

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

CWP-18931-2023

Date of Decision: 13.12.2023

Sudhir Kumar @ Sudhir Kumar Singh

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurugram and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sandeep Saini, Advocate for
Mr. Mandeep Saini, Advocate
for the petitioner.

HARSH BUNGER J.

1. Petitioner (Sudhir Kumar @ Sudhir Kumar Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for setting aside of impugned award dated 06.04.2023 (Annexure P-3) passed by the learned Industrial Tribunal-cum-Labour Court-II, Gurugram (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute raised by petitioner, regarding termination of his services, has been answered against him.

A further prayer has been made by petitioner for directing respondent No.2 – M/s Baynee Traders (in short 'respondent No.2-

Management) to reinstate the petitioner with continuity of service and back wages.

2. Briefly, petitioner raised an industrial dispute by filing a claim application under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act') before the Tribunal below on the plea that he was appointed as Chowkidar (Guard) by respondent No.2 – M/s Baynee Traders on 01.04.1996 and he was getting the gross salary of Rs.10,000/- per month. Petitioner stated that no appointment letter was issued to him at the time of his appointment nor any wage slips were given to him. It was further stated by the petitioner that he continued to work with respondent No.2-Management till 04.11.2012, on which date, he met with an accident and remained admitted in the Hospital till 29.04.2013. Petitioner claimed that he reached at the Office of Company on 30.04.2013 and requested them to take him back on duty, however, he was not allowed to perform his duty and his services were orally terminated on 30.04.2013. Petitioner further claimed that on account of the accident, he suffered disability to the extent of 55%, regarding which a Disability Certificate has also been issued to him. It was claimed by petitioner that he had rendered services for a long period of 16 years, w.e.f. 01.04.1996 to 30.04.2013, and there was no complaint against him and that he had worked for more than 240 days. Petitioner stated that the Management had paid the medical allowance/medical treatment benefit of Rs.1,16,497/- during hospitalization of the petitioner, however, his services had been illegally and arbitrarily terminated without complying with the provisions of Sections 25-F and 25-G of the 1947 Act. Accordingly, he prayed for reinstatement in service along with all the consequential benefits.

3. The aforesaid claim of petitioner was contested by respondent

No.2-Management by submitting that the petitioner had joined the service of M/s Daga Trading Company w.e.f. 22.09.1990 and said Company has been closed since long, whereupon services of petitioner were taken over by respondent No.2-Management. It was stated that petitioner sustained injuries, while in service, and started remaining absent from duty, w.e.f. 04.11.2012. It was stated by respondent No.2-Management that considering the service of petitioner w.e.f. 22.09.1990, the Company paid him a sum of Rs.1,16,497/-, being bonus and gratuity, and no other allowance was outstanding against the Company. Respondent No.2-Management further stated that petitioner had already collected his full and final amount, by way of cheque, on 11.04.2013 and after receipt of the said amount, petitioner raised the demand notice; that too after the expiry of more than two years. It is the stand of the Management that it did not terminate the services of petitioner w.e.f. 30.04.2013, as claimed by him. The other allegations levelled by petitioner were also denied by respondent No.2-Management and prayer was made for dismissal of the claim of petitioner.

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

“(i) Whether the termination of services of workman as alleged is illegal and unjustified, if so to what effect?”

(ii) Relief.”

5. Thereafter, both the parties led evidence in support of their respective case. Petitioner appeared as as PW-1 and examined one summoned witness Sh. Ashok Kumar, Clerk from the Office of ALC-5. On the other hand, respondent No.2-Management examined its Sales Manager, namely Sh. Rajeev Sharma, as MW-1.

6. Upon considering the material/evidence available on record, Tribunal rejected the claim of petitioner, by holding as under:-

“11. For the sake of arguments, let us say that the claimant had gone to attend his duty on 30.04.2013. It seems that he was not allowed to enter the premises of respondent because the claimant had already taken his full and final settlement. Even if, it be taken that the claimant had not settled his dues and was entitled to rejoin the duty, he was required to submit fitness certificate that he was fit to do his duty, as he had remained an indoor patient for six months. During his cross-examination, the claimant PW-1 admitted that he was neither having Fitness Certificate nor could produce the same. In the circumstances, the respondent cannot be faulted if, it had not allowed the claimant to join duty on 30.04.2013.

