(2011) 05 P&H CK 0255

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No"s. 15434, 16210, 16216, 16217, 16218, 16219 and 16220 of 1992

Punjab Agriculture University and Another		APPELLANT
	Vs	
Presiding Officer, Labour Court and Another		RESPONDENT

Date of Decision: May 26, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 21, 226, 227
- Industrial Disputes Act, 1947 - Section 10, 2, 25B, 2A

Citation: (2011) 164 PLR 58

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.
As identical questions of law and facts are involved and collectively argued by the counsel for the parties, therefore, I propose to dispose of the instant writ petitions, arising out of the same impugned award (Annexure P7) of the Labour Court (for brevity "LC"), by virtue of this common judgment, in order to avoid the repetition. However, the facts, which require to be noticed for the limited purpose of deciding the core controversy, involved in these matters, have been extracted from (1) CWP No. 16210 of 1992 titled as "Punjab Agriculture University, Ludhiana and Anr. v. Presiding Officer, Labour Court, Bathinda and another" in this context.

2. The crux of the combination of the facts and evidence, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that the Respondents-workmen were engaged as daily wage workers, in the year 1989, at the monthly salary of `760/-by the management of Petitioner-Punjab

Agriculture University, Ludhiana (for short "the management"). The workmen claimed that their services were illegally terminated by the management with effect from 1.7.1990. In the wake of the industrial dispute raised by the workmen, by way of demand notice (Annexure P1), the appropriate Government referred the matter to the LC for adjudication, in view of the provisions of Section 10 of The Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act").

3. The case set up by the workmen, in brief in so far as relevant, was that they were engaged as Beldars on daily wages, in the year 1989, by the management and their services were illegally terminated, without issuing any show cause notice, holding any inquiry or payment of retrenchment compensation. Their termination orders were stated to be arbitrary, illegal, unjustified, against the principle of natural justice and statutory provisions of the Act as well. On the basis of aforesaid allegations, the workmen claimed their reinstatement with continuity of service and full back wages in the manner indicated hereinabove.

4. The management refuted the claim of the workmen and filed its written statement before the LC, inter-alia pleading certain preliminary objections of, maintainability of the claim petitions, cause of action and locus standi of the workmen. The management claimed before the LC that workmen had themselves abandoned their duties after 1.7.1990. The management pleaded that as their willful absence amounted to misconduct and indiscipline, therefore, their services were duly terminated after conducting the regular inquiry, by means of termination order dated 27.4.1991. It will not be out of place to mention here that the management has stoutly denied all other allegations contained in the statements of claim and prayed for their dismissal.

5. In the wake of pleadings of the parties, the Presiding Officer of the LC framed the following issues for adjudication of the case:

i) Whether the references are in competent as pleaded in the legal objections taken in the written statement ?

ii) Whether the order of termination of services of the workman is justified and in order?

iii)Relief.

6. The parties to the lis brought on record the evidence, in order to substantiate their respective stands. Taking into consideration the entire material on record, the LC accepted the claim of the workmen, decided issue Nos. 1 and 2 against the management and reinstated them, with continuity of service and 50% of back wages, by virtue of common impugned award dated 5.8.1992 (Annexure P7), the operative part of which is as under:

All the references are answered in the negative and management is ordered to reinstate the workmen with continuity of services. So for as back wages are concerned, they are

also allowed but to the extent of 50% only as claimed for other 50% of back wages has been gracefully abandoned by the workmen when he lone witness examined by them, namely Krishan Kumar WW1 had made statement in this fact. I would like to add at this juncture that the way, the workmen have shown grace in abandoning claim qua 50% of back wages to which they were entitled to at least in normal course, the management would also show magnanimity in reinstating them without losing any unnecessary time. No order as to costs.

7. The Petitioner-management did not feel satisfied and preferred the present writ petitions, challenging the impugned award (Annexure P7), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia pleading that the workmen were engaged only as daily paid workers and their employment was not against any regular post. They themselves abandoned their jobs and did not join/resume their duties, despite repeated offers, by way of letters (Annexures P2 to P6). The appropriate Government was stated to have wrongly referred the matter, which was decided by the LC, by way of the impugned illegal award (Annexure P7). On the basis of aforesaid allegations, the management sought the quashment of impugned award in the manner depicted hereinbefore.

