

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5246 of 1993 (O&M)

Date of Decision: 08.12.2015

Kaka Singh

... Petitioner

Versus

Presiding Officer, Labour Court,
Patiala and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jai Bhagwan, Advocate,
for the petitioner.

Mr. I.S. Sidhu, Advocate,
for Respondent-2.

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

RAJIV NARAIN RAINA, J.

1. Earlier, the petitioner approached this Court in CWP No.3531 of 1987 with two co-petitioners praying that a writ of prohibition be issued restraining the respondent-Bank from terminating the service of the petitioner and also prayed for a direction extending the tenure of appointment which was coming to an end on expiry of the stipulated period of 89 days. The other prayers were for regularization of their services and meanwhile for an interim order staying the likelihood of termination. The Division Bench of this Court passed orders in the petition on November 03, 1987 directing that the case would be governed by the directions issued in CWP No.3270 of 1987. In the latter petition, the following order was passed on November 03, 1987:-

“Learned counsel for respondents Nos.2 and 3 states at the bar that the petitioners who are in service shall be permitted to continue in service till regular appointments are made, and the persons who have been relieved on or after 2nd June, 1987 shall be permitted to rejoin with effect from today and shall be allowed to continue till regular appointments are made against their posts, and the ad hoc employees shall be relieved from service only when regular hands are appointed against their posts. In the meanwhile, the persons who have already been relieved, no ad hoc appointments shall be made against their posts.

In view of the statement made by the learned counsel for respondents Nos.2 and 3, the petitions are dismissed.” [underlined for emphasis]

2. Notwithstanding the above, the petitioner was relieved from service on May 18, 1987 which was before June 02, 1987, the stipulated date in the aforesaid order. In terms of the Division Bench order the petitioner got no relief whatsoever as he stood relieved. Being party to the order he bound himself in the welter of *res judicata*. The petitioner did not make a timely request to the Bench to try and extricate himself by praying that he may be granted leave to withdraw his name from the petition before the order was passed with leave to pursue available remedies before the Labour Court on industrial law principles. When this liberty was not taken then it is a seriously debatable issue whether the petitioner could have turned around and sought remedies under the Industrial Disputes Act, 1947 (“the Act”) by raising a demand notice on the Bank and claiming industrial reference. The Labour Court has declined the reference and answered it holding that the case falls under the exception (bb) of section 2 (oo) of the Act rendering the dispute non-industrial since no “retrenchment” took place,

the exit being based on non-renewal of contract. The total period of service spent with the employer Bank is brief 9 months served in the capacity of a clerk on purely ad hoc and temporary basis. The letter of appointment and the subsequent re-appointment orders are placed as Annexures P-1 to P-7 covering a total period of 9 months, the first of which was 89 days and thereafter for 30 days each by extensions.

3. On the strength of these appointment orders all within a short duration, the petitioner argues that he has a right to reinstatement with continuity of service and full back wages on the post of Clerk in the respondent-Bank.

4. Even assuming that the findings of the Labour Court are incorrect with respect to applicability of section 2 (oo) (bb) of the Act even then interference is not called for in the award in exercise of supervisory jurisdiction provided by Article 226 of the Constitution of India and Article 227 of the Constitution of India as well. The principles of interference are well known and can be found in the Constitution Bench decision of the Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*; AIR 1964 SC 477 and the facet under Article 227 of the Constitution of India explained in *Surya Dev Rai v. Ram Chander Rai*; (2003) 6 SCC 675 to keep subordinate courts within the bounds of their jurisdiction.

5. Interference can only be for a fundamental flaw in law or an error apparent on the face of the record. No infirmity is found in the award of the Labour Court in declining the reference in exercise of judicial discretion. The petition is found without substance and no interference is called for in writ jurisdiction.

6. The petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

08.12.2015
manju