(2012) 01 P&H CK 0337

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 17822 of 2009

Rajwant Singh		APPELLANT
	Vs	
State of Punjab and Another		RESPONDENT

Date of Decision: Jan. 12, 2012

Citation: (2012) 135 FLR 1031

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Vipin Mahajan, for the Appellant; S.S. Sahu and Ms. Deepali Puri, for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The writ petition challenges the order of recovery of Rs. 2,50,000/-, the loss alleged to have been caused by the petitioner by his negligent conduct in making an admission before the Labour Court, while tendering evidence as management witness. The alleged negligent evidence attributed to the petitioner was that he had admitted before the Labour Court in a proceeding initiated by a workman Rajinder Singh challenging an alleged illegal termination. The petitioner, who was the Secretary, Market Committee, had given evidence that the workman had been working with the Market Committee from 1.4.1988 to 30.4.1990. The Labour Court ultimately held that the termination made was erroneous and directed reinstatement. To a charge-sheet levied against him, the petitioner had contended that during the relevant period, he was not even in-charge of the Market Committee as a Secretary but he had known about the fact that an application had been filed u/s 33-C(2) by the workman Rajinder Singh against the Management claiming wages that included the period from 1.4.1988 to 30.4.1990. The order had been passed by the Labour Court upholding the claim of the workman, when the Management had remained ex parte. The Labour Court held that it was established that the workman had worked with the Management and that his statement that he had not been paid

wages for the said period (1.4.1988 to 30.4.1990) stood unrebutted. It appears, the Management sought to assail the order before the very same Labour Court and they failed in their attempt.

2. The contention of the learned Counsel for the petitioner, therefore, was that it was not as if it was the petitioner''s evidence before the Labour Court that was responsible for securing an adverse order of a direction for reinstatement. The Management had already suffered an order for a claim for wages on the basis of the claim by the workman that he had worked during the relevant period and the Management''s own attempt to assail the same was not successful. The order of reinstatement subsequently made when the termination order was issued could not be therefore taken as a mere consequence of wrong admission by the petitioner but the first blame has to be borne by the Management itself in allowing the proceedings u/s 33-C(2) to go undefended and when the Court had found that the workman''s service from 1.4.1988 to 30.4.1990 had been an established fact.

3. Admittedly, the petitioner was not working during the relevant period when he was making admission that the workman had been employed with the Market Committee from 1.4.1988 to 30.4.1990, he was being indiscreet. He could have only spoken from the records and it is not as if the petitioner had a defence that he had looked into the records and found that the workman had indeed been shown to have worked. On the other hand, the defence by him before this Court is only that there had been already a finding by the Labour Court that the workman had worked between the said period. If he was not himself working at that relevant time, the response could have been only that he did not know whether the workman had worked between the said period or not. It cannot be denied that the petitioner had been indiscreet in his evidence. The question that would still require to be considered is whether the petitioner''s evidence could be taken as so overwhelmingly negligent as to render him liable for the consequences of a direction for refund of Rs. 2,50,000/-. The amount was said to be the damage incurred by the Management for suffering an adverse order before the Labour Court for reinstatement. It is not possible for me to judge now as to what must have gone into reckoning of the Labour Court for taking a decision for directing reinstatement. I am not sitting in an appeal or considering the validity of the order of the Labour Court directing reinstatement. In a way, the admission by the petitioner had surely gone as one of the factors in the Court''s decision that the claim for reinstatement by the workman was bound to succeed. The Management cannot bury fathoms deep its own negligent conduct in allowing the proceedings u/s 33-C(2) to go undefended. By its own conduct, it had obtained an adverse decision that the workman had worked from 1.4.1988 to 30.4.1990. Even without reference to the evidence of the petitioner before the Labour Court, the Labour Court could have still come to the same conclusion that the workman was entitled to reinstatement on the basis of what the workman could produce as evidence in support of his contention that he had worked during the period for which he had

also obtained an order of the Labour Court granting to him the wages. In such a situation, it should have been impossible for the Management to still contend that the workman did not work at all.

There is a further point that has to be noticed. It is not as if the petitioner was supporting a workman against a Management by figuring himself as a witness against the Management. The Management secured an affidavit of the petitioner in support of its contention and placed him as its witness. In the cross-examination, the petitioner has blurted out a statement which under the circumstances, perhaps could only be seen to be indiscreet and not grossly negligent. Unless a case of brazen untruth or perjury is attributed, I will not take a statement in an unguarded moment in the cross-examination to be so serious a misconduct that could visit an employee to suffer a gross prejudice of being called upon to refund the entire financial burden of what the Management had to shoulder when a workman was securing a right of reinstatement. In this case, I would not find that the misconduct attributed to the petitioner was such as to render him liable for the damage which they were trying to recover against the damage.

4. The learned Counsel for the respondent States that the Court''s intervention in a department proceedings ought to be minimal and the Enquiry Officer had given an evidence on the basis of sure evidence let in and on the basis of what even the petitioner had admitted that he did not work during the period and, therefore, he could not have definitely asserted that another workman had worked during the particular period of 1.4.1988 to 30.4.1990. I would find a scope for interference only because the basis of levying a charge-sheet and seeking for recovery itself is untenable. I have observed that it was not a case of perjury or a deliberate untruth. An indiscreet answer in a cross-examination cannot be likened to a case of fraud and a misconduct that could give room oven for constituting an enquiry. In the whole attempt, the Management was trying to literally make the petitioner scapegoat, when it was trying to make light its own negligent conduct in not defending the workman''s action for salary during the period when he asserted that he was working. I would see the subsequent order of the Labour Court directing reinstatement as mere fallout the initial act of the Management in allowing for an adverse order to be suffered by them at the instance of the workman. The impugned order cannot therefore be sustained and would require to be quashed. It is, accordingly, quashed and the writ petition is allowed.