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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15072-2023

Date of decision : 11.09.2023

Ishwar Singh

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal cum Labour Court, Panipat and
others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sunny Namdev, Advocate (Legal Aid Counsel)
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Ishwar Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of the award dated 05.12.2022 (Annexure P-6), passed by the Industrial Tribunal cum Labour Court, Panipat (respondent No. 1 herein) whereby the reference was answered in the negative and claim statement filed by the petitioner-workman was dismissed.

2. Briefly, the petitioner-workman raised an industrial dispute by serving a demand notice under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') and thereafter filed a claim statement before the Industrial Tribunal-cum-Labour Court, Panipat (hereinafter referred to as 'the Tribunal').

3. As per the petitioner, he was appointed as a Peon in the Panipat Central Cooperative Bank Limited, Village Israna, District Panipat

(hereinafter referred to as 'respondent-Bank') in February, 2008 and claimed to have worked there upto 31.12.2016 under the control of the respondent-Bank. The petitioner-workman claims that his services were wrongly terminated on 01.01.2017 without any reasonable cause, prior notice, notice pay etc. As per the petitioner-workman, his service record was spotless and satisfactory and he was drawing Rs. 8,550/- per month salary and he had completed 240 days in a calendar year and thus, his termination was unlawful, arbitrary, against the principle of natural justice and in violation of Section 25-F of 1947 Act. The petitioner-workman further claimed that since his juniors have been appointed in place of petitioner-workman, therefore, respondent-Bank has violated the provisions of Section 25-H of 1947 Act as well. Accordingly, petitioner-workman sought reinstatement with full back wages alongwith continuity of service and other benefits.

4. The aforesaid claim of the petitioner-workman was contested by respondent-Bank by filing its written statement wherein it was categorically stated that the petitioner-workman was not appointed as a Peon, hence, there is no question of termination of his services. It is pleaded case of respondent-Bank that there was no relationship of servant and master between petitioner-workman and respondent-Bank. As per respondent-Bank, it had allotted the work of deploying the outsourced staff to Royal Security Agency, Sondhapur, Assandh Road, Panipat (respondent No. 3 herein) in the year 2013 and the petitioner-workman was engaged by the said respondent-Security Agency.

5. In the claim statement, one Royal Security Agency was also

impleaded as party respondent, which filed its separate reply wherein it was stated that respondent-Bank had allotted the work of deploying the outsourced staff to it in the year 2013 and the petitioner-workman was engaged by it (respondent No. 3-Security Agency) on the demand of respondent-Bank. It is the case of respondent No. 3-Security Agency that it never disengaged the services of petitioner-workman rather, the petitioner-workman quit his job on his own. It is further the stand of respondent No. 3-Security Agency that respondent No. 2-Bank had terminated the contract of the aforesaid respondent No. 3-Security Agency on 20.06.2018, vide letter No. Estt/2018-2019-1076 and thereafter, allotted the work to some other agency. Accordingly, it was prayed that the petitioner-workman was not entitled to any relief.

6. On the basis of the pleadings of the parties, the issues were framed and the parties led their respective evidence before the Tribunal.

7. After considering the pleadings as well as the material/evidence on record, the Tribunal, vide its Award dated 05.12.2022 (Annexure P-6), dismissed the claim petition filed by the petitioner-workman.

8. In the aforementioned circumstances, the petitioner-workman has filed the instant writ petition.

9. Learned counsel for the petitioner-workman submits that the Tribunal has erred in dismissing the claim petition of the petitioner-workman without considering the pleadings as well as material/evidence placed on record. It is submitted that the termination of services of the petitioner-workman was completely arbitrary, unreasonable and unjustified act on the

part of respondent-Bank. It is submitted that even today, respondent-Bank has engaged the services of outsourcing agency for the purpose of employing peon. Thus, the impugned Award is wrong and is liable to be set aside.

