

In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.4494 of 1984.

Date of decision:31-10-2007

Harjinder Singh.

...Petitioner.

Versus

The Presiding Officer and another.

...Respondents.

...

Coram: Hon'ble Mr.Justice K.C. Puri.

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Present: Mr.J. C.Verma, Senior Advocate with Ms. Meenakshi
Advocate for the petitioner.

None for the respondents.

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Judgment.

K. C.Puri, J.

In this petition filed under Articles 226 and 227 of the Constitution of India, the prayer of the petitioner is for modification of the award, Annexure P-1, as published in the Punjab Government Gazette dated October 7, 1983 to the extent that he is entitled to the back wages and other benefits.

The facts of this case lie in a narrow compass. The following industrial dispute in the case of petitioner and another workman was referred to the Presiding Officer, Labour Court, Amritsar for adjudication:-

“Whether the termination of services of Sarvshri Inderjit Singh

and Harjinder Singh, workmen is justified and in order. If not, to what relief/exact amount of compensation are they entitled to?

The case of the petitioner was that he was employed with respondent No.2 in June, 1975 and his services were terminated on June 25,1976 without serving him with any show cause notice and without framing any charge sheet against him.

The case of the respondent was that the petitioner was employed on February 1,1975 and he only worked for one day. Thereafter he never turned up.

On the pleadings of the parties, the learned Labour Court framed the following issues:-

1. Whether the workman had himself left the service?
2. Whether termination of the services of the workman is justified and in order?
3. Relief.

Both issue Nos.1 and 2 were decided in favour of the petitioner and it was held that the petitioner served respondent No.2 from June, 1975 to June 25,1976 and his services were illegally terminated by the respondent No.2 without serving him any charge-sheet or show cause notice. However, under prayer clause it was held that the petitioner was not entitled to any back wages.

The petitioner is aggrieved by the denial of back wages to him and he has challenged this part of the award on the grounds that respondent No.2 had not claimed any issue in regard to his gainful employment; that he has not stated anywhere in his examination-in-chief or in the cross-

examination that he was employed for whole of period of his unemployment till the date of the award and as such no sweeping award could be passed against him; that holding the order of termination of services as illegal means reinstatement with full back wages except for the period when the employer is able to prove that the workman remained gainfully employed; that the termination of his services amounted to retrenchment under Section 2(oo) of the Industrial Disputes Act which had been effected by respondent No.2 without paying any retrenchment compensation.

I have heard learned counsel for the petitioner and have perused the entire paper book.

Mr. J. C. Verma, learned counsel for the petitioner has submitted that the learned Labour Court, Amritsar, has held that the termination of services of the petitioner is not justified but has wrongly denied the back wages on the ground that the petitioner has stated that he worked with different factories. Management has failed to give the period of such employment. Mr. Verma, has contended that onus to prove the fact that the petitioner was gainfully employed was upon the management and it has utterly failed to discharge the onus of that issue. The normal rule is to grant the full back wages and denial is the exception. The learned Labour Court has mis-read the statement of Harjinder Singh, petitioner. He has simply stated that he worked for 1-1/2 months in Mehra Shawls and worked for some time in other factories. He has also stated that he has been doing the work in his house to look after the cattle. So, in these circumstances, at least 50% of the back wages should have been allowed by the learned Labour Court. To support these contentions, learned counsel for the petitioner has relied upon the following authorities:-

1. **Haryana Urban Development Authority Versus Devi Dayal**, 2002(2) RSJ 503.

2. **Sukhdev Singh Versus General Manager, Punjab Roadways, Tarn Taran**, 2004(2) Recent Services Judgments 184.

3. **The Patiala Central Cooperative Bank Ltd., Patiala Versus Mehar Chand and another**, 1998(1) Recent Services Judgment 297; and

4. **Angrez Singh Versus State of Punjab**, 2003(3) Recent Services Judgments 402.

I have carefully considered the said submissions and have gone through the records of the case. Arguments advanced by Mr. Verma carry weight and have to be accepted. According to the petitioner, he worked for 1-1/2 months in Mehra Shawls and worked for some time in other factories. For the remaining period, he was looking after his cattle. Looking after of cattle cannot be said to be gainful employment of the petitioner. In the authority reported **Haryana Urban Development Authority** (supra), it has been held that where the workman was in service for a short period, the back wages to the extent of 50% is proper and justified. In authorities reported as **Sukhev Singh, Mehar Chand and another and Angrez Singh** (supra), it has been held that normal rule is full back wages and party objecting to it must establish the circumstances necessitating a departure.

So, in view of the above discussion, this writ petition stands partly accepted and the award dated 29th July, 1993 passed by Shri Niranjana Singh, Superior Judicial Service, Presiding Officer, Labour Court, Amritsar stands modified and appellant Harjinder Singh is held entitled to 50% back

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wages along with relief granted by the learned Labour Court.

31 October ,2007.
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(K. C. Puri)
Judge