

(2014) 02 P&H CK 0075

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 10899 of 2010

S.B. Packagings Ltd.

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision: Feb. 19, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, 151
- Industrial Disputes Act, 1947 - Section 2(s)

Citation: (2014) 175 PLR 697

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Surinder Gandhi, Advocate for the Appellant; N.K. Malhotra, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Gurmeet Singh Sandhawalia, J.

Present writ petition has been filed for quashing the award dated 08.12.2009 (Annexure P7), passed by the Labour Court, Rohtak, whereby, respondent No. 2 was reinstated in service on his previous post, with continuity of service and 30% back wages, from the date of the demand notice, i.e., 30.07.2002 (Annexure P1). A perusal of the paperbook would go on to show that respondent No. 2-workman took the plea that he had been appointed on 29.08.1999 as Junior Engineer (Electrical) and was getting Rs. 3200/- per month as salary and he worked upto 18.07.2002. His services were terminated without issuing any show cause notice and without assigning any reason and the mandatory provisions were not adhered to under the Industrial Disputes Act, 1947 (for short, the "Act"). On the dispute being referred, claim statement was filed before the Labour Court on the same set of allegations and in reply, the petitioner-Management took the plea that he was not a workman as he has been serving as Junior Engineer (Electrical) and was working as supervisory officer over the junior Electricians and thus, the jurisdiction of the

Labour Court itself was under challenge. By replication, the workman claimed that he fell under the definition given u/s 2(s) of the Act and was not working in the capacity of supervisory officer. On merits, the Management took the plea that it was a case of absence as he did not rejoined his duty despite being informed.

2. The Labour, Court framed the following issues:

"(1) As per terms of reference?

(2) Whether the applicant was not a workman?

(3) Relief."

3. Thereafter, the petitioner examined Shri K.S. Yadav, General Manager, S.B. Packaging as MW 1 and the workman appeared as WW 1. The Labour Court recorded a finding that there was nothing on record to show that he had left duty after 18.07.2002 or absented himself and no attendance register or document has been placed on the file, though the Management was claiming that the workman was working as Junior Engineer but the document dated 10.03.2003 (Mark "A") was rejected on the ground that it was not proved in accordance with law and pertained to some other person, namely, Manjeet Singh, son of Satvir Singh. The claim of the Management that there was no document to show that the workman was appointed on a supervisory capacity and he was verbally appointed as no appointment letter was issued to him, was taken into account. It was further noticed that the Management witness has deposed that he cannot produce any document to show that he was appointed in supervisory capacity or that he had power to grant leave to other workers though he had stated that 2-3 persons were working under the workman. Accordingly, it was held that the nature of duties of the workman were only of a worker and he had no administrative powers and he could not be denied the benefit of the workman under the Act. Resultantly, reinstatement was ordered along with 30% back wages, from the date of the demand notice dated 30.07.2002.

4. Counsel for the petitioner has argued that vide CM No. 11196 of 2010 (Annexure P8) for placing on record the additional evidence, appointment letter dated 29.08.1999 has been placed on record in which it has been mentioned that respondent No. 2 had power to suspend the services of subordinate staff and initiate inquiry against them and he had workers working under him whose number may increase or decrease. In the application, it was averred that the petitioner had inadvertently not produced the record before the Labour Court and that it is necessary for the proper adjudication of the case. The said application was allowed on 25.07.2013 by a Coordinate Bench of this Court and the following order was passed:

"CM No. 11196 of 2010

Learned counsel for, respondent No. 2 submits that he does not intend to file any reply to CM No. 11196 of 2010 and he will argue the main case because he has

already filed the written statement to the writ petition.

In view of the above, the present application is allowed. Annexure P-8 is permitted to be placed on record. CM stands disposed of."

5. Counsel for the petitioner, has thus, submitted that the case should be remanded back to the Labour Court to adjudicate on the issue whether the Labour Court had jurisdiction or not and whether respondent No. 2 was a worker or not.

6. Counsel for respondent No. 2, on the other hand has opposed the said argument and submitted that the Management had all the right to produce the document before the Labour Court but has failed to do so and it cannot be, now, be read into evidence and it is in contradiction to the deposition of the Management witness.

7. After hearing counsel for the parties, this Court is of the opinion that the Labour Court has come to a categorical factual finding on two issues, namely, that the petitioner's services were terminated and he had not left the job. The Management had failed to produce any attendance register or documentary evidence, though it was claimed that the workman was working as Junior Engineer (Electrical). Thus, an adverse inference was rightly drawn against the Management. On the other issue as to whether the Labour Court had jurisdiction to adjudicate under the provisions of the Act because of the appointment letter dated 29.08.1999 (Annexure P8), is without any basis. The said document cannot, now, be taken into consideration.

8. A perusal of the statement of the Management witness would go on to show that a categorical stand was taken by Shri K.S. Yadav, General Manager of the petitioner-Management that they had no document, appointing him as a supervisory staff and that he was appointed orally and no appointment letter was issued to him. Thus, the credibility of the document is in doubt. Once the workman had himself specified that he was appointed on 29.08.1999 and the Management had denied his appointment letter totally and said that they do not have any appointment letter, even though they had raised an issue as to the fact that the workman was appointed in a supervisory capacity, the Management cannot be allowed to blow hot and cold at the same time, subject to its own convenience and specially, once a specific stand has been taken by the General Manager of the Management. It would not be in the interest of justice if the said document which has been taken on record, be read into evidence.

9. Even otherwise, though the said document was taken on record, this Court is of the opinion that no justifiable cause has been shown and the conditions prescribed under Order 41 Rule 27 read with Section 151 of the CPC have not been satisfied and the said document is not required for purpose of pronouncing judgment. Even otherwise, the said provision pertains to appellate proceedings. It is settled principle that the writ Court is not a Court of appeal and is only exercising its supervisory powers.

10. Thus, this Court is of the opinion that Annexure P8 cannot be taken into consideration. The award, as discussed above, is suffering from no illegality, infirmity or irregularity and is well reasoned. The Labour Court had only awarded 30% back wages and has balanced the equity inter se the parties while directing reinstatement. Accordingly, there is no scope for interference in the well reasoned award, passed by the Labour Court. Consequently, the present writ petition is hereby dismissed.