

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

LPA No. 1617 of 2014

Date of Decision:-15.10.2015

Principal Sainaik School, Kunjpura, District Karnal

...Appellant

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another

...Respondents

CORAM:-HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. B.S. Bedi, Advocate
for the petitioner.

Mr. D.S. Adlakha, Advocate
for the respondents.

HARI PAL VERMA J.

The management has filed this intra-court appeal under Clause X of the Letters Patent against the judgment dated 27.5.2014 passed by the learned Single Judge of this Court, whereby the writ petition (CWP No.8272 of 2014), filed by the Management against the Award dated 10.2.2014 passed by the Labour Court, Panipat reinstating the respondent-workman with continuity of service and 50% back-wages from the date of demand notice i.e. 23.4.2008, was dismissed.

Brief facts, leading to file the present appeal, are that the respondent-workman raised an industrial dispute and served a demand notice dated 23.4.2008, that he was appointed as Sweeper on daily wages basis in the year 1991. He worked from the year 1991 to 24.12.2003 and thereafter from 4.3.2004 to 13.6.2007 continuously. He, thus, completed more than 240 days in a calendar year as required under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called 'the Act'). However, the services of the respondent-workman were terminated by the appellant-Management on 22.10.2007 without giving any reason and following the procedure laid down under Sections 25-F, 25-G and 25-H of the Act. The respondent-workman served a demand notice dated 23.4.2008 upon the Management. A reference, as required under Section 10(1)(C) of the Act was made to the Labour Court. The appellant-management contested the claim of the respondent-workman on the ground that the workman had worked with the Management for seasonal and casual work as unskilled daily wager. He was paid daily wages as per the norms of the Management. Since the workman had worked as daily wager on need basis, no appointment letter was issued to him. The workman is not working with the Management since 17.5.2007. A case was registered against the respondent-workman i.e. FIR No.110 dated 13.6.2006 under Sections 363, 366-A, 368, 376 and 511 IPC. There being a criminal case against the workman, it falls within the ambit of 'moral turpitude'. He himself had stopped coming for the casual work since 17.5.2007 and therefore, the question of termination or payment of retrenchment compensation does not arise.

On the basis of the pleadings of the parties, the Labour court framed the following issues on 27.8.2010 :-

- “1. Whether the termination of services of workman Shri Jasmer Singh is legal and valid. If not so, to which relief, the workman is entitled ?OPW
2. Whether the workman has no locus-standi to maintain the present claim/reference? OPM
3. Relief.”

The Management has produced the solitary witness MW1 namely Shri Rajeev Mittal and the Labour Court found the cross-examination of MW1 illusive and evasive and has noticed that the said witness was avoiding giving direct answers to a straight question. This witness had even gone to the extent to say that he does not know as to whether the workman had worked with the Management from 1991 to 17.5.2007 or his services were illegally terminated, retrenchment compensation was ever paid or any notice was served to the Management about his termination or not. He has further stated that the record, for the period during 1991 to 2006, was destroyed, but at the same time he had admitted that no permission regarding destruction of the record was ever taken from the Court and the record was destroyed as per the school rules (Mark-B).

Considering the rival pleadings of the parties, the Labour Court has passed the award dated 10.2.2014 and observed as under :-

“14. Hence, under the facts and circumstances, this Court has left with no other options but to take an adverse inference against the respondent management for not only concealing the material record but also trying to be evasive in its physical evidence in order to defeat

the case of the workman, a practice which is seldom appreciable and is deprecated in every possible way. Thus, I hold that the workman worked from 1991 to 17.5.2007 continuously with the respondent-management and also completed 240 days in the preceding 12 months from the date of his termination. I also hold that while terminating the services of the workman, the provisions of Section 25-F were not complied by the respondent.

15. *Ld. AR for the workman has stated that the respondent has violated the provisions of Section 25-F of the Act without offering retrenchment compensation as provided under Section 25-F which makes termination as illegal and in support relied upon judgment of Hon'ble Supreme Court in the case "Krishan Singh Versus Executive Engineer HSAMB, Rohtak 2010(2) SCT 535 wherein it has been held that "Section 25-F and 11-A-daily wages termination of service notice retrenchment compensation reinstatement back wages service of a daily wages terminated after 4 years no notice or retrenchment compensation given termination held to be illegal as mandatory provisions of Section 25-F of the Act." He has referred to judgment of Hon'ble Supreme Court in Anoop Sharma Vs. Executive Engineer, Public Health, Division No.1, Panipat reported 2010 (3) SCT 318 holding that "provisions of Section 25-F are mandatory and non-compliance thereof render the retrenchment of an employee as nullity." Similar views were taken by Hon'ble High Court in 2010 (11) Law Herald (SC) _5_9210 the case of Ramesh Kumar vs. State of Haryana, in which it is held that "workman worked for 3 years and termination of his services in violation of compliance of provisions of Section 25-F so workman*

was held entitled to claim relief.” He further relied upon a judgment in Haryana Agricultural University versus Presiding Officer, Industrial Tribunal-cum-Labour Court and another 2011 LLR 1218 wherein it has been held that “termination of service of an employee who has completed 240 days’ continuous service, without payment of retrenchment compensation simultaneously at the time of termination by complying with the provisions of Section 25-F, may attract reinstatement that too with full back wages, continuity of service and consequential benefits.” I find force in the arguments of workman.”

