

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 8082 of 2012 (O&M)

Date of Decision: 24.12.2014.

Rajpal Singh

--Petitioner

Versus

M/s Bright Star Hotel Private Ltd. & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashwani Bakshi, Advocate for the petitioner.

Mr. Rajesh Garg, Sr. Advocate with
Ms. Nimrata Shergill, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J

The instant writ petition is directed against the award dated 7.12.2009, passed by the Labour Court-I, Gurgaon, whereby the reference has been answered against the petitioner-workman and thereby the action of the management in having terminated him from service, has been upheld.

The factual position as regards the petitioner-workman having served on the post of Helper from 6.3.1997 to 2.5.1998 is not in dispute. Claim set up by the petitioner was that his services had been terminated w.e.f. 2.5.1998 without issuance of any notice, inquiry, wages in lieu of notice period and without complying with the provisions of the Industrial Disputes Act, 1947. During the course of conciliation proceedings before the Labour-cum-Conciliation Officer, Circle-I, Gurgaon on 22.11.1998, stand of the management was recorded that on 1.5.1998 the workman had attempted to steal certain items from the store and upon having been confronted, he got angry and abused officials of the management and resultantly the management has removed him from the job.

In the impugned award while declining relief to the workman, the version of the management that the workman was found committing theft of certain items and having abused his seniors based upon testimony of MW-1 Jagat Pal Singh, has been believed.

Learned counsel for the parties have been heard at length.

Concededly, no domestic inquiry was conducted against the petitioner-workman. Stand of the management has been consistent right through. In the written statement filed on behalf of the management before the Labour Court, Gurgaon and placed on record as Annexure P-4 along with the instant writ petition, it was clearly stated in para 2 as follows:-

“The work and conduct of the applicant forced the management to loose confidence in his integrity to discharge his duties.”

Even in the written statement filed to the instant writ petition, it has been pleaded that on 1.5.1998 the petitioner had tried to steal a few items from the store and upon the explanation having been sought as regards such conduct the petitioner had abused the higher officials and such **conduct of the petitioner tantamount to loss of confidence in his integrity and ability to discharge his duties.**

The termination of the services of the petitioner-workman was founded on a misconduct. Under such circumstances, it was imperative upon the management to have conducted a domestic inquiry by adhering to the principles of natural justice. The same having not been done, the order of termination cannot sustain. The Labour Court has clearly erred having overlooked such aspect and the impugned award suffers from a patent infirmity. In taking such view, I would draw support from the observations of the judgement of Hon'ble Supreme Court rendered in case of **Chandu**

Lal Vs. The Management of M/s Pan American World Airways Inc.,
AIR 1985 Supreme Court, 1128, wherein it was held as follows:-

“8. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion, it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. 'Retrenchment' is defined in S.2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained.”

The question now arises as to what relief the petitioner-workman is entitled to.

It is by now well settled that in every case of wrongful termination by the employer reinstatement is not an automatic relief. A number of relevant aspects such as nature of appointment, mode and manner

of appointment, length of service, delay in having raised industrial dispute etc. would have to be considered.

It has gone uncontroverted that the petitioner-workman had served for a short span of time i.e. from March, 1997 to May, 1998. Termination of the petitioner-workman relates back to 2.5.1998.

Under such circumstances, this Court is of the considered view that the ends of justice would be sub-served by granting to the petitioner-workman a lump sum compensation of Rs.2 lacs in lieu of reinstatement.

Ordered accordingly.

For the reasons recorded above, the present petition is allowed. The impugned award dated 7.12.2009 (Annexure P-6) is set aside. The compensation amount of Rs.2 lacs be released and paid to the petitioner-workman, within a period of eight weeks from today failing which the same would carry interest @ 8% per annum.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

December 24th, 2014.
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