State of Punjab Vs Bodh Raj

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 2, 2014

Acts Referred: Constitution of India, 1950 â€" Article 226
Industrial Disputes Act, 1947 â€" Section 10, 17-B, 2(oo), 25, 25F

Citation: (2014) 143 FLR 990 : (2014) 4 LLJ 89

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Amit Chaudhary, Addl. A.G, Advocate for the Appellant; B.R. Mahajan, Advocate for the Respondent

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J.
Challenge in the present writ petition, filed by the State, is to the award dated 29.08.2000 (Annexure P3) whereby

the respondent-workman was directed to be reinstated with continuity of service and full back wages, from the date of his termination, i.e.,

01.11.1992 till reinstatement.

2. As per the claim statement of the workman, he was appointed as a daily wage labourer under the supervision of the Manager, Government

Sericulture Farm, Dinanager, Tehsil & District Gurdaspur-petitioner No. 2 in January, 1983 and worked till October, 1993, continuously as per

the rates approved by the Deputy Commissioner. His services were terminated w.e.f. 01.11.1992, without complying with the mandatory

provisions of the Industrial Disputes Act, 1947 (for short, the "Act") and despite approaching petitioner No. 2 for reinstatement, he remained

unemployed and juniors to him were retained in job and fresh recruitment were made and therefore, there was violation of Section 25-H. The

workman also took the plea that the judgment passed in State of Punjab Vs. The Presiding Officer, Labour Court and Another, pertained to the

Horticulture Department and therefore, the said facts were not applicable to the facts of the present case.

3. The claim statement was resisted by filing written statement and the plea taken was that the workman had not completed 240 days during the

preceding 12 months and he was only appointed on need basis and as and when the seasonal agricultural works in the farm completed, his services

automatically finished. Reliance was placed upon the judgment dated 04.09.1997 passed in the case titled Ram Saran Vs. Divisional Sericulture

Officer, Sujanpur to take the plea that the Department of Sericulture does not fall under the definition of ''Industry'', as per the earlier decision of

the Labour Court, Gurdaspur, to controvert the plea taken by the workman regarding the applicability of the Act.

4. The Labour Court, after taking into account the pleadings of the parties, framed additional issues as to whether the Sericulture Department was

an industry or not, within the meaning of the Act and secondly, as per the reference, whether the termination of services of the workman was

justified and in order.

5. In the Punjab Government notification dated 23.02.1994, the Department of Horticulture was taken into consideration and accordingly, it was

held that the case of the workman related to the period from January, 1983 to November, 1992 and the notification issued in 1994 would be of no

help to the Management''s case. When the services were terminated, at that time, the Department of Sericulture was an industry within the meaning

of the Act and accordingly, also distinguished the award dated 04.09.1997, passed by his predecessor and held that it was not binding upon it, as

such.

6. On the merits of the case, pertaining to completing 240 days and whether the procedure of Section 25-F had been followed, it was noticed that

the workman had specifically deposed that one Naval Masih and Joginder Pal, who were juniors to him, were retained in service. The evidence of

the Management witness, Jagdev Singh was taken into consideration and it was noticed that in the cross-examination, the said witness had

contradicted himself and admitted that the workman had worked from January, 1983 to November, 1992, with notional breaks and no notice,

notice pay or retrenchment compensation was paid to him. Even the letters written for being reinstated were also admitted and accordingly, it was

held that the Management had failed to produce the pay rolls and attendance register to rebut the fact that there were any notional breaks and 240

days were not completed preceding his termination. Accordingly, it was held that there was no compliance of the provisions of Section 25-F, as

stated by the Management witness and reinstatement was directed with full back wages.

7. Writ petition was admitted on 03.01.2001 and on 26.09.2002, the execution of the award was stayed, subject to the provisions of Section 17-

B of the Act. However, the workman was reinstated in service on 19.01.2004 and continues to be in service though he has only been paid wages

as admissible to the daily wage employees, during the pendency of the present writ petition. In the application for early hearing, it was mentioned

that 7 new Malis have been appointed in the regular pay scale on 04.10.2012 and inspite of 29 years of service, he was only being treated as daily

wager and being paid the wages, as such.

8. Counsel for the State has submitted that Sericulture Department would not be an industry and placed reliance upon the Division Bench judgment

passed by this Court in the case of State of Punjab (supra) wherein it has been held that the Horticulture Department is part and parcel of the

Agriculture Department and therefore, would not come under the ambit of industry. Similarly, it is also submitted that the Labour Court, Gurdaspur

had denied relief to one Ram Saran on the ground that Sericulture association was integral part of Horticulture Department and did not fall under

the ambit of industry.

9. Counsel for respondent No. 1, on the other hand, submitted that the Labour Court was well justified in directing reinstatement and merely

because a notification had been issued at a subsequent point of time, the jurisdiction of the Labour Court pertaining to industrial dispute would not

be taken away, which related to period prior to the notification and it could not have any retrospective effect.

