IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-17945-1997 (O&M)
Decided on : 05.04.2024

Gopal Krishan

. . . Petitioner(s)

Versus

State of Punjab and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rohan Garg, Advocate as *Amicus Curiae* for the petitioner(s).

Mr. Prabhdeep Singh Dhaliwal, Astt. AG, Punjab.

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SANJAY VASHISTH, J. (Oral)

1. Despite information given by the Registry, no one has put in appearance on behalf of the petitioner.

2. Considering the fact that the termination from service of the workman relates back to 28.08.1987 and reference under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), had been answered against the workman vide impugned award dated 03.10.1997; this Court deems it appropriate to dispose of the present writ petition after seeking assistance of some counsel of this Hon'ble Court.

3. Accordingly, Mr. Rohan Garg, Advocate (Enrolment No.PH/5566/23) (Mobile No.88474-23005) who is present in Court, is appointed as *Amicus Curiae*, in the present writ petition.

After granting him reasonable time to prepare the petition and address arguments, learned *Amicus Curiae* explained the facts and argued the writ petition on behalf of the petitioner – Gopal Krishan (workman).

4. Petitioner – Gopal Krishan (workman) has filed the present writ

petition challenging the award dated 03.10.1997 (Annexure P-10), passed by respondent No.2 – Industrial Tribunal and Labour Court, UT Chandigarh (in short, 'learned Tribunal'), whereby, reference under Section 10(1)(C) of the ID Act, requiring to adjudicate the industrial dispute, has been answered against the workman.

5. Pleaded case of the workman through demand notice and the claim statement is that he joined as 'Chowkidar' in the office of respondent i.e. Director, Social Welfare Punjab, Chandigarh (Management), vide order dated 31.12.1985, and worked there uptill 18.08.1987. After serving for more than 240 days, he was terminated illegally and arbitrarily, without even complying with the provisions of the ID Act. Thus, there being violation of provision of Section 25-F of the ID Act, he prayed his reinstatement with continuity in service with full back-wages.

6. In the written statement filed by the Management, a specific stand is taken that there was a regular post of Chowkidar, and for a short period, workman was appointed and his services were dispensed with on filling of the post of Chowkidar, on regular basis, as the services of the workman were no longer required. A civil suit was also filed by the workman, which had been withdrawn by him, after a period of seven years. Thus, prayed for dismissal of the claim statement filed by the workman.

7. After considering the pleadings of the parties, learned Tribunal framed the following issues:-

> *"1. Whether the services of workman were terminated illegally by the respondent, if so to what effect and to what relief he is entitled? OPW.*
>
> *2. Relief."*

8. While deciding the issue No.1, learned Tribunal noticed the contention of the workman in paragraph No.6 of the award, stating that he was appointed as Chowkidar in December, 1985, up to 28.01.1986. Thereafter, from 01.03.1986 to 28.02.1987, 01.03.1987 to 28.05.1987 and 01.06.1987 to 17.08.1987. Thus, his services were terminated on 18.08.1987, without any retrenchment compensation or without serving notice or notice pay.

Accordingly, demand notice was issued on 25.04.1994, by the workman, after withdrawal of the civil suit from the Civil Court in appellate jurisdiction.

9. On the other hand, Management examined one witness namely Harjeet Singh, who, while controverting the case of the workman, disclosed that on contingency basis, workman was appointed from 26.12.1985 to 28.02.1986 vide order dated 31.12.1985, passed by the Director, Social Welfare (Ex.W1), and said appointment was further continued by giving extensions. As per the condition in the appointment letter, workman could be terminated any time without any notice. His last service period after extension was 01.06.1987 to 18.08.1987. However, said witness deposed that there was no regular post of the Chowkidar in the Department.

10. Learned Tribunal without discussing much about the nature of the job, total working period, requirement of notice, notice pay or non-payment of retrenchment compensation, primarily went to discuss the maintainability of the reference before it. Learned Tribunal declined the reference by observing that for the same cause, workman had filed the civil suit before the Civil Court, which was decreed in his favour, but during the pendency of the appeal filed by the Government Pleader of State of Punjab

(Management), statement regarding the withdrawal of the suit was given, but neither the permission to withdraw suit with liberty to seek remedy under labour law was sought by him, nor same was granted to the workman. Therefore, reference under Section 10(1)(C) of the ID Act, was held to be not maintainable.

11. To repel the said observation given by the learned Tribunal, learned *Amicus Curiae* firstly submits that undoubtedly there was a civil court decree in favour of the workman, but matter being covered by the provisions of the ID Act, during the pendency of appeal filed by the Management, it was happily agreed by the workman to withdraw the suit, to enable him to seek the appropriate remedy under the law i.e. under the ID Act. He further refers to the statement given by the parties before the Civil Court in the proceedings of the civil appeal, pending in the Court of Sh. I.C. Aggarwal, learned Addl. District Judge, Chandigarh. The statement given by the workman (as respondent in the civil appeal) is referred and same is reproduced herein-below:-

"Statement of Mr. B.M.Bedi, for the respondent.

