

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 11444 of 2011O&M)
Date of decision : April , 2015

M/s Haryana Breweries Ltd.

..... Petitioner

Versus

Presiding Officer, Labour Court and another

..... Respondents

CWP No. 11436 of 2011O&M)

M/s Haryana Breweries Ltd.

..... Petitioner

Versus

Presiding Officer, Labour Court and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P. K. Mutneja, Advocate
for the petitioner.

Mr. R. S. Malik, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Amit Rawal, J.

The Management has approached this Court for setting aside the award of the Labour Court dated 13.12.2010 whereby the workman-respondent No.2 has been held entitled to reinstatement with continuity of service and also has been awarded

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50% back wages from the date of demand notice.

Mr. P. K. Mutneja, learned counsel appearing on behalf of the petitioner-Management submitted that the petitioner is engaged in the manufacture of Beer at its factory situated at Murthal. Because of prohibition in the State of Haryana, it has to close down its factory in the year 1996. After the prohibition was lifted, an advertisement was issued for its employee to re-join/come back in the year 1998. Pursuance to the aforementioned advertisement various employees joined back and were given fresh appointment letters and various of the workmen who did not join, their places were filled up by other employees who were recruited afresh. The workman namely Suraj Mal in CWP No. 11444 of 2011 and Karamveer Singh in CWP No. 11436 of 2011 both of them did not come back in the year 1998 but subsequently in the year 2000 they came back and were taken on casual and temporary basis as per the need for work from time to time i.e. w.e.f.1.5.2000. Thus they did not come continuously but worked as per the availability of work and he further submitted that since the workmen have not worked for a period of 240 days in the relevant year, therefore the award of the Labour Court is vitiated in law, much less suffers from perversity and therefore it would not have entailed into reinstatement in service with 50% back wages.

He further submitted that both the aforementioned workmen along with two others on 7.1.2002 alleged that they had been paid minimum wages whereas persons who were employed earlier were getting different wages. During the conciliation two

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workers compromised but the respondents-workmen in the present cases refused and thereafter on 18.7.2002 served another demand notice under Section 2-A wherein for the first time alleged termination of their services. During the conciliation proceedings the workmen were given opportunity to report for work on temporary and casual basis but the workmen did not join as they insisted for back wages for a period of seven months and ultimately the conciliation proceedings failed and the matter was referred to the Labour Court to decide the controversy of alleged termination. He further submitted that the award of the Labour Court is liable to be set aside, for, it is not in consonance with the settled proposition of law, much less as per statutory provisions of 1947 Act on the following grounds:-

- i) The workmen failed to plead and aver in their demand notice/the claim petition that they worked for 240 days in the relevant year.
- ii) The workmen were employed on temporary basis and therefore they would not fall within the definition of workmen as per Section 2-S of the Act.

He further submitted that grant of wages, is also arbitrary, for, as per judgment of the Hon'ble Supreme Court in **UP Bras Ware Corporation Ltd. Vs. Uday Narain 2006 SCC 479** to contend that grant of back wages is not automatic, particularly, when it has been found that the termination was illegal the onus was on the

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workman to specifically plead, that during the period, he remained out of service/ on termination he was not gainfully employed. He further submitted that even the onus to prove that the workman had worked for 240 days as per Section 25-B of the Act was on the workman. In support of the aforementioned submissions learned counsel for the petitioner has relied on the judgment in **Manager, Reserve Bank of India Vs. S. Mani and others (2005) 5 SCC 100** and **Range Forest Officer Vs. S.T. Hadimani (2002) 3 SCC 25**.

Mr. R. S. Malik, learned counsel for the petitioner in support of his arguments relied upon the judgment of Hon'ble Supreme Court in **Anoop Sharma Vs. Executive Engineer (2010) 3 SCC 497** where services of a workman is retrenched by an oral order or by communication or he is simply asked not to come for duty. It is the duty of the employer to lead tangible and substantive evidence to prove the compliance of Section 25-F of the Act. He further submitted that as per the ratio decidendi laid down by the Constitutional Bench the Hon'ble Supreme Court in **Syed Yakooob Vs. K. S. Radhakrishnan and others 1964 5 SLR 64** wherein the jurisdiction of the High Court to issue a writ of certiorari in the cases involving the challenges to the orders passed by the authorities vested with quasi judicial functions, is limited and the Court cannot assume the role of an appellate court by appreciating the evidence, re-opening and questioning the evidence in writ proceedings.

