

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No. 305 of 2011 (O&M)

Date of Decision: September 21, 2015

M/s. Premier Security Services (Now M/s. Premier Shields (P) Ltd.)
---Appellant

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Union
Territory, Chandigarh and another ---Respondent

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Harish Bhardwaj, Advocate, for the appellant.

Shri Dheeraj Jain, Advocate, for respondent No.2.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Ram Narain Singh (here-in-after referred to as 'the workman') had joined employment of M/s. Premier Security Services (Now M/s. Premier Shields (P) Ltd.) (here-in-after referred to as 'the management') as a Security Guard in the month of December 1997 and worked as such till November 11, 2000. On November 12, 2000 he was not allowed to join his duties without any reason and without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short, 'the Act').

Consequent upon failure of conciliation proceedings, the appropriate Government made the following reference to Industrial Tribunal-cum-Labour Court, Chandigarh (for short, 'the Tribunal'):

“Whether the services of Shri Ram Narain Singh, House No. 118-A, Sector 30-B, Chandigarh were terminated illegally by his employer; The Manager, M/s. Premier Security Services, SCO No. 216, Sector 37-C, Chandigarh; if so, to what effect and to what relief entitled to, if any?”

02. The management contested workman's claim saying that the management, which provides work force to various industries and industrial establishment, had initially posted the workman at M/s. Cargo Motors, Zirakpur on December 17, 1997, from where he was transferred to M/s. Punjab Meat Limited, Derabassi and was again transferred to Zirakpur with effect from March 10, 1999; and that the workman was transferred to M/s. Rallies India Limited, Derabassi with effect from November 11, 2000 and a proper movement order was issued but the workman, instead of joining his new place of posting, preferred a complaint before Labour Inspector and then filed a notice of demand. Thus it was not a case of termination of services of the workman.

03. After both the sides adduced evidence in support of their respective pleas, learned Tribunal examined the same in the light of the submissions made on behalf of the parties and came to a definite conclusion that workman's services were illegally terminated in violation of the provisions of Section 25F of the Act and he was entitled to be reinstated in service with 50% back wages for the period from November 11, 2000 till the date of award; and, vide award dated January 22, 2010, answered the reference accordingly.

04. To lay a challenge to award dated January 22, 2010, management preferred Civil Writ Petition No. 13501 of 2010 which has been dismissed by the learned Single Judge vide order dated August 02, 2010.

05. The management has now invoked Clause X of the Letters Patent to challenge correctness of order dated August 02, 2010 passed by the learned Single Judge.

06. There is delay of 105 days in refiling of the appeal and an application (C.M. No. 827 of 2011) has been moved for condonation thereof. However, we have heard learned counsel for the parties on merits besides examining the record of the case.

07. On behalf of the appellant-management it has been vigorously contended that the very fact that the respondent-workman firstly abandoned his job by not joining at the new place of his posting and then did not join his duties inspite of an offer having been made by the management, establishes that it is not a case of termination of services rather the respondent-workman is not a willing worker. Therefore, award of the learned Tribunal directing reinstatement of the respondent-workman with 50% back wages, as affirmed by the learned Single Judge, cannot sustain. The contention, however, has been refuted on behalf of the respondent-workman and it has been argued that while he has successfully discharged the initial burden that lay upon him to prove his employment with, and its termination by, the appellant management but the management has utterly failed to prove its plea of abandonment of job by, and unwillingness of, the respondent workman to join back his duties.

08. Appellant-management's plea that the respondent-workman firstly abandoned his job by not joining at the new place of his posting and then did not join his duties inspite of an offer having been made by the management, has been repelled by the learned Single Judge thus:

“Similar was the plea raised by the petitioner-management before the Labour Court, which was rejected after consideration. The finding of fact recorded by the Labour Court is that the workman initially was hesitant to join duties, when an offer of taking him back into service was made by pleading that the petitioner had not terminated his services but ultimately, the respondent was ready to join the duties. This was, however, on a condition that he would reserve his right to seek legal remedy in regard to payment of back wages for the intervening period. As per the observations made by the Labour Court, the management thereupon backed out and had stated that they did not commit themselves for employment to the respondent. The workman, thus, was found ready to join the duties and accordingly the Labour Court found that the petitioner-management was not ready to take the workman back and offer made was not bone fide. The whole steam out of the argument raised by counsel for petitioner, thus, will go out that it was not a case of termination or dismissal. The plea as raised, thus, cannot be accepted. The award given by the Labour Court is well reasoned and there is no cause or reason to call for the interference in the same.”

09. As per case of the management, the workman, who was in continuous and uninterrupted service from December 17, 1997 to November 11, 2000, had absented from duties and the management did not hold a domestic enquiry into the alleged misconduct and did not even served upon him a notice to show cause against proposed termination of his services. Provisions of Section 25F of the Act were also not complied with in so far no amount by way of retrenchment compenation or otherwise has been paid to him.

10. By absenting from the duties, the workman might have

committed misconduct but when an employee absents from duty unauthorizedly, he, indisputably, commits misconduct. A domestic inquiry is, therefore, required to be initiated. The order of termination/discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed misconduct, he is entitled to an opportunity of hearing. Had such an opportunity of hearing been given to him, the workman could have shown that there were compelling reasons for his not reporting for duty. Even a minor punishment could have been granted. Thus, the finding of the learned Tribunal, as affirmed by the learned Single Judge, that services of the workman were illegally terminated, does not call for interference.

11. Once the termination of services of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the workman. But the relief of reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment--ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration.

12. On this aspect, in **General Manager, Haryana Roadways v. Rudhan Singh, 2005(3) SCT 559 : (2005)5 SCC 591**, a three-Judge Bench of the Hon'ble Supreme Court has observed thus :

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination

of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character; any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

13. It needs to be noticed that immediately after termination of his services in the month of November, 2000, the workman approached the Labour-cum-Conciliation Officer before whom the management offered to take him back in service but did not honour that undertaking. Ultimately, reference was made by the Appropriate Government to the learned Tribunal in the year 2002 which came to be answered only in the year 2010, i.e. after about eight years. Therefore, finding of the learned Tribunal that the workman is entitled to reinstatement with 50% back wages, as affirmed by the learned Single Judge, calls for no interference.

14. In the result, the appeal fails and is dismissed.

15. No costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

September 21, 2015
adhikari