

Before M. R. Agnihotri, J.

AVTAR SINGH,—Petitioner

versus

PRESIDING OFFICER, LABOUR COURT, AMRITSAR
AND ANOTHER,—Respondents.

Civil Writ Petition No. 406 of 1987.

September 21, 1987.

Industrial Disputes Act (XIV of 1947)—Section 10—Termination of services—Justification of—Reference—Relationship of employment denied on ground of invalid appointment—Labour Court upholding plea and dismissing reference—Abridged adjudication—Whether proper—Duty of Labour Court—Whether bound to answer terms of reference.

Held, that once it is established that an employee was in fact appointed to a certain post and had started working as such, there was hardly any necessity or legal requirement for the Labour Court to go into the question as to whether the appointment had been made validly or in accordance with the rules or not. Even if that was considered necessary by the Labour Court, yet it did not absolve it from the responsibility and duty of giving a firm finding on the question as to whether the termination of services of the petitioner was justified or not. (Para 4).

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (a) *a writ in the nature of Certiorari or any other writ, order or direction appropriate in the circumstances of the case be issued quashing the impugned order/award of the Labour Court, annexure P-10 and further ordering the reinstatement of the petitioner with full back wages and other service benefits.*
- (b) *Any other relief to which the petitioner is found entitled to in the facts and circumstances of the case may kindly be allowed to the petitioner.*
- (c) *Filing of certified copies of annexure may kindly be dispensed with, and*
- (d) *the writ petition may kindly be allowed with costs.*

J. C. Verma, Advocate, for the Petitioner.

B. K. Jhingan, Advocate, for the Respondent No. 2.

JUDGMENT

M. R. Agnihotri, J.

(1) In this petition under Articles 226 and 227 of the Constitution of India, petitioner Avtar Singh, formerly Auction Recorder, Market Committee, Amritsar, has challenged the award dated 12th June, 1986, of the Presiding Officer, Labour Court, Amritsar (Annx. P-10), by which the reference made to the Labour Court was dismissed, thereby upholding the termination of services of the petitioner by the Market Committee, Amritsar, with effect from 1st July, 1977.

(2) Briefly stating, the petitioner was appointed as Auction Recorder on 12th November, 1976. Later on, by a resolution dated 9th March, 1977, the Market Committee, Amritsar, regularised the services of the petitioner and confirmed him as Moharrir against a permanent post and he continued to work as such till 30th June, 1977. However, on 1st July, 1977, his services were terminated and, according to the petitioner, this termination was without any notice, charge-sheet, inquiry, etc. On a reference made to the Labour Court, the management was called upon to justify the termination of services and in reply thereto the Market Committee gave a very brief reply which is reproduced below *in extenso* :—

“Sir,

The respondent Management begs to submit as follows :—

- “1. That according to record no relationship of Employee and Employer has existed between alleged workman and the respondent management during alleged relevant period. Therefore, no question of any alleged termination of its justification arises at all.”

Since the very relationship of employee and employer had been challenged by the Management, the learned Presiding Officer, Labour Court, Amritsar, thought that the issue regarding the termination of services or its justification, if any, became secondary. That is why the Presiding Officer, after going through the material available on the record, came to the conclusion that since the

Avtar Singh v. Presiding Officer, Labour Court, Amritsar
and another (M. R. Agnihotri, J.)

appointment of the petitioner was not valid, such an appointment could not bind the principal institution and, therefore, even though the petitioner did work in pursuance of such appointment, he could at best pursue his remedy against those who gave him appointment in defiance of the rules and statutory provisions. In view of this, it was held that there could be no question of termination of services. The reference was accordingly dismissed.

(3) Mr. J. C. Verma, Advocate, learned counsel for the petitioner, has vehemently contended that in the first instance the learned Labour Court could not go beyond the reference and, therefore, the only task of the Labour Court was to adjudicate as to whether the termination of services of the petitioner-workman was illegal or not. In any case, according to the learned counsel, the finding arrived at by the Labour Court on the other question, that is, relationship of employee and employer, was wholly incorrect as most of the material evidence available on the record was not considered by the Labour Court.

(4) I find considerable force in the submissions of the learned counsel. Once the petitioner had satisfied the Labour Court by successfully establishing that he was in fact appointed to the post of Auction Recorder working as such, there was hardly any necessity or legal requirement for the Labour Court to go into the question as to whether the appointment had been made validly or in accordance with the rules or not. Even if that was considered necessary by the Labour Court, yet it did not absolve it from the responsibility and duty of giving a firm finding on the question as to whether the termination of services of the petitioner was justified or not. This has not been done in the present case. Otherwise also, from a close scrutiny of the record I find that even while arriving at the finding regarding the non-existence of the relationship of employee and employer, most of the material and relevant evidence available on the record escaped notice of the learned Labour Court. Firstly, even though the records of the Market Committee—employer, were summoned by the Labour Court, the same were not produced and it appears that no effort was made later on for securing their production during the subsequent proceedings. The joining report of the petitioner was alleged to have been entered in the receipt register of the Market Committee which too was not brought by the witness of the Management—M.W. 1 Karnail Singh, Secretary of the Market

Committee, at the time of making a statement in the Court. Again, the petitioner—workman had summoned the records relating to his posting and stay in the Market Committee, Amritsar, before he was transferred to Rayya in the year 1976. That record was also not brought by W.W. 2 Suraj Bhan, while appearing before the Labour Court. On the other hand, in para 8 of the award, the learned Labour Court has made some observations based on personal experience in the following words :—

“My experience shows that the functioning of Market Committee, Amritsar, is highly irregular and chances of collusion between officials working in the Market Committee and the workman litigating in Courts, cannot be ruled out.”

There was neither any necessity nor any occasion or basis for making such observations. Equally without any force is the conclusion arrived at by the learned Labour Court that since the notice of demand was not issued by the workman earlier than 15th June, 1978, his conduct “supports considerably the version of the Management that this gentleman was never appointed by the Management nor did he actually serve for it at any time.”

(5) Consequently, the writ petition is allowed, the impugned award dated 12th June, 1986 (Annexure P-10), is hereby set aside and the case is remitted back for fresh decision on the reference made to the Labour Court, Amritsar, in accordance with law. The parties, who are present through their counsel, have been directed to appear before the Labour Court, Amritsar, on 26th October, 1987. There shall be no order as to costs.

R. N. R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

RAJ PAUL OSWAL,—Applicant.

versus

COMMISSIONER OF WEALTH TAX, PATIALA,—Respondent.

Wealth Tax Reference Nos. 17 and 18 of 1978.

October 1, 1987.

Wealth Tax Act (XXVII of 1957)—Sections 16-A (1) (a) and (b)—Wealth Tax Rules, 1957—Rules 3B—Assessment of true value of assets—Estimated value more than returned value—Reference to Valuation Officer by the Wealth Tax Officer—Whether mandatory.