Mr. R. S. Malik, learned counsel for respondent No.2 further contended that award of the Labour Court is just and fair and do not suffer from no perversity, the Management has

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suppressed the material facts from the Court, in as much as, that it has come on record that the workman had completed continuous service of 240 days with the Management during the period 10.1.2001 to 11.1.2002 and it is also clear from the record that the workman had worked on earlier occasion for 15 years on 4.12.1996 and the workmen after the factory had re-started in the year 2000 were given employment on 9.5.2000 and were taken back against their old posts though were given a less wage and when they filed a complaint along with other workers for removing the discrepancies, On 11.1.2002 their services were terminated without giving any notice, charge sheet, much less compensation which is in violation of Section 25-F of the Act.

He further submitted that Management failed to prove on record the plea qua the absence of workmen from duty and only controversy was that the workmen wanted to join duty with back wages. He further submitted that the Management did not prove the absence period and there is no record with the Management to show that the workmen were not interested in their job and on the basis available evidence and material on record of the Management the Labour Court has passed a legal and reasoned award in favour of the workman.

In order to lend support to his argument he has drawn attention of the Court to the statement of the Management witness R. B. Kapoor (Annexure P-4) who in his evidence submitted as under:-

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That the deponent was the Executive H.R.of M/s Haryana Breweries Ltd.Murthal now known as M/s Skol Breweries Ltd.Murthal and is well conversant with the facts of the present case. That the original attendance register is brought and shown in the court. The copy of attendance register is Ex.MW/1/1/ (3 pages)

That the petitioner was given work on temporary and casual basis depending upon availability of work w.e.f May, 2000. the petitioner was absent from duties without taking permission from the respondent from 24.12.2001 and filed the demand notice dated 13.6.2002 based on false grounds.

That the service of the respondents have not been terminated by the respondent and during the proceeding before the Labour-cum-Conciliation Officer, Sonapat respondent offered him duty but the petitioner put a condition that until or unless he is paid back wages he would not join his duty. That the petitioner himself remained absent from his duties, therefore, he was not entitled for back wages for the period of absenteeism.

That the services of respondent have not been terminated by the respondent rather he himself has not been coming for his duties. That the respondent is still ready to take him on duty but without back wages.

That the services of the petitioner have not been terminated therefore, the respondent has not violated any section of Industrial Disputes Act and the petitioner neither is entitled for any relief whatsoever. It is therefore prayed that the claim be dismissed and filed with heavy costs.”

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In cross examination, the Management witness was unable to answer the details of wages given to the claimant before the closure of the factory. The Management witness further stated that the claimant was not coming on his own. The relevant piece of his cross examination is extracted as under:-

“Cross by Sh. R.S Lkra, A.R.for the workman

It is correct that I used to work in the respondent-Organisation before closure. It is wrong that I was a Star Operator. I do not know the wages which were given to the claimant before closure of the factory. Himself stated that today whatever worked he is doing he is being paid accordingly. I do not know the salary being paid earlier was given to him on his being employed again. Himself stated that he is being paid for the work he is doing. I do not know that this irregularity in wages was sought to be removed by demand notice dated 7.1.2002 by majority workers. It is wrong that the management put any pressure in withdrawal of demand notice dated 7.1.2002. it is wrong that the management through the workers out because the malafide. Himself stated that the claimant is not coming on his own. Management has not thrown him out. It is wrong that the workman after demand notice dated 13.6.2002 before the Labour Cum Conciliation Officer was ready to come for his work. It is wrong that the person representing the company orally refused to take him back on work. On behalf of the company I know of all disputes whether filed jointly or individually by the workers. It is wrong that in the questions being asked for today despite knowing I

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am refusing. It is wrong that I am deposing falsely.:

Mr. P. K. Mutneja, learned counsel appearing on behalf of the workman, in rebuttal, has drawn attention of the Court to the statement of the workman (Annexure P-3) to contend that the workman has failed to state in examination-in-chief that he had worked for 240 days in a relevant year and he also stated that the workman has also admitted that he was kept on temporary basis. Similar contention has been made in respect of the other workman in CWP No. 11444 of 2011.

I have heard learned counsel for the parties, appraised the impugned award and paper book.

The Hon'ble Supreme Court in **Mohan Lal Vs. Management of M/s Bharat Electronics Ltd. 1981 3 SCC 225** had an occasion to interpret the provisions of Section 25-B (2) of the Act and while interpreting the provisions held that the aforementioned section describes a situation where the workman is not in employment for a period of 12 calendar months but has rendered the services for a period of 240 days commencing and counting back from the relevant date i.e. date of retrenchment and in such circumstances he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B.

In the instant case, it is an admitted fact that the workmen had been employed on 9.5.2000 and the services were dismissed on 11.1.2002. Thus for all intents and purposes the workmen had completed a period of 240 days as per provisions of

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Section 25-B of the Act. This fact has also been admitted by the Management witness R. B. Kapoor who stated that the workmen had worked on temporary basis w.e.f. May, 2000 and thereafter they remained absent from duty without taking permission from the respondent. Thus, in my view the finding of the Labour Court in para 11, that the workmen had completed a continuous service of 240 days is thus based on interpretation of provisions of Section 25-B while taking into consideration the statement of the aforementioned witness.

It is settled law that the provisions of Evidence Act do not apply to the proceedings conducted under the Industrial Disputes Act, 1947 since there is no order of retrenchment either in writing or non-compliance of provisions of Section 25-F. In view of the ratio decidendi culled out in **Anoop Sharma's case (supra)**, it is duty of the employer to lead tangible and substantive evidence to prove compliance of Section 25-F of the Act. The Management witness intentionally brought the record of attendance register for the month of December, 2001, February 2002 despite the fact that the workman was taken back in the year 2000. No explanation has come forth for not bringing the record for the relevant period.

The plea of the Management that the onus is on the workmen to prove that they have completed 240 days in a relevant year by relying upon the judgment of the Hon'ble Supreme Court in **Manager RBI's case (supra)** is also not sustainable in as much as that the Hon'ble Supreme Court in the aforementioned matter, while posing a question decided that where the Management had taken a

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stand that the workman had abandoned the job and do not report for duty the onus lied on the Management to produce on record by leading direct and cogent evidence which in the instant case failed to do. It was also incumbent upon the Management to issue show cause notice and serve charge sheet upon the workmen in case the workmen had abandoned the job so as to wriggle out from the wrath of non-compliance of provisions of Section 25-F of the Act by applying the analogy, that the general principles as envisaged in Evidence Act, are applicable under the provisions of the 1947 Act. It is so imperative to see that the principles of natural justice have been complied with or not as per the ratio decidendi laid down in **Manager RBI's case (supra)**. By relying upon the various case law, in essence that principles of natural justice have been complied with or not the Management in the present case, on its own brought documentary evidence, though not complete one, to belie the claim of the workmen, though the workmen had not moved any application to produce the record of salary register, muster roll, payment register/attendance register etc. but once the Management has brought on record the documents it invited the attention of the Labour Court to adjudicate that documentary evidence brought on record was sufficient to prove that the workmen had worked for 240 days in 12 calendar months. Since there is a categoric admission on behalf of the witness of the Management that the workmen was employed in May, 2000 and thereafter in January 2000 therefore a strict interpretation of Section 25-B (2) is not required to be applied in view of the ratio decidendi culled out by the Hon'ble Supreme Court in

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Mohan Lal's case (supra) i.e. by taking the period of joining w.e.f. May, 2000 till the workmen were not allowed to join in December, 2001. The workmen are deemed to have rendered a service for a period of 240 days within a period of 12 calendar months i.e. commencing and counting back from the date of retrenchment.

Even otherwise this Court while exercising the power under Article 226 of the Constitution would confine its judicial review on a limited point where the quasi judicial authorities apparently commit illegality and perversity, by misreading and misinterpreting the law and facts. However, in the instant case, the petitioner-Management has called upon this Court to appreciate the evidence once again by acting as an appellate court, but, yet on examining the evidence, I reiterate the finding of fact recorded by the Tribunal as from the aforesaid observation, it is ex facie proved that the workmen had continuously worked for a period of 240 days commencing and counting backward from the relevant period i.e. date of retrenchment.

The plea of the Management that the workman had remained absent and did not join his duty has not been proved on record. It was incumbent upon the Management to serve charge sheet and hold an enquiry, de hors the fact that the workmen after being given an opportunity to join the enquiry do not join enquiry and thereafter the Management would have been competent to retrench the services of the workman strictly in accordance with the provisions of Section 25-F of the Act. Having not done so there is no illegality or perversity in findings arrived at by the Labour Court which is hereby

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upheld and the plea raised in the present writ petition is thus devoid of merits.

The award of the Labour Court for reinstatement into service with continuity of 50% back wages is fair, legal and justified. The Labour Court/Industrial Tribunal after entire material brought on record, has rightly arrived at a fair, legal and just finding. No interference is called for.

Accordingly the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

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