

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

LPA-1443-2015 (O&M)
Reserved on : 31.01.2023
Pronounced on: 22.02.2023

The Sabuana Multi Purpose Cooperative Agriculture Service Society Ltd.,
Sabuana, Tehsil & District Fazilka Through its Secretary
.....Appellant(s)

Versus

Presiding Officer Industrial Tribunal, Bathinda & another
.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Harbans Sharma, Advocate, for the appellant.

Mr.Rajinder Singla, Advocate, for respondent No.2.

G.S. Sandhawalia, J. :-

Consideration in the present Letters Patent Appeal, filed by the respondent No.2-writ petitioner, is to the order dated 06.08.2015 of the Learned Single Judge passed in CWP-3643-2013 titled *Gurnek Singh Vs. The Presiding officer, Industrial Trinunal, Bhatinda & another*, wherein the writ petition was allowed and the award of the Labour Court dated 15.02.2012 was set aside whereby the reference has been declined. Accordingly, the workman was held entitled for reinstatement in service with continuity of the same and 50% back-wages from the date of the receipt of the demand notice.

2. The reasoning on which the writ petition was allowed is that the workman had been transferred to the appellant-Society and there was an order of the Assistant Registrar, Cooperative Society dated 26.02.1997 (Annexure P-2) approving the resolution of transfer which had been sent

for approval. It was further held that the Management had only produced the audit report pertaining to 1996-97 upto 31.03.1997 and it is the case of the workman that he had been in employment with respondent No.2-Management since 1991 and reliance had wrongly not been placed upon the receipt of Rs.5000/- dated 09.01.1994 which had been taken by the employer. Accordingly, it was held that the receipt would show the relationship of employer-employee and accordingly, a finding was recorded that the provisions of Section 25-F of the Industrial Disputes Act, 1947 has not been complied with and no compensation had been paid to the workman. The plea that the workman had not joined the employer was held to be meaningless in view of the categorical averment in the claim petition and the fact that he remained unemployed after 1997 and the Management was held not to have led any evidence to the contrary.

3. A perusal of the paperbook would go on to show that the claim of the workman as per his claim statement was that he had worked as Salesman from 25.07.1981 to 26.02.1997 and his service had been illegally terminated on 26.02.1997 without any notice, show cause notice, enquiry or compensation. He was drawing Rs.2506/- per day/month at the time of termination from service and it was claimed that junior persons and newly appointed persons were working. It is pertinent to mention that neither there was any claim that he was initially working with Bandi Wala Cooperative Agriculture Service Society in his claim petition and that he had been transferred.

4. Apparently, at the initial stage, an ex-parte award was passed on 21.01.2010 against the Management which had then filed CWP-6936-2010 challenging the same which was allowed by this Court on 22.07.2011 and the matter was remanded for fresh decision.

5. The specific averment of the appellant was that he was never employed by them and that being duly constituted body under the Punjab Cooperative Societies Act, 1961, they were performing their business and maintaining the attendance register of its employees. Proceeding books for passing/transacting the resolutions were duly incorporated in the proceedings book with the consent and authority of the elected body which was checked after every 6 months by the Inspector, Cooperative. Department annual audits were being done and there was no resolution passed for the appointment of the said workman and neither there was any relationship of employer and employee. It was alleged that the resolution which was placed in the file was forged and fabricated and had no authenticity and the said reference was liable to be dismissed as it was claimed to be not maintainable as there was no relationship of employer and employee and therefore, no question of dismissal, discharge or retrenchment arose. It was specifically pleaded that there were 3 posts of Secretary, Salesman and Sewadar against which, Gurmit Singh, Surinder Singh and one Bhagirath were working and proper record had been maintained about its employees.

The following issues were framed by the Labour Court:

- “1. Whether there exist relationship of employee and employer between the parties and workman is entitled to relief as claimed for? (OPW)
2. If issue no.1 is proved, whether the termination of services of workman is legal, valid and justified? (OPM)
3. Whether the workman has got no locus standi and cause of action to file the instant claim? (OPM)
4. Relief.”

6. After examining the findings and the statements of the parties, it was held that the onus lay upon the workman to prove the relationship as employee and employer and the burden would be upon him

and accordingly, it was noticed that the appointment was with Bandi Wala Cooperative Agriculture Service Society vide resolution dated 25.07.1981. He had been declared surplus vide resolution dated 09.11.1991 and relieved in the year 1992 after having received permission from the Assistant Registrar. It was accordingly noticed that there was no documentary evidence that he had ever joined duties as Salesman with the present appellant-Society and marked his presence or had received wages. The resolutions (W-9 & W-10) which had been placed on record did not bear any number or date and rather it was held that these documents could not be said to have been passed by the Society in accordance with law. It was further held that resolution declining surplus also did not bear any number or date and neither there was any demand made by the present society or that there was any post lying vacant regarding the status of the workman. He had been declared surplus and there was a gap of more than 5 years as he was relieved in 1992 and there were allegations that he had joined the Society on 04.03.1997.

