

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21059 of 2015
Date of Decision: 05.10.2015

M/s Indication Instruments Limited

... Petitioner

Versus

Anita Kumari and another

... Respondents

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

Present: Mr. A.P. Bhandari, Advocate,
for the petitioner.

Ms. Abha Rathore, Advocate,
for the caveator.

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

RAJIV NARAIN RAINA, J.

1. Dispute as to termination arose on January 06, 2011 when the services of respondent-Anita Kumari were illegally terminated by the management. She had been appointed as a Helper on March 02, 2009. Anita Kumari approached the Labour Court after raising a dispute and serving a demand notice upon the management and on the expiration of 45 days [of service of demand notice on the labour conciliation officer] she took recourse to the amended provision in section 2-A (2) of the Industrial Disputes Act, 1947 ("the Act") by approaching the Labour Court-III, Faridabad. Anita Kumari had earlier to the period in question worked intermittently with the management in 2007 and 2008 and had suffered two termination orders before she was appointed on March 02, 2009 as an Apprentice (Learner), a post not covered under the Apprentices Act, 1961

("1961 Act") because it was so stated by the management itself in the appointment letter Ex.M-10 at Annexure P-1 with the paper book. The duration of the apprenticeship training was fixed from March 02, 2009 to August 31, 2009 in the first instance. This period could be further extended up to maximum period of 36 months. Her services were stipulated to be governed by the provisions of the Certified Standing Orders of the company and such other rules and regulations as are in force and which may come into force from time to time. The appointment did not promise regular or permanent post on completion of the training period in terms of Clause-4. Her services could be terminated at any time during or at the end of training period without any notice or without assigning any reason therefor. Since the post was not covered under the provisions of the 1961 Act the job was of a "workman" within the meaning of section 2 (s) of the Act. The training period was extended to November 30, 2010. By order in writing Ex.WW-1/3 dated November 30, 2010 management invoked Clause-4 of the appointment letter and discontinued training w.e.f. November 30, 2010 (afternoon) resulting in termination or retrenchment within the meaning of section 2 (oo) of the Act. Anita Kumari refused to accept the impugned letter dated November 30, 2010 and this was recorded by the management in its letter dated December 03, 2010 communicated to her. It has been recorded in the letter that Anita Kumari was called to company office on November 30, 2010 during office hours for receiving the order discontinuing her services and calling upon to take full and final amount of severance from the Accounts Department after submission of clearance certificate. But she did not turn up.

2. Resultantly, the management sent letter dated December 03, 2010 through registered post together with a cheque No.904600 dated December 09, 2010 amounted to Rs.6307/-. Anita Kumari acknowledged receipt of the registered letter and wrote back to the management that her services were terminated arbitrarily, illegally and with mala fide intention and she would take recourse to law to claim relief against the management for having taken away her livelihood all of sudden without any reason. She accepted the cheque under protest to tide over hardship for the time being saying she would take legal counsel. She stated that she had never received the appointment letter dated March 02, 2009. She said that management had taken her signatures and thumb impressions on blank, printed papers and vouchers at the time of appointment and during the tenure of her service which were likely to be misused and if misused she would take appropriate legal action against the management.

3. She raised a dispute by serving demand notice under section 2-A of the Act which is dated January 20, 2011. In her demand notice, she asserted that she was appointed by the management earlier in April 2007 but the door was shut on November 30, 2007. Again she was appointed in March-April 2008 and her services were again terminated in November 2008. While she was serving she was a member of the Employees Provident Fund but the management had not recognized her EPF member after appointment on March 02, 2009. Her services were terminated without show cause notice or charge-sheet or payment of retrenchment compensation and there was violation of section 25-F of the Act. Wages in lieu of notice was not paid to her as required by the Act. Her last drawn

wages were Rs.4370/- per month. She claimed that she had put in over 240 days of continuous service in the calendar year preceding the date of termination. There is no gainsaying that section 25F prescribes a mandatory procedure and check list to be followed before the retrenchment becomes valid and legal and violation visits with invalidation of the action with consequential results.