10. After hearing counsel for the parties, this Court is of the opinion that a factual findings of fact has been recorded on the merits of the case that

the workman had worked from January, 1983 to November, 1992 and the Department had failed to rebut this fact by producing the necessary

record to show that 240 days has not completed. The workman has been able to discharge the initial onus before the Labour Court regarding the

said fact of his period of service and further, the onus has been shifted upon the petitioner-Department to show to the Court that the workman had

not completed 240 days, preceding his termination. Reliance can be safely placed upon R.M. Yellatti Vs. The Assistant Executive Engineer, .

Relevant observation reads as under:

Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings u/s 10 of the

Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly

taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only

upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and

documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no

receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal

muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse

inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving

statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he

had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea

of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the

above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the

concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case. Now applying

the above decision to the facts of the present case, we find that the workman herein had stepped in the witness box. He had called upon the

management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1994. This period is the period borne out

by the certificate (Ex. W1) issued by the former Asstt. Executive Engineer. The evidence in rebuttal from the side of the management needs to be

noticed. The management produced five nominal muster rolls (NMRs), out of which 3 NMRs, Ex. M1, Ex. M2 and Ex. M3, did not even relate to

the concerned period. The relevant NMRs produced by the management were Ex. M4 and Ex. M5, which indicated that the workmen had

worked for 43 days during the period 21.1.1994 to 20.2.1994 and 21.3.1994 to 20.4.1994 respectively. There is no explanation from the side of

the management as to why for the remaining period the nominal muster rolls were not produced. The labour court has rightly held that there is

nothing to disbelieve the certificate (Ex. W1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In

the circumstances, we are of the view that the division bench of the High Court ought not to have interfered with the concurrent findings of fact

recorded by the labour court and confirmed by the learned single judge vide order dated 7.6.2000 in writ petition no. 17636 of 2000. This is not,

therefore, a case where the allegations of the workman are founded merely on an affidavit. He has produced cogent evidence in support of his

case. The workman was working in SD-1, Athani and Ex. W1 was issued by the former Asstt. Executive Engineer, Hipparagi Dam Construction

Division No. 1, Athani-591304. In the present case, the defence of the management was that although Ex. W1 refers to the period 22.11.1988 to

20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce

before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this

judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that

the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.

W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.

11. Thus, a factual finding of fact has been recorded that in the case of the workman, the mandatory provisions of Section 25-F of the Act have

not been completed and it is settled principle of law that if that is not being done, then the workman is entitled for reinstatement. Reference can be

safely made to the judgments of the Apex Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, & Anoop Sharma Vs. Executive

Engineer, Public Health Division No. 1 Panipat (Haryana), wherein it has been held that the Labour Court is only to examine the fact that whether

the person had completed 240 days in the preceding period, prior to his retrenchment and the nature of appointment was not be seen. In Devinder

Singh Vs. Municipal Council, Sanaur, , it was held by the Apex Court that where there is violation of Section 25-F(a) & (b), which are mandatory

and the termination of the services of the workman was made without following the said procedure, it would ordinarily result in reinstatement.

Relevant observations read as under:

19. Section 25 couched in negative form. It imposes a restriction on the employer''s right to retrench a workman and lays down that no workman

employed in any industry who has been in continuous service for not less then one year under an employer shall be retrenched until he has been

given one month''s notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the

period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days'' average pay for every completed

year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate

Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F(a) and (b) are mandatory and termination of the service of a

workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month''s notice or pay in lieu thereof and

retrenchment compensation is null and void/illegal/inoperative- The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ,

Bombay Union of Journalists and Others Vs. The State of Bombay and Another, , Santosh Gupta Vs. State Bank of Patiala, , Mohan Lal Vs.

Management of Bharat Electronics Ltd., , L. Robert D''Souza v. Southern Railway (supra), Surendra Kumar Verma and Others Vs. Central

Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, , Gammon India Limited Vs. Niranjan Dass, , Gurmail Singh and

Others Vs. State of Punjab and Others, and Pramod Jha and Others Vs. State of Bihar and Others, .

21. In Anoop Sharma v. Executive Engineer, Public Health Division, Haryana (supra), the Court considered the effect of violation of Section 25F,

referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions

contained in Section 25-F(a) and (b) should ordinarily result in his reinstatement.

12. The second issue which arises for consideration is that whether the State is entitled to take the plea that the Department of Sericulture stood

transferred to the Department of Horticulture vide the notification dated 23.02.1994 and therefore, petitioner No. 2 was not an industry. It is an

admitted position that the said transfer cannot have any retrospective effect on the rights of the parties and the violation of the mandatory provisions

of the Act were made by petitioner No. 2 in November, 1992, much prior to the alleged transfer of the Department. State has not shown as to

how the notification would have retrospective effect, adversely affecting the rights of the employee who is seeking his legal redressal and the said

notification would not take away his vested rights which accrued to him at the time of the illegal termination of his services, without complying with

the mandatory provisions of the Act. Therefore, this Court is of the opinion that the subsequent notification would not be applicable to the issue in

question, since at that point of time, when the cause of action arose, the Sericulture Department was not part of the Horticulture Department and

therefore, the respondent-workman cannot be denied the relief on this ground.

13. Accordingly, finding no merit in the present writ petition, the same is hereby dismissed.