

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CWP-27377-2017(O&M)
Date of Decision:05.04.2024

THE JAT EDUCATION SOCIETY, ROHTAK AND ANR

.... Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, ROHTAK AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Naveen Kumar, Advocate for the petitioner.

Mr. R.K. Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate
for respondent No.2.

SANJAY VASHISTH, J.(Oral)

1. Petitioners i.e.(i) The Jat Education Society Rohtak and
(ii) All India Jat Heroes Memorial College, Rohtak (being
Management), have filed the present writ petition, assailing the award
dated 08.03.2017(Annexure P-6) passed by Industrial Tribunal-cum-
Labour Court, Rohtak, whereby reference No. 38 of 2004, filed under
Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, 'the
Act of 1947') has been answered in favour of respondent No.2-Sunil
Kumar (workman).

2. Present writ petition is the outcome of the second round of litigation in regard to the Industrial Dispute raised by the workman. At first instance, industrial dispute raised by the workman was decided by the learned Tribunal vide award dated 04.03.2014 by answering the reference against him. Thereafter, the workman challenged the said award by filing CWP No.22753 of 2014, before this Court (Punjab and Haryana High Court), the same was allowed vide judgment dated 22.11.2016 by setting aside the impugned award and directed the Labour Court to decide the reference afresh within a period of six months.

The operative part of the impugned award is reproduced herebelow:

“3. Learned counsel for the petitioner submitted that vide Annexure P-4 dated 5.12.2007, he submitted an application for summoning witnesses and records like muster roll/payroll and other service records pertaining to the petitioner. On 2.7.2010, one Raj Singh, Clerk of Jat College, Rohtak appeared and sought time that record would be made available in future date. However, the same was not complied by Raj Singh, Clerk. Ignoring the application for summoning service records relating to the petitioner, the Labour Court proceeded to pass award. Therefore, award of the Tribunal dated 4.3.2014 is set aside and the matter is remanded for consideration of application for summoning witness as well as production of records like muster roll/pay roll and other service particulars of the petitioner. The Labour Court is directed to decide the reference afresh within a period of six months from today. If any LCRs are received by the Registry, the same shall be returned to the Labour Court at the earliest”.

Accordingly, reference/industrial dispute was restored on 07.12.2016 to its original number for its re-decision.

3. Facts pleaded by the workman are that he was appointed as Assistant Computer Operator with The Jat Education Society (Management) with effect from 01.10.1996. Despite his work and conduct being satisfactory his services were terminated verbally on 24.12.2000 without assigning any reason. It was further pleaded that his appointment was against a regular post and the required working period of 240 days of service had been completed by him in the preceding Calendar year from the date of his termination. Since, the provisions of the Act of 1947, were not adhered to, same being violative of Section 25 F of the Act of 1947, and the principle of “***last come first go***” was also not followed causing violation of Section 25 G and 25 H of the Act of 1947. Thus, workman claimed the termination to be declared as unsustainable as per law.

4. In the written statement filed by the Management the pleadings raised by the workman were controverted by stating that there was no regular and sanctioned post of Assistant Computer Operator with the Management, and never any advertisement was published for inviting any application. Workman was asked by the principal of the respondent-college to work as a part-time worker at a fixed salary of Rs.2,000/- per month.

5. Further explained that petitioner had worked only from 01.01.1997 to 31.03.1997, 16.08.1997 to 31.03.1998 and 16.09.1998

to 28.02.1999. It was further pleaded that workman himself stopped rendering the services because he never showed up in the office after 28.02.1999, thus, Management pleaded that instead of calling it a case of termination, it could be said that the workman himself abandoned the service. Management also denied the completion of 240 working days and that the workman continuously worked upto 24.12.2000.

6. On the basis of the pleadings, the learned Tribunal framed the following two issues:

- “(i) Whether termination of services of Sh. Sunil Kumar is justified and if not, to what relief he is entitled? OPW*
- (ii) Relief.”*

Accordingly, to prove the issues, parties to the *lis* led their evidence and learned Labour Court reached to the conclusion that the reference was worth being allowed and thus, ordered for his reinstatement on the same post with continuity in service, alongwith 25% back wages and all other consequential benefits. Learned Tribunal found that the witness, namely, Raj Singh, Clerk, who appeared as MW1 made an admission during the cross-examination that workman had continuously worked with the Management from 01.10.1996 to 24.12.2000 as Assistant Computer Operator. He also admitted that no notice or retrenchment compensation was given to the workman before terminating him from service. From the statement of the said witness, learned Tribunal also concluded that the

required working of 240 days was also proved in the preceding one year from the date of his termination.

7. To clear the doubt of the actual working period of the workman with the Management, there was direction to produce the complete record such as the Muster roll and the attendance register etc (as noticed in paragraph No. 14 of the award). However, the same was never produced and resultantly, adverse inference was drawn by the Tribunal. Thus, drawing of adverse inference would mean believing the case put forth by the workman and disbelieving the defence put forth by the Management.

8. Additionally, Raj Singh, Clerk (MW1) also admitted to the fact, that no seniority list was prepared at the time of removal of the petitioner and that a new appointment had also been made after his removal. Such a deposition strengthens the plea raised by the workman and thus, it is a case of clear violation of Sections 25 F, 25 G, and 25 H of the Act of 1947.

9. During the course of the hearing, Mr. R.K. Malik, learned Senior Counsel, submits that the witness had deposed out of the record and against the truth, thus, in the interest of justice, his statement requires to be ignored.

This Court is not in agreement with such a contention, for the reason that Raj Singh, who appeared as MW1 is the witness produced by the Management itself and is supposed to speak truth,

moreover, there is no reason for the Court to conclude that his deposition is against the truth.

10. On the other hand, it is within the domain of the Management to produce the summoned record through witness Raj Singh or any other witness. In case, Raj Singh (MW1) was deposing against truth, Management could get the witness declared as hostile. However, no such attempt was made, therefore, Management would be bound by the deposition of its witness and cannot wriggle out of the same later on i.e. now.

11. Moreover, the present writ petition has been filed by the Management against the award passed by the learned Labour Court in favour of the workman. Workman has been out of the job for the last more than 23 years and as stated by the counsel the back wages under Section 17-B of the Act of 1947 have never been paid to him. This way, Management has deprived the workman with the relief granted by the Labour Court.

12. In view of the aforementioned reasons, recorded by learned Labour Court and also affirmed by this Court, I do not find any reason to interfere with the findings recorded by the learned Labour Court. While maintaining the same, the present petition is hereby dismissed.

April 05, 2024
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no