7. It was further noted that neither any joint account had been opened for disbursal of the wages and salaries by the Society and the record of the year 1996-97 upto 31.03.1997 had been placed and proved on the record which was the time when he had joined. Thus a finding was recorded that neither he was employee during the period nor he had received wages or salary and his name was not figuring in the report. It was held that there was no evidence to prove that he was an employee and accordingly, issue No.1 was held against the workman. Issue Nos.2 & 3 regarding the termination of services being valid and legal and the locus-standi of the workman were also accordingly decided in favour of the

Management and against the workman on account of issue No.1 being decided against the workman.

8. The pleadings would also apparently go on to show that there was no specific averment that he was initially appointed with the Bandi Wala Cooperative Agriculture Service Society and that he had been transferred. The specific defence was that there were only 3 employees with the Society. Apparently, the evidence was led beyond the pleadings which fact was not appreciated by the learned Single Judge. No appointment order was placed on record to claim the said benefit and neither there was any receipt of any salary paid or any termination order. All these aspects missed the notice of the learned Single Judge. In the absence of the pleadings even the appellant was handicapped and could have denied in the pleadings and taken a stance. It was not open for the learned Single Judge to accept a stance which was not even pleaded in his claim statement but has been wrongly accepted as gospel truth by the learned Single Judge.

9. Apparently, the alleged termination was in the year 1997 whereas the claim petition was only filed in March, 2006 and nothing has been shown as to the reason for the delay of over 9 years in preferring the same. Neither the learned Single Judge recorded any finding that there was a demand by the appellant-Society on the Bandi Wala Cooperative Agriculture Service Society that the said person was required. Therefore, any resolution passed by the Bandi Wala Cooperative Agriculture Service Society on 09.01.1997 transferring him and appointing him as a Salesman and seeking necessary transfer allegedly from the Assistant Registrar, Cooperative Society would not give the workman any right to enforce such a resolution also against the appellant-Society. There was never any

demand and neither any resolution has been placed on record that he was to be adjusted and had been appointed for which approval of the Assistant Registrar was called for. Rather resolution dated 17.01.1997 (Annexure P-3) by the Bandi Wala Cooperative Agriculture Service Society had been placed on record that the adjustment could not be done with the present appellant and therefore, he should be adjusted with one Cooperative Society at Chimbuana CASS.

10. In such circumstances, the stance of the appellant-Corporation that the resolution itself was forged was a factor which had to be considered and the onus had wrongly been shifted upon the Management. Reliance can be placed upon the judgment of the Apex Court in **Ganga Kisan Sahkari Chini Mills Ltd. Vs. Jaivir Singh, 2007 (4) RSJ 723**, to show that the burden of proof which lay upon the employee could not be shifted upon the employer.

11. Reliance can also be placed upon the judgment of the Apex Court in **Workmen of Nilgiri Cooperative Marketting Society Ltd. Vs. State of Tamil Nadu & others, AIR 2004 (SC) 1639** wherein it was held that the burden is on the person claiming the relationship of employer and employee and the one who alleges so and further the High Court while exercising powers of judicial review would not interfere unless the finding is manifestly erroneous or perverse.

12. Reliance can also be placed upon the judgment passed in **R.M.Yellatti Vs. The Assistant Executive Engineer, 2006 (1) SCC 106** wherein a Three Judge Bench of the Apex Court held that the High Court should not interfere with the findings recorded by the Tribunal and that the burden of proof would lie upon the workman and mere affidavits and self-

serving statements would not suffice. Relevant portion of the judgment reads as under:

“15. Analyzing the above decisions of this court, it is clear that the provisions of the [Evidence Act](#) in terms do not apply to the proceedings under [section 10](#) of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under [Article 226](#) of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.”

13. Thus, keeping in view the said settled principles, the reasoning given by the learned Single Judge and merely there was a mention in the letter of the Assistant Registrar that the resolution had been approved would not be suffice as it was specific case that the said letter

was forged. The learned Single Judge had never recorded a finding that there was any person from the State Government who had vouched for the said letter. Similarly the finding that the Management is only providing report pertaining to the year 1996-97 upto 31.03.1997 and that it is the case of the workman that he had been in employment since 1991 is also against the record.

14. It is the case of the workman himself that he was only employed in the year 1997 on transfer and there were no allegations that he had been working since 1991 immediately after he had been declared surplus in the earlier Society. Therefore, merely because he had opened an account on 09.01.1994 which showed a sum of Rs.5000/- which had been deposited by him would also be of no help since there was no such pleading of relationship of employer-employee for the year 1994 and therefore, the same was wrongly relied upon by the learned Single Judge.

15. Thus, in our considered opinion the judgment of the learned Single Judge is not based on the correct proposition of law and also suffers from a fatal flaw while appreciating the factual matrix in the correct perspective and therefore, same cannot be sustained. Resultantly, we allow the present appeal and set aside the judgment of the learned Single Judge dated 06.08.2015 and uphold the award of the Labour Court dated 15.02.2012 declining the reference.

(G.S. SANDHAWALIA)
JUDGE

22.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : Yes