Accordingly, the Labour Court while passing the award dated 10.2.2014, has set aside the termination of the respondent-workman and has ordered that the workman be re-instated with continuity of service and 50% back-wages from the date of demand notice i.e. 23.4.2008. The said award passed by the Labour Court was further made subject matter of challenge by way of CWP No.8272 of 2014. Even, learned Single Judge did not find any merit in the writ petition and dismissed the same and has observed as under :-

*“The workman had served the demand notice on 23.4.2008 and instead of amicably settling the issue and taking the workman back in service, the management has forced him to litigate and now seeks deny the benefit of back wages to the tune of 50%. The Labour Court has balanced the equities by granting only 50% back wages, which is the discretion which is to be exercised by the Labour Court and not to be interfered with by this Court. The settled proposition has been laid down by the Apex Court in **M/s Reetu Marbles vs. Prabhakand Shukla, 2010(2)***

SCC 70, wherein it has been specifically laid down that the discretion of the Labour Court is not to be readily interfered with. The Apex Court in Harjinder Singh vs. Punjab State Warehousing Corporation, 2010 (3) SCC 192 and Surya Dev Rai vs. Ram Chander Rai and others, 2003 (6) SCC 675 also, has held that this Court is not sitting as a Court of Appeal.”

It is in the aforesaid circumstances, the appellant-Management has filed the present Letters Patent Appeal assailing the judgment passed by the Single Judge dated 27.5.2014 and the award passed by the Labour Court dated 10.2.2014.

Learned counsel for the appellant has argued that the respondent-workman has himself absented from the duty w.e.f. 17.5.2007 because FIR No.110 dated 13.6.2006 was registered against him. Learned counsel further argued that the learned Single Judge has dismissed the petition without appreciation of facts and law and has wrongly observed that it is a case of victimization and unfair labour practice. Since the respondent-workman was involved in a criminal case and he remained in judicial custody, therefore, there is no question to terminate the services of the respondent-workman and only a case of absence from duty. The respondent-workman left the work at his own and did not turn up to do the casual work. The Management never terminated the services of the respondent-workman. There is no document on the record to show that the appellant-Management terminated the services of the respondent-workman.

We have heard learned counsel for the parties and gone through the judgment passed by the learned Single Judge dated

27.5.2014 and the Award dated 10.2.2014 passed by the Labour Court.

Admittedly, the respondent-workman was appointed as Sweeper in the year 1991 and he continued to work till 17.5.2007, when his services were finally terminated without complying with the provisions of the Act. On an industrial dispute raised by the respondent-workman, the Labour Court vide award dated 10.2.2014 decided the reference against the Management and held that the services of the workman were terminated illegally and the Management had adopted unfair labour practice. The cross-examination of MW1 was found to be illusive and evasive and the Labour Court has found that the said witness was not responding to the questions in a straight manner. Further, even before termination of services of respondent-workman, the provisions of Section 25-F of the Act were not complied with. While dismissing the writ petition filed by the appellant-Management against the aforesaid award dated 10.2.2014, learned Single Judge has affirmed the finding recorded by the Labour Court with regard to unfair labour practice of the appellant-Management. It was the stand of the appellant-Management that it is the respondent-workman, who absented himself from duty from 17.5.2007 on account of the fact that a criminal case was pending against him. However, we have noticed that in the said criminal case, the respondent-workman had faced the trial and he was acquitted by the Court by extending the benefit of doubt.

Interestingly, the appellant-Management has not resorted to any inquiry into the allegations to bring out the case within the ambit of term 'moral turpitude' against the respondent-workman. The workman had

served the demand notice upon the Management but before terminating his services, no domestic inquiry was ever conducted against the workman for alleged absence from duty. It is also not disputed that while terminating the services of the respondent-workman, who was working as Sweeper, provisions of Section 25-F of the Act were not complied with.

Therefore, in the above facts, we are not inclined to accept the aforesaid contentions raised by learned counsel for the appellant because present is the case of unfair labour practice at the end of the Management. The respondent-workman had worked from 1991 to 24.12.2003 and thereafter from 4.3.2004 to 13.6.2007. Therefore, the termination of services of the respondent-workman has rightly been held to be illegal and arbitrary by the Labour Court and affirmed by learned Single Judge. Hence, no ground to interfere in the order passed by learned Single Judge as well as the award passed by the Labour Court is made out. The workman is entitled to reinstatement with continuity of service and 50% back-wages from the date of Demand Notice i.e. 23.4.2008.

The present appeal is dismissed accordingly.

(SATISH KUMAR MITTAL)
JUDGE

(HARI PAL VERMA)
JUDGE

October 15, 2015

Vijay Asija