

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.9410 of 2014
Date of decision : 13.03.2015

Kabul Singh

...Petitioner

Versus

Presiding Officer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chaman Lal, Advocate
for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the award dated 15.01.2014 (Annexure P-1) passed by the Presiding Officer of Labour Court, UT, Chandigarh, whereby the reference of the petitioner-workman has been dismissed on the premise that the petitioner had availed the remedy of Civil Court to challenge his termination.

Civil Suit was dismissed by the trial Court vide judgment and decree dated 07.09.2000. Against the aforementioned judgment and decree, the petitioner is stated to have filed an appeal under Section 96 of the Code of Civil Procedure which had been dismissed vide judgment and decree dated 02.09.2006, whereby the District Judge

while dismissing the appeal held that the Civil Court had no jurisdiction to try this suit. A copy of the judgment and decree has been annexed as Annexure P-3 with the petition.

I have gone through the judgment and decree of Lower Appellate Court as well as award rendered by the Labour Court. The operative part of the award passed by the Labour Court is extracted herein below:-

“I have very thoughtfully considered the rival contentions of both the sides. The workman is aggrieved that his service have been wrongly terminated and fair and proper inquiry has not been conducted by the management. On the other hand the case of the management is that services of the workman have been rightly terminated after following the procedure prescribed under Haryana Punishment & Appeal Rules and the present reference is not maintainable as the workman had already availed the remedy by challenging his termination order before the civil Court and finding has already been come on this issue. Close scrutiny of the evidence led by both sides reveals that it is admitted by the workman that he had preferred a civil suit before Civil Court challenging his termination. Rather it has been specifically mentioned in his affidavit Ex.AW1/1 which is reproduced below:-

“12. That the deponent challenged the said order of termination being totally illegal and filed civil suit for declaration for declaring the said order to be bad in the eyes of law and against the principles of natural justice and illegal, unconstitutional and inoperative and null and void ab initio. The suit was

contested by the department and ultimately the Ld. Trial Court dismissed the suit-vide order/judgment and decree dated 7th September, 2000 to which the deponent preferred an appeal and the appeal to has been dismissed by the Ld. Court of District Judge, Chandigarh vide judgment and decree dated 2nd September, 2006...

and he has also admitted in his cross examination the same. Relevant part of cross-examination of the workman as under:-

....it is correct that I filed the civil suit challenging the termination order and said suit was dismissed. It is correct that I filed the appeal against the dismissal of civil suit which was dismissed. It is correct that I filed appeal in the Hon'ble Court and the appeal was remanded to the District Judge and my appeal was dismissed.”

Now the only moot point which needs to be determined by this Court is that whether the workman can again challenge the order dated 21st October, 1997 before a different forum inspite of the fact that the Civil Court has already dismissed his suit which was dismissed his suit wherein he has challenged his termination order. The answer to this would be certainly no. It is worth mentioning here that when the workman has preferred appeal before Hon'ble Punjab and Haryana High Court was pleased to remand the case to Hon'ble District Judge and order has been placed on record as Exhibit M20. Relevant part of order passed by Hon'ble High Court is as under:-

“In view of the above this appeal is allowed and the judgment dated 8th November, 2004 passed by the

learned District Judge, Chandigarh is set aside and the case is remanded back to the District Judge, Chandigarh for fresh decision of the merits.

10. In view of order passed by Hon'ble District Judge and admission of the workman that his appeal challenging the termination order in dispute in the present case has been dismissed by Hon'ble District Judge and since he has already challenged the order dated 21st October, 1997 regarding his termination before the Hon'ble District Judge then he cannot challenge his termination again before this Court. As such the present reference is not maintainable. Both these issues are decided against the workman and in favour of the management.”

Since the Labour Court did not embark upon the merits of the case and decided the matter only on maintainability of reference but the fact remains that the remedy to challenge the termination was under the Industrial Disputes Act and Labour Court ought to have address the controversy on merits and simply dismissed the claim of the workman on the ground that workman had already availed the remedy in the Civil Court.

The aforementioned finding is not only arbitrary but is fallacious.

In view of what has been observed above, the award of the Labour Court dated 15.01.2014 (Annexure P-1) is set aside. Writ petition is allowed. The matter is remitted back to the Labour Court to decide the matter afresh on merits within a period of six months from

the date of receipt of the certified copy of this order. Labour Court shall give an opportunity to parties to the lis to produce evidence in addition to what has already been led.

With the aforementioned direction, this writ petition is allowed.

13.03.2015

pawan

**(AMIT RAWAL)
JUDGE**