

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

CWP-22979-2015

Date of Decision: 07.10.2023

Ramesh Singh

..... Petitioner

Versus

Presiding Officer, Labour Court-cum-Industrial Tribunal, U.T., Chandigarh
and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. N.K. Nagar, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Ramesh Singh) has filed the instant writ petition under Articles 226 and 227 of the Constitution of India seeking a writ in the nature of *Certiorari* for setting aside of impugned award dated 22.10.2012 (Annexure P-9) passed by the Industrial Tribunal-cum-Labour Court, U.T., Chandigarh (hereinafter referred as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner, regarding termination of his services, has been rejected.

A further prayer has been made by petitioner for directing the respondents to reinstate the petitioner in service along with all the other consequential benefits.

2. Briefly, petitioner raised an industrial dispute, regarding termination of his services. The said dispute was referred to the Tribunal below, for adjudication.

3. The Demand Notice served by the petitioner was treated as his statement of claim, wherein it was stated that petitioner was appointed by respondent No.2-PUNSUP (hereinafter to be referred as 'respondent No.2-Management') in September, 1985 and his services were terminated in the year 1987; thereafter, the petitioner was re-employed on 08.07.2002 by the District Manager, PUNSUP, Hoshiarpur, when his services were again terminated on 10.01.2005 in violation of Section 25-N of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Petitioner claimed that services of his junior, namely Lakha Singh son of Udham Singh, had been regularized during the period when petitioner remained out of service at the first instance. Accordingly, petitioner prayed for reinstatement in service with continuity thereof and back wages.

4. The aforesaid claim of petitioner was contested by respondent No.2-Management by raising the preliminary objection regarding jurisdiction of the Court and also that the petitioner had not come to the Court with clean hands. On merits, it was stated by respondent No.2-Management that petitioner was appointed as a Daily Wage Chowkidar on 01.04.1987, for security of wheat at Dasuya by the District Manager, PUNSUP, Hoshiarpur, and thereafter, he was discharged on 17.11.1987, after payment of due compensation. Petitioner was again appointed on 08.07.2002 as a Daily Wage Chowkidar for a period of twenty nine days and said engagement was extended from time to time; and ultimately, petitioner was discharged from service on 10.01.2005, after payment of due compensation as provided under Section 25-F of the 1947 Act. It was further stated that

Section 25-N of the 1947 Act was not applicable in this case as the Management had employed less than hundred workers. The averment of petitioner regarding retaining of his junior, namely Lakha Singh, was denied and it was stated by respondent No.2-Management that the said Lakha Singh was appointed on 15.06.1977 whereas the petitioner was firstly appointed on 01.04.1987 and thereafter on 08.04.2002. Accordingly, prayer for dismissal of the claim of petitioner was made.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW

(ii) Whether the reference is not maintainable? OPM

(iii) Whether the reference is bad for mis-joinder and non-joinder of the necessary parties? OPM

(iv) Whether this court has no jurisdiction to entertain, try and decide this reference? OPM

(v) Relief.”

6. In order to substantiate his claim, petitioner examined himself as AW-1. On the other hand, respondent No.2-Management examined Shri Kewal Singh, Junior Assistant as MW-1 and Smt. Kashmir Kaur, Senior Assistant, Labour Department, Punjab as MW-2.

7. Upon considering the material/evidence available on record, the Tribunal below rejected the claim of petitioner vide impugned award dated 22.10.2012 (Annexure P-9).

8. Being aggrieved against the aforesaid award, petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner. It is

submitted that the Tribunal below has failed to consider and decide as to whether the services of petitioner were terminated illegally by the Management or not; rather, petitioner has been non-suited only on the ground that he had concealed the material facts from the Court. It is further submitted that the retrenchment of petitioner was not in accordance with law.

With the aforesaid submissions, learned counsel for the petitioner prayed for setting aside impugned award dated 22.10.2012 (Annexure P-9) and to further grant necessary relief to the petitioner.

