

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-2046-2017 (O & M)
Date of Decision: 09.02.2023

M/s. Hindustan Everest Tools Ltd.

.....Appellant(s)

Versus

Rajbeer and another

....Respondent(s)

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

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

Ms. Gurmeet Kaur, Advocate,
for Mr. Rajesh Duhan, Advocate,
for respondent No.1.

G.S.SANDHAWALIA, J.

Consideration in the present Letters Patent Appeal filed by the appellant-company is to the order of the learned Single Judge dated 04.10.2017 passed in CWP No. 23415 of 2012 whereby, the writ petition was allowed and compensation to the tune of Rs.2,00,000/- alongwith interest @ 8% per annum from the date of the award was directed to be paid. Further, interest @ 8% per annum was also directed to be paid on the gratuity amount of Rs.52,463/- which had been paid by way of cheque before the learned Single Judge while relying upon the judgment in ***Y.K. Singla vs. Punjab National Bank and others, (2013) 3 SCC 472.***

The challenge in the present appeal is not to the interest element awarded on the delayed payment of gratuity but only on Rs.2,00,000/- which had been awarded by way of compensation by the Management. Out of the said amount of Rs.2,00,000/-, 50% of the compensation was directed to be

stayed while issuing notice of motion by the co-ordinate Bench on 30.10.2017. The learned Single Judge took into account the fact that the workman was employed on 14.09.1974 and he had lost sight in one of his eyes and received injuries on his neck and shoulder on account of an accident on 07.11.2000. Charge sheet had also been issued to him on the aspect that his work and performance was not upto the mark. Eventually, his services were dispensed with on 30.06.2005. It was also noticed by the learned Single Judge that the company now stands closed since 15.12.2016. Resultantly, a finding was given that a detailed enquiry had not been done and his services had been terminated in a summary manner and it was illegal and arbitrary and while noticing that the workman would have retired from service on 15.05.2020 and the company was closed, the damages were awarded.

Mr. Ashwani Talwar, counsel for the appellant has vehemently submitted that the order is not sustainable as admittedly, the accident was not in the course of employment and, therefore, the company could not be saddened with the said liability. The specific defence as such before the Labour Court was that the work capacity had been reduced to 50% and opportunities have been given to him to improve. The accident had not taken place in the course of employment. In view of Section 2(oo)(c) of the Industrial Disputes Act, 1947 (in short 'the Act'), an exception was provided that termination of service of a workman on the ground of continued ill health was not retrenchment and, thus, stood excluded from the statutory protection. It was submitted that the last drawn monthly salary was Rs.3,372/- and a categorical finding as such had been recorded by the Labour Court regarding the statutory position as such vide its award dated

petition filed under Articles 226 and 227 of the Constitution of India since there was no perversity in the award of the Labour Court.

A perusal of the demand notice dated 16.07.2005 (Annexure P-2) issued under Section 2A of the Act would go on to show that reference had been made to the termination order dated 30.06.2005 (Annexure P-1) that his services were being terminated on account of his physical incapacity. In the notice itself, it would be clear that the applicant was transferred on 02.06.2005 from the R & D Department to the Packing Department. It is the case of the workman that it was for the purpose of torture and termination but apparently it is on account of the fact that the company was giving him a chance as such on account of his handicap so that he could be adjusted. It having not worked out, led to the termination on account of the fact that due to injury suffered by him in view of Section 14(a) of Certified Standing Order of the company, his services were dispensed with while referring to Section 2(oo)(c) of the Act. It was specifically mentioned that having completed more than 5 years in service, the entitlement for gratuity was also there which was to be paid after giving a written application.

The demand notice was duly replied before the Labour-cum-Conciliation Officer (Annexure P-3) in which it was specifically mentioned that the appellant was given proper opportunity to improve and perform his duty but he could not do so and the fact that he was involved in an accident while on duty was also denied. It was accordingly held out that since he was not fit to perform, the right decision had been taken. Similar was the stand taken in the written statement that the employee as such had been incapacitated to certain extent on account of the fact that he had attained

certain injuries when he had been hit by a Maruti car.

In *Escorts Ltd. vs. Presiding Officer, (1997) 11 SCC 521*, it was held that non-renewal of the contract of employment on the expiry of the contract as such would not amount to retrenchment. Resultantly, the orders of this Court and the Labour Court were set aside by the Apex Court.

