

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

CWP-13061-2011 (O&M)
Date of Decision: 05.01.2024

RAHIS AHEMAD KHAN

...Petitioner

Versus

M/S MACHINO PLASTIC LIMITED AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashwani Bakshi, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for respondent No.1.

HARSH BUNGER, J.

1. Petitioner (Rahis Ahemad Khan) 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 quashing the Award dated 29.10.2009 (Annexure P-10) passed by the Industrial Tribunal-cum-Labour Court-1, Gurgaon (here-in-after referred to as 'the Tribunal'); whereby, the reference of industrial dispute regarding termination of services of the petitioner was answered against him.

2. Briefly, the petitioner-workman, who is stated to be 10+2 pass and possess ITI Diploma in Fitter, joined respondent No.1 (M/s Machino Plastic Limited) as a Machine Operator on 05.10.1987. It is the case of the petitioner that while working on a machine in the factory premises, he met with a serious accident on 28.04.1993; whereupon, he was admitted to the

hospital and since the injuries were serious, accordingly, it took long time for its treatment and ultimately, he was issued a fitness certificate on 04.04.1997. However, when the petitioner went to the factory to join his duties on 05.04.1997, he was not allowed to join. Thereafter, the petitioner is stated to have approached the management on 10.04.1997; however, again he was not allowed to join his duties. As per the petitioner, he submitted a certificate issued by IGESI Hospital, Jhilmil, Delhi, recommending that the petitioner may be considered for lighter work as he was physically disabled upto 75%. It is stated that the management had left the petitioner at his own fate after the accident and the attitude of the management was callous towards him inasmuch as, that even a charge sheet was issued to the petitioner on 07.02.1996 for alleged absence from duty, however, no further action was taken in that regard.

Being aggrieved by the illegal termination of services, the petitioner raised an industrial dispute by serving a demand notice dated 13.10.1997 on the employer. However, upon failure of the conciliation proceedings, the matter was referred to the Industrial Tribunal below for adjudication. It appears that the demand notice was treated as the statement of claim on behalf of the petitioner.

3. The afore-said claim of the petitioner was contested by the respondent-management; wherein the factum of accident as well as the injuries suffered by the petitioner was admitted. It was also admitted that the petitioner remained under treatment in E.S.I. Hospital as well as in All India Institute of Medical Sciences. The termination of the petitioner was sought to be justified under Section 2(oo)(c) of the Industrial Disputes Act, 1947 (for short 'the 1947 Act') by stating that under the said provision, the

employer can terminate the services of a workman on the ground of continued ill-health.

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

“1. Whether termination of services of Sh. Rahis Ahamad is not justified and if so, to what relief, he is entitled to ?

2. Relief ?

5. In order to prove his case, petitioner-workman examined himself as PW-1 besides proving documents Ex. P-1, Ex.P-2, Mark-1 and Mark-2, respectively and thereafter, the evidence from the petitioner's side was closed.

6. On the other hand, respondent No.1-management examined Sh. Naveen Chahar as MW-1 besides proving documents Ex.MW-1/1 and Ex.MW-1/2 and thereafter, the evidence from the side of respondent No.1-Management was closed.

7. After considering the material/evidence available on the record, the learned Tribunal below answered the reference against the petitioner-workman by rejecting his claim by holding that in terms of the standing orders of the management, the petitioner-workman was discharged from service due to continued ill-health. Accordingly, it was concluded that dispensing with the services of the petitioner-workman on the ground of continued ill-health cannot be said to be wrong or illegal, in any manner.

