

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8044 of 2013

Date of Decision: 02.11.2015

Hari Narain Pandey

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal-cum-Labour Court, Faridabad
and another

... Respondents

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

Present: Ms. Abha Rathore, Advocate,
for the petitioner.

Mr. Ashish Chaudhary, Advocate,
for R-2.

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 award passed by the Presiding Officer, Labour Court, Circle-1, Faridabad in Ref. No.R-127/2004 pronounced on September 04, 2012 cannot be sustained since the reference has been declined accepting the plea of management on the point of maintainability of the reference and the capacity in which the claimant worked. Reasons for holding that the award is not tenable is that the Labour Court has confined its examination on the question of maintainability on the terms of the appointment letter alone which was not a correct approach. The letter of appointment Ex.M-1 dated January 23, 1992 and placed as Annexure P-5 with the petition contains Clause 4 on the strength of which the services of the petitioner

were terminated on July 20, 2001. He was appointed as an Export Assistant and it is said that he was later made to work as a Store Assistant from November 15, 1999 onwards. His salary on the date of termination was Rs.950/- +HRA Rs.200 + conveyance allowance Rs.150/- per month. His services were terminated vide Ex.M-2 placed at Annexure P-6 with the petition. Clause 4 was resorted to. It is recorded in the order that one month's notice pay will be paid in lieu of notice period. The workman was asked to collect his dues in full and final settlement from the Accounts Department on any working day subject to producing the usual clearance slip. There is a handwritten note on the face of paper Ex.M-2 where it is recorded that H.N. Pandey had refused to accept the termination letter. There is no doubt that the petitioner was a confirmed hand. Otherwise resort could not be had to Clause-4 whatever its worth may be since it comes into play after confirmation of services. Though it is not mentioned in the letter of appointment or in Clause-4 that the termination can be brought about without assigning any reason but it means as much. The learned Presiding Officer, Labour Court, Circle-1, Faridabad fell in error when it assumed that the termination was brought about in a legal manner because it was as per the appointment letter. The Labour Court went on to hold that since the claimant refused to receive the letter and to collect his dues including salary for one month in lieu of notice he was estopped by his own act and conduct to raise an industrial dispute. Nothing further has been examined in the short award and there is a scant discussion on all points. The termination was effected on July 20, 2001. The management does not dispute that the dispute was raised for the first time and demand notice was served on

August 20, 2001 whereafter the matter was attempted to be resolved unsuccessfully by the Conciliation Officer. The appropriate Government in Delhi rejected the demand notice. A separate demand notice had also been served dated August 22, 2001 before the Labour-cum-Conciliation Officer, Circle-1, Faridabad. Reference was declined by the Deputy Labour Commissioner, Haryana by passing a rejection order dated April 04, 2002 holding that the termination of services is legal and justified.

2. It is pleaded that the petitioner filed a suit for permanent and mandatory injunction in the Civil Court being Civil Suit No.239 dated July 25, 2001 and against the refusal of temporary injunction by the Civil Court an appeal was carried to the learned Additional District Judge, Faridabad which was dismissed on August 14, 2003. The workman withdrew the civil suit on February 10, 2004 without seeking and obtaining permission of the Civil Court to bring fresh suit. The management pressed the provisions of Order 23 Rule 1 CPC urging that claimant cannot maintain the present demand notice. However, this is not the correct legal position since industrial rights can be only claimed before the Labour Court and not before the Civil Court. In these circumstances, a fresh demand notice was served upon the management under section 2-A of the Industrial Disputes Act, 1947 ("the Act") for reinstatement with continuity of service and full back wages. This demand notice is dated February 13, 2004. The dispute again went before the Conciliation Officer whose attempts for settlement failed and the appropriate Government referred the matter to the Labour Court, Faridabad on receipt of the failure report. The award passed after contest is from where this petition arises.

