

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 4375 of 2016
Date of Decision: 04.3.2016.

Daya Nand

.....Petitioner

Versus

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

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sandeep Singal, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 226 of Constitution of India seeking a writ in the nature of certiorari challenging the award dated 11.9.2015 (Annexure P-6).

Heard.

Petitioner had raised an industrial dispute by serving a demand notice Annexure P-2 dated 1.8.2005 challenging his termination. Respondent university submitted its comments (Annexure P-3) to the demand notice. Admittedly, the dispute raised by the petitioner vide demand notice Annexure P-2 was not referred for adjudication to the Labour Court and the request of the petitioner for referring the dispute for adjudication to the Labour Court was declined. Thereafter, petitioner approached the Industrial Tribunal-cum-Labour Court by submitting statement of claim in the year 2012.

Case of the petitioner, in brief, was that he had served with the respondent management as a Mali on daily wage basis

since January 1995. The respondent university kept employing the petitioner from time to time by changing his name and transferred him from one branch to another. Services of the petitioner were terminated verbally in November 2002 without complying with the mandatory provisions of Industrial Disputes Act, 1947 ('Act' for short). Petitioner had approached the Industrial Tribunal-cum-Labour Court directly by basing reliance on amended provisions of Section 2-A(2) of the Act which came into effect with effect from 15.9.2010.

Section 2-A of the Act reads as under:-

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- *Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]*

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt

of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)”

The amended provision of Section 2-A (2) of the Act came into effect from 15.9.2010. However, in the present case, petitioner had served demand notice on 1.8.2005 and the appropriate Government had declined to refer the dispute to the Labour Court. Petitioner in his cross-examination had admitted that the earlier demand notice served by him was dismissed. Since the earlier demand notice served by the petitioner already stood rejected, the learned Industrial Tribunal-cum-Labour Court rightly held that the claim filed by the petitioner on 1.2.2012 was liable to be rejected being not maintainable as the petitioner could not take the benefit of the amended provision of Section 2-A(2) of the Act. Further, as per Section 2-A(3) of the Act, petitioner could have approached the Labour Court within three years of the date of his termination. In the present case, services of the petitioner were terminated in November 2002 whereas the claim was filed by the

petitioner on 1.2.2012.

In these circumstances, no ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India is made out.

Dismissed.

**(SABINA)
JUDGE**

March 04, 2016
Gurpreet