8. Being dissatisfied with the afore-said Award, the petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submitted that despite suffering disability to the extent of 75%, the petitioner is in a position to

work although he is on wheel chair but he is mentally alert and his hands are also in working order. Accordingly, it is submitted that the management could have taken some lighter work from the petitioner, in case, it did not want him to work on the machine. Learned counsel for the petitioner further submitted that the management has shown totally irresponsible and inhuman attitude towards the petitioner-workman, who was in his employment and has become physically disabled to the extent of 75% during the course of employment. It is submitted that the management did not even bother to provide any help for petitioner's treatment and he is getting only Rs.99/- per day from E.S.I., which is a very meagre amount. It is submitted that after the accident of the petitioner, he lost his wife also and even his son was murdered at the age of 20 years. It is submitted that the management was bound to pay sufficient compensation to the petitioner. It is further submitted that the Tribunal below has failed to consider that mere physical disablement incurred by a workman due to injuries received in the course of employment, cannot be termed as "continued ill-health" within the terms of Section 2(oo)(c) of the 1947 Act. It is submitted that once the petitioner has been granted fitness certificate, therefore, he could have been taken back in service. Accordingly, it is prayed that the impugned Award be quashed and appropriate directions be issued for re-instating the petitioner into service with all consequential benefits.

10. Per contra, learned counsel appearing for respondent No.1- Management has opposed the prayer of the petitioner by submitting that the learned Tribunal below has passed a well-reasoned and justified award. Learned counsel for respondent No.1 submits that the case of the petitioner is covered under section 2(oo)(c) of 1947 Act and termination of his services

does not amount to retrenchment. It is next submitted that during the pendency of the proceedings, the petitioner has attained the age of superannuation on 01.11.2016 and he is getting the disability pension from the Employees State Insurance Corporation. Learned counsel further submits that the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are not applicable. Accordingly, the prayer was made for dismissal of the writ petition.

11. I have heard learned counsel for the respective parties and have perused the paper-book as well as impugned Award dated 29.10.2009 (Annexure P-10) passed by the Tribunal.

12. Here it would be apposite to refer to the definition of "retrenchment" under Section 2(oo) of the 1947 Act, which is as follows :-

*"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) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) 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 or of such contract being terminated under a stipulation in that behalf contained therein; or

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

13. There is no dispute that the only sub-clause of the definition of “retrenchment”, which can cover the present termination of service is subclause (c) of section 2(oo) of the 1947 Act.

14. Although some submissions were made as regards the true import of the expression "continued ill-health", however Hon'ble Supreme Court in the case of **Anand Bihari v. Rajasthan State of Road Transport Corporation 1991(2) S.C.T. 44**, 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; construed the expression “ill health” as under:-

“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; sick; with disease; with anxiety (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..."

15. 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 75%, 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. Hence, the termination *per se* is not illegal, however, in the peculiar fact and circumstances of this case, I am of the view that another issue which would arise for consideration in the backdrop of the relevant provisions of our Constitution, is that whether the action of the Management in discharging the petitioner on account of "ill-health" is proper, equitable and

justified; moreover, when the petitioner had suffered disability to the extent of 75%, while performing his duties with the respondent-Management.

16. In the case of *Anand Bihari (supra)*, Hon'ble Supreme Court 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; observed that the discrimination against the employees such as the drivers in the said case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. It was observed that admittedly, no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation. It was stated that there is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. It was held that the injustice, inequity and discrimination is writ large in such cases and is indefensible. It was observed that the service conditions of the workmen such as the drivers in the said case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of theirs. Accordingly, Hon'ble Supreme Court evolved a scheme to give relief to such workmen and directed the Corporation as follows:

(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:

(a) where the employee has put in 5 years' or less than 5 years' service, the amount of compensation shall be equivalent to 7 days' salary per year of the balance of his service;

(b) where the employee has put in more than 5 years' but less than 10 years' service, the amount of compensation shall be equivalent to 15 days' salary per year of the balance of his service;

(c) where the employee has put in more than 10 years' but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service;

(d) where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(e) where the employee has put in more than 20 years' service, the amount of compensation shall be equivalent to two months' salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman... ”

17. Coming to the case in hand, a perusal of the order sheets in the instant case would reveal that vide order dated 08.01.2013 passed by this

Court, a direction was issued that the petitioner shall remain present at the factory premises on 18.02.2013 at 10:00 a.m. to carry out the exercise to determine whether he is capable of alternative employment.

18. Further, vide order dated 21.07.2016 passed by this Court, the Management was directed to examine, whether the petitioner can be accommodated as a Clerk or in the account section or phone operator or any other post having regard to his qualification.