8. The workmen contested the claim of management and filed the written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petitions, cause of action and locus standi of the workmen. It was explained that the workman Angrej Kaur did not abandon her job. Her services were terminated, without issuing any show cause notice, holding C.W.P. No. 16210 of 1992 along with 6 connected petitions any inquiry or payment of retrenchment compensation. The alleged inquiry proceedings, during the pendency of the reference petitions, were stated to be illegal and contrary to the provisions of law. Since the matter was sub-judice before the LC, so, the management was not otherwise entitled to initiate such inquiry, which was stated to be farce and illegal. The workman joined the services, in pursuance of the admission order dated 20.1.1993 of this Court, but the management did not pay her the wages regularly. In all, according to the workman that as her services were terminated, without following the mandatory provisions of law, therefore, the LC has rightly reinstated her in this respect. It will not be out of place to mention here that the contesting Respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal.

9. After hearing the learned Counsel for the parties, going through the record and relevant provisions of the Act with their valuable assistance and after deep consideration over the entire matter, to my mind, there is no merit in the instant writ petitions in this context.

10. Ex facie, the argument of learned Counsel for management that the workmen were not appointed against any regular post and since they themselves abandoned their jobs, so, they were not entitled to reinstatement in service, is not only devoid of merit but misconceived as well.

11. As is evident from the record, that the workmen have worked with the management from 1989 to 1.7.1990, when his services were terminated. The management in the writ petitions has described that the workmen were engaged in the month of August, 1989 and they abandoned their duties after 1.7.1990. No doubt, the management has pleaded that the workmen have worked for 186 days from August, 1989 to June 1990, but it has miserably failed to produce any record of attendance of workmen, muster roll or any other cogent evidence to substantiate its case in this connection. On the contrary, the workmen, while appearing in the Court, have stated, on oath, that they worked and remained in continuous service C.W.P. No. 16210 of 1992 along with 6 connected petitions of the management from 1989 to 1.7.1990. They never abandoned their duties, but their services were illegally terminated, without issuing any show cause notice, holding any inquiry or payment of retrenchment compensation.

12. Moreover, it has been specifically pleaded by the management, in its written statement before the LC, that workmen have abandoned their duties after 1.7.1990. As their willful absence amounted to misconduct and indiscipline, therefore, their services were duly terminated after conducting the regular inquiry, by means of termination order dated 27.4.1991. Again, the management did not produce any record of any inquiry initiated against the workmen before the service of demand notice (Annexure P1).

13. Significantly, the undated charge sheet (Annexure P3), offer letter dated 28.12.1990 (Annexure P4), notices dated 17.1.1991 (Annexure P5) and 8.2.1991 (Annexure P6) appear to have been subsequently created by the management after the issuance of demand notice dated 4.7.1990 (Annexure P1) by the workmen and no implicit reliance can be placed on these documents, particularly when the termination order dated 27.4.1991 has not seen the door of the Court till today.

14. That means, the management has neither produced the attendance register, muster roll to prove the breaks in service of workmen nor produced any record of inquiry and termination order dated 27.4.1991, by virtue of which, the services of the workmen were terminated. In other words, the management has withheld the best possible evidence in this context for the reasons best known and in that eventuality, a legal adverse inference is inevitable against it, which would corroborates the evidence of workmen that they have put in continuous service from 1989 to 1.7.1990 as defined u/s 25B of the Act and their services were abruptly terminated by the management w.e.f. 1.7.1990, without issuing any notice, valid inquiry or payment of retrenchment compensation. In that eventuality, the termination of services of workmen would amount to retrenchment and the C.W.P. No. 16210 of 1992 along with 6 connected petitions provisions of the Act would be applicable. This matter is not res integra and is well settled.

15. An identical question came to be decided by the Hon''ble Apex Court in case Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, , wherein it was ruled that "striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning

of Section 2(too) of the Act. The provisions of Section 25F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid."

