

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-10989-2017 (O&M)
Date of decision :04.12.2023

RAM RATTAN

...Petitioner

Versus

THE PRESIDING OFFICER, LABOUR COURT, AMBALA
AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajesh Arora, Advocate
for the petitioners.

Mr. A.S. Virk, Advocate
for respondents No.2 and 3.

HARSH BUNGER, J. (ORAL)

1. Petitioner-Ram Rattan has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *mandamus* for modifying the award dated 03.12.2015 (Annexure P-8) passed by the Labour Court, Amabla (here-in-after referred to as 'the Labour Court'); whereby the petitioner was ordered to be reinstated with continuity of service; however, he has been denied the back wages.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the learned Labour Court below.

3. It appears that before the learned Labour Court, the representative of the petitioner-workman made a statement that his demand notice be treated as a claim statement. The petitioner claimed that he joined

the services with respondents No.2 and 3, herein (Management) on 01.05.2001 as a Helper/Beldar on daily wage basis in various Divisions and he performed his duties to the best of his ability; however, his services were illegally terminated on 01.06.2007, without giving him one month's notice or salary in lieu thereof and a retrenchment compensation, despite the fact that he had completed more than 240 days' service in the year preceding the date of his termination. Petitioner further claimed that the juniors to him had been retained in service and fresh hands have been appointed; therefore, he claimed that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short 'the 1947 Act').

4. The afore-stated claim of the petitioner was contested by respondents No.2 and 3 (Management) by controverting all material assertions of the petitioner-workman and accordingly, prayer was made for dismissal of the claim of the petitioner.

5. A perusal of the paper-book would reveal that the learned Labour Court, Ambala passed an Award dated 09.02.2011 (Annexure P-4), rejecting the claim of the petitioner. It is further borne out from the petition that a Writ Petition bearing **CWP-13034-2014** filed by the petitioner against the afore-said Award dated 09.02.2011 (Annexure P-4) came to be dismissed in *limini* by this Court and thereafter, the petitioner preferred **LPA No.2150 of 2014**, which was disposed of by observing that the petitioner's remedy would be to file an application for review. It appears that thereafter, the petitioner filed a review application before this Court, which came to be allowed vide order dated 17.07.2015 and by setting aside the

Award dated 09.02.2011 (Annexure P-4), the matter was remanded to the learned Labour Court, Ambala for deciding the reference afresh.

6. Upon remand, the learned Labour Court, vide impugned Award dated 03.12.2015 (Annexure P-8) has answered the reference in favour of the petitioner-workman by holding him entitled to be reinstated with continuity of service; however, the back wages were denied to him by observing that the workman has not maintained in his demand notice that he remained unemployed ever since the date of his termination.

7. Learned counsel for the petitioner submits that once the learned Labour Court below has come to the conclusion that the services of the petitioner have been terminated in violation of the provisions of the 1947 Act; accordingly, the petitioner should have been granted back wages by the learned Labour Court below. Accordingly, the petitioner, by way of filing the instant petition, prays that the impugned Award dated 03.12.2015 (Annexure P-8) passed by the learned Labour Court below be modified and necessary relief be granted to him.

8. Per contra, learned counsel appearing for respondents No.2 and 3 has opposed the prayer made on behalf of the petitioner by submitting that the learned Labour Court has passed a well-reasoned and justified Award, which does not call for any interference. It is submitted that as per the settled law, if the termination of a workman is held to be bad on account of the violation of the provisions of the 1947 Act; even then, the grant of relief of reinstatement with continuity and back wages is not automatic. It is submitted that the petitioner had not even claimed in his demand notice, which was treated as a claim statement that he had remained unemployed ever since the date of his termination; accordingly, the learned Labour Court

was justified in not awarding the back wages to the petitioner. Accordingly, prayer for dismissal of the writ petition has been made.

9. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

10. Contours of the scope of interference by High Court in disciplinary proceedings are well settled. In ***Union of India v. P. Gunasekaran***, 2015(1) S.C.T. 5, Hon'ble Supreme Court held as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a) the enquiry is held by a competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is violation of the principles of natural justice in conducting the proceedings;*
- d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

- g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.*

xxx

xxx

xxx

18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court...”

11. In the case of ***Management of Regional C.E. P.H.E.D. Ranchi v. Their Workmen Rep. by District Secretary, 2018(4) SCT 427***, Hon'ble Supreme Court held as under:

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

*13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, ***M.P. State Electricity Board v. Jarina Bee (Smt.)***, 2003(3) S.C.T. 625 : (2003) 6 SCC 141, ***G.M. Haryana Roadways v. Rudhan Singh***,*

2005(3) S.C.T. 559 : (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey, 2006(1) S.C.T. 77 : (2006) 1 SCC 479, J.K. Synthetics Ltd. v. K.P. Agrawal & Anr., 2007(2) S.C.T. 79 : (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan, 2009(3) S.C.T. 749 : (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr., 2009(3) S.C.T. 790 : (2009) 15 SCC 327) and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., 2013(4) S.C.T. 716 : (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

15. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

16. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to 37 workmen while directing their reinstatement in service.

