution of India. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior

Courts or Tribunals. These are cases where orders are passed by the inferior Court or Tribunals without jurisdiction, or is in excess of it, or as a

result of failure to exercise jurisdiction. A writ can also be issued where in the exercise of jurisdiction conferred on it, the Court or Tribunal acts

illegally or improperly. If the Court or the Tribunal decides the question without giving opportunity of hearing to the affected party or where the

procedure adopted by it is contrary to the principles of natural justice, a writ can be issued. However, the High Court cannot act as an Appellate

Court. That necessarily means that the finding of fact reached by inferior Court or by the Tribunal as a result of appreciation of evidence cannot be

reopened or questioned in writ proceedings. An error of fact cannot ordinarily be corrected in exercise of certiorari jurisdiction. The only cases in

which the High Court can upset a finding of fact recorded by the Tribunal in a writ of certiorari is where it is shown that in recording the said

finding, the Tribunal has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence and that

has influenced its finding. Likewise, if a finding of fact is based on no evidence, the Court may interfere by holding it to be a case of error of law.

9. The contention of the learned counsel that the Labour Court and the learned Single Judge have erred in rejecting the appellant"s plea regarding

abandonment of job by the workman deserves to be examined in the light of the principles referred to herein above. A look at Annexure P-2 dated

17.4.1978 written by the Sub Divisional Officer, Doraha to the respondent-workman shows that the former had charged the latter with the

allegation of sleeping on duty and causing danger to the security of the sub station. In the endorsement made by the Sub-Divisional Officer to the

Executive Engineer, an unequivocal recommendation was made for termination of the service of the respondent no. 2. For ready reference, the

letter written by the Sub Divisional Officer to the respondent no. 2 is reproduced below :-

From

S.D.O.

Town Sub Division,

Doraha.

To

Shri Mukhtiar Singh,

Chowkidar,

T.M.V. Doraha

Sub: Sleeping during duty hour.

On dated 17.4.1978 you took over the charge of shift duty from Shri Banta Singh at 12.00 MN and the u/s had a round of the workshop at 3.00

A.M. to the utter surprise of lies u/s the main gate was azar, your were sleeping on a full bedding laid near the repaired transformers on the floor

and you had your face covered. About six seven persons of operation staff were on job inside the transformers yard for filling the damaged cable

box of Rampur feeder. They were having access to every thing in the yard and were moving out and coming in without any restriction at the gate as

you were sleeping.

In the part also you have been caught twice by the u/s sleeping on duty and you were issued necessary warning but you have failed to improve and

have become habitual in sleeping on duty. This habit of yours puts the security of the workshop in danger. Once a theft has also taken place during

your duty on 27th and 28th of December, 1977 night. It is not possible for this office to risk the security of the workshop any longer by keeping

you on the said job as such you are requested to meet Exn. T.M.V. Division Patiala for further orders. Enst. No. 49 Conf. Dt. 17.4.78 Doraha.

Copy of the above is forwarded to Xen. TRW Division Patiala for information and necessary action please this office had already recommended

the termination of service of the official under Rules no. 17(2)(v)(m) of Standing Orders whereas the theft had taken place in the workshop during

the duty of the said official. The official is not at all reliable and cares little for him during duty. It is not in the interest of the department to keep him

in employes any further.

Sd/- S.D.O.

T.R.W.

O/O Doraha.

10. If the contents of the letter dated 17.4.1978 are read with the statement made by the respondent no. 2 before the Labour Court, it becomes

clear that after receiving that letter, the respondent no. 2 went to the Executive Engineer for posting order but he was not given duty. Instead, the

respondent no. 2 was made to give in writing that he wanted to withdraw Employees Provident Fund Account. The Labour Court opined that this

was done by the employer in order to cover its lapse by shifting the blame upon the workman. The Labour Court held that the Sub Divisional

Officer was not satisfied with the working of the respondent no. 2, but instead of taking departmental action against him, he directed the workman

to report to the Executive Engineer. This, according to the Labour Court, amounted to termination of the service of the workman. In his order, the

learned Single Judge has expressed his concurrence with the finding of the Labour Court and observed:

It is also on record that Sub Divisional Officer under whom respondent no. 2 was working, was not happy with the manner in which the

respondent no. 2 was discharging his duties. It has come on record that some punitive action was in the contemplation of the Sub Divisional Officer

under whom the workman was working. However, instead of resorting to taking the punitive action which would have necessitated the holding of

an enquiry a simple method was resorted and this method was to direct respondent no. 2 to report for further posting orders to the Executive

Engineer. This indicates that so far as the Sub Division Officer was concerned he had brought an end to the service contract and this is patently

contrary to law because the intention was to put an end to the service contract on account of some lapses on the part of respondent no. 2 which

may or may not be correct and regarding which no enquiry was held. It is on the file that immediate boss of respondent no. 2 was not very happy

with his work. If this was so, then it can be safely concluded that the petitioner acting through the Sub Divisional Officer terminated the services of

respondent no. 2 by way of punishment which cannot be sustained. Apart from this there was no compliance of Section 25 of the Industrial

Disputes Act as it is patent that no retrenchment compensation was offered or paid to respondent no. 2.

11. While rejecting the plea of voluntary abandonment, the learned Single Judge observed:

The argument that this is a case of voluntary abandonment of service because respondent no. 2 had resorted to withdrawal of his provident fund

may again be not correct. The circumstances in which respondent no. 2 was placed and taking into consideration that he was not aware of the

consequences which might ensue on the withdrawal of provident fund amounts to voluntary abandonment of service. The respondent no. 2 was to

sustain himself and he must have found some solace by resorting to the money which, he had deposited in his provident fund. Not only this, it may

be seen that respondent no. 2 was informed by his immediate boss that his services were no longer required and that he should report for further

posting orders to the Executive Engineer, from this the natural conclusion is that the service of respondent no. 2 was brought to an end and the

workman was justified in making the application for withdrawal of his provident fund. In any case it may be seen that the mere act of making

application for withdrawal of provident fund would not be a factor to conclude that respondent no. 2 had abandoned in service. There is no

statutory provision or any precedent which may support such a conclusion. In any case, it may be seen that the Labour Court has come to the

conclusion that there was no abandonment of service and this being finding of fact cannot be challenged.

12. We fully agree with the learned Single Judge that the finding of fact recorded by the Labour Court regarding voluntary abandonment of duty

does not suffer from any error of law warranting interference by the High Court.

13. We also agree with the learned Single Judge that the termination of the service of the respondent no. 2 was liable to be declared as void on the

ground of violation of principles of natural justice. Admittedly, the employer had struck off the name of the workman from its rolls under Clause

17(2)(v)(m) without giving opportunity of hearing to him. In similar circumstances, the termination of the service of the workman has been held to

be illegal in D.K. Yadav v. J.M.A. Industries 1993(4) SLR 126. In that case, the action was taken by the employer under Clause 13(2) (iv) of the

Certified Standing Orders which empowered it to terminate the service of the workman if he remained absent for a period of 8 days. Their

lordships held that even though the employer may terminate the service of the workman by exercising power under Standing Orders, the principles

of natural justice had to be complied with.

14. No other point has been argued.

15. For the reasons mentioned above, the appeal is dismissed.