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I may be permitted to withdraw the suit to seek remedy under labour law.

R.O. & A.C.. *Sd/-*
A.D.J.
21.2.94

Sd/-
(B.M. Bedi)
Adv. "

Statement given by by the Management (appellant in the civil appeal), is referred and is reproduced herein-below:-

"Statement of Sh. Himet Singh, G.P.

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In view of the statement of the counsel for the

respondent, this appeal has become infructuous and same may be dismissed as such.

R.O. & A.C. *Sd/-*
A.D.J.
Sd/- *21.2.94.*
(G.P.) *"*

Order passed by the Lower Appellate Court is also referred by the learned *Amicus Curiae*, which is also reproduced here-under:-

"Present: G.P. for the appellant.
Counsel for the respondent.

ORDER

In view of the statement of the counsel for the respondent and the G.P., which shall form part of this order, this appeal is, hereby, dismissed as such.

Announced. *Sd/-*
Addl. District Judge,
21.2.94. *Chandigarh."*

12. In the backdrop of the circumstances, finding recorded by learned Tribunal in paragraph Nos. 8, 9 and 10, are also reproduced here-under:-

"8. I have carefully gone through the evidence produced by the parties in support of their respective contentions. Admittedly the workman availed of the civil remedy by filing a suit in the civil court. The said suit was decreed as per copy of the judgment Ex.W1. The point of jurisdiction was also adjudicated in favour of the workman. The respondent preferred an appeal but during the pendency of the appeal, counsel for the workman made a statement withdrawing the suit itself. For proper appraisal the statement suffered by counsel for the workman is reproduced as under:

'I may be permitted to withdraw the suit to seek remedy under Labour Law.'

Further on the statement having been suffered by the Govt. Pleader, the appeal was dismissed as having become infructuous and the appellate court dismissed the appeal too, on the basis of statement suffered by counsel for the workman and the statement

suffered by the Govt. Pleader. For proper appraisal the order passed by the Ld. Addl. District Judge, Chandigarh on 21.2.1994 is reproduced as under:-

> *'In view of the statement of the counsel for the respondent and the GP, which shall form part of this order, the appeal is hereby dismissed as such.'*

9. A careful perusal of the statement of counsel for the workman and the Govt. Pleader, and the judgment passed by the appellant Court, I find that the counsel for the workman simply suffered the statement that he may be permitted to withdraw the suit to seek remedy under Labour Laws. No permission was sought by him, that may be allowed to seek the remedy under Labour Law. This statement made by counsel for the workman, withdrawing the suit with permission to file fresh on the same cause of action, even if takes to be correct, do not grant the permission to withdraw the suit and cannot be taken that the court also granted permission to file fresh suit on the same cause of action, as the statement cannot be split up into two parts. In the case in hand, a bare perusal of the statement suffered by counsel for the workman discloses that no permission was ever sought by the counsel that he may be allowed to withdraw the suit with permission to file fresh one under the Labour Law. He simply sought the permission to withdraw the suit to seek remedy under the Labour Law. No ground has been assigned by him as to what made him to withdraw the suit more especially when the suit was decreed by the trial Court. The point of jurisdiction too was adjudicated in his favour and the appeal was filed by the respondent department, wherein, the judgment and decree of the trial court was assailed. No grounds on which the judgment of the trial court was assailed have been brought on record to give an inference that apprehending acceptance of appeal, counsel for the workman withdraw the suit itself. So, in these sets of circumstances, when the workman had already availed of the remedy, he cannot now plead that he could have sought the remedy under the Labour Laws as well, more especially when demand notice too was served by him at a belated stage i.e. on 25.4.94, wherein, he cahllenged his terminated dated 18-8-87. By suffering the statement suo-moto for withdrawal of the suit, will not give him the benefit of the period which he exhausted while availing

in civil Court.

10. So taking into consideration, the totality of the facts and facts of the case, the issue stands disposed of accordingly against the workman and in favour of respondent."

13. Thus, learned *Amicus Curiae* submits that the purpose of the law is to give easy access to each and every litigant, especially who are from the weaker strata of the society. In the present case, mistakenly or due to ill advise, the workman had approached to the wrong forum, therefore, declining the reference on this short ground that the demand notice was issued after a long time and that there was no permission to file a demand notice, is incorrect approach adopted by the learned Tribunal.

14. On the other hand, learned State counsel representing the Management, while defending the impugned award submits that firstly, the act and conduct of the workman is sufficient to note that initially he approached to the inappropriate forum, where, claim could not be entertained. Secondly, the observation had already been given that no permission was granted by the Civil Court in appellate jurisdiction to relegate the workman, to seek remedy under the ID Act. Thus, he supports the reasoning given by the learned Tribunal in the impugned award.

