(2014) 07 P&H CK 0841

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. Nos. 5035 and 12393 of 1991 and 11483 of 1995

Darshan Singh		APPELLANT
	Vs	
The Presiding Officer		RESPONDENT

Date of Decision: July 31, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 9, 10, 11
- Industrial Disputes Act, 1947 - Section 25-F, 25-G, 25-H

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Arun Abrol, Advocate for the Appellant; Harit Sharma, Advocate for the Respondent

Final Decision: Dismissed

Judgement

K. Kannan, J.

All the three petitions are litigations inter se between the Cooperative Society represented through the liquidator and a workman who was originally appointed as a sales person in the society on 01.10.1968. CWP No. 5035 of 1991 is at the instance of the workman challenging the award of the Labour Court denying him the back wages from the date of suspension which was issued on 27.04.1974 but provided back wages only from the date when a reference was made for adjudication in the year 1987. CWP No. 12393 of 1991 is a challenge to the same award by the society on a plea that the adjudication rendered by the Labour Court through the demand notice was after an initial dismissal of the petition for default against the order of retrenchment. The contention in the writ petition is that the subsequent reference made at the instance of the workman is barred by res judicata. Pursuant to the order originally passed by the Labour Court directing reinstatement, the workman had been actually reinstated as well and retrenched again on 28.06.1991 after purporting to follow the provisions u/s 25-F of the Industrial Disputes Act. The workman issued a demand notice again complaining that the notice was not in

accordance with law and the Labour Court allowed the reference holding that the termination effected even while the writ petitions were pending on an earlier order was bad in law. There was also a complaint by the workman that there had been violation of Section 25-G and 25-H of the Industrial Disputes Act. The Labour Court held that there had been such violation and the challenge presently in CWP No. 11483 of 1995 by society is that there was no pleading for violation of Section 25-G and 25-H and that further the termination effected after due notice u/s 25-F was not considered at all on its merits but the Labour Court had wrongly dealt with the issue by raising the question that retrenchment would not have been possible when there were already writ petitions challenging the order of reinstatement and the claim for back wages. It is also the contention on behalf of the society that the society was ordered to be wound up and there had been a closure of the affairs of the society and consequently, a direction for reinstatement was not competent.

2. The first issue of whether there could have been a valid reference when the first reference had been dismissed for default would require to be undertaken. The facts reveal that an action for suspension was taken when the workman was alleged to have committed embezzlement of the funds of the society. A criminal case had also been simultaneously prosecuted against the workman. The prosecution of the criminal case was itself taken as the basis for circulating a resolution for termination of services by resolution of the Board which was also the basis for termination from service on 13.07.1997. A liquidator was appointed for the society for winding up on 11.09.1980 and the workman served a demand notice on 25.08.1982 complaining of the termination as invalid. Since the termination was brought about without holding any enquiry but taking the prosecution of the criminal case itself as the basis, the workman pointed out that since he had been acquitted of the criminal charge by the Criminal Court on 06.03.1981, there existed no subsisting reason to let the termination order to continue. It appears that a reference which was made on the basis of demand notice was dismissed by the Labour Court on 28.05.1986. The award of dismissal had also been published on 18.07.1986. An application for restoration was filed by the workman after the publication of the award and it was dismissed by the Labour Court on merits that there existed no ground for entertaining the application.

3. A fresh demand was made on 25.08.1987 taking up the issue of termination already effected and on a reference the objection had been that second petition was not maintainable and the petitioner was barred by res judicata. This objection was rejected and the Labour Court held that the termination ordered was bad in law. It directed reinstatement through its order on 08.05.1990 and also directed back wages to be paid from 25.08.1987. We have seen previously that two writ petitions have come out of this award: One, at the instance of the workman demanding for back wages from the date of suspension and another at the instance of the management complaining that the award of reinstatement itself was incompetent.