16. The same view was reiterated by the Hon''ble Supreme Court in cases H.D. Singh Vs. Reserve Bank of India and Others, and The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. The Presiding Officer, Labour Court, Chandigarh and Ors. 1990(2) RSJ 53.

17. Again, the Hon''ble Apex Court in case Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, has held that "the law must, therefore, be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence."

18. It is not a matter of dispute that there is nothing on record to show C.W.P. No. 16210 of 1992 along with 6 connected petitions that the provisions of Section 25F of the Act were complied with by the management in the instant case. As indicated earlier, the alleged undated charge sheet (Annexure P3), offer letter dated 28.12.1990 (Annexure P4), notices dated 17.1.1991 (Annexure P5) and 8.2.1991 (Annexure P6) appear to have been subsequently created by the management, much after the issuance of demand notice dated 4.7.1990 (Annexure P1) by the workmen. The documents (Annexures P3 to P6) are farce & sham papers and in operative on the rights of the workmen.

19. In this manner, the documents of alleged inquiry and the termination order, which did not visit the door of the LC or of this Court till today, are inoperative on the rights of the workmen, to deny them the statutory benefits of the provisions of the Act in this relevant connection. Therefore, it is held that the disengagement of employment of the workmen was arbitrary, illegal and against the statutory provisions of the Act in this relevant connection.

20. Now adverting to the other contention of learned Counsel for management that since the workmen were engaged as daily wagers and were not appointed against the regular post, so, the provisions of Section 25F of the Act were not applicable to them, is again not tenable.

21. As is clear, the term "workman" has been defined in Section 2(s) to mean any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

22. A conjoint reading of this provision would reveal that even if a person is engaged on daily wages and has completed the continuous service as defined u/s 25B, then, his services cannot be terminated without following the statutory provisions of Section 25F of the Act, irrespective of the fact that he was not appointed against a regular post as alleged on behalf of the management. Therefore, the contrary arguments of learned Counsel for management "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances and the law laid down in the aforesaid judgments "mutatis mutandis" is applicable to the facts of the present case and is the complete answer to the problem in hand.

23. Not only that, having scrutinized the evidence on record in the right perspective, the LC has negated the stand taken by the management, by virtue of impugned award (Annexure P7), which, in substance in this regard, is (paras 9 & 10) as under:

It has been the consistent stand of the workmen throughout that their services were terminated by the management abruptly w.e.f. 1.7.90 without any notice, charge sheet, inquiry or compensation. Had they abandoned the job of their own, there was no fun of their part to issue notices u/s 2-A of the Act with promptitude as out of them two had issued demand notices on 3.7.90 while rest excepting workman Kamla Devi on 4.7.1990. Even workman Kamla Devi cannot be said having slept over her rights beyond 25.8.90. Statement of workman Krishan Kumar on oath to the fact that they never abandoned the job but were weeded out by the management thus has to be given weight over the evidence led by the management to the contrary. Further more, had it been a case of abandonment as pleaded by the management there would have been no fund (Sic. fun), at least in normal course on the part of the management to constitute enquiry much after the workmen served demand notices and to pass termination order on 27.4.1991 i.e. during the pendency of adjudication of the references by this Court.

In view of all which has been discussed above, there is no need to elaborate further and to discuss the evidence witness wise/itemwise. In consequence it is held that workmen were terminated by the management on 1.7.1990 without any notice, charge-sheet, enquiry or compensation and hence order of termination forming subject matter of references under adjudication cannot be said to be either justified or in order and hence this issue in all the references is decided against the management.

24. Meaning thereby, the LC has rightly accepted the claim of workmen in this relevant direction, vide impugned award (Annexure P7). Such award containing valid reasons, cannot possibly be interfered with, while exercising the writ jurisdiction of this Court, unless and until, the same is illegal and perverse. As no such patent illegality or legal infirmity has been pointed out by the learned Counsel for the management, therefore, the impugned award (Annexure P7) is liable to be and is hereby maintained in the obtaining circumstances of the case.

25. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

26. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petitions are hereby dismissed as such.