10. I have heard learned counsel for the petitioner and with his able assistance, have perused the paperbook.

11. A perusal of the claim statement would show that the petitioner-workman has categorically pleaded that he was appointed as a Peon by respondent-Bank with effect from February, 2008 and he worked there upto 31.12.2016 on a monthly salary of Rs. 8,550/-, however, his services were terminated by respondent-Bank on 01.01.2017 without assigning any reason, despite the fact that the petitioner-workman has completed more than 240 days continuous service and accordingly, petitioner-workman alleged violation of Sections 25-F, 25-G and 25-H of 1947 Act.

12. In order to substantiate its case, the petitioner-workman appeared himself as a witness as WW-1 and further examined Shri Ranjit Singh, Branch Manager as WW-2 and one Sehdev Singh, Clerk as WW-3; apart from leading documentary evidence.

13. On the other hand, respondent-Bank examined its Branch Manager Shri Anand Kumar as RW-1 and respondent No. 2 i.e. Royal Security Agency examined its proprietor Shri Mukesh Kumar as RW-2 and further led documentary evidence.

14. The learned Tribunal returned a finding that it was incumbent upon the petitioner-workman to prove that he was appointed as a Peon by respondent-Bank, however, verbal statement made by petitioner-workman

(WW-1) has not been corroborated by any documentary evidence like appointment letter, attendance record, payment of salary etc. from respondent-Bank. In this regard, the learned Tribunal has returned the following findings :-

“13. Keeping in view the arguments extended by the Ld. ARs for both the parties, in my considered opinion, it was incumbent upon the workman to prove that he was appointed as peon by respondent No. 1 however, the verbal statement made by the workman (WW-1) has not been corroborated by any documentary evidence like appointment letter, attendance record, payment of salary etc. from respondent No 1. It is pertinent to mention here that during his cross-examination dated 16.01.2020, the workman (WW-1) admitted that he was appointed in the year 2008 with respondent No. 1 through M/s Royal Security Agency. He further admitted that he was terminated by the said agency. He further deposed that he used to get salary in his bank account and that no attendance was marked. Suffice it to say that the admissions made by the workman have falsified his own case that he was ever appointed by respondent No. 1 as Peon. That RW-1 Sh. Anand Kumar, Branch Manager from the O/o the respondent No. 1 has categorically stated that there did not exist relationship of employee and employer between the workman and respondent No. 1.

14. In the present case, document Ex.W-3 shows that the same was written by the Branch Manager

of respondent No. 1 in which it was shown that the workman had been working since 01.01.2013 to 31.12.2014 as Peon in the Panipat Central Coop. Bank Ltd. Israna Branch and engaged by the Bank through Royal Security Agency, Panipat. In these circumstances, it is proved on record that the workman was appointed by the service provider i.e. respondent No. 2 and not by respondent No. 1.

15. Keeping in view my observations above, it stands proved that since the workman was neither engaged by respondent No. 1 nor salary paid by respondent No. 1 and rather, the workman was engaged through service provider and salary also paid by it, hence no relationship of employer and employee existed between respondent No. 1 and the workman. In the absence of evidence that there existed relationship of employer and employee between the parties, there was no occasion for alleged termination of the workman. Resultantly, this issue is decided against the workman.”

15. I have considered the aforesaid findings returned by the learned Tribunal and a specific query has been raised to the learned counsel for petitioner-workman as to whether there is any document/evidence which shows that the petitioner-workman was appointed by respondent-Bank, however, learned counsel for the petitioner-workman has been unable to refer or show any document in that regard. Further, it appears that in cross examination, the petitioner-workman has clearly admitted that he was appointed in the year 2008 through M/s Royal Security Agency and he

further admitted that he was terminated by the said respondent-Security Agency. Thus, the statement made by the petitioner-workman in his cross examination demolishes his entire case.

