

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

L.P.A. No. 1534 of 2015 (O&M)

Date of Decision : October 25, 2016

The Tauru Primary Co-operative Land Development Bank Limited

....Appellant

VERSUS

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Mr. Ramender Chauhan, Advocate
for the appellant.

Mr. Praveen Bhadu, Assistant Advocate General, Haryana.
for respondents No.1.

Mr. S.K. Bawa, Advocate
for respondent No.3.

T.P.S. MANN, J.

Respondent No.3, namely, Bal Kishan (hereinafter referred to as 'the workman') was appointed as a Peon in December, 1985 by the appellant-Bank on daily wages and his services were terminated on 29.8.1986. The workman filed a civil suit challenging his termination from the services of the Bank. The civil Court passed interim order restraining the Bank from removing him from service, if not already removed. Ultimately, the suit was withdrawn by the workman on 14.11.1986 and on the next day, he was relieved from office duties. Thereafter, the government referred the dispute to the Labour Court.

The workman filed his statement of claim. In its written statement, the

Bank averred that the workman was estopped from seeking relief under the reference as he had already exhausted and availed remedy available to him by seeking relief in the civil Court but the same was, later on, withdrawn by him. He could have chosen any of the remedies available to him under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the common law. Since he had elected to avail the remedy under the common law, therefore, the reference was not tenable in the eyes of law. The workman filed replication to the written statement taking a stand that the additional plea of the Bank management was totally misconceived. He had filed suit for permanent injunction but the same was withdrawn subsequently. It was not decided on merits. Therefore, he had adopted right course under the Act.

The Labour Court framed the following issues :-

- “1. Whether termination/retrenchment of Sh. Bal Kishan is justified order ? If not, to what relief is he entitled ?
2. Whether the respondent management does not fall within the scope and ambit of Industry as defined in the Industrial Disputes Act ?
3. Whether the claimant is stopped for seeking relief from this Court as alleged ?

Vide award dated 8.2.1995, the Labour Court ordered reinstatement of the workman with full back wages. Aggrieved of the award, the Bank filed writ petition under Articles 226 and 227 of the Constitution of India. During its pendency, on 19.1.2001 an undertaking

was given by the Bank that the benefit of Section 17-B of the Act would be periodically deposited in the bank account of the workman. However, the Bank made the payment only upto 19.1.2001. On account of not complying with the order regarding depositing of the benefit under Section 17-B of the Act, learned Single Judge vide order dated 10.11.2009, held that as the workman had not been paid what was undertaken before the Court, the Bank could not have the right of audience. Accordingly, the writ petition was dismissed. The Bank challenged the order passed by the learned Single Judge by filing LPA No.252 of 2010. In the said appeal it was pleaded that vide pay order dated 23.2.2010, the provisions of Section 17-B of the Act stood complied with and, therefore, the Bank was entitled to the grant of hearing of its writ petition on merit. In view of the fact that the provisions of Section 17-B of the Act stood complied with, the letters patent Bench vide judgment dated 10.8.2010 relegated the Bank to the remedy of filing appropriate proceedings before the learned Single Judge. Pursuant to the same, the writ petition came up for hearing before learned Single Judge, who vide judgment dated 16.12.2014, dismissed the same. The said judgment is impugned in the present appeal.

When the appeal came up for preliminary hearing, notice was issued limited to the extent of considering whether compensation should have been awarded to the workman, instead of reinstatement with full back wages. Having been served in the appeal, the workman put in appearance through his counsel. The appeal came up for further

hearing on 27.1.2016 when the workman made two offers, one of giving up back wages, provided he was reinstated with continuity in service and secondly, he was ready to accept compensation of Rs.Five lacs. Faced with the stand of the workman, the Bank apprised the Court that the offer shall be considered by the Board of Directors in its next meeting. On 4.4.2006, the learned counsel for the Bank submitted that the Bank was ready and willing to pay Rs.Five lacs to the workman. However, short adjournment was sought for making the payment. On 12.7.2016, learned counsel for the appellant Bank produced the cheque issued by the appellant-Bank in the name of respondent No.3(workman) for a sum of Rs.Five lacs by way of compensation. The cheque was, accordingly, handed over to learned counsel for the workman, who requested for a short adjournment. On 26.7.2016, learned counsel for the workman apprised this Court that his client was not ready to accept a sum of Rs.Five lacs as compensation, despite the fact that he had already received a cheque in the said account and, that too, in this Court. He, however, requested for an adjournment in order to produce the workman before this Court as well as the cheque in the amount of Rs.Five lacs. On 29.8.2016, respondent-workman appeared in the Court and while returning the cheque dated 22.4.2016 to the learned counsel for the appellant Bank, took the stand that he did not want to accept the same by way of compensation. Rather, he was interested in the relief of continuity in service with full back wages. As such the appeal is now being taken up for hearing on merits.

While passing the impugned judgment whereby the writ

petition stood dismissed, the learned Single Judge had observed that the reinstatement ought not to have been ordered considering the brief period of service rendered by the workman and instead, the Court ought to have examined the issue of compensation as an alternative course. The writ petition had been pending since 1995 and the dispute itself was raised in the year 1988. Therefore, the pendency of the writ petition had largely outlived its utility to the cause of reinstatement which had been espoused by the workman. It was also observed that during the pendency of the writ petition attempts were also made to get the matter resolved through the good offices of the Lok Adalat which, however, did not bear any fruit. Despite the same, the Court ought to have granted some compensation to the workman. Further, the workman was given re-employment pursuant to the restraint order passed by the Court subject to the provisions of Section 17-B of the Act and the order of the Lok Adalat indicated that a cheque of Rs.15,589/- was given to the workman which he refused to accept, leading to the collapse of the attempt to settle the matter. The said amount was towards wages under Section 17-B, even subsequently, amount under Section 17-B of the Act was indeed paid to the workman by direct transaction to his Bank account.

It is true that vide impugned judgment, the learned Single Judge dismissed the writ petition preferred by the Bank but fact remains that in the concluding paragraphs of the impugned judgment, it was held by the learned Single Judge that reinstatement ought not to have been ordered and instead, the Court ought to have examined the issue of

grant of compensation as an alternative course. When put to the learned counsel for the workman that whether the observations made by the learned Single Judge in considering grant of compensation to the workman instead of, granting him reinstatement has been challenged, he has no reply. His only stand is that the award passed by the Labour Court ordering reinstatement of his client with full back wages has been upheld by the learned Single Judge.

It is the case of the workman that he had joined the duty as Peon on 18.11.1985 and continued to work as such till 14.11.1986 when his services were terminated. On the other hand, the Bank has taken the stand that the workman had worked from December, 1985 to August, 1986. On 29.8.1986 though his services were terminated yet the workman filed civil suit and obtained interim restraint order which remained valid upto 14.11.1986 when on the said date, the suit filed by him was withdrawn. Fact remains that the workman had served only for a very short duration of time as a Peon and is out of service since 14.11.1986. Thereafter, he has never remained in service and getting the benefit under Section 17-B of the Act. Even the learned Single Judge had observed while passing the impugned judgment that reinstatement ought not to have been ordered considering the brief period of service rendered by the workman and instead, the Court ought to have examined the issue of grant of compensation as an alternative course. Apparently for the said reason, when the appeal came up for preliminary hearing, notice was issued limited to the extent of considering whether compensation should have been awarded instead of, reinstatement with

full back wages. Subsequently, the Bank had accepted one of the two options, i.e. of compensating the workman by giving a sum of Rs.Five lacs to him and, accordingly, a cheque was prepared by the Bank and duly handed over to the learned counsel for the workman, who later on, changed his mind and while returning the cheque without getting it encashed, he, once again, insisted for the relief of reinstatement in service with full back wages. As this Court has observed regarding the workman not being entitled to the relief of continuity in service with full back wages, the only relief which he can get in the present appeal is compensation for an amount of Rs.Five lacs.

Resultantly, it is held that the respondent-workman is not entitled to the relief of reinstatement with full back wages. Instead, he is entitled to receive an amount of Rs.Five lacs as compensation. Accordingly, the appellant Bank is directed to disburse an amount of Rs.Five lacs as compensation by way of a cheque in the name of respondent-workman within a period of one month from today.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

October 25, 2016
satish

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO