

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3344 OF 1997

Date of Decision: 5.5.2017

Dharminder Singh

... Petitioner

Versus

Presiding Officer, Labour Court, Ludhiana and others ... Respondents

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

Present: Mr.G.P.Singh, Advocate for the petitioner

Mr.Raman Mahajan, Advocate for respondents no.2 & 3

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and perused the paper-book.

2. On all four counts in issue, the award dated 18th December, 1995 passed by the Presiding Officer, Labour Court, Ludhiana suffers from infirmities which call for its nullification.

3. There is sufficient weight in the argument of Mr. G.P.Singh, appearing for the petitioner that even a probationer has industrial rights under the Industrial Disputes Act, 1947 (for short “the Act”) as the Act makes no distinction between a probationer and a confirmed employee. There is no such distinction drawn in Section 2 (s) which defines who a “workman” is. The Labour Court has failed to apply its mind in drawing the distinction, which is a gross misreading of the law.

4. Secondly, learned counsel submits that termination or retrenchment cannot be brought about without complying with the provisions of Section 25F of the Act so long as the workman had completed 240 days in a preceding 12 calendar months preceding the date

reason whatsoever”, and therefore, termination during probation has to be accompanied by assigning reason and by paying retrenchment compensation etc. in accordance with law. The law on the point is settled in several judgments, including in case Santosh Gupta vs. State Bank of Patiala, AIR 1980 SC 1219 where an employee was removed from service on account of not passing a type test which would have enabled her to be confirmed in service. The Supreme Court held that the discharge of the workman on the ground of non-passing of the test amounted to 'retrenchment' within the meaning of Section 2 (oo) of the ID Act and, therefore, the requirements of Section 25F of the Act had to be complied with, which are mandatory in nature and conditions precedent to retrenchment, failing which, declaration of nullity follows. What relief is to be given in a case is another matter.

5. The third contention on behalf of the petitioner must also succeed inasmuch as the termination was without reason conveyed to the petitioner. This is the mandatory requirement of Section 25F (a) of the Act. It was not the defence of the Management that the workman during probation had demonstrated himself as a person whose work and conduct was unsatisfactory. Neither enquiry whatsoever was conducted against the workman with regard to his work and conduct nor was a stigmatic order passed by the employer, which was open to it and in that eventuality, the termination could have been justified.

6. The fourth question is that the defence of the Corporation was not that the petitioner was not a “workman” who was given the designation of Executive II to perform technical duties. Neither was issue claimed nor framed by the Labour Court on the question as to whether the claimant was a “workman”. Learned counsel for the petitioner states that

this is not even a case set up by the Management before the Labour Court, and therefore, the fact is admitted.

7. There is a specific averment in paragraph 1 of the claim statement that the claimant is a “workman” has not been denied in the reply filed by the Management which brings the matter to an end as far as this argument is concerned raised at the hearing. If the claimant qualifies as “workman”, Section 25F of the Act gets attracted and had to be complied with as he had developed industrial rights during probation on completion of 240 days to be treated in the manner provided under Section 25F of the Act which is mandatory provision.

8. The Labour Court fell in error of reasoning holding that the termination was not illegal because it was brought about during probation. The claimant was initially put on probation for six months which was extended twice over. The Labour Court wrongly assumed that non-grant of further extension amounted to the claimant’s work and conduct not being found satisfactory. This inferential reasoning does not find support in law on the totality of the facts narrated above.

9. Accordingly, I find that the award suffers from several fundamental flaws of legal reasoning on all four counts. The Labour Court was after all dealing with a Corporation and not with the private businessman and as such the Labour Court should have acted in a more responsible manner while hearing the case of the workman for which legal infirmities he has had to suffer for its illogical verdict passed twenty years ago.

10. The Corporation has chosen to file its written statement in this petition which it need not to have since the dispute came through

determination by trial and evidence and also because nothing new can be

introduced at this stage. However, I find from the written statement that there is not even a whisper regarding what was found wrong in the work and conduct of the petitioning employee. This shows that the Management has even lost in the written statement its right to share with the Court the real reasons for termination during probation. Of course, the written statement filed before the Labour Court is also silent on the nature of the lack of satisfactory work and conduct of the workman. Mere saying that work and conduct is not satisfactory in the order is not enough for the Corporation which assesses its employees on the basis of performance unless supported by material produced in defence of the reference to satisfy the Court that the reasons were germane to the decision. It is not the decision but the decision making process that is judicially reviewed. I have no material from where I can conclude safely that the termination during probation was justified.

11. I may have accepted the argument from the Management's side that while dealing with a private employee, employer is under no obligation to record reasons on the day to day working of its employees. This matter has been pending for the last 20 years. The workman had been denied relief altogether and that is not a happy situation. This was a case of reinstatement to take the petitioner back to the original position which is probation since the termination was illegal. The petitioner is present in Court. Mr.G.P.Singh, learned counsel, on instructions from the petitioner states that he is now 50 years old. This means effectively 8 to 10 years of service remain in case he is reinstated to service.

12. For the foregoing reasons, this petition is allowed and the impugned award alongwith the termination order are set aside. Instead of

remanding the case to the Labour Court after 20 years to consider

moulding the relief, I take the task upon myself to bring to an end to the litigation by directing that respondent-Corporation would reinstate the petitioner to his original position without back-wages but with continuity of service. He would get continuity of service so that it bring him pay to current levels but the non-pecuniary benefits which may have fallen due in the interregnum will be his as though he had continued in service.

13. It may be too late for the respondent-Corporation at this distance of time to consider the work and conduct of the petitioner unsatisfactory long ago with officers who took the decision unavailable. Also because no tangible material has been shown or produced in two Courts to justify termination and, therefore to in order to serve the ends of justice, the petitioner will have be treated as regular from the date of termination as there is no other way out in the special circumstances in a labour matter where strict rules of service law can often be of no help. This is because the Corporation has not addressed itself to the doctrine of motive and foundation and their merging points. However, this order will not be treated as a precedent on relief as the directions are based on factual matrix. Dismissing the case casually would not serve justice. The remaining period of service will represent compensation for statutory wrong committed for which amends have to be made somehow.

(RAJIV NARAIN RAINA)
JUDGE

5.5.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes