

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

Date of decision: 16.05.2017

CWP No.12231 of 1996 (O&M)

M/s Robinson Sports

...Petitioner

Vs.

The Presiding Officer, Labour Court, Jalandhar & another ...Respondents

CWP No.14633 of 1996

M/s Robinson Sports

...Petitioner

Vs.

The Presiding Officer, Labour Court, Jalandhar & another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Tanu Bedi, Advocate, for the petitioner(s).

Mr. Puneet Jindal, Senior Advocate, with
 Ms. Shreya Vasishita, Advocate, for respondent(s) No.2.

RAJIV NARAIN RAINA, J.

This order will dispose of aforementioned two writ petitions arising out of a common Award rendered by the Presiding Officer, Labour Court, Jalandhar, which can conveniently be decided by a common order.

The Presiding Officer, Labour Court, Jalandhar by his award dated August 3, 1995 has rejected the plea of abandonment of service set up by the management, the petitioner before this Court. The plea of delay in raising dispute and serving demand notice has been resolved in favour of the

respondents. The Labour Court has found that against the illegal termination, their cause was espoused by the Sports Industries Labour Union (Regd.), Connaught Circus, Jalandhar by a complaint to the Labour Inspector on 16.02.1983.

The management responded to the notice of the Labour Inspector to enter conciliation proceedings and on appearance refuted the stand of the workers that they were dismissed from service since they had abandoned their service. The dispute was not raised within a reasonable time.

The workmen filed an application before the Labour Court for permission to produce additional evidence by summoning records relating to proceedings at Jalandhar Labour Office and at Head Office, Chandigarh to prove the allegation that the Evaluation and Implementation Committee set up by the Department was seized of the dispute by entrustment was unable to decide if the workmen should be asked to give fresh demand notices or whether the previous and similar dispute settled through civil writ petition No.3080 of 1975 should be pursued.

The record of the conciliation proceedings conducted by the Labour-cum-Conciliation Officer, Jalandhar was produced as Ex.WW6/1. It was there that Labour Court found that the Board/Committee ultimately decided that the workmen should serve fresh demand notices on the management because the earlier award was set aside by this Court in CWP No.3080 of 1975 and stood implemented when the workers were taken back on duty on January 1, 1983. The three workmen were dismissed soon thereafter in 1983 itself after implementing the orders of this Court. The

management was, however, given liberty to proceed against all the three workmen afresh on the alleged delinquency. The management did not initiate disciplinary proceedings, but chose to reinstate them and then dismiss Harbans Lal on 03.02.1983; Raj Kumar on 10.02.1983 and Ram Lal on 15.02.1983. This position is not disputed or the fact that neither the back wages or current wages were paid to the workmen at the time of termination which was brought about in violation of Sections 25F of the Industrial Disputes Act, 1947 (for short 'the Act').

The plea of the management was that after rejoining duty, all the three workmen started absenting themselves from work and never returned to the factory. The management sent notices Ex.MW1/1 dated 14.02.1983, Ex.MW1/4 dated 16.02.1989 and Ex.MW1/7 dated 14.02.1983 asking them to report to duty. These notices were received back undelivered. In the midst of this defence plea, the Labour Court perused the exhibited notices received back undelivered and found that notice to Harbans Lal was sent care of "C/o F.C.Sondhi & Company, Suranai, District Jalandhar" while notices to Raj Kumar and Ram Lal were sent "C/o Sports Industries Mazdoor Union, Cannught Circus, Jalandhar". The address established that personal service was not effected on the respondent workers while the management witness stated that the management did not possess residential addresses of the workers. The names of the three workers were still on the rolls of the respondent vide attendance register Ex.MW1/25 to Ex.MW1/27. Their names were not struck off and, therefore, it could not amount to retrenchment. The Labour Court disagreed with the contention that workmen had abandoned their jobs. The Labour Court observed that workmen had fought battles firstly in the Labour Office, then in the Labour Court,

Jalandhar and again in the High Court where they ultimately “won the war”. They were taken back into service after the management’s SLP against the decision of the High Court was dismissed by the Supreme Court. The Labour Court may not be wrong to have remarked that the management was smarting under the humiliation of defeat and on finding the first opportunity they threw the workers out. If they had raised disputes in time in 1983, then a case of abandonment was not made out. They had served for quite a number of years before they were sack in 1983. Harbans Lal and Raj Kumar had served for 14 years and Ram Lal for 5 years in the Cricket Ball Section as Cricket Ball Piece Jurai Stitchers with M/s Robinson Sports, a manufacturer of sports goods.

