

CWP-20588-2015 &
CWP-12690-2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-20588-2015
Date of Decision : Sept. 14, 2018

Krishna Auto Sales Petitioner.

Versus

The Presiding Officer, Industrial Tribunal, Bathinda,
 and others.
 Respondents.

2. CWP-12690-2015

Nar Singh alias Nahar Singh
 Petitioner.

Versus

The Presiding Officer, Industrial Tribunal, Bathinda,
 and others.
 Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Amit Jhanji, Advocate,
 for the petitioner in CWP-20588-2015 and
 for respondent No.4 in CWP-12690-2015.

Mr. Abhinav Jain, Advocate
 with Mr. Gobind Rai Sharma, Advocate,
 for the petitioner in CWP-12690-2015
 and respondent no.2 in CWP-20588-2015.

Mr. Shiv Kumar, Advocate,
 for respondent No.2 in CWP-12690-2015

and respondent No. 3 in CWP-20588-2015

SHEKHER DHAWAN, J.

The above titled two writ petitions arise out of common award dated 3.7.2014 (Annexure P/12) passed by Industrial Tribunal, Bathinda (for short, “**learned Tribunal**”). CWP-20588-2015 has been filed by Krishna Auto Sales challenging the award granting compensation to the workman and Nar Singh alias Nahar Singh, workman has filed CWP-12690-2015 impugning the award to the extent that he has been allowed lump-sum compensation of Rs.1,00,000/- while ignoring the back wages. Therefore, both those writ petitions are being disposed of by this common judgment.

2. For facility of reference, facts are being taken from CWP No. 20588 of 2015.

3. Nar Singh alias Nahar Singh (hereinafter referred to as “the workman”) raised an industrial dispute on the ground that he was appointed on 2.12.1993 as Foreman and thereafter he was transferred to Moga branch. His services were terminated illegally in July, 2007 without issuing any notice, charge sheet or payment of retrenchment compensation and prayer was made by the workman for his reinstatement.

4. Krishna Auto Sales (Petitioner in CWP-20588-2015) (hereinafter referred to as “the Management”) contested the claim taking preliminary objection that the reference was not maintainable as the workman had earlier filed a civil suit for declaration and injunction in the Court of Civil Judge (Senior Division), Moga agitating the same matter and

the said civil suit was withdrawn by him by making a statement that he did not want to proceed with the said case. The Management also took the plea that they had not employed the workman nor any appointment letter was issued to him and as such, there existed no relationship of master and servant between the parties. In fact, the workman was working under respondent No.3 and he was not performing his duties to the satisfaction of the Management. He was issued warning on different lapses and fighting and using abusive language with the seniors and fellow workers. He was served with written warning on 23.04.2005 and 1.4.2006 and at that time, he had tendered his written apology. Still he remained absent from duty and had actually worked during the last three financial years as under:-

<u>Year</u>	<u>No. of days.</u>
2004-2005	74 days
2005-2006	52 days
2006-2007	66 days
2007-2008	14 days

5. Thereafter his services were terminated on 20.07.2007 alongwith payment of one month's salary in lieu of retrenchment compensation.

6. Learned Tribunal appreciating the material and evidence available on record, held that it had come in the statement of the workman dated 2.7.2013 that he was 59 years of age and by then, he had already completed 60 years of age, i.e., age of retirement, so his reinstatement would not be proper. As such, learned Tribunal ordered payment of lump-

sum compensation of Rs.1.00 Lakh in favour of the workman.

7. Learned counsel for the Management contended that the writ petition as well as reference before learned Tribunal was not maintainable as earlier civil suit for declaration and injunction on the same cause of action was filed and the same was got dismissed as withdrawn without seeking liberty to file a fresh one with the permission of the Court and thereafter, raising of industrial dispute was not permissible as per law. On this point, reliance was placed upon judgments from Hon`ble Apex Court in **Executive Engineer, ZP Engg. Divn. Vs. Digambara Rao, 2005(1) SCT 636; Pondicherry Khadi & Village Industries Board Vs. P. Kulothangan and Anr. 2003(4) SCT 913**; Hon'ble Division Bench of this Court in **Gulzar Singh Vs. Director State Transport, 2017 (3) SCT 53** and Co-ordinate Bench of this Court in **Hoshiarpur Central Cooperative Bank Ltd. Vs. Presiding Officer, Labour Court and another 2005(1) RSJ 222.**

8. While arguing on this point, learned counsel for the workman contended that civil suit was filed under the apprehension that the services of the workman would be terminated, whereas, the other remedy by way of raising dispute before learned Tribunal was availed challenging the termination order and as such, the principle of *res judicata* is not available in the facts of the present case. On this point, reliance was placed on the judgments from Hon`ble Apex Court in **The Premier Automobiles Ltd. Vs. Kamlakar Shantaram Wadke, 1975 AIR (SC) 2238**; Hon`ble Delhi High Court in **Kewal Krishan Jaitely Vs. Acharaj Ram Kanpur, 2012 (3) Civ**

CC 286; and Hon`ble Madras High Court in **Kumari Estate Workers' Union, Nagercoil Vs. Modaile Easwari Estate, Ponmanai, Nagercoil & Anr., 1991 (2) CLR 921.**

9. Learned counsel for the workman contended that jurisdiction of the Civil Court is otherwise barred in such like cases and the only remedy was before learned Tribunal and that has actually been availed by the workman. He further contended that the workman was otherwise entitled to reinstatement, but the lump-sum compensation awarded by learned Tribunal is significantly on lower side as the workman had worked with the Management from 2.12.1993 to July, 2007 and he be awarded suitable compensation.

10. Having heard the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute to the main fact that earlier a civil suit was filed which was filed in the Court of Civil Judge (Senior Division), Moga and same was dismissed as withdrawn without seeking permission of the Court to file a fresh one. Even if the workman had filed civil suit while apprehending threat to his job and after passing of order of termination, proper course for him was to amend the civil suit or withdraw the suit and seek permission of the Court to avail alternative remedy, but that has not been done. There is also no dispute on the fact that in such like cases, the remedy available with the petitioner was either to file a civil suit or to raise industrial dispute. But if the workman has availed the remedy of filing a civil suit, which having been dismissed as withdrawn without seeking

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permission of the Court, the workman cannot adjudicate the same matter without permission of the Court and the remedy of raising an industrial dispute is completely barred. Such a view as taken by Hon`ble Division Bench of this Court in **Gulzar Singh's case (supra)** because if the workman had already availed his remedy before the Civil Court by assailing the order of termination, the finding recorded by the Civil Court becomes final. Same operates as res judicata against the workman. Applying the same principle of law to the present set of facts, the writ petition filed by the workman is not maintainable.

11. Identical view was taken by Hon`ble Apex Court in the cases of **Digambara Rao, Pondicherry Khadi & Village Industries Board** and Co-ordinate Bench of this Court in **Hoshiarpur Central Cooperative Bank Ltd.'s case (supra)**.

12. In view of the above, the CWP-20588-2015 filed by Krishna Auto Sales is allowed and the impugned award dated 03.07.2014 is set-aside and the CWP- 12690-2015 filed by the workman is dismissed.

(SHEKHER DHAWAN)
JUDGE

September 14, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes