

(1997) 01 P&H CK 0038

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 411 of 1982

M.K. Kohli

APPELLANT

Vs

Alfadeal Chemicals and Another

RESPONDENT

Date of Decision: Jan. 6, 1997**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 2
- Punjab Shops and Commercial Establishments Act, 1958 - Section 2(4), 22

Citation: (1997) 116 PLR 81**Hon'ble Judges:** R.L. Anand, J**Bench:** Single Bench**Advocate:** R.S. Mittal, for the Appellant; None, for the Respondent

Judgement

R.L. Anand, J.

Shri M.K. Kohli, petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India for the issuance of proper writ, direction or order quashing the order passed by respondent No. 2 dated 23.6.1981 published in Haryana Govt. Gazette dated 3.11.1981 (Annexure P.2) against the respondents.

2. The case set up by the petitioner is that he was employed as a Salesman by respondent No. 2 on 25.1.1977. Respondent No. 1 M/s Alfadeal Chemical is a firm carrying on business as an industrial undertaking by manufacturing and supplying cutting oil and numerous other chemicals and also doing job work in metal finishing on contract. Part of the manufacturing process and job work is carried on manually and part of it is carried on mechanically with the aid of machines working with power. The petitioner further states that respondent No. 1 is an industry within the meaning of Section 2(j) of the Industrial Disputes Act as it runs a systematic activities for the production and distribution of goods and services calculated to satisfy " human wants.

3. On 21.4.1979, respondent No. 1 illegally terminated the services of the petitioner without issuing any charge-sheet or holding an enquiry. The petitioner raised an industrial issue by serving demand notice dated 31.5.1979 and on the basis of that the appropriate Govt. referred the matter to the Labour Court, respondent No. 2. Before the Labour Court, the petitioner filed a statement of claim. Similarly, respondent No. 1 also filed the written statement and after framing necessary issues, the Labour Court gave the findings against the petitioner that he was not entitled to reinstatement but would be entitled to only two months' wages as notice pay. Vide award Annexure P.2 dated 23.6.1981 through which the challenge has been given in the present writ petition on the ground that the Labour Court though framed certain issues with regard to the retrenchment etc. of the petitioner but no issue was framed as to whether the provisions of Punjab Shops and Commercial Establishments Act, 1958 would be applicable to the dispute between the parties. The award has also been attacked that Section 22 of the Shops and Commercial Establishments Act, 1958 provides a speedy remedy of getting compensation of an employee whose services had been terminated without giving him one month's notice or pay in lieu thereof and the forum provided this speedy remedy is a judicial Magistrate. This Section does not talk of retrenchment and the remedy of Section 22 of the said Act is not a substitute of the Disputes Act from the Labour Court. It has also been pleaded that it is one of the basic principles of interpretation of a Statute that whatever is omitted by Legislature is deemed to be excluded and therefore, on the plain reading of language of Section 22(4) of the said Act, the jurisdiction of the Industrial Tribunal to award full back wages in case an industrial dispute referred to it is prohibited and consequently the remedy u/s 22(2) of the Shops Act is additional remedy to the remedy open to the workman under the Industrial Disputes Act. The petitioner is a workman within the definition of Section 2(k) of the Industrial Disputes Act while respondent No. 1 is an industry. The matter related to the retrenchment of the petitioner and all these aspects have been ignored by the Labour Court while passing the impugned award dated 23.6.1981 Annexure P.2 and with the passing of the award the case of the petitioner has been seriously prejudiced and the award is liable to be quashed.

4. Notice of the writ petition was given to the respondent No. 1. Nobody has given the appearance on behalf of this respondent, nor any written statement was filed in the Registry. In the light of the above, the present writ petition is being disposed of with the assistance of Shri R.S. Mittal, Sr. Advocate, appearing on behalf of the petitioner.

5. A perusal of the impugned award Annexure P.2 would show that M.K. Kohli petitioner raised an industrial issue by alleging himself to be the workman against respondent No. 1 treating it as an industry. Issue No. 4 of the impugned award would show that the Labour Court treated the petitioner as a workman and finding of this issue has gone against the management/employer. Under issue No. 7, the Labour Court treated respondent No. 1 as having been registered under Punjab

Shops and Commercial Establishments Act, 1958. Under issue No. 9 it was categorically held by the Labour Court that the termination of services of the workman was unjustified and this issue was decided against the management. However, under Issue No. 10, the Labour Court relied upon a judgment reported as 57 FJR 206, Nawanshahar Central Co-operative Bank Ltd. v. Labour Court, Jullundur, and came to the conclusion that the petitioner was not entitled to reinstatement from the date when his services were terminated, but he will be entitled to only 2 months wages as notice pay. This finding was given on the assumption that respondent No. 1 is registered under the Punjab Shops and Commercial Establishments Act, 1958.

