

Disputes Act for re-employment on account of new vacancies being there. The right of the workman, who has been retrenched, to get re-employment has no connection with the legality of the order of retrenchment passed. It is assumed that the workman was retrenched. It is only then that he can claim re-employment. The Labour Court in the impugned award Annexure P/11 was, thus, misconceived of the legal position and the aforesaid order cannot be sustained.

(4) Learned counsel for the respondent has argued that since the petitioner was initially appointed as Peon-cum-Cook and the posts which have now been filled in 1986, were only for peons and the petitioner could not be accommodated. This contention again cannot be accepted. Order Annexure P/11 indicates that the petitioner was confirmed on the post of Peon. May be, he was initially appointed as Peon-cum-Cook but when he was retrenched, he was working as Peon, which is also clear from the order of retrenchment Annexure P/3. It is left to the respondent as to on what job the petitioner is to be put but suffice to say. That having been confirmed as Peon, he is entitled to be re-employed to the post of Peon.

(5) For the reasons recorded above, the award Annexure P/11 dated December 3, 1990, is quashed. Respondent No. 2 is directed to re-employ the petitioner on the post of a Peon with effect from April, 1986, when the last person was employed as Peon against the vacancies occurring then. The petitioner will be paid all the back wages and other benefits of service. It is directed that the respondent-Society would comply with the directions aforesaid within a period of two months. The Writ Petition stands allowed accordingly. No order as to costs.

J.S.T.

Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.

THE PUNJAB STATE CO-OPERATIVE BANK LIMITED,
CHANDIGARH,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT, CHANDIGARH AND
ANOTHER,—*Respondents.*

Civil Writ Petition No. 14016 of 1991

February 26, 1992.

Constitution of India, 1950—Art. 226 and 227—Industrial Disputes Act 1947—S. 10—Res judicata—Petitioners' services terminated—Order upheld in High Court—Whether subsequent proceedings taken under

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S. 10 of *Industrial Disputes Act* before Labour Court valid—Labour Court debarred to entertain reference—High Court order acts *as resjudicata*.

Held, that if the High Court had simply dismissed the writ petition *in limine* without giving any reasons, it could be argued that the order was not passed on merits and the workman could have approached the Labour Court. There is no dispute that such a matter relating to adjudication of dispute of termination of services of a workman could be referred to the Labour Court under section 10 of the Act. However, when different remedies were available and the workman chose to avail the remedy of the writ petition under Article 226 of the Constitution and failed on merits, she was debarred from approaching the Labour Court again on the same cause of action and for the same relief. The principle of *res judicata*, as enunciated in section 11 of the Code of Civil Procedure, would be applicable. The order passed by the High Court dismissing the Writ Petition while dealing with the merits of the case giving reasons thus could not be ignored by the Labour Court, especially on the grounds as set out in the order of the Labour Court, which is impugned.

(Para 7)

Held, that since the order terminating services of the petitioner was held to be legal by the High Court, the same could not be challenged before the Labour Court. It is not considered necessary to refer to other findings on merits given by the Labour Court holding the order of termination to be bad. The Labour Court was debarred to entertain the reference and its order cannot be sustained.

(Para 9)

Ajay Mahajan, Advocate, for the Petitioner.

J. C. Verma, Sr. Advocate with Dinesh Kumar, Advocate, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) The short question for consideration is as to whether the order of the High Court passed under Article 226 of the Constitution dismissing the writ petition, though *in limine* but on merits giving reasons, would operate as *res judicata* in the subsequent proceedings taken under section 10 of the Industrial Disputes Act (for short 'the Act') before the Labour Court.

(2) Relevant facts for decision of the aforesaid question only needs to be noticed. Mrs. Usha Devi Sharma, respondent No. 2, was

removed from service,—*vide* order Annexure P. 8, dated September 20, 1985. She was employed as a Clerk by the Management of the Punjab State Co-operative Bank Limited, the petitioner; that retrenchment compensation and one month's wages in lieu of notice were ordered to be paid,—*vide* this order. This was challenged by Smt. Usha Devi Sharma in C.W.P. No. 4807 of 1985 and the Division Bench passed the following order on January 24, 1986, after notice to the opposite party :—

“The petitioner was working as a probationer Clerk with the respondent, her services were terminated,—*vide* order dated 20th September, 1985—Annexure P. 5. She has challenged the said order through this writ petition.

The contention of the learned counsel for the petitioner is that the services of the petitioner were terminated by way of punishment. We regret our inability to accept the contention. There is nothing on the record that the impugned order has been passed by way of punishment. It also does not cast any stigma on the petitioner. It is well settled that during probation, the services of an employee can be terminated by the employer by passing an innocuous order. Consequently, we do not find any merit in writ petition and dismiss the same *in limine*.”

(3) Feeling not satisfied, Smt. Usha Devi Sharma, raised an industrial dispute challenging the same order terminating her services. The dispute was referred to the Labour Court. *Vide* Award dated April 4, 1990, (Copy Annexure P.1), the order terminating services of Smt. Usha Devi Sharma was held to be illegal. She was directed to be re-instated with continuity of service and she was to get 60 per cent of back-wages. Annexure P. 1—Award of the Labour Court is under challenge in this writ petition.

(4) On the question of binding nature of the order of the High Court passed in the writ petition the Labour Court in para 10 of the judgment observed as under :—

“Before parting with this award, I would like to make brief mention of the argument raised by the counsel for the management that the present reference is barred under the principle of *res judicata* in the light of orders Ex. M1 passed by the Hon'ble Court on 24th January, 1986. The workman is devoid on merit because there is no plea in

the written statement and secondly that the writ was dismissed *in limine*. Thirdly, the High Court did not think proper to invoke the provisions of Article 226 of the Constitution as the matter required thorough scrutiny which could be done only by leading evidence by both the parties. Otherwise also the dispute was an industrial issue which could be raised by the workman by separate proceedings which he did."