4. On the ground that the second reference was not maintainable on account of res judicata, I must observe that the res judicata is a principle enunciated through Section 11 CPC and though it relates to proceedings before the Civil Court, the principles are applied also in proceedings similar to Civil Court proceedings. Section 11 operates in cases where there is an adjudication rendered between the parties on the same issue on merits. A dismissal of an application in default cannot be taken as a dismissal on merits and consequently, the principle does not apply. A bar to a fresh suit when an earlier suit was dismissed for default is found under Order 9 Rule 9 CPC which contemplates that if the suit is dismissed for default, a fresh suit on the same cause of action cannot be made unless an application for restoration is made and the Court for adequate reasons restores the suit and allow for a fresh adjudication. Learned counsel appearing on behalf of the petitioner would refer to me a decision of the Supreme Court and a decision of the Division Bench of this Court both of which held that if the order is passed ex parte by the Labour Court and an award is also published, an application for setting aside the ex parte decree is not competent since the Labour Court becomes functus officio on publication of the award. This proposition is laid down in Sangham Tape Company Vs. Hans Raj, and to the same proposition, there is a Division Bench ruling of this Court in Omi Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court and Another, The argument of the learned counsel for the society is that the principle of what is stated by the Supreme Court in relation to ex parte proceeding must apply a fortiori to proceedings for restoration of reference dismissed for default as well.

5. The principle could be applied in a case, if only the Court will be competent to dismiss a case for default, the same way as it could have decreed a reference ex parte. An ex parte decision on evidence taken from a workman amounts to an exercise of the judicial mind before a reference is answered one way or the other. A dismissal for default does not stand on the same footing. It is a summary rejection of a reference that does not invite application of judicial mind. This situation has been considered by at least three decisions of our Court. In The British India Corporation Ltd. New Egerton Woollen Mills Branch Vs. The State of Punjab etc., a Division Bench held that if a reference is made without adjudication on merits but in default, a reference obtained thereafter u/s 10 would be competent. Yet another Division Bench held in K.K. Rattan Vs. Presiding Officer, Labour Court and Others, that a Labour Court is bound to decide a reference on merits even in the absence of a workman and it cannot dismiss the reference. This decision has been followed subsequently in Chuhad Singh Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat that a Labour Court is duty bound to answer a reference on merits and a dismissal in default due to the absence of a workman is incompetent. These three decisions clearly answer the issue of what we are looking for solution. The dismissal which had been made earlier in default on 25.08.1981 was incompetent. It was irrelevant that an application for restoration was dismissed in default for the initial order was not valid in law. If a fresh reference was, therefore, made on a

demand notice made by the workman it was competent in the light of the decision of the Division Bench in The British India Corporation Ltd.''s case referred to above. The Labour Court was, therefore, competent to enter into an adjudication and find that a dismissal made without resort to the procedure prescribed u/s 25-F of the Industrial Disputes Act was incompetent and was fully justified in directing reinstatement. I, therefore, reject the plea made by the society that the validity of the termination could not be undertaken in view of the summary dismissal of the earlier petition and that it was barred by res judicata.

6. The question of whether the workman would be entitled to back wages from the date when he was suspended must be seen in the context of how the workman had himself approached the action to vindicate his rights. I find that there has been laches at various times by the workman. If he was terminated from service on 13.07.1977, the workman had issued a notice only on 25.08.1982 i.e. after a period of five years after the proceedings were initiated for winding up. Again the workman was not vigilant in prosecuting his own case and had allowed for dismissal of the petition for default. It was only after he issued a fresh notice on 25.08.1987 he has acquired a fresh adjudication directing reinstatement. Justifiably when the Labour Court was ordering the back wages to be paid, it limited the back wages only from the date when the second demand notice was made. I find that there was a justification in such a restriction by the lackadaisical conduct exhibited by the workman. I find no reason to alter the award which was already passed. I uphold the award passed initially and dismiss the writ petition filed by the workman in CWP No. 5035 of 1991 and also dismiss the writ petition filed in CWP No. 12393 of 1991 by the management.

