

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23037-2011 (O&M)
Date of Decision: 01.12.2023

PUNJAB URBAN PLANNING AND DEVELOPMENT AUTHORITY,
PUDA BHAWAN, SECTOR 62, MOHALI THROUGH THE
CHIEF ENGINEER

...Petitioner

Versus

SMT. TARA RANI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. D.V. Sharma, Senior Advocate assisted by
Mr. Chinmay Pratap, Advocate
for the petitioner.

Mr. Sharwan Sehgal, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioner (Punjab Urban Planning and Development Authority) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari*, for quashing of impugned Award dated 08.03.2011 (Annexure P-24) passed by respondent No.2-the Presiding Officer, Industrial Tribunal, Ludhiana (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute regarding termination of services of respondent No.1-Tara Rani, was decided in favour of the workwoman, by directing her reinstatement into service with 40% back wages from the date of filing of the demand notice till reinstatement.

2. Briefly, respondent No.1 (Tara Rani) raised an industrial dispute regarding termination of her services, which was referred for adjudication to the Tribunal below. As per respondent No.1-Tara Rani, she

was working as a Bill Clerk under the petitioner-Punjab Urban Planning and Development Authority, Ludhiana (here-in-after called as 'petitioner-management') at the wages of Rs.3740/- per month. She claimed that her services were terminated illegally and arbitrarily on 03.10.2000, without any notice, notice pay and retrenchment compensation and without holding any enquiry etc. It was further claimed by respondent No.1 that juniors to her, in the same category, were retained in service and other workmen, in the same category, were appointed after termination of her services. It was stated by respondent No.1 that her services were termination in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). Accordingly, respondent No.1 claimed reinstatement with continuity of service and full back wages.

3. The claim of respondent No.1-Tara Rani was contested by the petitioner-Management on the ground that no such employee by the name of Tara Rani has ever worked in their establishment and therefore, the question of terminating her services did not arise.

4. On merits, the averments made by respondent No.1-Tara Rani were controverted and prayer was made for rejecting the claim of respondent No.1-Tara Rani.

5. On the basis of the pleadings of the parties, the following issues were framed :-

“1) Whether the reference is not maintainable as alleged ?

2) Whether relationship of master and servant existed between the parties ?

3) Whether the order of termination of services of the workman is justified and in order ?

4) Relief.”

6. The parties led their respective evidence in support of their claims.
7. On the basis of the material/evidence placed on the record, the Tribunal below answered the reference in favour of respondent No.1-Tara Rani, by directing her reinstatement into service with 40% back wages from the date of filing of the demand notice i.e. 20.03.2001 till reinstatement, vide impugned Award dated 08.03.2011 (Annexure P-24).
8. Being dissatisfied, the petitioner-Management has filed the instant writ petition before this Court.
9. I have heard learned counsel for the respective parties and have perused paper-book as well as the impugned Award dated 08.03.2011 (Annexure P-24) passed by the Tribunal below.
10. In the statement of claim filed by respondent No.1-Tara Rani, she had specifically stated that she was working as a Bill Clerk under the petitioner-Management and her average pay was Rs.3740/- p.m., whereas, the petitioner-Management had terminated her services on 03.10.2000.
11. In response to the claim statement, the petitioner-Management submitted a reply of total denial by stating that no such employee by the name of Tara Rani was recruited/engaged in the organization.
12. Accordingly, the issue was framed by the learned Tribunal regarding the existence of relationship of employer and employee between the parties.
13. The learned Tribunal below has returned the following findings :-

“9. On these issues the representative of the workman has drawn my attention towards the statement of claimant Tara Rani WW-1 and documents produced by her Ex.W/2 to W/6 and also towards the statement of MW-1

namely Harinder Singh particularly towards his cross-examination and has argued that claimant Tara Rani is a 'workman' who worked as a bill clerk under the Respondent management on a monthly wage of Rs.3740/-. Without holding any inquiry, without any notice, without any notice pay or retrenchment compensation and in an arbitrary manner, her services have been terminated by the Respondent and, therefore, she is entitled to her reinstatement into service on old terms with continuity of service and with full back wages.

10. The representative of the Respondent management argued at length contending that the applicant is not entitled to any relief because her services have never been terminated by Respondent PUDA, rather she has never been on the rolls of the Respondent nor relationship of employer and employee existed between the parties. The claimant has not brought on record any appointment letter to show that she was ever employed by the Respondent. She has not brought on record any document showing that she has ever received any salary from the Respondent. She herself has admitted that she did not submit any application for job nor she received any appointment letter. Under these circumstances, treating her to be not the employee of the Respondent, she is not entitled to any relief of reinstatement or back wages.

