

MAKHAN SINGH
v.
NARAINPURA CO-OPERATIVE AGRICULTURAL
SERVICE SOCIETY LTD. & ANR.

JULY 17, 1987

[E.S. VENKATARAMIAH, AND K.N. SINGH, JJ.]

Industrial Disputes Act 1947—Termination of service of a workman without holding a domestic enquiry is not justified.

The respondent-Society terminated the service of the appellant, who stayed away from work for a few days, without holding a domestic enquiry. Upon an industrial dispute having been raised, the question whether the termination of service was justified was referred to the Labour Court under S. 10(1)(c) of the Industrial Disputes Act, 1947. The appellant submitted that he had stayed away from work due to his illness and gave evidence in support thereof. The respondent pleaded that the appellant had gone 'on a strike' without obtaining any leave and had also committed embezzlement of money belonging to it. The Labour Court came to the conclusion that the appellant had absented himself from duties without obtaining leave and, accepting photostat copies of certain documents furnished by the respondent found that the appellant had committed the alleged embezzlement. It accordingly held that the termination of service was justified. The appellant's writ petition against the award of the Labour Court was dismissed *in limine* by the High Court.

Allowing the appeal by special leave and ordering reinstatement of the appellant in service with full back wages,

HELD:The termination of the service of the appellant without holding any domestic enquiry is unjustified. [530E-F]

The finding of the Labour Court that the appellant had embezzled amounts belonging to the respondent without going into the question whether the photostat copies of documents produced could be accepted as evidence in the absence of the originals, when no explanation was given by the respondent for not producing the originals, is without any basis and is liable to be set aside. The finding of the Labour Court that the appellant had absented himself from duties without obtaining leave is not sustainable for the reason that the case of the respondent was that

A the appellant had gone 'on a strike' and, if that was so, no question of obtaining any leave would arise. There was also no reason to reject the evidence given by the appellant in support of his assertion that he had not attended to his work during the relevant period due to his illness. [530A-C]

B (ii) If the appellant has worked in any other society, the amount of back wages payable shall be reduced by the salary drawn by the appellant from such society during the period subsequent to his termination of service. [531A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1080 of 1987.

C From the Judgment and Order dated 3.2.1986 of the Punjab and Haryana High Court in C.W. No. 561 of 1986.

Pramod Ahuja and Kailash Vasdev for the Appellant.

D P.N. Puri for the Respondents.

The Judgment of the Court was delivered by

E **VENKATARAMIAH, J.** The appellant, Makhan Singh, was working as the Secretary of Narainpura Co-operative Agricultural Service Society Limited, Narainpura, District Ferozepur—Respondent No. 1 (hereinafter referred to as 'the Society'). He did not attend to his duties between May 11, 1981 and May 29, 1981 and that he had stayed away from work during that period. The Society passed a resolution on May 30, 1981 terminating his services. On an industrial dispute being raised the Labour Commissioner, Punjab referred the following questions to the Labour Court, Bhatinda under section 10(1)(c) of the Industrial Disputes Act, 1947:

Whether termination of services of Makhan Singh, workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?

G Before the Labour Court the appellant filed his statement of claim in which he asserted that he had not attended to his work between May 11, 1981 and May 29, 1981 due to his illness, that he had taken leave for that period and that his services had been terminated by the management without any justification. He further alleged that he had put in six years of service in the Society and was drawing a salary

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of Rs.460 per month at the time of the termination of his services. He prayed for reinstatement in his post and also for back wages. The Society contested the claim of the appellant on various grounds. It alleged that the Society was not an industry and the Industrial Disputes Act, 1947 was not applicable. It pleaded that the appellant had gone 'on a strike' without obtaining any leave and that he had also committed embezzlement of the money belonging to the Society. The Labour Court found that the appellant had committed embezzlement and that he had absented himself from duties without obtaining leave. It accordingly found that the termination of the services of the appellant was justified. It, however, held that the Society was an industry and the Labour Court had jurisdiction to pass the award. The Labour Court accordingly rejected the claim. Aggrieved by the award passed by the Labour Court the appellant filed a writ petition in Civil Writ Petition No. 561 of 1986 on the file of the High Court of Punjab & Haryana. That petition was dismissed *in limine* by the High Court on February 3, 1986. This appeal by special leave has been filed by the appellant against the decision of the High Court as well as against the award of the Labour Court.