16. Faced with this situation, learned counsel for the petitioner-workman has submitted that the learned Tribunal should have at least granted the relief to the petitioner-workman against respondent No. 3 i.e. M/s Royal Security Agency. When learned counsel for the petitioner-workman was asked to show any demand notice raised against respondent No. 3 i.e. Royal Security Service, learned counsel for the petitioner-workman was unable to show any such demand notice. Infact, the demand notice (Annexure P-1) is only against the Panipat Central Co-operative Bank Limited.

17. In my considered view, once no demand has been raised against respondent No. 3 i.e. Royal Security Agency, the petitioner-workman cannot claim any relief against it. In this regard, reference can be made to the judgment rendered by Hon'ble the Supreme Court of India in Prabhakar Versus Joint Director Sericulture Department and anr., 2015 (4) SCT 493, wherein the following observation was made :-

“28. In this process, let us first examine as to what would constitute 'industrial dispute' because of the simple reason that the appropriate Government has power to refer what is known as an 'industrial dispute' and likewise the Labour Court/Industrial Tribunal has jurisdiction to decide if there is an industrial dispute. We are not going into the entire gamut of what constitutes 'industrial dispute' within the meaning of

Section 2(k) of the Act. Our focus is only on the aspect that what can be referred should be the dispute which is existing and in praesenti when the reference is sought. To put it otherwise, if it no longer remains an industrial dispute or industrial dispute 'does not exist' at that time, there would not be any question on making reference or adjudicating the matter as it is not an industrial dispute. 29. Section 2(k) of the IDA defines 'industrial dispute' and it reads as under :

"'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons;"

30. As per Section 2A dispute relating to discharge, dismissal, retrenchment or termination of an individual are also deemed as industrial dispute and, therefore, an individual is given right to raise these disputes.

31. The term 'industrial dispute' connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community. The expression 'dispute or difference' as used in the definition, therefore, means a controversy fairly definite and of real substance, connected with the employment or non-employment or with the terms of employment or the conditions of labour of any person, and is one in which the contesting parties are directly interested in maintaining the respective contentions.

32. *To understand the meaning of the word 'dispute', it would be appropriate to start with the grammatical or dictionary meaning of the term :*

'Dispute': "to argue about, to contend for, to oppose by argument' to call in question - to argue or debate (with about or over), - a contest with words; an argument; a debate; a quarrel;

33. *Blacks law dictionary, 5th Edition, page 424 defines 'dispute' as under :*

" A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

34. *Thus, a dispute or difference arises when demand is made by one side (i.e. workmen) and rejected by the other side (i.e. the employer) and vice versa. Hence an 'industrial dispute' cannot be said to exist until and unless the demand is made by the workmen and it has been rejected by the employer. How such demand should be raised and at what stage may also be relevant but we are not concerned with this aspect in the instant case. Therefore, what would happen if no demand is made at all at the time when the cause of action arises? In other words, like in the instant case, what would be the consequence if after the termination of the services of petitioner on April 01, 1985, the petitioner does not dispute his termination as wrongful and does not make any demand for reinstatement for number of years? Can it still be said that there is a dispute? Or can*

it be said that workmen can make such demand after lapse of several years and on making such demand dispute would come into existence at that time. It can always be pleaded by the employer in such a case that after the termination of the services when the workmen did not raise any protest and did not demand his reinstatement, the employer presumed that the workmen has accepted his termination and, therefore, he did not raise any dispute about his termination. It can be said that workmen, in such a case, acquiesced into the act of the employer in terminating his services and, therefore, accepted his termination. He cannot after a lapse of several years make a demand and then convert it into a 'dispute' what had otherwise become a buried issue..."

18. Thus, in the absence of any demand by the petitioner-workman against respondent No. 3 i.e. Royal Security Agency, the petitioner-workman would not be entitled to any relief against respondent No. 3.

19. In view of above discussion, I do not find any merit in the instant writ petition and the same stands dismissed.

20. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

11.09.2023
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No