11. After hearing the parties through their representatives and going through their oral as well as documentary evidence on record, the tribunal has reached at the conclusion that applicant Tara Rani had been in the employment of Respondent PUDA. The stand of the management is that of a plain denial, but the evidence collected and produced from here and there, by the claimant is suggestive of the fact that she has been working in some capacity or the other with the Respondent management. Ex. W/2 is the list of bill clerks working in the public health division PUDA, Ludhiana which has been

produced by the workwoman during her evidence. It shows two ladies working as a bill clerk under PUDA. One is Sh. Ramesh Kumari wife of Sh. R.K. Joshi and the other is Tara Rani wife of Sh. Satpal (present claimant) whose date of joining has been shown to be 1.5.1999. This document has been issued under the signatures of Divisional Engineer, Public Health, PUDA, Ludhiana. The Respondent witnesses MW/1 Harinder Singh has identified there over signatures of his Divisional Engineer. Similarly, Ex.W/4, Ex.W/5 and Ex.W/6 are three different noting sheets which have been initialed and recorded by present workwoman Tara Rani and had been submitted in due course of business to S.D.E., Public Health. The signatures on these documents have also admitted by the management through their witness MW-1 Harinder Singh. If the claimant had not been working under the respondents, there was no occasion for her signatures on these documents which had been submitted to and accepted by the S.D.E., Public Health PUDA also. Thus it abundantly stands proved that relationship of employee and employer exists between the parties. The plea of Respondent PUDA that the workman has never worked under them, is not believable.

12. Once the factum of relationship of employee and employer between the parties is proved, it was for the Respondent to prove that the services of the claimant have been terminated after adopting the procedure. There is no evidence that before the termination of her services, any show cause notice was issued to her, any inquiry was held, any notice or notice pay was given to her and thus termination of her services is bad in the eyes of law and in complete violation of Section 25-F of the Industrial Disputes Act. Her termination is ordered to be set aside and she is ordered to be reinstated into service with back wages but only at the rate of 40%.

Issue No.1

13. *In view of my findings recorded on issues nos.2 and 3, I hold that since the services of the workwoman have been terminated illegally, the reference moved at her instance, is maintainable.*

Relief

14. *In view of my findings on the aforesaid issues, the workwoman is reinstated into the service of the Respondent with 40% back wages from the date of filing of the demand notice i.e. 20.03.2001 till reinstatement. She is directed to report for duty within 30 days of the publication of award. The reference is answered accordingly. No order as to costs. File be consigned to record room”*

A perusal of the above extracted findings would manifest that the learned Tribunal has held that the termination of services of respondent No.1-Tara Rani, was in complete violation of Section 25-F of the Act, 1947.

14. Here, it would be apposite to refer to Section 25-F of the Act, 1947, which reads as under :-

“25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of that notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be

specified by the appropriate Government by notification in the Official Gazette).”

15. In order to determine the continuous service as envisaged under Section 25-F of the Act, 1947, one has to refer to Section 25-B of the Act, 1947, which reads as under :-

“[25B. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer –

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which –

- (i) *he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;*
- (ii) *he has been on leave with full wages, earned in the previous years;*
- (iii) *he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
- (iv) *in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”*

16. The provisions of Section 25-F of the Act, 1947 can get only attracted, if it is proved that the respondent workman had completed 240 days work under the Management in 12 calendar months preceding termination. The theory of 240 days as contemplated under Section 25-B of the 1947 Act was considered by the Hon’ble Supreme Court in the case of ***Mohd. Ali v. State of Himachal Pradesh and Ors., (2018) 15 SCC 641.***

17. In the instant case, respondent No.1 had pleaded that her services were terminated on 03.10.2000; therefore, the relevant period for seeing, as to whether respondent No.1-Tara Rani had completed 240 days’ work, would be 03.10.1999 upto 03.10.2000.

18. A perusal of the impugned Award dated 08.03.2011 (Annexure P-24) would reveal that no finding, whatsoever, has been rendered by the Tribunal on the issue as to whether respondent No.1-Tara Rani had rendered continuous service of 240 days, in terms of Section 25-B of the Act, 1947. It is not disputed that the Industrial Tribunal exercises original jurisdiction and on the basis of the pleadings, issues are framed whereon the parties led their respective evidence and ultimately, the

reference is decided by the Tribunal by taking into consideration the facts as pleaded and proved before it, which requires findings on the issues framed. Those findings become the basis for determining the rights of the parties. The basic requirement, therefore, of the original Court/Tribunal exercising its jurisdiction, is to determine the facts by giving its finding on the issues.

19. The basic contention, therefore, as raised by respondent No.1- Tara Rani, in her claim statement that her services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act, 1947, having not been looked into nor any finding having been recorded thereon; accordingly, the Award cannot be sustained and the same is hereby set aside.

20. Accordingly, the instant writ petition is partly allowed and the case is remanded to the Tribunal below for fresh adjudication, in the light of the observations made here-in-above, in accordance with law.

21. The petition is disposed of in the afore-stated terms.

22. Pending application/s, if any, shall also stand closed.

December 01, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No