(5) In order to avoid the order of the High Court passed in the writ petition, as reproduced above, the Labour Court observed that there was no plea in the written statement taken regarding order of the High Court operating as *res judicata*. It was also observed that the High Court did not think proper to invoke the provisions of the Article 226 of the Constitution as the matter required thorough scrutiny which could be done only by leading evidence by both the parties. The aforesaid observations are against the record. Copy of the written statement filed by the petitioner before the Labour Court is Annexure P. 3. A portion of preliminary objection No. 2 is reproduced to highlight that specifically the point was raised therein :—

"The reference is not maintainable as Smt. Usha Devi, filed a Civil Writ Petition No. 4807 of 1985 titled as Usha Devi v. The Punjab State Co-operative Bank Limited, against the orders of termination dated 20th September, 1985 which are impugned in this very reference of dispute. Therefore, once the Hon'ble High Court has upheld the orders of termination, the reference of dispute is not competent and the same is liable to be dismissed on this score alone".

The other observation is also not supported from the record as order of the High Court has been reproduced *in extenso* above. No observations were made by the High Court that resort to the provisions of Article 226 of the Constitution could not be had as the matter required thorough scrutiny which could be done only by leading evidence by both the parties. If such an opinion was to be expressed, the High Court would have left Smt. Usha Devi Sharma, the then writ-petitioner, to approach the Labour Court. However, the thing is otherwise. The High Court considered the writ petition on merits and adjudicated upon the arguments addressed.

(6) The contention of counsel for Smt. Usha Devi Sharma, that the order terminating services was passed by way of punishment,

was not accepted. Rather it was observed, "there is nothing on the record that the impugned order has been passed by way of punishment". Further-more, it was observed that the impugned order was passed during the period of probation and it did not cast any stigma. The services of an employee could be terminated by the employer by passing an innocuous order. While holding as above the writ petition was dismissed *in limine*."

(7) The Labour Court in the impugned Award-Annexure P. 1 further observed that the writ petition was dismissed *in limine* and otherwise also the dispute was an industrial issue which could be raised by the workman by separate proceedings which she did i.e. by getting the dispute referred to the Labour Court for adjudication under section 10 of the Act. If the High Court had simply dismissed the writ petition *in limine* without giving any reasons, it could be argued that the order was not passed on merits and the workman could have approached the Labour Court, even if no such direction was given by the High Court. There is no dispute that such a matter relating to adjudication of dispute of termination of services of a workman could be referred to the Labour Court under section 10 of the Act. However, when different remedies were available and the workman chose to avail the remedy of the writ petition under Article 226 of the Constitution and failed on merits, she was debarred from approaching the Labour Court again on the same cause of action and for the same relief. The principle of *res judicata*, as enunciated in section 11 of the Code of Civil Procedure, would be applicable. The order passed by the High Court dismissing the writ petition while dealing with the merits of the case giving reasons thus could not be ignored by the Labour Court, especially on the grounds as set out in the order of the Labour Court, which is impugned.

(8) In order to see as to whether Smt. Usha Devi had actually challenged the order terminating her services in the writ petition or she had merely claimed regularisation of services, counsel for Smt. Usha Devi has produced copy of the writ petition. A perusal of the same shows that the same was filed after her services had been terminated and the order of termination was also challenged on different grounds. The contention of the counsel for the petitioner that in the writ petition the only relief sought was regularisation of the services is not correct. Rather a specific prayer was made in the writ petition in the nature of *certiorari* for quashing order dated September 20, 1985, copy of which was produced in the writ petition, as Annexure P. 5.

(9) Since the order terminating services of the petitioner was held to be legal by the High Court, the same could not be challenged

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before the Labour Court. It is not considered necessary to refer to other findings on merits given by the Labour Court holding the order of termination to be bad. The Labour Court was debarred to entertain the reference and its order cannot be sustained).

(10) For the reasons recorded above this writ petition is allowed. The order of the Labour Court dated April 4, 1990—Annexure P. 1 is quashed. However, there will be no order as to costs.

J.S.T.

Before Hon'ble H. S. Bedi, M. S. Liberhan, JJ.

PREM SAGAR BATRA,—*Petitioner.*

versus

MAHARSHI DAYANAND UNIVERSITY, ROHTAK AND
OTHERS,—*Respondents.*

Civil Writ Petition No. 16372 of 1991.

March 10, 1992.

Constitution of India, 1950—Art. 226 & 227—Creation of additional seats—Reservation of such seats for wards of University employees—Such reservation void—Whether additional seats deemed to lapse—Admission against such seats.

Held, that the University had created the additional 15 seats keeping in view its resources and as such it cannot be said that on the striking down of the reservation the said seats must also be deemed to lapse.

(Para 5)

Further held, that the benefit which has to flow from the order of this Court must be confined to only such persons who have come to court to vindicate their rights.

(Para 6)

Nitin Kumar, Advocate, *for the Petitioners.*

Ashok Aggarwal, Sr. Advocate with Vikrant Sharma, Advocate,
for Respondent No. 1 and 2, for the Respondents.

JUDGMENT

H. S. Bedi, J.

(1) *Vide* this judgment we propose to dispose of CWP Nos. 15233, 16177, 16372 of 1991 and 84 of 1992, the facts of the case having been taken from CWP 16372/1991.