6. After hearing the learned counsel for the petitioner this Court is of the considered opinion that the findings of the Labour Court are patently erroneous and against the law. It is the categorical case of the petitioner that respondent No. 1 was an industry and he was a workman within the definition of Section 2(j) and 2(k) respectively and to this extent even the Labour Court has given the findings in favour of the workman. "Commercial establishment" has been defined u/s 2(4) of the Punjab Shops and Commercial Establishments Act, 1958 which means "any premises wherein any business trade or profession is carried on for private and includes journalistic or printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating houses, theatre, cinema or other place or public entertainment or any other place which the Government may declare, by notification in the official Gazette, to be a commercial establishment for the purposes of this Act."

7. The above definition would show that respondent No. 1 in fact did not fall within the definition of commercial establishment because there is no notification by the State Govt. to this effect that the industry of respondent No. 1 would fall within the definition of "Commercial Establishment". Otherwise also, the provisions of Industrial Disputes Act have not been repealed by Punjab Shops and Commercial Establishments Act, 1958. Even if it is assumed for the sake of argument that the activities of respondent No. 1 falls within the definition of "Commercial Establishment" still the provisions of Industrial Disputes Act cannot be put at naught in the light of the provisions of Section 22 of the Punjab Shops and Establishments Act. The so long an industrial issue has arisen between the petitioner and respondent No. 1 with regard to the retrenchment of the petitioner, it could always be referred to the Labour Court for adjudication. Section 22 of the Punjab Shops and Commercial Establishments Act, 1958 only talks of notice of removal and it states that "No employee shall be removed from service unless and until one month's previous notice or pay in lieu thereof has been paid to him. Section 22(2) only authorise the Judicial Magistrate to award compensation to the employee equivalent to two months' salary whose services has been removed without reasonable costs. This section does not talk that of reinstatement and the Legislature in its wisdom

had intentionally left over this matter within the purview of the Labour Court and under the Industrial Disputes Act. So long respondent No. 1 is covered within the definition of Industry as defined in Section 2(j) of the Industrial Disputes Act and the petitioner, is covered within the definition of workmen as defined u/s 2(k) of the Act and an industrial dispute had arisen, this has to be decided in accordance with the provisions of Industrial Disputes Act and Punjab Shops and Commercial Establishments Act, 1958 does not govern either the procedure or the forum or relief opened to the workman under Industrial Disputes Act. The remedy provided under the Shops and Commercial Establishments Act is an additional remedy available to the workman. The judgment relied upon by the Labour Court is not applicable to the facts in hand. With the passing of the impugned award Annexure P.2 dated 23.6.1981 a serious prejudice has been caused to the petitioner. The Labour Court has exercised its jurisdiction in a wrongful manner by giving wrong interpretation to the provisions of Industrial Disputes Act and Shops and Commercial Establishments Act, Resultantly the impugned award Annexure P.2 cannot sustain in the eyes of law and is hereby quashed.

8. Now the ancillary point for determination before this Court is whether the petitioner is entitled full back wages or not? It is the case of the petitioner himself that his services were terminated as back as on 21.4.1979. The award was passed on 23.6.1981. It will not be believable that the petitioner remained out of job or that he was not gainfully employed right from 1979 onwards. For his survival he must be striving here or there. Nevertheless, the petitioner was wrongfully deprived of his right of reinstatement and other consequential benefits. Keeping in view the facts in hand, it is hereby ordered by setting aside the impugned order Annexure P.2 dated 23.6.1981 that the workman - the petitioner will be entitled to reinstatement into service with respondent No. 1 with the benefit of continuity of service and he shall also be entitled to back wages at the rate of 25 per cent from the date of the demand notice till the date of his reinstatement. Of course, the petitioner will be entitled to full back wages from the date, he submits his joining report in pursuance of the decision of this Court. There shall be no order as to costs in this writ petition.