

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.862 of 1993

Date of Decision: 16.01.2017

Surjit Singh

... Petitioner

Versus

The Presiding Officer, Labour Court,
U.T. Chandigarh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Surinder Sharma, Advocate,
for the petitioner.

Mr. R.C. Chaudhary, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The petitioner had rendered 4 years, 2 months and 8 days service under respondent No.2 as a Clerk-cum-Salesman on regular basis, serving between August 06, 1985 to October 15, 1989 (F.N.), when his services were terminated by the Society. He was paid one months' advance salary by a bank draft sent through registered AD post but on this tender the petitioner submits that the amount sent was short by 5 days' wages and, therefore, it was in law an invalid tender of money. He alleged violation of Section 25-F of the Industrial Disputes Act, 1947 ("the Act") in the reference proceedings before the Labour Court, UT, Chandigarh. The award dated September 11, 1992 went against the workman published in the Chandigarh Administration Gazette (Extra-ordinary) on November 27, 1992. The workman's case was that retrenchment compensation was not paid. Wages for notice period was short by five days which was less than

due and payable. The case of the petitioner was not covered by the exceptions in Section 2 (oo) of the Act.

2. It is not disputed that the initial appointment was against a regular post in the Manimajra Cooperative Marketing-cum-Processing Society, Limited, Grain Market, Chandigarh. It is also not disputed that the termination order dated October 09, 1989 was recorded to be a decision taken in the interest of the society keeping in view its weak financial position while the society was in the throes of taking economic measures. There is no doubt that in law this would amount to retrenchment because retrenchment can by definition be for any reason whatsoever.

3. The ground on which the management contested the claim of the workman was that an inquiry was held under section 50 of the Punjab Cooperative Societies Act, 1961 ("1961 Act") under orders of the Registrar Cooperative Societies, UT Chandigarh into the working and financial conditions of the society. The society had at the relevant time suffered heavy losses to the tune of ₹ 27.84 lacs. The business of the society had "finished" according to the management. The employees of the society had become surplus. Many employees were discharged from service keeping in view the poor financial position and closing down the business of the society.

4. The appropriate Government had referred the issue as to whether the services of the petitioner were terminated illegally by the management and in case, it was so, then what relief could be granted. The evidence was led by both the parties before the Labour Court. The Court returned a finding that no retrenchment benefits were paid at the time of

termination/retrenchment. In case Section 25 FFF was applicable then permission to close down the industry for any reason was not obtained and the workman still would be entitled to notice and compensation. The workman argued that closure merely by reason of financial difficulty cannot be deemed to be closure in law due to unavoidable circumstances beyond the control of the employer. The workman has to be paid compensation in any case.

5. The Labour Court reasoned that retrenchment took place on account of proceedings under the 1961 Act as applicable to Chandigarh and was thus in terms of the provisions of law. The Presiding Officer, Labour Court, Chandigarh had by then passed an award in similar circumstances in IDR No.223 of June 01, 1990 in case title *Rajinder Singh v. Manimajra Marketing Cooperative Society* decided on September 19, 1991 and held the retrenchment in similar circumstances was valid. The Labour Court applied its earlier award and dismissed the reference. It accepted that retrenchment was necessitated due to losses suffered by the society. There was, therefore, nothing wrong in the society in discharging the workman as surplus where the society was in the process of rationalizing its structure.

6. Even if the petitioner has a case by reason of non-compliance of the provisions of Section 25-F of the Act; the case not falling in Section 25 FFF, or the award not been perfectly justified in law, even then what relief can come by to the petitioner after 24 years of the pendency of this petition.

7. I am conscious of the order passed by the Lok Adalat on July 28, 1999 presided over by a former Hon'ble Judge of this Court. The Lok

Adalat feeling that it was a case of reinstatement by giving continuity of service and seniority right from the date of initial appointment if the workman gave up his right to back wages to which he was prepared to accept half before the Lok Adalat but the matter got adjourned for the counsel for the management to obtain instructions from the management; and efforts to compromise out of court failed and the matter was referred back to the High Court for a decision on merits but that was also 18 years ago. Considering reinstatement of the petitioner to service would be inappropriate after passage of so much time only to upset termination effected on October 09, 1989. This is especially when the workman was not protected by interim orders/measures during the pendency of this case. Also looking to the fact that the petitioner served for not more than four years then a case of compensation in lieu of reinstatement would also not be appropriate especially when the discharge was result of proceedings under Section 50 of the 1961 Act directed to inquire into the financial health of the society where huge losses were assessed crippling it from continued business with the same vigour. It is well settled that an illegal termination will not result in automatic reinstatement. Calling upon the respondent society to cough out compensation may also seem unjust at this distance of time. I am conscious and helpless at the same time that it would serve no useful purpose to set the clock back when the wounds may have healed by now.

8. I may notice that the respondent-management has placed a strong reliance on the decision of the Supreme Court in M.Ramanatha Pillai v. The State of Kerala and another, AIR 1973 SC 2641, holding that

abolition of post is not dismissal or removal from service. The power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on exigencies of circumstances and administrative necessity. The abolition of a post may have the consequence of termination of service; but such termination is not dismissal or removal within the meaning of Article 311 of the Constitution of India. Therefore, opportunity of showing cause does not arise in a case of abolition of post.

9. Though the case is rendered in mainstream service law but broadly its principles may come to the rescue of the management in labour law scenario even though this is not a case remotely touching Article 311 of the Constitution of India. Closer home is another decision cited by the management in Dr. Suresh Chander Sharma and others v. The Haryana Dairy Development Co-op Federation Ltd. and another, 1999 (1) RSJ 377, which is also a case of termination on account of abolition of post in a Cooperative Federation. The Court held that action of abolition taken after detailed study of functioning of a Federation with a way to improve its economy then the termination on account of abolition of post is not bad. Here also an audit had been undertaken regarding the financial health of the Federation. The Division Bench relied on the ruling in M.Ramanatha Pillai.

10. I find insufficient scope in this petition for upsetting the impugned award of the labour court only to substitute an opinion by an opinion which might seem better. The view taken by the lower court is a possible view on the evidence produced and if the court has arrived at findings which are not palpably erroneous or contrary to evidence or defeat

logic and reasoning then I have no reason to dissect the award or put it under a microscope with a judicial lens. We do not sit in appeal over the work of Tribunals and remain conscious of the limitations placed in the way of the writ court and enunciated long ago by the constitution bench of the Supreme Court in guiding star case pronounced in Syed Yakoob v. K.S.Radhakrishnan, AIR 1964 SC 477. The award does not appear to me to suffer from a fundamental flaw of law or fact.

11. For the above reasons, I would not interfere in this matter and would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

16.01.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*