

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.3643 of 2013

Date of Decision: August 06, 2015

Gurnek Singh

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Bhatinda & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Inderjeet Sharma, Advocate,
for the petitioner.

Mr.Harbans Sharma, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 15.2.2012, whereby the reference sought by the petitioner alleging his termination at the hands of respondent No.2-Management has been declined.

Mr.Inderjeet Sharma, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed as Salesman with Bandi Wala Cooperative Agriculture Service Society Limited on 25.7.1981. Since such post became surplus and there was need of Salesman with the Sabuana Co-operative Agriculture Service Society Ltd.-respondent No.2,

the petitioner, vide resolution dated 9.1.1997 (Annexure P-1), was transferred in the said Society. The permission for appointment was sought by the Society from Assistant Registrar, Cooperative Agriculture Service Society, Fazilka and the same was accorded vide letter bearing No.1142-43 dated 26.2.1997 (Annexure P-2) and he continued to work as Salesman, but, however, his services were abruptly terminated on 27.2.1997 without any notice, enquiry or compensation. He further submits that the petitioner had worked for more than 240 days in the last calendar year and, therefore, was entitled to serve. He also submits that the Labour Court has committed an illegality and perversity in not noticing the factum of report produced by the Society, i.e., audit report pertaining to the year 1997, whereas the petitioner had worked from 1991 to 1997 and, therefore, adverse inference is liable to be drawn against the Management. He further submits that Annexure P-3, copy of the resolution passed by the Bandi Wala Cooperative Agriculture Service Society Limited on 17.1.1997, has no value in view of the approval granted by the Assistant Registrar on 26.2.1997, therefore, the award of the Labour Court is liable to be set-aside and the petitioner is entitled for reinstatement along with continuity of service.

Mr.Harbans Sharma, learned counsel appearing on behalf of respondent No.2-Management submits that the Labour Court had doubted the genuinity of the resolution dated 09.1.1997 (Annexure P-1) on the ground that it did not bear any number, date and letter head and as per Annexure P-3, the petitioner was never relieved from erstwhile Cooperative Society, much less, he has not proved that he had worked from 1991 to 1997 and rightly so, the reference has been declined and, therefore, the award of

the Labour Court is liable to be upheld.

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

No doubt, the resolution dated 9.1.1997 does not bear any number and letter head, but the fact remains that the reference of the same has been mentioned in letter No.1142-43 dated 26.2.1997 (Annexure P-2) passed by the Assistant Registrar, Cooperative Societies, Fazilka, whereby the said resolution had been approved. Annexure P-3 resolution dated 17.1.1997 could not be passed once the proposal with regard to the earlier resolution (Annexure P-1) had already been sent for approval to the office of Assistant Registrar, Cooperative Societies, Fazilka. The workman has categorically stated in the claim petition that he he was unemployed during the period he remained out of service. The finding of the Labour Court that the resolution dated 9.1.1997 wrongly typed as 9.11.1991, thus, is incorrect.

There is another aspect of the matter. The Labour Court has remained oblivious of the fact that the Management had only produced the audit report pertaining to the the year 1996-97, i.e., upto 31.3.1997 as Ex.M1, whereas, it is categoric case of the petitioner that he had been in the employment with respondent No.2-Management since 1991. The Labour Court has also committed an illegality in not referring the receipt dated 9.1.1994, whereby a sum of ₹5,000/- has been taken by respondent No.2-Management from the petitioner. There is no discussion of the same. The aforementioned receipt clinches the issue that there was a relationship of employer and employee between the petitioner and respondent No.2.

The Management has also failed to prove that they have

resorted to the provisions of Section 25-F of the Industrial Disputes Act, 1947 as no compensation, much less, notice or charge sheet had ever been served upon the petitioner if it was a case of misconduct, though it was not pleaded. Even otherwise, the plea of Mr.Harbans Sharma that the workman had not joined respondent No.2 would be meaningless for the reason hat there is a categoric averment in the claim petition and the statement that he remained unemployed after 1997 and the Management has failed to lead any evidence to the contrary.

Keeping in view of the aforementioned observations, the award of the Labour Court is set-aside and the petitioner is held entitled to reinstatement into service with continuity of service and 50% back wages from the date of receipt of the demand notice. The aforementioned directions be complied with by respondent No.2 as expeditiously as possible, preferably within a period of one month from the date of receipt of certified copy of the order.

The writ petition is accordingly allowed.

August 06, 2015
ramesh

(AMIT RAWAL)
JUDGE