The exceptions under Section 2 (oo)(bb) of the Act were subject matter of consideration by a three-Judge Bench of the Apex Court in *M. Venugopal vs. Divisional Manager, LIC of India, (1994) 2 SCC 323* wherein, it was held that it would not amount to retrenchment under the Act. Resultantly, the orders of the Labour Court were interfered with. The relevant observations in *M. Venugopal's case (supra)* read thus:-

“9.....Any such termination, even if the provisions of the *Industrial Disputes Act* were applicable in the case of the appellant, shall not be deemed to be "retrenchment" within the meaning of *Section 2(oo)*, having been covered by exception (bb). Before the introduction of clause (bb) in *Section 2(oo)*, there were only three exceptions so far as termination of the service of the workman was concerned, which had been excluded from the ambit of retrenchment (a) voluntary retirement; (b) retirement on reaching the age of superannuation; and (c) on ground of continued ill health. This Court from time to time held that the definition of "retrenchment" being very wide and comprehensive in nature shall cover, within its ambit termination of service in any manner and for any reason, otherwise than as a punishment inflicted by way of disciplinary action. The result was that even discharge simpliciter was held to fall

within the purview of the definition of "retrenchment". ([State Bank of India v. N. Sundara Money](#), AIR 1976 1111 : 1976 (1) SCC 822 : [Santosh Gupta v. State Bank of Patiala](#), AIR 1980 Supreme Court 1219 : 1980 (3) SCC 340. Now with introduction of one more exception to [Section 2\(oo\)](#), under clause (bb) the legislature has excluded from the purview of "retrenchment" (i) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment no such stipulation is provided or prescribed, then such contract shall not be covered by clause (bb) of [Section 2\(oo\)](#). In the present case, the termination of service of the appellant is as a result of the contract of employment having been terminated under the stipulations specifically provided under Regulation 14 and the order of the appointment of the appellant. In this background, the non-compliance of the requirement of [Section 25-F](#) shall not vitiate or nullify the order of termination of the appellant."

In such circumstances, we are of the considered opinion that the learned Single Judge as such is not justified in granting the relief and setting aside the order of the Labour Court in the absence of any perversity in the order of the Labour Court. It has been time and again held that in writ jurisdiction, the said exercise should not be done until the Writ Court comes to a finding that the award of the Labour Court is not legally sustainable and

suffers from legal lacunas and is perverse in nature. In ***Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, (2010) 8 SCC 329***, the scope and parameters of the writ Court under Articles 226 and 227 of the Constitution of India were spelled out and it was held that power must be exercised sparingly and it is for the writ Court to see that the sub-ordinate Courts act within the bounds of their authorities and interference is only where there is grave dereliction of duty and where failure of justice had been occasioned. Similarly, in ***Sh. Jogendrasinhji Vijaysinghji vs. State of Gujarat and others, (2015) 9 SCC 1***, it was held that the Division Bench would scrutinize the facts as to whether jurisdiction exercised by the learned Single Judge would fall upon the nature, contour and character within the parameters laid down while exercising the extra ordinary writ jurisdiction under Article 226 of the Constitution of India while referring to in a three-Judge Bench in ***Radhey Sham and another vs. Chabbi Nath and others, (2015) 2 RCR (C) 606***.

In ***General Manager, Electrical Rengali Hydro Electric Project, Orissa and others vs. Sri Giridhari Sahu and others, (2019) 10 SCC 695***, it was held that a writ in the nature of certiorari is meant to correct the errors of jurisdiction or where there is violation of principles of natural justice. In the absence of the learned Single Judge having recorded such a finding, we are of the considered opinion that there is no scope for interference in the well reasoned order of the Labour Court while keeping in mind the observations of the Constitution Bench in ***Syed Yakoob vs. K.S. Radhakrishnan and another, AIR 1964 SC 477***. In the latter, it has been held that if an error of law is apparent on the face of the record, it can be

exercising jurisdiction as a supervisory jurisdiction and does not act as a Court of Appeal.

Resultantly, keeping in view the above, we are of the considered opinion that the appeal is liable to be allowed and the order of the learned Single Judge dated 04.10.2017 is accordingly set aside. However, since 50% of the compensation amount has already been paid, as pointed out by counsel for the appellant and since the company also stands closed, in the peculiar facts and circumstances since the workman is also handicapped and would have utilized the said amount, we do not deem fit as such to direct refund of the said amount.

(G.S. SANDHAWALIA)
JUDGE

09.02.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No