There was also a litigation between the parties under Section 33C(2) of the Act, when workers presented an application for recovery of arrears of wages, which resulted in payment of Rs.33,000/- to all the three workers against wages for the period in dispute. The argument that workmen had not completed 240 days after reinstatement did not work before the Labour Court reasoning that when the earlier dismissals have been set aside by the High Court, the workmen were deemed to have continued in service. More so, when their plea for wages for the period was accepted by the Labour Court on 02.03.1990.

This litigation has continued since 1968. One of the workers (Raj Kumar) is dead and his legal heirs were impleaded in 1997.

Having concluded that the terminations were illegal, the Labour Court, however, did not reinstate the workmen. The Presiding Officer reasoned that the re-entry of the workers was merely symbolic. With the

passage of time, the Labour Court assumed that the respondent, the present petitioner must have recruited some other persons in their places and they have become “pretty old”. During service they were all paid wages of about Rs.500/- per month i.e. in 1983. By joining, the Court observed that in the intervening period had they remained in service, they would have earned about Rs.72,000/- each. However, the Labour Court awarded Rs.50,000/- as lump sum compensation. By applying the current minimum wages i.e. Rs.1237/- per month, the Labour Court held Raj Kumar and Harbans Lal entitled to Rs.28,500/- and Ram Lal to Rs.22,800/- as gratuity.

The Labour Court announced its Award on August 3, 1995 and awarded Rs.72,500/- each to Harbans Lal and Raj Kumar and Rs.72,800/- to Ram Lal against the petitioner. The Labour Court gave sufficient latitude by directing the management to pay the amount by the end of December 1995 failing which they shall pay the same with interest at the rate of 10% per annum w.e.f. 01.03.1983, which is the date nearest to the dates of their termination.

It may be pertinent to mention here that the Award was stayed on August 14, 1996 conditionally on payment of Rs.20,000/- to each of the workmen. Compliance was reported by the management and the same is recorded in the next order dated October 15, 1996. Thereafter, the cases were admitted on July 18, 1997 for listing within one year. The cases have been through the Lok Adalat Bench – III to examine whether settlement is possible. Since the private respondents did not appear, no settlement was possible and the cases were returned to the High Court and that is how the cases have come up for hearing.

Having heard Ms. Tanu Bedi, learned counsel representing the petitioner and Mr. Puneet Jindal, learned senior counsel assisted by Ms. Shreya Vasishita, appearing on behalf of the workmen at length, I do not find any merit in both these petitions. There is no error apparent on the face of the record and the conclusions including relief granted are within the four corners of industrial law. There is no fundamental flaw of reasoning which requires correction at the hands of this Court. The Award is based on appreciation of evidence and to take another view on the same evidence is not within the jurisdiction of this Court in proceedings under Articles 226 and 227 of the Constitution, as it does not sit in appeal over awards of Labour Courts and Tribunals. I agree with the Presiding Officer, Labour Court, Jalandhar, that management failed to make out a case of abandonment of service. Award of compensation in lieu of reinstatement is a discretion exercised judiciously and the view taken calls for no interference.

Accordingly, both the writ petitions are dismissed. The management is directed to calculate and pay the awarded amount less amounts already paid under court orders, along with interest as per the award dated August 3, 1995. Management shall comply with the order within a period of three months from the date of receipt of a certified copy of this order by deposit before the Labour Court, Jalandhar failing which the entire amount will earn interest, in case of default at the same rate as awarded by the Labour Court. In case, any of the other respondents have passed away, the money will be due and payable to their/his legal heirs/legal representatives.

However, I may record that there are many facts, which have not been recorded in this order as they appear to have no relevance to the case in hand based solely on the plea of abandonment and delay in raising dispute.

16.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*