(1997) 02 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1618 of 1982

Norton Engineering Works		APPELLANT
	Vs	
The Presiding Officer, Labour Court		RESPONDENT

Date of Decision: Feb. 6, 1997

Acts Referred:

- Industrial Disputes (Punjab) Rules, 1958 - Rule 22

Citation: (1997) 117 PLR 196

Hon'ble Judges: N.C. Khichi, J

Bench: Single Bench

Advocate: P.K. Mutneja and Balwinder Singh, for the Appellant; M.S. Bedi, for the Respondent No. 2, for the Respondent

Final Decision: Dismissed

Judgement

N.C. Khichi, J.

In this writ petition, the legality of the award dated 19.11.1981 (Ann.P.7) passed by the Labour Court, Amritsar, ordering reinstatement of respondent No. 2, with continuity of service and full back-wages after deduction of the amount which is proved to have been earned by him during this period, has been challenged.

2. The brief facts of the case are that respondent No. 2 had worked for about six years as Chowkidar on a monthly salary of Rs. 220/- with the petitioner-management and his services were terminated on September 26, 1976 without any notice or enquiry and in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, the "Act"). The workman raised a dispute and the State Government in exercise of the powers u/s 10 of the Act, referred the dispute for adjudication to the Labour Court, Amritsar. On receipt of the order of reference the parties appeared and the management (present petitioner) filed written statement and controverted, the allegation that the services of the workman had been

terminated on September 26, 1976. The management took a specific plea that the workman had joined service on 11.7.1975 but submitted his resignation of his own on 24.8.1976 which was accepted on 25.8.1976. The workman after received his dues upto 25.8.1976, left for his village in Uttar Pradesh, Following issues were framed by the Labour Court:-

1. Whether the workman resigned from the job" If so, to what effect"

2. Whether termination of the services of the concerned workman is justified and in order?

3. Relief.

Since the management did not produce any evidence in spite of granting a number of opportunities, so its evidence was closed vide order dated 15.9.1981. The workman also did not come into the witness box. Since onus to prove both the issues referred to above was on the management, therefore, the learned labour Court answered the reference on the basis of the pleadings of the parties and held that the workman had worked for more than 240 days with the management and since there was no compliance of the provisions of Section 25-F of the Act, therefore, he was entitled to the usual relief of reinstatement with continuity of service and full back-wages. However, it was further directed that the full back wages be paid after deduction of the amount which is proved to have been earned by the workman during the period of his forced unemployment in the proceedings of computation of that amount.

3. I have heard the learned counsel for the parties and have also gone through the record.

4. The learned counsel for the petitioners while assailing the impunged award has contended that the Labour Court grossly erred in law and in contravention of the principles of natural justice in as much as it did not afford any reasonable opportunity to the petitioner-management to produce its evidence, According to him, onus of issue No. 2 was upon the workman and since he failed to come into the witness box therefore, there was no question of leading any evidence in rebuttal by the management. He has further submitted that the management has summoned two witnesses for 13.10.1977, vide Annexure P.5 and thereafter the case continued to be adjourned for one reason or the other and when the same was taken up on 6.1.1981, both the parties requested for a date and the matter was adjourned to 31.3.1981, for evidence. He has further submitted that the management had summoned expert witness namely; Shri R.S. Bal and had deposited diet money but he was not summoned. According to the learned counsel, the Labour Court was not justified to close the evidence of the management and it has resulted into miscarriage of justice and the case be remitted for fresh decision. After giving my thoughtful consideration to this submission of the learned counsel and keeping in view the peculiar facts and circumstances of the case, I do not find any force and

substance therein. No doubt the case was adjourned from time to time for one reason or the other but the management did not produce its evidence. Last opportunity was granted to the management to produce its evidence on 15.9.1981. It was the duty of the management to produce its entire evidence on that day on its responsibility. The management having failed to do so, the Labour Court was fully justified to close the evidence by detailed order dated 15.9.1981.

5. The learned counsel for the petitioner- management had submitted that the workman did not step into the witness box therefore, the Labour Court was not justified to award the relief of reinstatement. In support of this contention he has referred to the decision rendered by the Allahabad High Court in V.K. Raj Industries, Aligarh v. The Labour Court (1) U.P. and Ors. 1982 Lab. I.C. 551 wherein it was held as under:-

" Although Evidence Act did not apply to proceedings before the Industrial Court the principles underlying it apply. Accordingly, workman challenging the validity of termination of his services should produce evidence to prove its illegality. Where the Industrial Court placed the burden of proof of validity of termination order on the employer and awarded relief of reinstatement to the workman who neither appeared nor filed any written statement, the Court should be held to have exceeded its jurisdiction."

This case law was also brought to the notice of the Labour Court and it has rightly been distinguished as is not applicable to the facts of the case in hand. In the instant case, the parties filed their pleadings and appeared in Court. The workman even filed replication. A specific plea was raised by the management that the workman resigned from his job of his own. Thus in a way, it was admitted that the workman-respondent No. 2 worked with the management for more than 240 days. In this situation, in the absence of any evidence produced by the management, the Labour Court was fully justified to return a finding that the workman did not resign from the job of his own and his services were terminated without compliance of the provisions of Section 25-F of the Act.

6. It is by now well-settled that the Labour Court is under an obligation to proceed with the reference and to decide the same on merits if the workman even fails to put in appearance before it. Rule 22 of the Industrial Disputes (Punjab) Rules, 1958, reads as under:-

"If without good cause shown, any party to proceedings before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court. Tribunal or Arbitrator may proceed, as if he had duly attended or had been represented."

In Radhey Sham and Ors. v. The Presiding Officer, Labour Court, Haryana, Rohtakand Anr. (1981)85 PLR 458 a Single Bench of this Court after noticing Rule 22 quoted above, observed as follows:-

" A plain reading of Rule 22 of the Industrial Disputes (Punjab) Rules, 1958, shows that the Labour Court while adjudicating upon a dispute between workmen and the management is not bound by the strict rules of the procedure and has been empowered to give a decision on merits, even if, one party or the other after having appeared once before it, declines to appear on a subsequent date.''

In K.K. Rattan v. Presiding Officer, Labour Court, Chandigarh and Ors. 1993(1) RSJ 423 a Division Bench of this Court, made the following observations:-

" xx xx In a given case if a workman remains absent, it becomes the duty of the tribunal to consider the claim statement filed by the workman as well as the written statement filed by the management and any other record which is made available to the Labour Court and it should answer the point of dispute referred to it on merits."

7. No doubt, where a workman complains of retrenchment u/s 25-F of the Act, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. In the instant case, it has been admitted by the petitioner-management that the workman, respondent No. 2, was in service from 11.7.1975 to 25.8.1976 i.e. continuously for a period of more than 240 days. It was nowhere pleaded that during this period, respondent No. 2 did not work. Therefore, the termination of the services of respondent No. 2 by petitioner-management shall amount to retrenchment u/s 2(oo) of the Act. Since the provisions of Section 25-F of the Act were not complied with therefore, the termination of services of the workman was not justified. In view of this, the impugned award Annexure P.7, cannot be treated as erroneous in law.

Resultantly, the writ petition is dismissed being without merit. However, there will be no order as to costs.