

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.15300 of 1995
Reserved on:15.05.2015
Date of decision:29.05.2015

The Karimpur Cooperative Agricultural Service Society Ltd.

....Petitioner

Versus

Presiding Officer, Labour Court, Jalandhar & another

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.H.S.Bedi, Advocate, for the petitioner.

Mr.Deepak Verma, Advocate, for respondent No.2.

G.S.Sandhawalialia J.

1. Challenge in the present writ petition, filed by the petitioner-Society, is to the award dated 03.08.1995 (Annexure P7), passed by the Labour Court Jalandhar, whereby the respondent No.2-workman, who was employed as Secretary of the Society, was held entitled to continuity of service but without the benefit of increments of past service. He was, however, awarded 1/3rd of the back wages from the date of termination of service and full wages, from the passing of the award. It is not disputed that the said respondent has attained the age of superannuation and in view of the award having been stayed at the time of admission of the petition, he would, now, be entitled only for the financial benefits, in case the award is upheld.

2. The reasoning given for granting the said relief was that the principles of natural justice had been violated and the services of the workman were terminated without issuing any proper notice to him. The fact that he had been convicted in a police case but was released on probation and therefore, the stigma of imprisonment had been removed and the factum that there was no finding of embezzlement at the time when the resolution of removal from service

was passed by the Society against the workman and in the absence of any loss of confidence, as such, the relief had been granted.

3. Counsel for the petitioner-Society has vehemently submitted that there was never any specific challenge to the subsequent order of termination dated 10.11.1981 and before the said termination order was passed, a show cause notice dated 26.10.1981 (Annexure P1) had been issued, by virtue of a registered notice and therefore, the Labour Court was not justified in granting the necessary relief. It was also contended that there was an embezzlement which he had admitted before the Appellate Court, leading to his being released on probation on account of the fact that he had deposited the amounts, pursuant to the award passed against him and therefore, reinstatement was not justified. Lastly, it is contended that back wages had been granted even though the demand notice was served belatedly, after almost a period of 3 years.

4. Counsel for respondent No.2-workman, on the other hand, has justified the impugned award and submitted that at the time of removal from service, the principles of natural justice had not been complied with. The FIR was lodged subsequently, i.e., on 08.08.1982, but the Society had already made up its mind to remove the workman from service and the said conviction was not the basis of the removal, though he had been released on probation. He was never allowed to join duty after the first termination order was set aside and a finding of fact was recorded that the show cause notice had never been served upon him and in the absence of any departmental enquiry, his services could not be terminated at the whims of the Society.

5. In order to appreciate the above contentions, the facts of the case would necessarily have to be noticed. Admittedly, respondent No.2-workman was appointed as a Secretary of the Society in the year 1971. His services were initially terminated by way of resolution of the Society dated 06.08.1981. He was

successful in getting the same set aside on 23.09.1981, by filing an appeal before the Deputy Registrar, Cooperative Societies. However, he was never allowed to join service and a resolution was again passed on 10.11.1981 (Annexure P2) and the services of the workman were terminated on account of (i) charges of embezzlement of ₹57,256.02 and (ii) on account of absence of any surety in favour of the Society and (iii) in view of the fact that the said workman had remained on strike on a particular day, without getting his leave sanctioned. Before passing the resolution, allegedly, a notice was sent to the said workman on 26.10.1981 to put in appearance before the Society but nothing, at that stage, was mentioned as to whether the workman was served or not or whether the notice had been sent for personal hearing when the second order of termination was passed. The workman, thereafter, served a demand notice dated 10.07.1984 (Annexure P5) that he was not being allowed to join his duties and therefore, he was entitled for reinstatement with full back wages. On the matter being referred to the Labour Court on 01.03.1985, the workman filed statement of claim dated 13.10.1986, taking the plea that neither any chargesheet had been issued against him nor any enquiry had been held nor any show cause notice had been issued to him before passing the resolution dated 06.08.1981, terminating his service, which was also not communicated to him. He, accordingly, sought reinstatement without challenging the subsequent termination order dated 10.11.1981.

