

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9829 of 1990 (O&M)

Date of Decision: 08.12.2015

Haryana Cooperative Sugar Mills

... Petitioner

Versus

Presiding Officer, Labour Court,
Rohtak and others

... Respondents

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

Present: Mr. Pawan Kumar Mutneja, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

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

RAJIV NARAIN RAINA, J.

1. The respondent-workman joined the petitioner Mills in 1979 and was in good time made a permanent employee. Troubles fell on him when in September 1980 he was disengaged without notice from service. He availed his civil remedy against the termination order by challenging it in a suit before the civil court which failed so also later the appeal on August 06, 1982. The judgment and decree of the civil court was passed on the merits of the case and the termination order was upheld as one which was not liable to be interfered with much less set aside. Having lost the litigation he did not prefer any further appeal and the decree against him attained finality. The workman then changed track and sought remedy under the Industrial Disputes Act, 1947 ("the Act") by raising an industrial dispute by

serving a demand notice on the employer. The demand notice dated February 08, 1984 led to conciliation proceedings which also failed before the labour officer and the failure report recording reasons for failure to arrive at a settlement was submitted to the appropriate Government which made a reference to the Labour Court on April 11, 1985 for determination of the dispute under Section 10 (1) (c) read with Section 2-A of the Act. The reference has been answered in favour of the workman. He has been awarded reinstatement with continuity of service and full back wages.

2. The operation of the impugned award was stayed on July 25, 1990 in the challenge brought in the present petition by the aggrieved Mill. Sadly, the workman died during the pendency of the petition and his legal heirs and representatives were brought on record. No one appears for them today at the hearing.

3. As per office note dated November 28, 2015 the opposite counsel has been informed telephonically of the date fixed. Vakalatnama of Mr. Suresh Kumar Sharma, Advocate dated February 14, 1991 is on record representing the late workman in the proceeding. With the death of the respondent-workman the Vakalatnama would continue with the engagement unless the LRs engaged some other counsel of their choice to appear for them. Therefore, judgment can be passed in the absence of representation.

4. Appearing for the Mills, Mr. Pawan Mutneja submits that the workman once having availed his remedy before the civil court against the order of termination and having lost up to first appeal could only be seen as pursuing that remedy to its logical end. Once the finding of the civil courts has come upholding the legality and validity of the termination order it is no

longer liable to be set aside, rescinded or varied. The civil court invoked the settled principle of law that a contract of personal service is not specifically enforceable before the civil court in view of Section 14 (1) of the Specific Relief Act, 1963 and therefore a declaration cannot be granted by the court. The exceptions to the above rule are only too well known which are where the employer is the Central Government or State Government, a body incorporated by statute or an industry governed by the provisions of the Industrial Disputes Act, 1947 or State laws on the subject, or a body created under a statute provided it satisfies tests of 'other authorities' within the meaning of Article 226 of the Constitution. Though the remedy before the Labour Court is always available to a "workman" at his option in the beginning to press for his industrial rights but the present respondent workman did not take recourse to that remedy and, therefore, the findings of the Civil Court remain *res judicata* and are not open to be disturbed in an industrial reference.

5. The Labour Court has held that the Civil Court had no jurisdiction in the matter. The question is not so much of jurisdiction but is one of availing remedy available in law on the doctrine of election and this appears to have been the grave error committed by the Labour Court in accepting the reference and granting relief. Since the workman is dead there is no question of reinstatement. Even assuming *arguendo* that the action was sustainable under the industrial law for infractions of special industrial rights even then so far as the monetary benefits are concerned they would still not be admissible to the LRs in view of the civil court decree operating as *res judicata* between the Mills and the decedent employee which cannot

be brushed aside when obtained after contest on the rights, if any, pressed for decision.

6. As a result, the impugned award dated April 02, 1990 passed by the Presiding Officer, Labour Court, Rohtak suffers from an error of law apparent on the face of the record which goes to root of jurisdiction and cannot be sustained in law and hence the same has to be set aside. The writ petition is allowed. The award goes.

7. A copy of this order be sent to the LR's. They would be at liberty to move an application for revival of this petition, in case, they still feel aggrieved by the order.

(RAJIV NARAIN RAINA)
JUDGE

08.12.2015
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