

316 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-831-1996
Date of Decision: 10.08.2022

The Panipat Cooperative Sugar Mills Ltd. Petitioner

Versus

The Presiding Officer, Industrial Tribunal/Labour Court, Panipat and
another Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. C.B.Goel, Advocate,
for the petitioner.

Mr. Samrat Malik, Advocate,
for respondent No.2-workman.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned award/order dated 26.10.1994 (Annexure P-7) passed by respondent No.1, whereby relief of reinstatement with back wages has been granted to the respondent-workman.

The brief facts, as involved in the present case, are that the respondent-workman asserted that he was appointed as Bottling Attendant in the Distillery Unit of the petitioner-Sugar Mills in the year 1984. He continued to work as such upto 13.01.1990. On this day, his services were terminated without assigning any reason and without issuing any notice or payment of retrenchment compensation. Accordingly, he raised an

Industrial Disputes Act. The dispute was referred to the Labour Court. The said dispute has been answered by the Labour Court in favour of the respondent-workman. Hence, the present petition has been filed by the petitioner-employer.

Arguing the case, learned counsel for the petitioner-employer has submitted that the respondent-workman was engaged as daily wager. On 05.10.1988, the petitioner-employer had decided to adjust the workers engaged as daily wager against the permanent post of unskilled Bottling Attendants. Accordingly, the respondent-workman was appointed as Bottling Attendant against the permanent post. Since, the respondent-workman was being appointed against the permanent post, therefore, he was put on probation for a period of one year. However, the work and conduct of the respondent-workman during the probation period was not found to be satisfactory. Therefore, the probation period of the respondent-workman was extended for another term of one year, vide order dated 12.10.1989. Since, the respondent-workman failed to improve his work and conduct, therefore, the petitioner-employer had terminated his services, vide order dated 13.01.1990, in accordance with the terms of the appointment letter. It is also submitted that under the certified standing orders, the Managing Director of the petitioner-Mills has power to discharge the employees during the probation period. Accordingly, in compliance of the certified standing orders, the services of the respondent-workman were dispensed with. The order passed by the petitioner-employer was perfectly in accordance with the law. Learned counsel has further submitted that the Labour Court has

wrongly read the certified standing orders to hold that the Managing Director of the petitioner-employer could not have extended the period of probation beyond one year. Hence, the award passed by the Labour Court deserves to be set aside.

On the other hand, learned counsel for the respondent-workman has submitted that it is not even in dispute that the respondent-workman had completed 240 days of service on the date when his services were dispensed with. Therefore, the termination of services of the petitioner is squarely covered by the definition of 'retrenchment' as provided under the provisions of Section 2(oo) of the Industrial Disputes Act. To avoid the rigour of the provisions of the Industrial Disputes Act, the petitioner-employer had tried to take shelter under the provisions relating to probation on appointment of the respondent-workman against the permanent post. However, the exercise of powers by the Managing Director was in violation of the certified standing orders applicable to the respondent-workman; qua extension of the probation period. Since, the extension of the probation period was beyond the authority of the Managing Director; and was in violation of the certified standing orders, therefore, the termination of the services of the respondent-workman would be covered by the definition of 'retrenchment'. Hence, the award has rightly been passed by the Labour Court granting him the benefit of reinstatement with continuity of service and 100% back wages. No fault could be found with the impugned award as such.

Learned counsel for the respondent-workman has further pointed out that during the pendency of the present petition, the petitioner-

employer had reinstated the respondent-workman on 31.03.2005. However, while reinstating the respondent-workman, he was taken on fresh employment because of the pendency of the present petition. But after that re-employment, the respondent-workman continued till the age of superannuation and he has retired from service of the petitioner-employer on 30.04.2020. Therefore, as of now, it is only the question of financial benefits which accrues to the respondent-workman on account of the award passed by the Labour Court, needs to be decided.

Having heard learned counsel for the parties, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner-employer. It is not even in dispute that the respondent-workman had completed 240 days of service in 12 calendar months preceding the date of termination of his services. Therefore, the termination of services, per se, would be covered by the definition of 'retrenchment' as defined under Section 2(oo) Industrial Disputes Act. Although, to avoid the compliance of the provisions prescribed as pre-conditions for valid retrenchment, as required under the Industrial Disputes Act, the petitioner-employer had asserted that the probation of the respondent-workman was extended by the competent authority, and since the work and conduct of the respondent-workman was not found satisfactory even during the extended probation period, therefore, his services were terminated in accordance with the terms of appointment letter, however, even this argument does not come to help of the petitioner-employer in any manner. It is own case of the petitioner-employer that the services of the respondent-workman were covered by the

Certified Standing Orders. The said Certified Standing Orders dealt with the aspect of probation period of the workman as well. Under the said Certified Standing Orders, the maximum period of probation, with any extension, would have been for one year. The said Certified Standing Orders also stipulates that in case of completion of one year, the services of the workman shall stand regularized. Therefore, the Labour Court has not committed any illegality in not recognizing the extension of probation of the respondent-workman beyond the period of one year. Any action of extension of probation of the respondent-workman beyond the maximum period of one year has to be taken as *non-est* being *void ab initio*. Accordingly, the Labour Court has rightly treated the extension of probation beyond the period of one year as *non-est*. If the period of extension of probation beyond one year is ignored, then, obviously the termination of services of the respondent-workman is covered by the definition of 'retrenchment' as defined by Section 2(oo) of the Industrial Disputes Act. Hence, the petitioner-employer was under statutory duty to comply with the mandatory provisions relating to retrenchment of the respondent-workman. It is not even in dispute that such mandatory provisions have not been complied with by the petitioner-employer. No notice is stated to have been served upon the respondent-workman. No retrenchment compensation is stated to have been paid to him. Hence, the Labour Court has not committed any error.

In view of the above, finding no merit in the present petition, the same is dismissed. The award passed by the Labour Court is upheld.

The respondent-workman is held entitled to all the benefits as granted by the Labour Court.

Since, the respondent-workman already stands retired, therefore, it would be appropriate if the petitioner-employer is directed to grant all consequential benefits to the respondent-workman within a specified time. Accordingly, it is further ordered that the petitioner-employer shall calculate all the benefits available to the respondent-workman on account of reinstatement, continuity of service and the back wages, as granted vide award passed by the Labour Court; and to release the same within a period of sixty days from today.

(RAJBIR SEHRAWAT)
JUDGE

10.08.2022
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No