

Before G. C. Mital and K. S. Bhalla, JJ.

RAJINDER PARSHAD,—Petitioner.

versus

PRESIDING OFFICER, LABOUR COURT AND ANOTHERS,
—Respondents.

Civil Writ Petition No. 6864 of 1986.

September 21, 1988.

Industrial Disputes Act (XIV of 1947)—Ss. 10 and 11-A—Constitution of India, 1950—Art. 226—Workmen dismissed for misconduct—Mis-conduct proved before the Labour Court—Labour Court awarding compensation in lieu of reinstatement—Workmen accepting compensation as awarded—Award implemented—Workman, whether can challenge the award and claim relief of reinstatement.

Held, that where the workman has completely submitted to the award, and the same stands implemented he is no longer competent to assail the same through this petition and that too after lapse of more than two months. He cannot possibly avail the benefit given to him under the award and at the same time challenge its operation so far as it works against him. (Para 4).

Petition Under Articles 226/227 of the Constitution of India praying that the following reliefs may kindly be granted to the petitioner :—

- (i) that the records of the case be sent for from Respondent No. 1.
- (ii) And after perusal of the record a writ of certiorari be issued, quashing the impugned award of the Labour Court Annexure 'P/6' and a direction be issued to Respondent No. 1 to order the reinstatement of the petitioner with continuity of service and full back wages.
- (iii) filing of certified copies of Annexures 'P/1' to 'P/6' may kindly be dispensed with ;
- (iv) service of advanced notices on the respondents be dispensed with ;

AND

- (v) Costs of this petition be awarded to the petitioner.

U. S. Sahni, Advocate, for the petitioner.

R. S. Mittal, Senior Advocate with P. S. Bajwa, Advocates, for the respondents.

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JUDGMENT

K. S. Bhalla, J.

(1) A short point calls for determination in this writ petition whether a person after taking benefit, under an award, passed by a Labour Court, by accepting monetary compensation, is entitled to challenge the said award, as a whole, after expiry of reasonable time ?

2. Relevant facts of the case lie in a narrow compass. Petitioner Rajinder Parshad was employed Head Doffer with M/s. Mohan Spinning Mills, Rohtak-respondent No. 2, since June, 1967. His services were terminated,—*vide* order dated 31st August, 1984. According to the Management he had committed a major misconduct resulting in large scale indiscipline in the work-force. Petitioner-workman on the other hand, contended that he was wrongfully dismissed by way of victimization, as he had started taking active part in trade union activities. It is further contended on his behalf that he had become joint secretary of the Cotton Textile Workers' Union. After termination of his services, petitioner served a demand notice under the Industrial Disputes Act on the management of respondent No. 2. The same having not been accepted, the dispute was referred to Labour Court Rohtak under Section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication whether the termination of services of Shri Rajinder Parshad were justified and in order. The Presiding Officer, Labour Court, Rohtak, after recording evidence of the parties,—*vide* its award dated 29th July, 1986 (annexure P-6) held that under the peculiar circumstances of the case, the management was fully justified in not holding domestic enquiry against the petitioner before dispensing with his services and that from the evidence on record it has been fully proved that petitioner indulged in major misconduct in striking work on 30th August, 1984. Consequently, reinstatement of the petitioner was not ordered although to mitigate the hardship he was awarded a sum of Rs. 7,000 as compensation purely, on compassionate grounds. The award of Labour Court, Rohtak, has been assailed by petitioner Rajinder Parshad through present writ petition and an order of reinstatement with continuity of service and full back wages has been sought.

3. Before going into the merits of the case, a preliminary objection has been raised on behalf of respondent No. 2 contending

that the petitioner accepted the amount of Rs. 7,000 awarded by way of compensation on compassionate grounds on 16th October, 1986 in full and final settlement of his claim and executed receipt Exhibit R2/1 and that for said reason petitioner having accepted the award cannot now challenge the same by means of the present writ petition.

4. There appears to be force in the preliminary objection raised on behalf of the management. Award annexure P-6 was given by the Labour Court on 29th July, 1986 and it was published in the official gazette on 23rd September, 1986. Within one month of its publication on 16th October, 1986, the amount of compensation was received by the petitioner as per receipt of the said date annexure R2/1 which runs as under :—

“In accordance with the award of the Labour Court dated 29th July, 1986, published in Haryana Government Gazette at page 2629 on 23rd September, 1986, I have received a sum of Rs. 7,000,—*vide* Cheque No. 108169, dated 16th October, 1986 issued in favour of Rohtak Central Bank of India, Rohtak. The Award has been fully implemented.

Rajinder Parshad,
16th October, 1986.”

The last sentence of this document i.e. receipt clinches the matter and the entire subject of dispute stood closed by it. In the light thereof, when the petitioner completely submitted to the award, he is no longer competent to assail the same through this petition and that too after lapse of more than 2 months. He cannot possibly avail the benefit given to him under the Award and at the same time challenge its operation so far as it works against him. This conclusion of ours finds support from *Jayanta Nath Mazumdar v. State of West Bengal* (1), wherein it has been held that where the workman whose services were terminated by the employer and awarded a lumpsum by the Industrial Tribunal as compensation instead of directing his reinstatement, the workman after taking benefit under the Award by accepting the monetary compensation, cannot challenge the award at a subsequent stage even if it is held that the view taken by the Tribunal was erroneous. It was further observed therein that the workman was not entitled to any

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relief in the writ petition filed by him challenging the award of the Tribunal.

The petitioner thus has become disentitled from assailing the award by his own conduct, and we are not inclined to exercise extraordinary writ jurisdiction in the given facts and circumstances of the case.

5. The result is that preliminary objection holds good and the writ petition in hand is dismissed but without making any order for costs.

R. N. R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

SARASWATI RICE AND GENERAL MILLS,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 286^A of 1988.

December 2, 1988.

Haryana General Sales Tax Act (XX of 1973)—Ss. 6.15—Registered dealer supplying rice to government under Levy Order—Liability to pay sales tax on such supply—Non-collection of Tax by dealer—Relevancy of.

Held, that there are absolutely no grounds for the petitioner to claim that it was not liable to pay sales tax in respect of levy transaction. The Haryana General Sales Tax Act, imposes a liability on the dealer to pay tax on sales and purchases. It may be that it is entitled to pass on the liability to the purchaser in respect of the sales effected by it, but that is not to say that if the purchaser does not pay the sales tax, the dealer is absolved to pay sales-tax. The remedy against the purchaser is not the concern of the Government when levying sales-tax under the Act. Either the fact that the dealer had not collected the tax or even the non-collection of the tax on the basis of assumption of non-liability of the transaction for sales tax can absolve the dealer from payment of the sales tax. If there had been a *bona fide* dispute or doubt relating to the liability of the transaction for tax it may be relevant ground for imposing