

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Civil Writ Petition No.11294 of 1993

Date of decision: 11.2.2015

Shri Sukhraj Singh

... Petitioner

Versus

The Sarangra Cooperative Agricultural Service Society Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms.Gaganpreet Kaur, Advocate,
for the petitioner.

Mr.I.S.Saggu, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

At the outset of the hearing of this regular matter pending since 1993, Mr.I.S.Saggu learned counsel for the respondents makes statement that he wrote a letter to his client on 4th February, 2015 apprising him of the status of the present proceedings and of the material sought by this Court in its interim order dated 4th February, 2015 calling upon the respondents to place documents on record explaining the bifurcation between the two respondent cooperative societies to know of their respective liabilities vis-a-vis the 1st respondent society and added respondent No.3-society impleaded on acceptance of CM No.12705 of 1996 filed by the workman under Order 1 Rule 10 CPC and Order 6 Rule 17 for impleading Kakar Cooperative

Society as respondent No.3 was allowed by this Court on 23rd July, 1996. He submits that the letter has drawn a blank and he can do no more. Therefore, this Court will take it that both respondents No.1 and 3 are jointly and severally responsible for any liabilities this order may cast on them.

2. Heard the learned counsel for the parties.

3. The case has a chequered history starting from the termination of the services of the petitioner in June, 1980. The dispute raised by him was referred in September, 1980 to the labour court. In August, 1981, the respondent management was proceeded against *ex parte*. An *ex parte* award was rendered on 22nd September, 1981 directing reinstatement of the petitioner with continuity of service and full back wages from the date of termination till the date of reinstatement [P-1]. The award was published in February, 1982 in the Gazette. Thereafter, the petitioner has been involved by the respondents in a long drawn out litigation simply to implement the award. Several applications under Section 33 C (2) of the Industrial Disputes Act, 1947 (for short, "the Act") claiming pay for different periods which were also allowed *ex parte*. The management filed an application for setting aside the *ex parte* award which was dismissed on 22nd December, 1989. Even before that, respondent No.1 had filed a civil suit No.731 of 1988 seeking permanent injunction against the workman restraining him from enforcing and recovering the amount in terms of the award. In January, 1993, both the applications under Order 39 Rule 1 & 2 CPC and the civil suit were dismissed. A fresh round of litigation started in application No.543 of 1984 under Section 33 C (2) of the Act which has been dismissed vide impugned order dated 11th March, 1993 holding that the workman had

not gone to the respondents to ask for work despite the fact that it was so directed by the Labour Court in its award dated 22nd September, 1981.

4. The present petition has been filed to assail that order. While admitting the writ petition on 29th July, 1994 an interim direction was issued to the respondent society to reinstate the petitioner to service. The petitioner joined duty in Kakkar Cooperative Society on 31st August, 1994. On 14th November, 1994, the petitioner wrote to the Assistant Registrar Cooperative Societies for release of salary on being taken back to work but denied wages. This was followed by a request letter to the same officers on 30th November, 1994 lamenting that the third respondent was not marking the attendance of the petitioner. The petitioner kept corresponding with the Registrar Cooperative Societies, Punjab, starting 8th March, 1995. Many letters were sent to the ARCS but nothing came of it till the Kakkar Cooperative Society was impleaded as an added respondent vide order dated July, 1996 passed by this Court.

5. I have heard the learned counsel for the parties and have perused the record placed on the writ file.

6. It is argued by Mr.Saggu that Kakkar Cooperative Society was not a party to the reference made in 1980 and his client has been impleaded in the writ proceedings and is thus not liable in law or in fact to pay anything to the workman, not being his employer.

