

Court No. - 52

Case :- WRIT - C No. - 43394 of 2017

Petitioner :- Bata India Limited Gurgaon And 2 Others

Respondent :- Presiding Officer Industrial Tribunal-Iv U.P. Agra And Anr.

Counsel for Petitioner :- Chandra Bhan Gupta

Counsel for Respondent :- C.S.C.,Anil Kumar Srivastava,Gaurav Srivastava

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Chandra Bhand Gupta, learned counsel for the petitioners and Sri Gaurav Srivastava, learned counsel for the respondent no.2.

2. The present petition has been filed for seeking quashing of the award dated 15.02.2017 passed by respondent no.1 in Adjudication Case No. 36 of 2011 published on 20.04.2017 through which the petitioner was directed to reinstate the respondent no.2 in service with 60% backwages.

3. The brief facts of the present case are that the respondent no.2 was appointed as Probationer Sales Assistant on 24.03.1994 in M/S Bata India Ltd in Agra Branch (hereinafter referred to as 'the Company') and he was promoted from time to time. On 24.05.2010, the company promoted the respondent no.2, workman on the post of Assistant Manager w.e.f. 31.05.2010 and transferred him from Mathura to Varanasi, on 31.05.2010, the workman written a letter to the Personal Manager of the Company that due to some personal reason, he is unable to join at transferred place and requested to permit him to continue at Mathura. On 06.07.2010, the workman again requested through letter to resume his duty at Mathura and on 13.07.2010, the Company wrote letter

to the workman to join his duties at Varanasi with immediate effect otherwise disciplinary action will be taken against him. On 24.07.2010, the Company dismissed the services of the workman on the ground of misconduct.

4. Being aggrieved with the order of dismissal from service dated 24.07.2010, the workman preferred a case which was registered as C.P. Case No. 260 of 2010. On 20.04.2011, the said case was transferred for adjudication before the Industrial Tribunal, Agra and where the said case was registered as Adjudication Case No.36 of 2011 and after hearing all the parties, the Industrial Tribunal, Agra passed the award dated 15.02.2017 through which the petitioner was directed to reinstate the respondent no.2 in service with 60% backwages which impugned the present petition.

5. Learned counsel for the petitioner-Company argued that once the respondent no.2-workman transferred at Varanasi and the transfer letter was duly served upon him, he became an employee of Bata Shoes Store at Varanasi and if he was aggrieved with the transfer, he could have challenged the same only in Varanasi not at Mathura and as such, the whole process suffers from want of jurisdiction. He further argued that the workman did not lead any evidence that during the period of dismissal, he was not in any gainful employment and as such, he was not entitled for any backwages.

6. For substantiating his arguments, learned counsel for the petitioner relied upon the judgments passed in the case of **Siemens Limited Vs. Presiding Officer, Additional Industrial Tribunal [2003 (4) LLJ 249]**, **Rajneesh Khajuria Vs. M/s. Wockhard Ltd. and another [2020 0 Supreme (SC) 34]**, **Bata (India) Limited Vs. S K Chawla [2006 (108) FLR 106]** and

Management of A P and C Ltd. Vs. Workmen (A P and C) Asstt. Assocn. [2001 (2) SC 289].

7. Learned counsel for the respondent-workman vehemently opposed the prayer as made in the petition and supported the order dated 15.02.2017 passed by respondent no.1 in Adjudication Case No. 36 of 2011 and submitted that the services of the petitioner were terminated on the ground of misconduct but before dismissal from services, neither any domestic inquiry was conducted nor any chargesheet was submitted, moreover, no opportunity was given to the petitioner to defend his case. Learned counsel for the respondent-workman further submitted that when the workman not joined his duties at Varanasi, his services were dismissed for not complying the order of joining at Varanasi and order of termination was served upon him at Mathura where he was working prior to transfer and as such, Industrial Tribunal, Agra was competent enough to decide his claim.

8. Learned counsel for the respondent-workman submitted that no post of Assistant Manager is available in the Standing Order of the Company on which the workman was promoted and directed to join at Varanasi and as such, the workman was only transferred under the garb of illegal promotion due to malafide intention. However, learned counsel for the respondent sought parity of the judgment dated 18.08.2023 which has wrongly been adjudicated and decided by this Court itself, wherein, the respondent was retired. In the present matter the respondent is still working in pursuance of the interim order at Varanasi.

9. For substantiating his arguments, learned counsel for the respondent-workman placed reliance upon the judgments passed in the case of **D.K. Yadav Vs. M/S J.A.M. Industries [FLR 1993**

(67) 111], Ashok Kumar Pandey Vs. State of U.P. [FLR 1999 (83) 1118], Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd, Bombay [FLR 1986 (52) 19], Ved Prakash Gupta Vs. M/S Delton Cable India Pvt. Ltd. [FLR 1984 (48) 417] and Bikash Bhushan Ghose Vs. M/S Novaratis India Ltd. [FLR 2007 (113) 1183].

10. I have gone through the rival submissions as extended by learned counsel for both the parties and perused the record.

11. By bare perusal of the records, it is apparent that before terminating the respondent no.2 from service, neither any domestic inquiry was conducted nor any chargesheet was submitted, moreover, no opportunity was also given to the petitioner to defend his case, it is also apparent that during the period of termination from service, the respondent no.2 was also not involved in any gainful employment. The respondent no.2 was promoted on the post of Assistant Manager and the said post was not mentioned in the Standing Order of the Company and as such, the respondent no.2 could not join at Varanasi, the respondent no.2 served the Company about 16 years without any complaint. The Company terminated the respondent no.2 from service on the ground of misconduct due to non joining at his transferred place i.e. Varanasi but it is nowhere mentioned in the Standing Order of the Company that if any employee is not joined his transferred place after promotion, the said action will be treated as misconduct and as such, termination from service of the respondent no.2 on the ground of misconduct is illegal. Finding of the Tribunal is based upon findings of fact and evidence and there is no illegality in the order impugned and the same is just and proper.

12. In view of the aforesaid facts and circumstances, the present

petition stands dismissed.

13. However, award of the Tribunal specifically for extending 60% of backwages in favour of the petitioner, is hereby modified only to the tune of 50%.

Order Date :- 16.11.2023

A. Tripathi