4. In a comedy of errors the dispute first raised led to reference by the appropriate Government which was received in the Labour Court-II, Faridabad on August 09, 2011 in Ref. No.105 of 2011 but it transpired that Anita Kumari had already invoked the amended provisions in section 2-A of the Act by approaching the Labour Court directly in Ref. No.R/42/11 which was received in the Labour Court on May 18, 2011 before the reference was received from the appropriate Government under section 10(1) (c) of the Act. On July 18, 2012 the Presiding Officer, Labour Court-II, Faridabad already ceased of the dispute proceeded ex parte against the workman and declined the reference. This situation has been explained by the Labour Court in the award and the court *a quo* has held that the order dated July 18, 2012 was a nullity in the presence of the workman having directly approached it before the reference was received by the Labour Court in the normal course under section 10 (1) (c) of the Act. The present dispute is, therefore one directly under section 2-A (2) of the amended provision.

5. The Labour Court noticed the application Ex.M-1 given by Anita Kumari to the management seeking employment but not as a trainee. The application was accepted and the appointment followed on February 27, 2009. The Labour Court noticed in para.14 of the award that the column of

Final Decision is left unsigned and has been filled apparently after the workman had raised the dispute with the management and the same is not signed by any person from the side of the management. The Labour Court has exploded the myth of trainee on reading the cross-examination of witness of the management which corroborates the deposition of WW-2 that Anita Kumari used to work on skilled jobs i.e. on the Foot Press in the Press Shop of which Satyawar was in-charge. Satyawar also admitted in his cross-examination that name of trainer is not mentioned on the record of the Press Shop as there is no trainer on the rolls of the company. The witness failed to produce the record of production of goods and over-time paid despite having received summons from the Labour Court to produce them before the Court. There was no evidence of trainer, training or trainee or the training timings and what kind of control the management exercises over its trainees. No evidence was placed on record whether information had been given to the Chief Inspector of factories regarding appointment of trainees in the factory and whether it was allowed by him. The labour court need not have travelled that far since the worker was not an apprentice under the Apprentices Act which was the admitted position but the findings do fortify the conclusion.

6. The Labour Court on appreciating the evidence on record has held that there were neither trainees nor trainers on the rolls of the company. Anita Kumari was not a trainee but was a workman. The Labour Court has relied on the following decisions to reach her conclusions:-

"1. M/s Trambak Rubber Industries Ltd. vs. Nashik Workers Union and others, 2003 Lab. I.C. 3483 (S.C)

2. State of Gujarat and another vs. Chauhan Ramjibhai Karsanbhai, 2004

LAB.I.C. 1453 (Gujrat)

3. *H.B. Vinobha and others vs. Managing Director, Hindustan Photo Films, Indu Nagar, Ootacamund and another*, 1988 L.L.R. 391 (Madras)
4. *Management of Sundaram Fastners Ltd, Chennai vs. Presiding Officer, Labour Court, Salem and others*, 2012 L.L.R. 957 (Madras)
5. *The Executive Engineer and another vs. Presiding Officer and others*, 2009 (8) SLR 103/ 2009 (4) S.C.T. 687 (Punjab and Haryana)
6. *Dhampur Sugar Mill Limited vs. Bhola Singh*, 2005(1) SCT 829 AIR 2005/AIR 2005 SC 1790
7. *Raj Kumar Rastogi vs. P.O. Labour Court-X and another*, 2015 LLR 682
8. *Executive Engineer, K.P.C. Bidar and another vs. Zulfegar Ali*, 2012 Lab IC 1987."

7. The Labour Court has held that there has been violation of section 25-F of the Act. The amount sent by the management through registered cheque if accepted by the workman under protest was not contemporaneous payment of retrenchment compensation at the time of termination and had no effect in the eye of law. Besides, the amount of the cheque did not represent terminal benefits resulting from retrenchment in their total. It is trite that short payment of retrenchment compensation is no payment under the Act.

8. Mr. Bhandari has not been able to point out any illegality or irregularity in the award passed by the Presiding Officer, Labour Court-III, Faridabad on July 31, 2015 which is a fundamental flaw while the evidence has been discussed and the view has been taken on the evidence. It is not for this Court in supervisory jurisdiction to re-appreciate the evidence as though it was sitting in appeal.

9. I would, therefore, not interfere in this case and would dismiss the petition as it does not suffer from any error apparent on the face of the record which might tend to vitiate the award. The management has flouted

the law in disengaging the worker on the pretext of putting an end to the training unceremoniously. Termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section 2 (00) of the Act amounts to retrenchment and this is impermissible if the mandatory ingredients in section 25F (a) & (b) are not satisfied, as in this case.

(RAJIV NARAIN RAINA)
JUDGE

05.10.2015
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