7. The argument is misplaced.

8. If the nature and character of the respondents before the Labour Court on bifurcation give rise to the existence of the third respondent, then I find no document disclaiming liability of the third respondent or of it distancing itself from the first respondent society. If respondent No.1-

society had been bifurcated into two societies after the litigation culminated in final awards/orders and such bifurcation took place on 26th July, 1993 as borne out from the written statement, then no evidence is forthcoming from record showing distribution of assets and liabilities between the two entities. It is one thing to say that the assets and liabilities of the society are bifurcated and split into two but it is quite another thing to duck the operation of Court orders/awards passed earlier than the bifurcation. The fact remains that the petitioner returned on duty on 31st August, 1994 in the Kakkar Cooperative Society. The third respondent admits that the petitioner worked in the society upto 11th November, 1994 and thereafter a story is spun that he absented himself from duty without leave. He was requested on 15th November, 1994 to join duty, but inspite of that, he never turned up to join work with the Kakkar Cooperative Society as directed in the interim. It is stated that the Society wrote UPC letter on 17th January, 1995 directing the petitioner to report for duty until 6th February, 1995, failing which, he shall be suspended from service. Despite this, the petitioner is said to have failed to turn up. The Managing Committee of the Society proceeded to suspend him vide resolution dated 8th February, 1995 and followed it with a show cause notice calling the workman to reply to it. He did not turn up to answer. The Managing Committee vide resolution dated 9th March, 1995 terminated the services of the workman which he never challenged. All this was during the pendency of this petition. This is the say of Mr. Saggu.

9. The workman filed rejoinder to the written statement and refuted the allegations. It is stated that the petitioner was reinstated in Kakkar Society in pursuance of the directions issued by this Court. While admitting the petition, a direction was issued, as said before, to the respondents to

reinstate the petitioner to service but the directions has been honoured only in their breach. If a show cause notice is issued, the date is not indicated. All these letters in correspondence were forged documents to obstruct the accrued rights of the petitioner. None of the documents on which reliance is placed by Kakar Society have been filed on the record of this case for the perusal of the Court. He relies on correspondence through registered letter addressed to the Society. He worked but was not paid. It has been the stand of Kakar Society throughout, that the liability, if any, is of the Sarangra Society to reinstate the workman and to pay him salary and it cannot be fastened on Kakar Society.

10. Despite due opportunity given, Mr.Saggu has not been able to place on record any material to show that respondent No.3 did not inherit the liability of respondent No.1 with respect to past employment relationships on bifurcation. Therefore, both are held to be jointly and severally liable for the liability and the interim order dated 29th July, 1994 of this Court directing Kakar Society to reinstate the petitioner is made absolute.

11. Leaving all matters aside, the core reason why I would set aside the order of the Labour Court dated 11th March, 1993 is because the Labour Court has selectively reproduced the deposition of the petitioner appearing as AW2 in Application No.543 of 1984 [S. 33 C (2)] when he appeared on 13th June, 1991 in the witness box and made a positive statement that:

“...the award was made in my favour in 1982. I had gone to the society to report for duty immediately after the award.
Thereafter, I have not received any intimation from the respondent nor I had myself gone to the respondent till today to ask for work.”

12. Unfortunately, the Labour Court skipped over the first sentence in para. 6 of the impugned order, twisting its text and context manifestly contrary to the true oral evidence of the workman recorded by the court *a quo*. The Labour Court sadly chose to reproduce what suited it in the direction of dismissing the application. This crucial omission casts very serious doubt on the intellectual integrity of the Presiding Officer, Labour Court, Amritsar and to reflect as to what damage a court can do to a litigant by a conscious omission of a very material statement in oral evidence. If the first line is added, as reproduced above, in the statement of the petitioner reproduced in para. 6, the entire sense would change and the end product of the order dismissing the application, and when it is read truthfully, the result of the adjudication would not be possible. One line changes the case and for which reason alone, I am constrained to set aside the order in toto as one which is unconscionable. If a Judge selectively omits a statement crucial to the determination, he is guilty of judicial misconduct. Alas, it has taken so many years to repair the damage.

13. Resultantly, this writ petition is allowed and the impugned order is quashed with costs of ₹ 20,000/- to be paid to the workman by the respondents 1 and 3. He would be entitled under the award dated 22nd September, 1981 to all consequential benefits including what may flow monetarily.

(RAJIV NARAIN RAINA)
JUDGE

February 11, 2015

Paritosh Kumar