

Rajinder Weaving Factory v. Presiding Officer, Labour Court
and another (G. C. Mital, J.)

(8) Otherwise also the evidence in the case produced by the prosecution does not inspire confidence. Ram Phal, P.W. 3 is a stock witness of the police. He denied to have appeared in any case when a suggestion was put to him, but the appellant has placed on the record documents Exs. DC to DG showing that he had appeared as a police witness in five cases. No reliance can be placed on the evidence of such a witness. P.W. 4 Maha Singh is a witness of another village. No reason is shown by the A.S.I. Raghbir Singh, P.W. 5 as to why he did not associate any of the witnesses of the village of the appellant.

(9) For the reasons recorded above, I am of the view that the prosecution has failed to bring home guilt to the appellant beyond any reasonable doubt. His appeal is allowed. His conviction and sentence recorded by the trial Court is set aside. He is on bail, his bail bonds shall stand discharged.

N.K.S.

Before Gokal Chand Mital, J.

RAJINDER WEAVING FACTORY,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT and another,—*Respondents.*

Civil Writ Petition No. 1151 of 1974.

December 7, 1979.

Industrial Disputes Act (XIV of 1947)—Section 10—Industrial Employee on probation—Services of such employee terminated during the probationary period—No show-cause notice to the employee nor any enquiry held—Such termination—Whether justified.

Held, that even if a workman was serving on probation, his services could not be terminated without giving him an opportunity to show cause and after due enquiry. (Para 6).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted:—

- (i) *A Writ in the nature of a Writ of Certiorari be issued calling for the records of respondent No. 1 relating to the impugned Award, Annexure 'P/6' be quashed;*

(ii) *Any other suitable Writ, Direction or Order that this Court may deem fit in the circumstances of this case be issued;*

(iii) *Costs of this petition be awarded to the petitioner.*

R. S. Mittal, Advocate, *for the Petitioner.*

S. C. Kapoor, Advocate, *for respondent.*

JUDGMENT

Gokal Chand Mital, J.

(1) Ram Singh, respondent No. 2 was appointed on daily wages as apprentice/probationer for a period of six months. He is alleged to have been relieved from service with effect from 23rd July, 1971, and finding the termination to be erroneous, he raised an industrial dispute which was referred by the State Government to the Labour Court, Rohtak.

(2) Before the Labour Court, the case of the workman was that he was in employment of the management for a period of six months on probation on the expiry of which he became a regular employee and he was not given any job for some time before termination of his services on 23rd July, 1971, and after that date he was not allowed to enter the factory premises. The claim of the workman was disputed by the management by filing a written statement, copy annexure P. 5. Thereafter, evidence was led by the parties and the Labour Court by award, dated 28th December, 1973, copy annexure P. 6, held that the termination of the services of the workman was not justified and ordered his reinstatement with continuity of service and full back-wages. Against the aforesaid award, the management has come up in the present petition under Article 226 of the Constitution of India.

(3) The learned counsel for the petitioner has urged two points, firstly, that the finding of the Labour Court that there was no material on the record that the workman was absent with effect from 16th July, 1971 to 23rd July, 1971, is against the record as there was material in the nature of statement of R. S. Rohtagi, M.W. 1, which has been reproduced in para 8 of the writ petition, and secondly, that the workman was on the second probationary term of six months during which his services could be terminated

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without a cause and the Labour Court was in error in coming to the conclusion that after 12th July, 1971, he automatically became a regular and permanent employee and for this matter, reference has been made to last page of annexure P-1, which is at page 47 of the paper-book.

(4) For the first point, a reference to para 8 of the writ petition, wherein statement of the workman as well as the partner of the management have been reproduced, coupled with the stand taken before the Labour Court, goes to show that the workman's case was that he was wanting to work but was not allocated any job and his entry after 22nd July, 1971, was refused, whereas the case of the management was that the workman absented from duty from 16th July, 1971 to 23rd July, 1971. This aspect of the case has been gone into by the Labour Court which is purely of fact and this Court, in exercise of its extraordinary jurisdiction, cannot re-appraise the evidence and take a different view. Once the workman is not allowed to work from 16th July, 1971 to 23rd July, 1971, the management will not mark his presence and therefore, even if the attendance register is produced, it cannot be conclusively held that the workman was not right in his stand that he was not allowed to work as no job was allocated to him.

(5) As regards the second point, it does bear out from the last part of annexure P-1 at page 47 of the paper-book, that the workman was to have an extended period of probation of six months in case he was not removed from service on the completion of the first probationary period of six months. But, no such stand is contained either in the writ petition or in the written statement, annexure P-5, filed before the Labour Court. The case of the workman throughout has been that after the period of six months he became a regular employee and his services could be dispensed with only after a show-cause notice and enquiry and not without a cause. This case was met only by conditions of services Nos. 1, 2, 7 and 13, contained in annexure P-1, at pages 41, 43 and 45 of the paper-book and not on the basis that there was an extended period of probation during which his services could be terminated. Accordingly, the management cannot be allowed to raise a new plea in the writ jurisdiction.

(6) Still in the interest of justice, it was specifically pointed out to the learned counsel for the management if he could cite any

authority for the proposition that under the Industrial Disputes Act, the services of a workman during the probationary period could be terminated without a cause. He could not cite any authority but wanted to rely on *Salem Distt. Textile Workers' Union v. State of Madras* (1), a reading of which clearly goes to show that it goes against the management as it was held that services of a probationer could not be terminated before the expiry of the probationary period. Even if the workman was serving under the extended period of probation, which started from 13th July, 1971, his services could not be terminated on the 10th day without giving him an opportunity to show cause and after due enquiry.

(7) For the reasons recorded above, there is no merit in this writ petition which is dismissed with costs.

N. K. S.

Before Harbans Lal, J.

BABU RAM and others,—Appellants.

versus

PUNJAB STATE ELECTRICITY BOARD ETC.,—Respondents.

First Appeal From Order No. 51 of 1972.

December 17, 1979.

Motor Vehicles Act (IV of 1939)—Sections 110-A and 110-B—Fatal Accidents Act (XIII of 1855)—Section 1-A—Death in a motor accident—Claim under section 110-A for compensation by brothers and sisters of the deceased—Such claimants—Whether have a locus standi to make a claim—Procedure and determination of persons entitled to compensation—Whether to be regulated under the Motor Vehicles Act—Interpretation of statutes—Special Act to override the general one.

Held, that a close perusal of section 110-B of the Motor Vehicles Act 1939 makes it evident that the tribunal in this provision has been given the power to make an award not only determining the amount