

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-165-2017 (O&M)

Date of Decision: 17.04.2023.

M/s Jotindra Steel and Tubes Ltd.

...Appellant.

Versus

Shri Nath and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Manoj Kumar, Advocate for the appellant.

Ms. Abha Rathore, Advocate for respondent No.1.

M.S. RAMACHANDRA RAO, J.(Oral)

The instant LPA has been preferred against the order dt.08.11.2016 in CWP-3688-2015 of the learned Single Judge.

2. The appellant herein filed the said writ petition challenging the award passed by the learned Tribunal-cum-Labour Court dt.20.08.2014.

3. By the said award, the Tribunal had directed reinstatement of respondent No.1 with continuity in service with full back wages.

4. Before the Tribunal, respondent No.1 had contended that he had worked with the appellant from January, 2004 as 'Operator' and his last drawn salary was ₹2400/- per month and on 01.08.2005, his services were illegally terminated. He contended that, initially he was taken back in service w.e.f. 05.10.2005 under Section 12(3) of the Industrial Disputes Act, 1947 but his services were again terminated w.e.f. 27.10.2005 illegally. He contended that there was an accident in the factory of the appellant on

27.01.2005 in which three fingers of his right hand were amputated and he has not been paid his dues w.e.f. 06.10.2005 to 26.10.2005 and he also contended that his signatures were obtained on blank papers and vouchers.

5. The appellant had filed written statement contending that the Reference under Section 10 of the Industrial Disputes Act, 1947, was not maintainable, that respondent No.1 had no existing right for claim and he had not come to the Tribunal with clean hands. The appellant contended that respondent No.1 had worked through a Contractor-Shri Jagdish Singh from 03.01.2005 to 31.07.2005 and thereafter, he remained absent till he joined on 06.10.2005 and worked till 26.10.2005. It was contended that the appellant again absented from duties w.e.f. 27.10.2005 and his name was struck off on 31.10.2006 from the Muster Roll. It was contended that respondent No.1 joined as 'Helper' on casual basis and he had already collected his dues for the period of his work.

6. Respondent No.1 examined himself as a witness and reiterated his contentions in the claim statement filed before the Tribunal. He also marked documents as Ex.W-1 to W-3 which are copies of record of accident report from employer in form No.16. The accident according to the documents occurred on 27.01.2005 and it is on record that the three fingers of his right hand were damaged.

7. The Industrial Tribunal held that the claim of respondent No.1 was established and the appellant could not establish its stand that respondent No.1 was an employee of a contractor since no documentary evidence to prove the same had been led by the appellant before the Industrial Tribunal. It held that there is no evidence to prove that respondent No.1 had collected his dues as alleged in the written statement filed by the

appellant. It also held that there was no evidence to prove abandonment of service by respondent No.1 and that the appellant had failed to discharge the burden of proving the said fact in view of judgment of this High Court in **Bhuna Cooperative Sugar Mills Ltd. Vs. Mohinder Singh and another, 2001 LLR, 141** where it was held that striking off name of an employee from the Muster Roll amounts to “retrenchment of service” within the meaning of Section 2(OO) of the Industrial Disputes Act, 1947, and provision of Section of 25-F of the Act are to be complied with as has been held by Hon'ble Supreme Court in **Delhi Cloth and Genaral Mills Ltd Vs. Shambhu Nath Mukherjee and others, 1978 LLJ, 1.** It further held that there is no evidence to show that provisions of Section 25-F of the Act have been complied with and, so it held that the services of respondent No.1 were terminated illegally.

8. Challenging the said award, the appellant had filed CWP-3668 of 2015, wherein a plea was raised before the learned Single Judge by the appellant that respondent No.1 had not worked for 240 days and provisions of Section 25-F of the Act are not attracted.

9. The learned Single Judge held that workman/respondent No.1 had been appointed in January, 2004 and he had worked upto 27.10.2005; that there was an accident which occurred in the appellant's premises causing injuries to respondent No.1 which is established through Ex.W-1 to W-3 and the appellant had entered into a compromise on 05.10.2005 vide Ex.W-5 with respondent No.1 and reinstated him, but it later terminated him on 27.11.2005. Learned Single Judge therefore held that no ground is made out to interfere with the award of the Tribunal. However, it was held that respondent No.1 has not discharged the duties of the post during the

intervening period and he has not produced any material to show that he was not gainfully employed. So the order of full back wages granted to respondent No.1 was modified and the back wages were restricted to 80% back wages.

10. Challenging the said judgment of the learned Single Judge, this LPA has been filed by the appellant.

11. Learned counsel for the appellant submitted that respondent No.1 did not prove that he had worked for 240 days and that provisions of Section 25-F of the Act are inapplicable but in fact, there is no specific pleading in the written statement filed by the appellant before the Industrial Tribunal that respondent No.1 had not completed 240 days of service.

12. Admittedly, in the written statement filed by respondent No.1, it was stated that he had been working with the appellant since January, 2004 and that he was illegally terminated on 27.10.2005 by verbal order. This was also deposed by respondent No.1 as a witness.

13. To disprove the submissions of respondent No.1, no Muster Roll for that period has been produced by the appellant before the Industrial Tribunal.

14. It was merely pleaded that respondent No.1 had been engaged by a Contractor-Sh. Jagdish Singh from 03.01.2005 to 31.07.2005 but appellant did not produce the said agreement with the contractor to prove the said fact.

15. When such evidence is available with respondent No.1 to disprove the plea of respondent No.1 regarding the duration of employment, and it does not produce it before the Industrial Tribunal, naturally, adverse inference has to be drawn against the appellant that such evidence if

produced, would not support its case.

16. We, therefore, uphold the award of the Industrial Tribunal-cum-Labour Court rendered on 20.08.2014 as modified by the learned Single Judge in the order dt.08.11.2016 in CWP-3688-2015 and dismiss the LPA with costs of ₹20,000/- to be paid to respondent No.1 within six weeks.

(M.S. RAMACHANDRA RAO)
JUDGE

17.04.2023

Komal

(SUKHVINDER KAUR)
JUDGE

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