15. I have examined and considered the impugned award, there is no doubt that while deciding the reference, learned Tribunal has not made any effort to examine the genuineness of the industrial dispute referred to it. In fact, the question of industrial dispute was never opened and considering the aspect of earlier approaching to the Civil Court and then filing of demand notice at a belated stage, without there being any permission to do so in specific, the reference has been answered against the petitioner –

workman.

16. I have gone through the reasoning assigned in the impugned award and also minutely perused the statements given before the Civil Court. Undoubtedly, the issue raised through the demand notice, could be decided only by the Industrial Tribunal-cum-Labour Court by dealing with the reference under Section 10(1)(C) of the ID Act. However same came up before it at the belated stage and after inviting of a judicial verdict of the Civil Court. Another undisputed fact is that the workman succeeded in his first attempt by earning a favourable order from the civil Court (Trial Court). Thereafter, when the issue was taken up to the Appellate Court, then from the circumstances, it appears that the issue of maintainability of civil suit arose and in this backdrop of circumstances, there was no other option with the workman, except to withdraw the suit, to enable him to seek his remedy under the provisions of the benevolent statute i.e. Industrial Disputes Act, 1947, which is enacted for considering the grievances of the workman more liberally.

17. Since, the civil suit had been entertained by the Civil Court and also decreed at the first instance, the workman cannot be attributed with every fault of his filing of the civil suit. Somehow situation could have been taken against the workman, if civil court decree, which was in his favour, pressed to be maintained before the Appellate Court also. Thus, the period of the pendency of the civil suit, should not be considered detrimental to the interest of the workman.

Secondly, if the statement recorded by the parties are also carefully understood, it gives a positive impression that the permission for withdrawal was granted with the idea to enable the workman to approach the

Labour Court. The statement dated 21.02.1994 of the workman clearly states that he is not simply withdrawing the suit, but in clear terms by **seeking permission to withdraw the suit**, **to seek remedy**, **under the labour law**.

In response to the said statement, Management neither opposed nor supported the request of the workman, however, stated that the appeal had become infructuous, which appears to be incorrect understanding of the respondent about rendering of the appeal, *'as infructuous'* for the purpose of its dismissal.

18. Now, coming to the order dated 21.02.1994, passed by the Addl. District Judge (ibid), it can be understood as mentioned here-under, *"**in view of the statement of the counsel for the respondent & the Govt. Pleader, which shall form part of this order, this appeal is hereby dismissed as such",*** which impliedly means that same is finally disposed of in view of the statement of the workman. Thus, applying the principle of harmonious construction for the purpose of interpretation of the statements and the order, this Court is of the view that ***there is an implied permission to file the suit***.

Thus, the finding given by the learned Tribunal is erroneous.

19. Even otherwise, if there is no implied permission to file a suit, the workman cannot be punished for the reason that he devoted his time before the wrong Forum i.e. Civil Court. Approaching before the wrong forum in some misconception or ill-advise, was already noticed by the legislators while enacting the law of limitation. There is a specific provision of law i.e. Section 14 of the Limitation Act, 1963. For ready reference, same is reproduced as under:-

> *"14. **Exclusion of time of proceeding bona fide in court without jurisdiction. —***
> *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
> *(3) Notwithstanding anything contained in rule 2 of Order XXXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*
> *Explanation.—*
> *For the purposes of this section,—*
> *(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;*
> *(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;*
> *(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."*

Therefore, answering the reference in negative by the learned Tribunal, that too without discussing the material on record, is against the spirit of the labour laws/Industrial Disputes Act, 1947, etc.

20. While imparting justice, Court is not expected to function only in a mechanical manner. Before proceeding further, this Court has also taken note of the factual aspect i.e. completion of 240 days working period, on which, neither any serious dispute has been raised nor the documents have been produced by the Management. It is believed and assumed that the petitioner (workman) had completed 240 working days, because his service was continued and extended from time to time. In such circumstances, service could be terminated only after giving him notice or pay notice or

retrenchment compensation.

In the absence of any such step having been taken by the Management, this Court holds that the termination of the workman from service was in violation of Section 25-F of the ID Act.

20. Therefore, by setting aside the impugned award, the writ petition is **allowed**.

However, noticing the fact that the dispute pertains to the year 1987, i.e. more than 36 years old, this Court deems it appropriate to direct respondents No.2 & 3 – Management to pay a lump-sum amount of Rs.1.5 lakhs as compensation to the petitioner – workman, within a period of three months from today i.e. on or before 04.07.2024, failing which, respondents No.2 & 3 – Management would be liable to pay the lump-sum amount of compensation of Rs.1.5 lakhs along with interest @ 6% per annum, from 05.07.2024 onwards.

Writ petition stands **disposed of**, in the above terms.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

April 05, 2024
J.Ram

Whether speaking/reasoned: ✓ *Yes/~~No~~*
Whether Reportable: ✓ *Yes/~~No~~*