17. We, however, find that the High Court in para 9 of the order placed reliance on the decision of this Court in Deepali Gundu Surwase (supra) for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in the case of Deepali Gundu Surwase (supra) itself, this Court referred decisions, which we have mentioned in para 13 above and then in

para 38 of Deepali Gundu Surwase, this Court culled out the ratio of all the cited cases. Thereafter, this Court in Deepali Gundu Surwase' case granted relief to the concerned workers on the facts involved in that case. In our opinion, the High Court did not apply the ratio of the decision in Deepali Gundu Surwase (supra) to the facts of this case properly and only quoted one para of the judgment in Deepali Gundu Surwase (supra) which contained general observations. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

18. We cannot, therefore, concur with such direction of the Courts below awarding full back wages to the workman which, in our opinion, has certainly caused prejudice to the appellant (employer).

19. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages..."

12. Keeping in view the afore-said legal position, it would be apposite to refer to the demand notice served by the petitioner-workman upon the respondents-Management, which reads as under :-

"To

- 1) The Vice Chancellor,
Kurukshetra University, Kurukshetra.*
- 2) The Executive Engineer,
Construction Branch, Kurukshetra University.*

Subject: Demand Notice under Section 2-A of the I.D. Act.

Sir,

It is, submitted as under :-

- 1. That the worker joined his services with the management in the year 01.05.2001 on daily wages as helper/Beldar in various Division under the addressee No.2 and SDO. The worker was appointed by the order of duly authority of the University.*
- 2. That the worker has been performing his duties to the best of his abilities and there was no complaint of any kind against him from any corner.*

3. *That the worker has been working continuously against a permanent post. And the work which the worker was working is of essential service as the conclusion branch is responsible for making the repair of existing building, residence departments, hostels and office etc.*
4. *That the worker worked upto 31.05.2007 and on 01.06.2007, the worker and his other colleagues were not allowed to perform their duties and the SDO told them that their services have been terminated. The worker has worked continuously with the management. He has completed 240 days during preceeding 12 twelve months. The worker was neither served with one month notice nor paid one month salary in lieu of notice and he was also not paid retrenchment compensation on or before terminating his services, which is violation of Section 25F of the I.D. Act.*
5. *That the management has terminated the services of the worker while exercising their colourful rights, illegally, arbitrary which is not tenable in the eyes of law, the management has terminated the services of the worker in order to avoid the membership of ESI, EPF etc. because there are more than 20 workers/employees are working there, which is also an unfair labour practice. The management has not terminated the services of the worker namely Ram Maruti, Baij Nath, Shiv Rattan, Jarnail Singh and other who are junior to him.*
6. *That the management has engaged new persons, through contractor which is also an unfair labour practice because the work which the worker was working is of permanent nature and does not require work through the contractor.*
7. *That the worker requested the concerned Xen, with his colleagues to reinstate him but he told him and his colleagues that respondent No.1 has not approved their name because he and his colleagues has a length of service and they have to regularize their services if working and his colleagues are retained in service and that is why he and his colleagues services have been terminated.*
8. *That the termination of services of the worker is illegal, null and void cryptic, unconstitutional on account of unfair labour practice and same is also in violation of Sec. 25F, 25G and 25H of the I.D. Act, which is not enable in the eyes of law and same is unable to be set aside.*

It is therefore, you are requested to reinstate the worker in service with full back wages and continuity of the service, in the interest of justice, equity and law.

Dated 18.06.2007

Note:

7 copies have been submitted before the labour-Cum-Conciliation Officer

Worker

Sd/-

*(Ram Rattan S/o Sh. Om Parkash)
H.No. 176/B, Vasant Vihar,
Karnal (Haryana)
Kurukshetra."*

13. A perusal of the aforesaid demand notice of the petitioner, which was treated as his claim statement before the Labour Court, would manifest that no averment was made by the petitioner that he was un-employed or was not gainfully employed post termination of his services.

14. It is well settled that it is necessary for the workman to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

15. Thus, in the facts and circumstances of the present case where the petitioner-Ram Rattan has not even claimed before the Labour Court that he has remained un-employed or not gainfully employed post termination of his services, the Labour Court was justified in not granting full back wages.

16. In view of the legal position as indicated above and in the peculiar facts and circumstances of the case, no interference is called for in the impugned Award dated 03.12.2015 (Annexure P-8) passed by the learned Labour Court. Resultantly, the instant petition fails and the writ petition is accordingly dismissed.

17. All pending application/s, if any, shall also stand closed.

December 04, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No