Admittedly, no domestic enquiry was held by the management before passing the order of termination of the appellant's services. Before the Labour Court the management tried to justify the order of termination of appellant's services on the two grounds, namely, that the appellant had embezzled certain amounts of the Society and that he had absented himself from duty without obtaining leave. The evidence led by the management in support of the embezzlement alleged by it is very scrappy indeed. It relied upon the evidence of Ram Sarup, who was working as the Secretary of the Society that the appellant had received a sum of Rs. 125 from one shareholder Bhaga Ram but he had made an entry in the account books stating that only a sum of Rs. 100 had been received and that the appellant had received a sum of Rs. 1145 and Rs. 150 from Sat Pal and Jagir Singh, shareholders of the Society respectively and had made entries in the account books showing that he had received Rs. 920 and Rs. 125 respectively from them. The management produced three photostat copies of the entries in the pass books which were marked as Exhibits M/1 to M/3. The originals were not produced. The appellant denied having misappropriated the amount of Rs. 25 in the first case, Rs. 205 in the second case and Rs. 25 in the third case. he stated that the photostat copies were fabricated documents. The Labour Court however accepted the evidence placed before it by the management. It did not go into the question whether the photostat copies, Exhibits M/1 to M 3, could be accepted as evi-

A dence in the absence of the originals. The award shows that no explanation had been given by the management for not producing the originals. We are not satisfied with the finding recorded by the Labour Court that the appellant had embezzled amounts belonging to the Society. The said finding is without any basis and is, therefore, liable to be set aside. The Labour Court has also accepted that the appellant had absented himself from duty without obtaining leave. It is interesting to note that the case of the Society before the Labour Court was that the appellant had gone on a strike without getting any leave. If he had gone on a strike no question of obtaining any leave would arise. The appellant gave evidence before the Labour Court stating that he was ill and, therefore, he was not able to attend to his duties. He also stated that he had obtained necessary leave sanctioned before absenting himself from duties. Of course, the appellant could not produce any record showing that he had given the application for leave to the management which could only be in the possession of the Society. In any event there was no reason at all for rejecting the evidence given by him. The finding on the above question is also not sustainable on the material placed before the Court. We regret to observe that the approach of the Labour Court to the whole case is highly casual and superficial.

On a consideration of the whole material placed before this Court we are of the view that the decision of the management in the instant case to terminate the services of the appellant without holding any domestic enquiry is not a *bona fide* one. We accordingly hold that the termination of the appellant's services is unjustified. In the result we set aside the judgment of the High Court and the award passed by the Labour Court and pass an award directing the Society to reinstate the appellant in its service with effect from May 30, 1981, the date on which the Society passed the resolution terminating the appellant's services. The appellant shall be treated as being in the service of the Society without any break in his service. He is entitled to all the consequential benefits. We direct the Society to pay full back wages to the appellant from the date of termination of his service till the date of reinstatement.

Shri P.N. Puri, learned counsel for the Society pleaded that the appellant was working in another co-operative society after his services were terminated and that the back wages payable to the appellant should be reduced by the salary drawn by him from the said society. If the appellant has worked in any other society, as pleaded by the learned counsel for the Society, the amount of back wages payable

under this award shall be reduced by the salary drawn by the appellant during the period subsequent to his termination of service from any other society. The Labour Court shall determine the actual amount payable by the Society to the appellant after hearing both the parties. The appeal is accordingly allowed. The appellant is entitled to recover costs from the Society which we quantify at Rs. 1,000.

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H.L.C.

Appeal allowed.