10. Per contra, learned counsel for respondent No.2-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed a well reasoned and justified order, which does not call for any interference by this Court. It is submitted that petitioner was appointed as Daily Wage Watchman by the District Manager, PUNSUP, Hoshiarpur in the month of February, 1986 and was discharged from service on 17.11.1987 by the District Manager. It is next submitted that petitioner was again appointed on 08.07.2002 as Daily Wage Chowkidar for 29 days and the said engagement on daily wage was extended from time to time and ultimately, petitioner was discharged from service w.e.f. 10.01.2005 after giving him due compensation as prescribed under Section 25-F of the 1947 Act by way of two drafts, i.e. Draft No.792973 dated 10.01.2005 for an amount of Rs.4,384/- and another Draft No.722972 dated 10.01.2005 for an amount of Rs.2,898/-, which were duly accepted by the petitioner. It is submitted that the petitioner had worked under the direct supervision and control of District Manager, PUNSUP, Hoshiarpur and no cause of action accrue to the petitioner at Chandigarh, therefore, the Industrial Tribunal at Chandigarh had no jurisdiction to consider the reference of industrial dispute

raised by the petitioner. It is further submitted that at Hoshiarpur, the Management of PUNSUP had employed less than hundred workers, therefore, Section 25-N of the 1947 Act has no applicability. It is also submitted that services of the petitioner were terminated after following the due process and paying retrenchment compensation to him; and there was no violation of any provisions of the 1947 Act. Accordingly, prayer has been made for dismissal of the instant writ petition.

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

12. The Tribunal below vide impugned award has answered the reference against the petitioner by observing as under:-

“17. In view, the workman has concealed material facts from the Court. In the demand notice he remained silent regarding the proceedings’ before the Assistant Labour Commissioner, Hoshiarpur with respect to challenge to retrenchment order under Section 25-F passed by the District Manager, Hoshiarpur. Entire job performed by the workman was in District Hoshiarpur under the District Manager. Fiver workers namely S/Shri Vyas Dev (present workman) Ramesh Singh, Resham Singh, Satnma Singh and Bhajan Singh were present before the Assistant Labour Commissioner, Hoshiarpur on 06.04.2005. Concerned official produced the documents before the Assistant Labour Commissioner with respect to their retrenchment but concerned workers refused to sign the proceedings before the Assistant Labour Commissioner. Admittedly, the workman has received retrenchment compensation under 25-F of the ID Act and he did not challenge the illegality of retrenchment before the present demand notice. Although the acceptance of compensation under Section 25-F itself did not debar the workman from challenging the legality of retrenchment under Section 25-N of the ID Act, concealment of proceedings from this Court which

took place before the Assistant Labour Commissioner, Hoshiarpur regarding the same retrenchment on behalf of the workman shows that he has not come to the Court with clean hands. Authority Eastern Coalfields Limited & Others Versus Kalyan Banerjee (supra) relied upon by the management is applicable to the facts of this case. Mere presence of Head quarter of PUNSUP at Chandigarh does not create jurisdiction in this Court at Chandigarh. Authority regarding jurisdiction Bhuna Co-operative Sugar Mill Versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Hissar (supra) relied upon by the workman is not applicable in this case because in the cited case objection of jurisdiction was raised by then employer at belated stage. Other authorities relied upon by the workman are also not applicable due to peculiar facts of this case discussed above. The workman did not join District Manager, Hoshiarpur in the present demand notice the case is bad for non-joinder of necessary party. In the light of discussion made above, all these issues are decided against the workman.

RELIEF:-

18. In the light of findings on the issues above, this reference is declined and is answered against the workman. Appropriate Government be informed. File be consigned to the record room.”

13. A perusal of the above extracted findings of the Tribunal below would reveal that the claim of the petitioner has been rejected primarily on the ground of jurisdiction, non-joining of necessary parties, mainly District Manager, PUNSUP, Hoshiarpur, and also on the ground of concealment of material facts as the petitioner had failed to disclose the proceedings before the Assistant Labour Commissioner, Hoshiarpur with regard to the challenge to the retrenchment order under Section 25-F of the 1947 Act.

14. In the instant case, learned counsel for the petitioner has primarily contended that services of petitioner were terminated without

following the provisions of Section 25-N of the 1947 Act, and therefore, termination of his services is bad. On the other hand, stand of respondent No.2-Management is that while terminating the services of petitioner, due compensation was paid to him and there was no violation of any provisions of the 1947 Act. As regards the averment of petitioner that provisions of Section 25-N of the 1947 Act have not been followed, it is submitted that the same are not applicable in the instant case as petitioner had failed to place on record any material to show that at any point of time, respondent No.2-Management had engaged more than one hundred workers.

15. I have considered the aforesaid submissions made on behalf of the rival parties. As regards the applicability of Section 25-N of the 1947 Act is concerned, it is observed that the said provision falls under Chapter V-B of the 1947 Act. The provisions of the said Chapter V-B are applicable to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) wherein not less than one hundred workmen were employed on an average per working day for the preceding twelve months. In the instant case, apart from a bald assertion on behalf of the petitioner that there is non-compliance of Section 25-N of the 1947 Act while terminating his services; no material/evidence has been placed on record to prove the said assertion, especially in view of the categorical objection of the respondent-Management that at Hoshiarpur, the number of workers employed by it were less than hundred workers and only the provisions of Section 25-F of the 1947 Act were to be complied with. In this view of the matter, I do not find any force in the submission of the petitioner that there is non-compliance of Section 25-N of the 1947 Act while dispensing with his services.

