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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25737-2016 (O/M)

Date of decision : 14.11.2023

Kashmir Singh

..... Petitioner (s)

Versus

The Presiding Officer, Industrial Tribunal, Bathinda and another

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Ravinder Kaur Manaise, Advocate (Legal Aid Counsel)
for the petitioner.

Mr. Rahul Sharma, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Kashmir Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of mandamus for directing respondent No. 2 to implement the award dated 28.08.1998 (Annexure P-4), passed by Industrial Tribunal, Bathinda (hereinafter referred to as 'Tribunal below'), whereby the industrial dispute raised by the petitioner was amicably settled between the parties and the petitioner was reinstated with continuity of service but without back wages.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by serving a demand notice upon respondent No. 2

(The Fazilka Cooperative Sugar Mills Ltd.) on the plea that he was serving as a Mali on the permanent job and his services were terminated with effect from 08.08.1991 without any notice, chargesheet, enquiry or compensation. Petitioner claimed that he was drawing Rs. 36.50 per day as daily wages. Petitioner further claimed that juniors to him had been retained and new hands had been recruited after his termination, therefore, his termination was against provisions of Industrial Tribunal Act, 1947 (hereinafter referred to as '1947 Act'). Accordingly, he prayed for reinstatement with continuity of service and full back wages.

3. The aforesaid claim of petitioner was contested by respondent No. 2 inter alia on the plea that the claim of the petitioner was time barred and also that he had not completed 240 days in 12 months preceding the date of his termination. The plea of petitioner that he was working with respondent No. 2 was admitted, however, it was stated that he was working as daily wage Mali. A categorical stand was taken by respondent No. 2 that the petitioner was never terminated on 08.08.1991 as he had worked upto 01.10.1991 and thereafter, he did not turn up to join his duty. Accordingly, prayer for dismissal of the claim petition has been made.

4. It appears that during the pendency of the proceedings before the Tribunal below, a settlement was arrived at between petitioner and respondent No. 2 on the term that management would reinstate the petitioner with continuity of service but without back wages. It further appears that the petitioner had agreed to the said settlement; subject to the condition that he reserves the right for regularization. In the aforesaid terms, the reference

was answered, vide award dated 28.08.1998 (Annexure P-4).

5. The petitioner filed the instant civil writ petition seeking implementation of the aforesaid award dated 28.08.1998 (Annexure P-4), however, a perusal of the instant writ petition would indicate that the petitioner has made following averments in para-5 thereof :-

“5. That in compliance of the award, petitioner/workman was joined on duty by respondent No. 2/management temporarily in October, 1998. It is pertinent to mention here that Labour Inspector Fazilka vide letter dated 01.03.1999 Annexure P-5 issued notice to respondent No. 2/Management for compliance of the award. Consequently, Respondent No. 2/management appeared before Labour Inspector on 17.03.1999 and stated that the workman has been joined on duty in compliance with the award, upon which the matter was adjourned. However, the petitioner/workman was again terminated on 21.03.1999 wrongly and illegally in complete violation of the award dated 28.08.1998 Annexure P-4, whereas his juniors namely :- 1. Brij Mohan, 2. Tara Chand (Mali), 3. Beant Singh, 4. Ami Lal, 5. Lakhwinder Singh, 6. Ekam Masih were still working.”

A perusal of the above extracted para-5 of the instant writ petition would show that it is the petitioner's own case that after the petitioner was made to join duty by respondent No. 2 in October, 1998; however, his services were again terminated on 21.03.1999, although the petitioner has referred to Annexure P-5 to Annexure P-11 to show that he has been approaching the authorities as well as Tribunal below seeking a way for filing

application for violation of the aforesaid award dated 28.08.1998 (Annexure P-4), however, there is an order dated 15.06.2010 (Annexure P-8), which reads as under :-

“Certified copy of order dated 15.6.10 in the case of Workman Kashmir Singh Vs. Fazilka Co-op. Sugar Mill Ltd.

Misc. App. No. 3/2007/99

Present: Sh. Manjit Singh representative for the applicant.

Sh. Jasvir Singh representative for the respondent.

In view of the statement of representative of the applicant, this misc. application is dismissed as withdrawn. However, the applicant may file a fresh application, if so advised, in accordance with law.

File be consigned to the record room.

Dated : 15.06.2010

sd/-

Presiding Officer

Industrial Tribunal

Bathinda”

6. After going through the paperbook, it is evident that the petitioner has clearly stated in para-5 of the instant civil writ petition that after he was made to join respondent No. 2, his services were again terminated on 21.03.1999. Therefore, in my considered view, new cause of action had accrued to the petitioner and further perusal of order dated 15.06.2010, passed by the Tribunal below would indicate that the petitioner was made aware of the fact that he would have to challenge the termination of his services on 21.03.1999 by filing a fresh application and

accordingly, it was observed in the order dated 15.06.2010 that the applicant i.e. the petitioner may file a fresh application, if so advised, in accordance with law. However, it appears that instead of filing a fresh statement of claim as regards his termination on 21.03.1999, the petitioner did not take any action and rather moved another complaint under Rule 29 for violation of the award dated 28.08.1998 (Annexure P-4).

7. At the time of issuance of notice of motion, the petitioner appears to have placed reliance upon the judgment rendered by this Court in Jagdish Chand Versus State of Haryana (1995) 2 SCT 54 to contend that the writ is maintainable for a direction to implement an award, however, in my considered view in view of categorical assertion made by the petitioner in para-5 of the writ petition that his services were again terminated on 21.03.1999, no relief can be granted to the petitioner in the instant proceedings.

8. In view of the above, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

(HARSH BUNGER)
JUDGE

14.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No