
A. Agg.

Before K. Kannan, J.

M/S S. P. WORSTED SPINNING MILLS,—Petitioner

versus

**THE PRESIDING OFFICER, LABOUR COURT,
AMRITSAR,—Respondents and another**

CWP No. 15195 of 1990

13th May, 2011

Constitution of India, 1950—Art.226—Industrial Disputes Act, 1947—S.25-F—Award of reinstatement challenged by Management on the ground that workman never worked in the factory—Attendance Register, Payment Register, ESI & PF record produced to show that workman's name was not entered in the record—Workman relied upon statement of a person claiming to be a co-worker—Documentary evidence discarded by the Labour

Court—Award rendered in favour of the workman on the basis of personal predilections of the Presiding Office—Petition Allowed and findings of Labour Court set aside.

Held, that a Presiding Officer is not required to act on a hunch or gut feeling but on the basis of material brought before him. A Judge shall adjudge what a witness brings before the Court. Relief that was granted was on a dangerous surmise which the evidence did not admit of. Award set aside.

(Paras 1 & 3)

B.R. Mahajan, Advocate, *for the petitioner*:

K.S. Sivia, DAG., Punjab

K.R. Dhawan, Advocate, *for respondent No. 2*

K. KANNAN, J (ORAL)

(1) The writ petition challenges the award of reinstatement passed by the Labour Court accepting the contention that the employee had been terminated without following the procedure under Section 25-F of the Industrial Disputes Act. The statement in defence by the Management was that respondent No. 2 herein, never worked in the factory. They also produced the attendance register, the payment register, ESI & PF records to show that the petitioner's name was not entered therein and not worked in the factory at any time. The workman, however, relied on evidence of a person claiming to a co-worker. The co-worker claimed that he had worked about 7 years earlier and at that time he has seen the second respondent working in the factory. The Labour Court discarded the documentary evidence and held that he knew that the workmen could have served in the factory without entering in the registers and that such malpractices as not showing full strength of the workers are not entirely unknown. In other words, the Presiding Officer was found to bring his own personal predilections of how such Managements were acting and proceeded to displace the evidence adduced by the Management. In my view, it is a dangerous judicial approach to adopt. The Presiding Officer does not act on hunch or gut feelings but is bound to examine what is brought before him. A Judge shall adjudge what a witness brings before the Court.

(2) The Management is contending that the second respondent was actually set up only by the workers Union over some dispute which they had with the Management. This aspect was rejected by the Labour Court to give the relief which she sought for. The statement of the Management must have been considered in my view along with other evidence placed by the Management.

(3) The direction for the reinstatement rendered on a finding that she had been a 'workman' cannot be accepted. The issue whether a person worked or not could be as simple appreciation of fact but I have hastened to interfere in the writ petition only because, I find that the judicial approach was wrong and the Labour Court was trying to grant relief on a dangerous surmise which the evidence did not admit of. I set aside the finding rendered by the Labour Court and allow the writ petition.

M. Jain