12. At this juncture, learned AR for respondent contended that only a person with sound health can function as Chowkidar/S Guard and the claimant, who is having 55% disability, was unfit to discharge the duty of Chowkidar/S Guard. The contentions raised on behalf of respondent are sustainable because it is highly impractical that a person with 55% disability in the leg could discharge the duty of Chowkidar/S Guard. If the respondent is directed to reinstate the disabled claimant as Chowkidar/S Guard, not only the same would become a risk to the property of a respondent but also, risk to the health of claimant.

13. In the peculiar circumstances, it is to be taken that it is a case of termination of service of the claimant by the respondent on the ground of continued ill health. Such a situation has been dealt with under Section 2 (oo) (c) of the Act, which is being re-produced for ready reference:

Section 2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action but does not include –

(a)

(b)

(bb)

(c) Termination of the service of a workman on the

ground of continued ill-health.

14. At the most, the case of claimant falls under Section 2(oo) (c) of the Act and as such, alleged termination of claimant is not a retrenchment. It being not a case of retrenchment, claimant is not entitled for the protection of the Act particularly when the respondent has already paid an amount of Rs.1,16,497/- to the claimant through Cheque No.865303 dated 10.04.2013 drawn on HDFC Bank Ltd., Asaf Ali Road, New Delhi, regarding which the claimant had put signatures (admitted by him during cross-examination) on the receipt, copy of which is available on record as Ex.M-1. Hence, issue in hand is returned against the claimant.

Relief:

15. In view of my findings upon above-said issues, reference stands answered in negative. Copy of this Award be sent to Deputy Labour Commissioner, Gurugram for information and necessary action.”

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

8. Learned counsel for the petitioner submits that the Tribunal has erred in law and fact in rejecting the claim of petitioner. It is submitted that petitioner had rendered continuous service with respondent No.2-Management and his services have been wrongly terminated in violation of the provisions of Section 25-F of the 1947 Act by adopting unfair labour practice.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside impugned award dated 06.04.2023 (Annexure P-3) and issuance of necessary directions to respondent No.2-Management to reinstate the petitioner in service with all the consequential benefits.

9. I have heard learned counsel for the petitioner and perused the

paper book with his able assistance.

10. Learned counsel for the petitioner has not disputed the fact that petitioner has suffered disability to the extent of 55% in his leg. Concededly, the petitioner was engaged as Chowkidar (Guard) with respondent No.2-Management. Going by the nature of duties to be performed by a Chowkidar (Guard) and also the extent of disability suffered by petitioner, there is no dispute that the only sub-clause of the definition of “retrenchment”, which can cover the present termination of service is sub-clause (c) of Section 2(oo) of the 1947 Act, which reads as under:-

*“2(oo). “Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action **but does not include** -*

(a) voluntary retirement of the workman; or

(b) xxxx

(bb) xxxx

(c) termination of the service of a workman on the ground of continued ill-health.”

11. The true import of the expression “continued ill-health” has been stated by Hon'ble Supreme Court in the case of **Anand Bihari v. Rajasthan State of Road Transport Corporation 1991(2) S.C.T. 44**, wherein, while considering the case of drivers of the corporation who had developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the corporation; the expression “*ill health*” was considered and following observations were made:-

“7. Even otherwise, it can scarcely be disputed that the expression “ill-health” used in sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not an illness but that which interferes with the usual orderly functioning of the

duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted, it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workman is engaged which is relevant and material and should be considered for the purpose. The expression “ill-health” is defined in the new Collins Concise English Dictionary to mean “not in good health; sick”; in Webster's Comprehensive Dictionary (International Edition) to mean “disordered in physical condition; diseased; unwell; sick”; in the Concise Oxford Dictionary (3rd Edition) to mean “out of health”, unsound; disordered, morally bad”, and in Shorter Oxford English Dictionary to mean : “Unsound, disordered: out of health, not well:. Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workman's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorised as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worst still in cases such as the present one they will endanger the lives and the property of the consumers. Hence, we have to place a realistic and not a technical or pedantic meaning on the said phrase...”

12. In view of the aforesaid construction of term “ill health”, it is obvious that the termination of the services of the workman in the present case, who has suffered disability to the extent of 55%, would be covered by

sub-clause (c) of Section 2(oo) of the 1947 Act and the same would not amount to retrenchment within the meaning of Section 2 (oo) of the 1947 Act.

13. Once the case of petitioner does not fall within the scope of “retrenchment”, accordingly, petitioner is not entitled to protection under the 1947 Act. Further, it is also not disputed by learned counsel for the petitioner that petitioner has already received an amount of Rs.1,16,497/- from respondent No.2-Management.

14. Keeping in view the above discussion, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

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

13.12.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No