

Makhan Singh

Vs

Narainpura Co-Operative Agricultural Service Society Limited and Another

Civil Appeal No. 1080 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

17.07.1987

JUDGMENT

VENKATARAMIAH, J. –

1. The appellant Makhan Singh, was working as the Secretary of Narainpura Co-operative Agricultural Service Society Limited, Narainpura, District Ferozepore - respondent 1 (hereinafter referred to as 'the Society'). He did not attend to his duties between May 11, 1981 and May 29, 1981 and 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 service of Makhan Singh, workman is justified and in order ?
If not, to what relief/exact amount of compensations is he entitled ?

2. 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 of Rs. 460 per month at the time of the termination of 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.

3. 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. 1125 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 evidence 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.

4. 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 order 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.

5. 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. 1000.

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