16. Further, as regards compliance of Section 25-F of the 1947 Act

is concerned, the respondent-Management has placed on record letter dated 10.01.2005 (Annexure R-1) whereby the petitioner was discharged from service after paying him retrenchment compensation and notice pay. The relevant extract of the aforesaid letter dated 10.01.2005 reads as under:-

“To,

Sh. Ramesh Singh S/o

Sh. Prem Singh

PUNSUP DASUYA

No. 4367

Dated: 10-1-2005

SUBJECT : DISCHARGE FROM SERVICE.

You were engaged by the Department as daily wages chowkidar for the security of Wheat etc. on 17/7/02 for 29 days. Thereafter according to requirement of the Department, your engagement on daily wages was extended from time to time. Now having become surplus, your services are no more required. You are therefore discharged with immediate effect as per terms and conditions of your engagement. Although your discharge from service does not amount to retrenchment and you are entitled to any Retrenchment Compensation, but still we are enclosing herewith a Bank Draft No.792973 dated 10.01.2005 worth Rs.4384/-. The detail of which is given below:-

<i>1. Retrenchment Compensation Rs.</i>	<i>2229.00</i>	
<i>2. Notice pay</i>	<i>2155.00</i>	<i>4384.00</i>

We are also enclosing herewith a draft No.792972 dated 10/01/05 amounting to Rs.2898/- on account of wages for the month upto 10/1/2005 (w.e.f. 1/12/04 to 29/12/04 and 1/1/05 to 10/1/2005)

DISTRICT MANAGER

PUNSUP, HOSHIARPUR

Endst. No.4368-70

Dated : 10-1-2005”

17. The receipt of the aforesaid amount in pursuance to letter dated 10.01.2005 has been admitted by the petitioner in his cross-examination, the relevant extract of which reads as under:-

“I have not brought any appointment letter today to prove my

appointment made by the management in September, 1985. This appointment letter is available with the management. I do not presently have the order passed in the year 1987 terminating my service by the management. My appointment was made by the District Manager, Hoshiarpur. I was again appointed in the year 2007 again said it was in the year 2002. I was appointed on 08.07.2002. I was given the appointment letter for the above appointment dated 08.07.2002 but I have not brought the said appointment letter today in the court. I do not know if my appointment was on daily wages or on regular basis. My job was of Chowkidar at the godowns hired by the PUNSUP.

- x - x -

It is correct that my whole tenure of appointment was under the District Manager, Hoshiarpur and I performed my duties at Hoshiarpur. My services were terminated by the management in the year 2005. I had not made any representation to the Labour Department at Hoshiarpur challenging my order of termination.

- x - x -

It is correct that I was discharged from the service by the respondent-management vide letter dated 10.01.2005. I have also received the payment vide Exs.M2 to M5. I did not make any representation to the management claiming three months salary and the compliance of Section 25-N except vide the present demand notice. I do not know that Lakha Singh S/o Udham Singh was senior to me and was appointed on 15.06.1977.

- x - x -

I do not have any record to show that the total strength in DM Office Hoshiarpur was more than 100 during the relevant time.

- x - x -

It is correct that the compensation has been paid to me by the respondent-management whereas I have no knowledge if any information is sent to the competent authority with regard to our discharge by the respondent-management.

- x - x -

I do not know whether my appointment made on 08.07.2002 was for 29 days or that the same was extended from time to time. In fact it was continuous in nature. It is wrong to suggest that I was informed by the management about my appointment on 29 days basis. On Exs. M1 to M5 the management had obtained my signatures without disclosing the intent of these documents. I do not know about the contents of my affidavit but I have signed the same. Volunteered, whatsoever is written in my affidavit is my correct deposition. I do not know what is written in my demand notice but its contents are my correct deposition. My authorized representative dictated by affidavit on my instructions. I cannot read English therefore I cannot spell out the contents of my affidavit. It is wrong to suggest that I have raised a false dispute with the management."

18. In view of the categorical admission of the petitioner that he was discharged from service by the Management vide letter dated 10.01.2005 and also that he had received the compensation/payment, it is held that there is no illegality or perversity in the action of the respondent-Management whereby the petitioner was discharged from service after paying retrenchment compensation as well as notice pay.

19. Considering the totality of circumstances, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

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

07.10.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No