

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 371 of 2013 (O&M)

Date of decision:- 27.07.2015

General Manager Gurdaspur Coop. Sugar Mills Ltd ...Appellant

Versus

Nathu Ram and anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vikas Singh, Advocate
for the appellant.

Mr. Sandeep Arora, Advocate
for respondent No. 1

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

Defendant-Appellant (for short 'the appellant') is in regular second appeal against the judgment and decree dated 27.08.2012 passed by Addl. District Judge, Gurdaspur whereby the suit of plaintiff/respondent No. 1 (for short 'respondent No. 1') was decreed by setting aside the judgment and decree dated 18.01.2010 passed by Civil Judge (Jr. Divn.) Gurdaspur.

The case of respondent No. 1 before both the Courts below was that he was appointed as semi skilled employee on 08.11.1980 on seasonal basis at manufacturing department of the appellant. Later on, he was transferred to engineering department on 08.10.1991 on permanent basis.

Respondent No. 1 was further transferred to Industrial Alcohol Plant Unit (in short 'IAP') of the appellant on 14.01.1998 and was promoted to the post of Clerk Grade-IV on permanent basis.

The precise grievance of respondent No. 1 was that on 18.02.2002, his services were again transferred from IAP distillery unit to the general office of appellant in the interest of mill on same grade. He was placed at Sr. No. 1600 in general office. He was granted increments from January 1998 to January, 2002 vide order dated 12.10.2002 from IAP distillery unit and thereafter, appellant granted him increments from IAP distillery unit. After transferring from IAP distillery unit to general office, respondent No. 1 was paid incentives and leave encashment during the crushing season of 2001-02 from general office. He was not paid any incentives and leave encashment during the crushing season in the general office in spite of his continuous service in the said office. The appellant has been forcibly trying to consider him as an employee of IAP distillery. Thereafter, respondent No. 1 served the legal notice dated 11.06.2005 but the appellant refused to accede to such request. Hence the present suit was filed seeking declaration to the effect that he has been regular employee in general office of appellant w.e.f 18.02.2002 and the action of the appellant for treating him employee of IAP distillery unit was nullity

and respondent has been entitled for service benefits from the year 2002 onwards and further sought consequential relief of mandatory injunction directing the respondents to release his service benefits from the year 2002 onwards by treating him employee of general office.

On notice, the appellant as well as respondent No. 2 admitted the appointment of respondent No. 1 and his subsequent promotion as Clerk in IAP distillery unit, yet, it has been asserted that he has been transferred and promoted on his request. It has been admitted that he has been working in general office of the appellant on same grade, which he was getting in IAP distillery unit, which has been closed down and in this respect, resolution No. 5 dated 09.06.2005 has also been passed. The employees of such unit became surplus and thus the service of respondent No. 1 and other employees of distillery unit have been transferred on temporary basis to general office.

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for decree of declaration as prayed for?
2. Whether the plaintiff is entitled for decree of mandatory injunction as prayed for?
3. Relief

The trial Court after going through the entire

evidence led by the parties, dismissed the suit of respondent No. 1.

On appeal, the Lower Appellate reversed the findings of the trial Court and decreed the suit of respondent No. 1 on the ground that the appellant had two departments i.e general office and IAP distillery unit and respondent No. 12 was appointed as semi skill employee in manufacturing unit of appellant-mill vide appointment letter dated 08.11.1980 (D1). Thereafter, respondent No. 1 moved application (Ex D2) for regularization of his service even as unskilled employee and accordingly, order dated 08.10.1991 Ex P2 (Ex D3) was passed and the services of respondent No. 1 were transferred to Engineering department as unskilled (Engg.) in the grade of unskilled on permanent basis. Thereafter, respondent No. 1 moved two applications (D4 and D5) praying the appellant to appoint him to the post of Clerk on permanent basis and vide order dated 14.01.1998(D6), he was made Clerk against vacant post lying in IAP distillery unit of appellant in clerical grade-IV. The services of respondent No. 1 as Clerk were confirmed against the post of Clerk vide order dated 04.10.2002 (Ex D9) and was paid increments from the year 1999-2000 vide order dated 12.10.2002 (Ex D10) from IAP distillery unit. As per order dated 16.01.2004 (Ex D11), the increments have been given to the employees and the name of respondent

No. 1 appeared at Sr. No. 2 against the list of employees in IAP distillery unit. As per resolution dated 04.06.2005, it was resolved by the Board of Directors that the IAP distillery unit be sold subject to approval of higher authority and its employees be retrenched in accordance with the rules. Further as per Ex D13, the IAP distillery unit was not working from 31.07.1997 as it was suffering heavy losses.

The Lower Appellate Court has made reference to order dated 18.02.2002, which reads as under:-

“Order:-

In the interest of Mills, the service of Sh. Nathu Ram, Clerk are hereby transferred from Distillery to General Office, with immediate effect. He is advised to report from duties to the office supdt.

Managing Director.”

No evidence was brought on record by the parties to show that the General Office and IAP distillery unit are independent and distinct entities with respect to service conditions of employees working in these units.

Reference was then made to an award passed by the labour Court on an application moved by various employees including respondent No. 1 under Section 33(2) of the Industrial Disputes Act, 1947 for grant of “production incentive as well as leave encashment for the years 1997-98

and 1998-99. The award was passed in favour of the employees, vide order dated 13.07.2007(Ex D15) and the appellant-mill filed CWP against the award dated 13.07.2007 and this Court stayed the recovery in pursuance of impugned award subject to payment of 25% of award amount to the employees within three months.

In the award passed, it was held that general office and IAP distillery unit are governed by same management and thus, these units cannot be treated as separate and independent entities with respect to service conditions of employees working in these units and as per Ex D7, the service of respondent No. 1 has been transferred to general office but there is no such mention of such transfer to be temporary. Thus, it was held that the service of respondent No. 1 were transferred permanently.

After going through the judgment passed by the Lower Appellate Court, one thing is very clear that the appellant-mill and IAP distillery unit are governed by same management and appointing authority of both units was Managing Director. Both units were working under the control of M.D and services of both units were transferrable from one unit to another unit according to requirement. The IAP distillery unit has been closed since last 4 years and they were working in the sugar mill unit. The IAP distillery unit has no separate offices of general manager, time office and

account department etc. Both units were based on production and balance sheets, which were also prepared jointly and both units have one management. Moreover, as per Ex D7, the service of respondent No. has been transferred to general office but there is no such mention of such transfer to be temporary. Thus, respondent No. 1 was rightly held to be entitled to be considered as regular employee of general office of appellant w.e.f 18.02.2002 Ex D5 and is entitled to all service benefits as accruing to the post of Clerk. He was also held entitled to consequential relief of mandatory injunction directing the appellant to release service benefits after considering him as regular employee.

Learned counsel for the appellant has not been able to controvert that in the written statement filed before the Labour Court, the appellant had taken a specific stand that the appellant-Mill and IAP distillery unit were working under the control of one M.D. Further, the IAP distillery unit has been closed since last 4 years and they were working in the sugar mill unit. The IAP distillery unit has no separate offices of general manager, time office and account department etc.

Thus, no fault can be found with the finding rendered by the the Lower Appellate Court, which is based on facts and law. There is no illegality much less perversity

in the findings recorded by the Lower Appellate Court.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 27, 2015
G Arora

(RITU BAHRI)
JUDGE