6. In the written statement filed by the petitioner-Society, plea taken was that the dispute was belated and stale and that he was not a workman and that he had stayed away from work on 29.05.1981 and therefore, due to his misconduct, his services were terminated. Allegations were also made that the accounts were audited by the Audit Inspector and an embezzlement had been detected. It was admitted that the earlier proceedings had been set aside by the Deputy Registrar. However, plea taken was that the show cause notice dated

26.10.1981 was issued to him under registered cover and he had been asked to appear and that vide subsequent arbitration proceedings, certain awards had been passed against him in the month of March, 1984.

7. The workman, thereafter, filed an application for amendment of the statement of claim, which was opposed. He took the plea that there was non-implementation of the appellate order by the respondent-Society and the fact had not been inadvertently mentioned and thereafter, filed the amended claim statement, taking the plea that the appellate order had not been implemented. Resultantly, after taking into account the evidence of the parties, the award had been passed, as noticed above.

8. The reasoning given to remove the respondent from his post as mentioned in the resolution dated 10.11.1981, read as under:

“1. Resolved that there are a lot of charges against Sh. Darshan Singh (ex-Secretary). Like embezzlement of a lot of cash of advance and balance. Sh. Darshan Singh s/o Bhagat Singh r/o Jaffarpur, P.O. Hiala, Teh: Nawanshahr Distt. Jalandhar has also not given surety in favour of the Society and on 29.5.81 without getting sanction of leave remained on strike, which is clearly shown in the register. As per Registrar Co.op. Punjab Chandigarh's letter No.Credit/CAC/1746 is removed from the post.”

9. It is apparent that without any enquiry and on the general allegation that there were some charges of embezzlement and the said respondent had not given surety in favour of the Society and that he had remained on leave without sanction, his services were dispensed with, without even holding any enquiry and examining any witness and without coming to a valid conclusion that whether the workman was guilty of the alleged misconduct. The workman, as noticed, was not even heard when the resolution was passed and without the fact being actually proved, it is apparent that the workman was removed from service. Thus, there was an open violation of the principles of natural justice and without

following any proper procedure, the order of removal from service has been passed, which cannot be justified in any manner.

10. A three Judges Bench of the Apex Court, in similar circumstances, in *D.K.Yadav Vs. M/s J.M.A. Industries Ltd. 1993 (3) SCC 259* held that striking off the name of the workman from the rolls on the ground of absence from duty amounts to termination of service and without complying with the principles of natural justice, the same would not be justified. In the said case, the workman had been absent for more than 8 days and was not allowed to join duty on account of the Certified Standing Orders, by taking the plea that he had left the service of the company. The Tribunal upheld the termination and found the same as legal and valid and that it was not a case of retrenchment under the Act. It was, accordingly, held by the Apex Court that once no enquiry was held and no opportunity was given to the workman and once he had been showing his readiness to join duty, reliance upon Clause 13 of the Certified Standing Orders, was unjust, unfair and violative of the principles of natural justice. Accordingly, reinstatement was directed along with 50% of back wages, to meet the ends of justice. Relevant portions of the judgment read as under:

“7. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

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9. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Art. 14 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a

statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

10. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable.

In Delhi Transport Corpn. v. D. T. C. Mazdoor Congress and Ors., [1991] Suppl. 1 SCC 600 this court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the constitution and the rules made under the provisions of the constitution and the rules made under proviso to Art. 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Art. 21

guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the Guarantee of equality assured by Art. 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Arts. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

11. It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D.T.C. v. D.T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employees was set aside.

12. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating

Articles 14. When so read the impugned action is violative of the principles of natural justice.”

11. The argument that the termination order dated 10.11.1981 has not been challenged, is without any basis. The demand notice had been served on 10.07.1984 and therefore, the matter was referred to the Labour Court. The issue before the Labour Court was whether the termination of service of the said workman was justified and in order and as to what relief and compensation he was entitled. It is not disputed that earlier, the services of the workman were terminated on 06.08.1981 and the said order was set aside on 23.09.1981 by the Deputy Registrar, Cooperative Societies. Immediately thereafter, one month later, the alleged show cause notice was issued on 26.10.1981. The Labour Court has taken into account the statement of Ajaib Singh, President of the Society, who was examined as MW4, to come to a conclusion that the notice dated 26.10.1981 (Exhibit M1) for appearance on 10.11.1981 was never delivered to the workman since the dispatcher had never been examined. It was noticed that the postal receipts pasted bore the date of 02.11.1981 whereas the resolution was passed on 10.11.1981 and therefore, service having not been effected upon the workman, removal was done without notice to the workman.