3. Heard Ms. Abha Rathore, learned counsel for the petitioner and Mr. Ashish Chaudhary, learned counsel for R-2-Management and perused the record. The management has cited a selection of judgments in support of its case that the petition deserves to be dismissed and the award upheld. These rulings are **The Punjab State Federation of Cooperative House Building Societies Ltd., Chandigarh vs. Presiding Officer, Labour Court, U.T. Chandigarh and another**, 2014 Lab LR 737; **Air India Ltd. vs. Mahinder Singh**, 2014 Lab LR 60 & **Rakesh Muni Tyagi vs. DTC**, 2014 (3) SCT 562 & **Bakshi Steels Ltd. vs. Regional Provident Fund Commissioner, Jaipur**, 1994(2) LLN 283.

4. The further argument of the management is that the respondent-Company has been declared Sick under the provisions of the Sick Industrial Companies Act, 1985 ("1985 Act"). Section 22 would come to the aid of the management since the respondent-Company has been registered with the Board for Industrial and Financial Reconstruction. The management cites a decision of this Court in **Major Singh vs. Surindra Engineering Co. Ltd. and others**, 2007(2) SCT 698 to urge that when the company is sick it would cover proceedings under the ID Act as well because these proceedings are initiated for realization of a right vested in the workman.

5. In the circumstances, relief in any would have to be moulded subject to the provisions of 1985 Act. A clause of the kind Clause-4 purports to be in the case of a confirmed hand of a regular employee is regarded as a Henry the VIII clause and is an unfair term in a contract of employment. The rule is against hire and fire and such clauses have been dealt with by the Supreme Court in the celebrated case in **Delhi Transport**

Corporation vs. D.T.C. Mazdoor Congress and others, 1991 Supp (1) SCC 600 though the decision has been rendered while dealt with unconscionable contracts of service in public undertakings covered by Article 12 of the Constitution but the principles can be applied in private law domain and private employment. The Court dealt with regulation 9 (b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 and declared the same unconstitutional as also violative of the rule of *audi alteram partem* and the rules of natural justice being also hit by section 23 of the Contract Act, 1872 as against public policy. Rule 9 (b) authorized employer to take action against employee without notice or hearing when it gave a carte blanche to the management to terminate the services of a regular employee without assigning any reason. Such a draconian law as in Rule 9 (i) could aptly be called the Henry VIIIth Clause since it confers an absolute, arbitrary and unguided power upon the corporation to exercise power. Clause 4 is no better than the clauses considered in *DTC* case.

6. The matter can also be examined from the point of view in **Central Inland Water Transport Corporation Limited and another vs. Brojo Nath Ganguly and another**, (1986) 3 SCC 156 which ruling was followed in *DTC* case. This judgment is a leading authority on unfair contracts. It was well within the power of the Labour Court in view of **The Bharat Bank Ltd., Delhi vs. Employees of The Bharat Bank**, AIR 1950 SC 188; 1950 SCR 459 to hold that an unfair term in a contract of employment can be declared void. The Labour Court failed to notice the legal position in making the award and resting the cornerstone of the edifice

of the litigation of the letter of appointment and confining the arguments by abiding by its terms assuming that they were fair and just. This is wholly contrary to the legal position and in abdication of the jurisdiction vested in the Labour Courts and Industrial Tribunals to do justice in accordance with law.

7. As a result of the above discussion, the impugned award is not legally sound and is declared so. This writ petition is allowed. The award is set aside. The petitioner is held entitled to reinstatement for being visited by the vice of an illegal and void termination brought about without complying with the mandatory provisions of section 25-N of the Act since the industry was large scale and fell in Chapter V-B of the Act attracting the provisions of section 25-N of the Act since the employment strength was well over 100 on an average per working day as submitted by Ms. Rathore and duly pleaded by her in the petition, which fact has not been controverted. However, back wages will not be available prior to February 13, 2004 when the demand notice was served under section 2-A of the Act for the period July 20, 2001 to February 12, 2004. The management cannot be blamed or attributed any fault to be saddled with any financial liability. However, this order will remain subject to the final outcome of the proceedings pending under 1985 Act and the provisions of section 22 thereof but will be read as declaratory of the rights of the petitioner and the liability of the management vis-a-vis the dispute.

(RAJIV NARAIN RAINA)
JUDGE

02.11.2015
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