19. It appears that in pursuance of the afore-said orders, since no response was forthcoming from the petitioner-workman, accordingly, on 27.08.2016, another order was passed to the effect that if the workman approaches the company at the earliest then the company would consider to accommodate the workman.

20. It further appears that on 13.01.2017, the petitioner was asked to report at the gate of the respondent-factory on 25.01.2017 upon which he would be provided work and an affidavit of compliance was sought.

21. A perusal of the file reveals that there is an affidavit dated 11.02.2017 submitted by the Executive Director of the respondent-Management stating that the petitioner has not visited the factory of the respondent on 25.01.2017 or any subsequent date in compliance of order dated 13.01.2017.

22. In the said affidavit dated 11.02.2017, the following averments have been made :-

“4. That it is further relevant to point out that as per the National Trade Certificate issued by the National Council for Training Vocational Trades, the date of birth of the petitioner is 01.11.1958. As per Rule 31 of the certified standing order of the company, the age of

retirement of a workman is 58 years. The requisite rule 31 is reproduced below for ready reference :-

“RETIREMENT

The workman shall retire from the services of the company on his attaining the age of 58 years. Declaration of age (date of birth) made at the time of appointment will be taken as final.”

5. That the petitioner has attained the age of superannuation on 01.11.2016 and thus, the company cannot keep him in employment at this stage.”

23. Apart from the above, even efforts were made to bring about an amicable settlement between the parties and on 16.04.2018, the following order was passed :-

“Learned counsel for the respondents submitted that in view of the order dated 19.03.2018, they were ready to pay Rs.2,00,000/- but the petitioner is not ready to accept the said amount.

List this matter on 01.05.2018.”

24. The above extracted orders passed on various dates by this Court would indicate that sufficient efforts have been made so as to explore the possibility of providing any alternate job to the petitioner and also to bring about an amicable settlement between the parties by providing adequate compensation. In fact, on 21.08.2023, learned counsel representing the petitioner submitted that he has not been able to contact the petitioner and sought time to get instructions and upon failure to get any further instructions from the petitioner, the arguments in the matter were heard.

25. The facts on record show that the petitioner had joined the respondent-Company as Machine Operator on 05.10.1987; however, on 28.04.1993, while performing his duties, he had met with an accident wherein, he was rendered handicapped as he suffered disability to the extent

of 75% and was discharged from service. It has come on record that the petitioner is getting pension to the tune of Rs.99/- per day from ESI. Learned counsel for the respondent-Management has stated that in terms of Rule 31 of the Standing Orders of the respondent-Company, the age of retirement of workman is 58 years and the petitioner attained the age of superannuation on 01.11.2016. There is no dispute that the petitioner suffered disability to the extent of 75% while performing his duties with the respondent-Company, on account of which the petitioner had to face premature termination of service on account of disabilities contracted from his job; while the other employees of respondent-Company would continue to serve till the date of their superannuation. Apparently, no special provision is made and no compensatory relief is provided in the eventuality of an employee/workman having suffered premature incapacitation, as has happened in the instant case. Although, the respondent-Management had offered an amount of Rs.2,00,000/- so as to bring about an amicable settlement between the parties, which was apparently not accepted by the petitioner, however, in my view, the afore-said amount of Rs.2,00,000/-, as offered by the respondent-Management is on the lower side.

26. Considering the totality of circumstances, in my considered view, the interest of justice would be met, if the petitioner is granted a compensation of Rs.3,50,000/-. Accordingly, the respondent-Management is directed to deposit the afore-said compensation amount with the Industrial Tribunal-cum-Labour Court-1, Gurgaon; within a period of one month from today, failing which, the afore-said amount shall attract interest @ 6% per annum. The petitioner shall be at liberty to approach the concerned Industrial Tribunal-cum-Labour Court-1, Gurgaon; to seek release

of the afore-said compensation amount, on moving an appropriate application and Industrial Tribunal-cum-Labour Court-1, Gurgaon shall release the said amount to the petitioner after due verification thereof against valid receipt. Accordingly, the instant writ stands disposed of in the afore-stated terms.

27. All pending application/s, if any, shall also stand closed.

January 05, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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