Ravinder Kumar Vs The Presiding Officer, Labour Court and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 12, 2010

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2, 25F, 2S

Citation: (2011) 162 PLR 226

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Judgement

Ritu Bahri, J.
The Petitioner has challenged the award of the Labour Court under Articles 226/227 of the Constitution of India dated

26.10.1987 (Annexure P-6). The Petitioner was working with Respondent No. 2 Management since 1984 as a Helper. On 1.2.1985 the

Petitioner was given a regular appointment letter vide Annexure P-2. However, his services were terminated on 6.7.1985 without any show cause

notice, charge sheet or inquiry. The Petitioner raised a demand before the Labour Court. In the labour Court, the stand of the Management was

that the services of the workman were terminated on 1.2.1985 in term of the contract of the employment. Clause 3 of the agreement of

employment reads as under:

Your services can be terminated at any time during the period of probation or extended period of probation without any notice or assigning any

reason.

2. The labour Court has declined the reference on the ground that the services of the workman were terminated in terms of stipulation made in the

agreement or employment. The workman was employed in terms of appointment letter on 01.02.1985 and that on 6.7.1985 his services were

terminated. Thus, he had not completed 240 days of continuous service. The plea of the workman that the period when he joined the factory of the

management as a trainee for six months, should be counted towards service as workman.

3. Mr. Ashwani Bakshi, Advocate for the Petitioner has challenged the award on the ground that as per definition of the workman in The Industrial

Disputes Act, 1947, an apprentice means a workman. The definition of workman is as under:

Section 2(s) ""workman"" means 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, but does not include

any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or an an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by

the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

4. In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, the definition u/s 2(s) of the Industrial Disputes Act has been discussed. The

Apex Court has observed in paragraph 14 which -is as under:

The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant

is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the

servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and

Harbour Board v. Coggins & Griffith (Liverpool) Ltd. 1947 AC 1 (E), ""The proper test is whether or not the hirer had authority to control the

manner of execution of the act in question.

5. The Petitioner was appointed as a trainee for six months with the Respondent. He was paid stipend of Rs. 250/-per month. He was to do the

training work in the Respondent factory, which amounts to skilled labour. From the cross examination of Deputy Manager, Administration, Mr.

B.B. Bhalla, it is clear that the wages was paid to him. The wage slip was shown to him which pertained to the year 1984. From the evidence on

record, it is clear that the Petitioner was a trainee under Respondent No. 2 on payment of stipend and there existed relationship of master and

servant i.e. employor and employee.

6. In view of the fact on record, the interpretation given by the Labour Court that the Petitioner was a trainee and he could not be treated as a

workman under the Industrial Disputes Act is not legally correct.

7. In view of Section 2(S) of the Act, the award is quashed. The services of Petitioner could not have been terminated without complying with the

provisions of Section 25F of the Act which is reproduced as under:

Condition precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one

year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month"s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days" average pay [for every

completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate

Government by notification in the Official Gazette].

8. Admittedly, no retrenchment compensation has been paid in compliance of Section 25F of the Act. The Petitioner has completed 240 days with

Respondent No. 2, therefore, the award is liable to be quashed for non-compliance of Section 25F of the Act. The award of the Labour Court is

of 1987 and there is a gap of 23 years. Ends of justice would meet, by awarding compensation of Rs. 30,000/-to the Petitioner. The benefit of

reinstatement after a gap of 23 years would not be appropriate relief. No order as to costs.

Accordingly, The writ petition is disposed of.