7. The case would now be required to be examined only for the ultimate order of the reinstatement that he has obtained which is subject of challenge in independent writ petition in C.W.P. No. 11483 of 1995. Pursuant to the order passed which had been the subject of consideration in the other two writ petitions discussed above, the workman was reinstated on 13.11.1990 and he was again retrenched after paying the compensation of what was stated to be the compensation payable u/s 25-F of the Industrial Disputes Act. The order of termination made on 28.06.1991 had been a fresh subject of challenge after a demand notice issued by the workman and a reference passed before the Labour Court. The Labour Court allowed the writ petition on 11.10.1994 holding that the termination could not have been effected again when there was a pendency of two writ petitions. The Labour Court also considered oral submission made which had not been brought out elsewhere for the challenge that there was a violation of Section 25-G and 25-H as well. As regards the first lien of reasoning adopted by the Labour Court that a termination could not have been made when there were two writ petitions pending before the High Court, it was clearly erroneous. If the order of reinstatement was complied with and he was reinstated, a fresh order of retrenchment made after notice u/s 25-F surely constituted a fresh cause of action and that could have been challenged only by

means of an independent reference and the Labour Court was bound to adjudicate of whether the termination was valid or not. The decision of the Labour Court to the extent that the termination could not have been effected at all was clearly erroneous. However, if the termination which was made was purported to be in due compliance of Section 25-F then it would require to be examined whether the compensation contemplated under the said provision was followed. Section 25-F requires a notice period of one month and wages during the said period. Apart from the wages for the period of one month if it were to be immediately taken effect, clause (b) of Section 25-F requires that the workman should be paid at the time of retrenchment compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. We are considering the case of a service that commences on 01.10.1968 when the order of appointment had been made. That was sought to be put an end through the order passed on 28.06.1991 to be effective from 30.06.1991. The period would count for 22 years and 9 months. The monthly pay/salary paid at the time of retrenchment was Rs. 742/- and the retrenchment compensation must have been for 345 days taking the compensation as payable for 15 days for every year. For 345 days so reckoned, the salary would require to be paid at the rate of Rs. 24.71 which is the daily wage payable considering the monthly salary drawn at the time as mentioned above. The retrenchment compensation was, therefore, Rs. 8525/-(24.71x345). To this must be added Rs. 742/- being monthly wages payable in lieu of the notice period. The total amount would be Rs. 9267/-. Admittedly, the amount which was paid as compensation was Rs. 7757/- and the amount paid was short by Rs. 1510/-. It cannot, therefore, be stated that the payment had been made as per the requirement of Section 25-F of the Industrial Disputes Act. The compensation paid did not conform to law and the termination made was not, therefore, valid.

8. Although there is a challenge in the writ petition to the reasoning of the Labour Court that the termination could not have been effected when the writ petitions were pending, I have already held that such a view was not correct. The case is, therefore, now being considered only to look afresh on admitted pleading of whether the amount paid at the time of issuing an order of termination conform to law. It surely did not, in the reckoning that we have made now.

9. The writ petition in C.W.P. No. 11483 of 1995 is also dismissed and the award of the Labour Court directing reinstatement is upheld although for different reasons brought out in this writ petition. I am not examining the issue of whether there had been any violation of Section 25-G and H for two reasons namely (i) that there was no bar on reference and (ii) if the order of retrenchment itself is bad, the question of granting priority in the manner of reinstatement and violation or otherwise of Section 25-G and 25-H does not arise. The petitioner is entitled to all the consequential monetary benefits as though he was deemed to be in service.

10. If there is any subsequent event relating to the existence or otherwise of the society, it would require to be independently examined and workman''s services must only be taken as continuing to secure to him all the benefits which he was entitled to be. The workman shall also be paid costs of Rs. 10,000/- in each one of the writ petitions filed by the society through its administrator or if liquidation has abated by the society.