12. It has also come on record that after the earlier termination order had been set aside, the workman had also submitted his joining report and he also examined the said Postmaster-Shri Inder Nath Nanda as WW1, but he was never allowed to join duty and thus, the Labour Court was seized with the larger reference as to whether the termination of service was justified or not and thus, has rightly held in favour of the workman.

13. The issue of embezzlement or loss of confidence is also without any basis. As noticed above, since admittedly, after the services of the workman were terminated, the FIR was lodged on 08.08.1982, which though led to his

conviction, but he was, thereafter, released on probation by the Addl. Sessions Judge, Jalandhar. Admittedly, the removal from service was not on the ground of conviction, which was recorded on 12.06.1987, much later and the challenge in the present set of proceedings is to the termination order passed in the year 1981 and therefore, the subsequent conviction would also not be a bar, as such, to deny the workman the said relief. Even otherwise, since the workman has reached the age of superannuation in the year 2004, he is only entitled for the monetary benefits and therefore, the argument that there is a loss of confidence in the workman also does not hold much water. The findings, thus, recorded by the Labour Court do not suffer from any infirmity or that it lacks jurisdiction which would warrant interference by this Court in its supervisory jurisdiction under Article 226 of the Constitution of India. It has time and again been held by the Hon'ble Apex Court starting from *Syed Yakoob Vs. K.S.Radhakrishnan AIR 1964 SC 477* that the writ Court under Article 226 of the Constitution of India would only exercise its jurisdiction wherein the Tribunal has acted illegally or improperly or decided the question without giving opportunity to other party to be heard and is only exercising supervisory jurisdiction and not acting as an Appellate Court. The said view was followed in *Swaran Singh Vs. State of Punjab (1976) 2 SCC 868* and in *Surya Dev Rai Vs. Ram Chander Rai and others, 2003 (6) SCC 675* and noticed in *Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 3 SCC 192* and in *Devinder Singh Vs. Municipal Council, Sanaur (2011) 6 SCC 584*. The limits of jurisdiction was further expounded in *Bhuvnesh Kumar Dwivedi Vs. M/s Hindalco Industries Ltd. JT 2014 (6) SC 190* wherein it has been held that factual aspects were only to be interfered with by the High Court where patent mistakes have been made in admitting evidence illegally or the Tribunal had made grave error in law in coming to the conclusion on facts. Thus, what has to be corrected is an error of

law which is apparent on the face of the record and it has to be manifestly clear that the conclusion of law recorded by the Tribunal is on an obvious misinterpretation of the relevant statutory provisions or in ignorance of the same. The same should be of such a character which is apparent on the face of the record and if the statutory provision is capable of two constructions and one of it had been adopted by the Tribunal, it may not be desirable to correct the same by way of writ of certiorari.

14. The last argument of counsel for the petitioner-Society is that demand notice was served after a period of almost 3 years since it was served on 10.07.1984 and the workman could not get benefit by serving a belated demand notice and thus, the workman was not entitled for the back wages from the date of termination. The said argument merits consideration. The termination of service in question is dated 10.11.1981 whereas the earlier termination order was passed on 06.08.1981. The workman's case was that he was not allowed to join duty, as noticed above. However, the demand notice was served at a belated stage, i.e., on 10.07.1984. This aspect missed the notice of the Labour Court and therefore, modification in the impugned order, to this extent, is liable to be granted that the workman is only entitled to the 1/3rd of the back wages granted, from the date of the demand notice dated 10.07.1984 till the date of the award dated 03.08.1995 and without any benefit of increments, for the said period, as ordered by the Labour Court. The principles regarding back wages were laid down by the Apex Court in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & others (2013) 10 SCC 324* wherein it was held that the workman had suffered due to the illegal actions of the Department. The said principles read as under:

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory

provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in [Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited](#) (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge

Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

The award is, accordingly, modified to that extent that 1/3rd back wages, as awarded by the Labour Court are to be paid from 10.07.1984 to 03.08.1995. However, from the date of the award, he is entitled for all the benefits and full back wages till the date of his superannuation. The amount due to the workman shall be calculated and paid to him, within a period of 2 months from the receipt of a certified copy of this order.

15. With the above observations, the present writ petition stands partly allowed, qua the period of back wages and is dismissed regarding the other issues.

29.05.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE