

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19110 of 2015

Date of Decision: 10.09.2015

M/s Sai Rice Mills (Cold Store) Patiala
Road, Near Simran Palace, Bhadson

... Petitioner

Versus

Presiding Officer, Labour Court-cum-
Industrial Tribunal, Patiala
and another

... Respondents

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

Present: Mr. Ravi K. Mattoo, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

This petition has been filed by the management for setting aside the order dated February 10, 2015 passed by the Presiding Officer, Industrial Tribunal, Patiala allowing the application of the Truck Driver/workman preferred under section 33-C (2) of the Industrial Disputes Act, 1947 (for short "the Act"). The claim of the workman was for unpaid wages for 8 months as per contract agreement dated July 16, 2007 signed by the management and the workman consenting that the latter would be entitled to wages drawn @Rs.6000/- per month up to March 31, 2008 i.e. for a period of 8 months. The worker complained that he was not paid wages according to the agreement. He claimed an amount of Rs.48,000/- as money due and payable to him. He admitted that he had taken a loan from

the management towards his marriage expenses and the sum be deducted from the claim in the application under Section 20 of the Act leaving a balance of Rs.18,000/- due towards him. He also claimed interest @18% on the principal amount till realization in his application presented in Form K-3 read with Rule 61-A (2) of the Rules framed under the Act in the application presented under sub-section (2) of Section 33-C of the Act. The application is dated March 06, 2009.

The learned labour court allowed the application and has computed money due and ordered the amount to be paid carrying interest @6% per annum from the date of passing of the order i.e. from February 10, 2015 till actual realization. Shortly before the workman filed the application, the management of firm through Ashwani Kumar Sood filed Civil Suit No.32 of 10.02.2009 for recovery of Rs.30,000/- from Surinder Singh. The management pleaded in the suit that recovery was due on the basis of the agreement exhibited on record as Ex.M-1. The management pleaded that Rs.30,000/- was paid in advance but after a week of joining as Driver, the applicant breached the terms and conditions of the agreement and withheld his labour and stopped performing his duty. He became a defaulter and did not return Rs.30,000/- which amount the management was entitled to recover in the suit. The suit was dismissed as the management failed to lead any evidence in support of the claim and did not step into the witness box to substantiate the claim.

The management's appeal to the court of the learned District Judge, Patiala was turned down on November 06, 2012 and the decree of dismissal of the suit was affirmed. Even before the labour court no evidence

was led to support that the workman had absented from duty after one week of joining as a Driver or that he had violated the terms and conditions of the agreement Ex.M-1. An adverse inference was drawn by the labour court, and correctly so, that the workman had served as a Truck Driver from August 01, 2007 to March 31, 2008 with the management and was thus entitled to unpaid wages.

The only point worth consideration raised by the learned counsel for the management in this petition is that the workman took contradictory stands in his pleadings, one before the Civil Court whilst the other before the labour court.

In the written statement filed in the civil suit, the workman denied that he has received Rs.30,000/- in cash from the plaintiff and the total amount payable was settled at Rs.48,000/-. The defendant took additional pleas and explained that plaintiff Ashwani Kumar Sood had approached him to work as a Truck Driver for him. He had been assured of payment of Rs.5000/- per month. The defendant worked with the plaintiff for five months for which he had been paid only Rs.5000/- and he demanded settlement of the balance amount which request resulted in his removal from service; Ashwani Kumar Sood refusing to pay the remaining salary. When the removal came the plaintiff Ashwani Kumar Sood obtained the signatures of the defendant on a blank paper bearing revenue stamps affixed to acknowledgment receipt of payment to rely on it as expenditure in his income tax returns. The agreement dated July 16, 2007 produced by the plaintiff was said to be the result of fraud and misrepresentation practiced on the defendant. The agreed salary was Rs.2250/- per month as asserted by

the plaintiff.

In order to examine the truth of what actually transpired between the parties, I asked the learned counsel for the management to point out the document, the agreement for employment, in the paper book. Annexure P-6 was pointed which is the translated copy of the agreement which reads as follows:-

“AGREEMENT FOR EMPLOYMENT

I Surinder Singh age 47 years son of Sh. Arjan Singh, Caste Jatt, resident of Bhadson, Tehsil Nabha, District Patiala

That I am working as Truck Driver in M/s Sai Rice and General Mills, Bhadson/M/s Sai Cold Storage Private Ltd. Bhadson from 01.08.07 till 31.03.08. I have settled my employment with the firm owner for an amount of Rs.48,000/-. Out of the same I have received today an amount of Rs.30,000/- in cash from owner Sh. Ashwani Kumar Sood. I shall receive an amount of Rs.2250/- as balance every month from the owner. I shall work for the Sheller/Cold Storage with utmost honesty and diligence within as well as outside the Sheller/Cold Storage. I shall be present for work on 01.08.2007. I have not received any leave from the employer. I shall give Rs.200/- per day in case of leave. I shall have tea from the owner's Sheller/Cold Store. I shall be responsible for any loss or damage to my life and property. I shall be liable to pay twice of the amount in case I back out or did not come on the duty and the owner can recover the same through Court. I shall be liable to pay the expenses. This agreement of employment has got written, heard and understood, same is correct. Date 16.07.07.”

A perusal of the agreement for employment shows a peculiar document. Normally, employment is offered by the employer and it is for the employee agrees to it by appending his signatures on the document in

token of its acceptance but in the present case the situation is in the converse. There is nothing offered by Ashwani Kumar Sood, the owner of the truck, except appending his signatures at the end of the document. Is this an offer accepted? The reading of the document reveals that it is a one-sided agreement where the truck driver binds himself to the terms and some of which appear to be opposed to public policy. For instance, the truck driver binds him responsible for loss or damage caused to property. He remains liable to pay twice the amount agreed in case he backs out of the deal and does not report for duty then the amount can be recovered through court, in which case he would be liable for the expenses incurred.

Nevertheless, the driver admits that he received a sum of Rs.30,000/- and discloses this fact candidly in his application under section 33-C(2) of the Act to be a deduction from the total amount of money due. In any event, the recovery suit filed by Ashwani Kumar Sood has failed and the appeal stands dismissed. His story has been disbelieved by the civil court when it dismissed the suit. There is hardly any reason to believe the story in the present proceedings arising out of an order passed under Sub-Section 2 of Section 33-C of the Act. There is no inconsistency found in the pleadings as the amounts are different that Rs.5000/- and Rs.6000/- and the relevant period of liability is not specified in the written statement filed in the civil court by the defendant workman. Moreover, the application in Form K-3 is not verified at its foot but the averments in the written statement are duly verified on solemn affirmation open to action in perjury. It is well settled that no amount of evidence can be led on the terms of the agreement which Section 91 of the Evidence Act, 1872 forbids.

I find no cogent or valid reason to differ with the view taken by the labour court after appreciating the evidence adduced by the parties on file and it cannot be said that the right was not one which was capable of being computed in terms of money and was not a pre-existing right open to execution in the subject proceeding. Hence, the impugned order is not open to correction on judicial review in writ proceedings as it does not suffer from any error apparent on the face of the record which vitiates the order and thereby forecloses interference under the extraordinary jurisdiction under Article 226 and 227 of the Constitution and therefore on the aforesaid premises I would dismiss the petition as without substantial merit or injustice caused to the petitioner.

(RAJIV NARAIN RAINA)
JUDGE

10.09.2015
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