

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.5815 OF 1993

RESERVED ON: JANUARY 21, 2015

DATE OF DECISION: FEBRUARY 13, 2015

Guru Nanak Dev University, Amritsar

.....Petitioner

Versus

The Presiding Officer, Labour Court, Amritsar
and another

.....Respondents

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

Present: Mr.Amrit Paul, Advocate for the petitioner.

Mr.Birinder Singh Khehar, Advocate for
Mr.Prateek Mahajan, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 15.12.1992 passed by the Labour Court, Amritsar at Annexure P1, whereby the reference was answered in favour of respondent No.2 – workman (since deceased) and he was held entitled to reinstatement with continuity in service and full backwages.

2. Mr.Amrit Paul, Advocate appearing for the petitioner-Guru Nanak Dev University, Amritsar (for short 'petitioner-University') would argue that the Labour Court has gravely erred in overlooking the fact that the post held by the workman had been declared vacant due to unauthorized over-stay of his leave

and continued absence from duty. It has been submitted that the workman, who was working as Head Watchman, had proceeded on three days casual leave i.e. from 12.8.1981 to 14.8.1981, the same having been sanctioned on 11.8.1981. Thereafter, an application dated 27.8.1981 had been received from a relative of the workman for extension of leave on the plea of illness. Such prayer had been re-iterated vide subsequent communication dated 4.9.1981 for further extension of leave for ten days. It is contended that the petitioner-University had advised the workman vide letter dated 19.9.1981 that extension in leave, if prayed for, should be signed by the employee himself. Thereafter, another application dated 25.9.1981 was received in the University Office seeking sick leave upto 19.10.1981. Such application was stated to be not accompanied by any medical certificate and as such, the petitioner-University vide letter, dated 1.10.1981, had called upon the workman to submit the same. It is also the contention raised on behalf of the petitioner-University that notices were sent to the workman to report for duty, but the workman having not done so, the University vide office order, dated 2.12.1981, declared his post vacant with effect from the date of his unauthorized absence i.e. 16.8.1981. It has been argued that against such factual backdrop, the finding recorded by the Labour Court as regards non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') cannot sustain. Learned counsel has further argued that the action of the petitioner-University in declaring the post held by the workman to be vacant was strictly in conformity with the

relevant statute contained in the University calender which, in turn, regulated the service conditions of the workman. It has also been stressed that the workman had duly received his provident fund dues at the relevant point of time and this would, itself, be reflective of voluntary abandonment of his job.

3. Mr.Amrit Paul, learned counsel has, as a matter of last resort, even raised a prayer in the alternative that even if the action of the petitioner-University in declaring the post of the workman as vacant was to be held bad in law and finding in regard thereto returned by the Labour Court was to be affirmed, yet a case for reinstatement with full backwages was not made out and rather some reasonable and adequate compensation could be awarded.

4. It would be apposite to notice that even though in the pleadings on record the petitioner-University had raised two grounds as regards the workman being not a workman under Section 2 (s) of the Act having been employed in a supervisory capacity, and that the petitioner-University being not an Industry and as such, not amenable to the provisions of the Act, yet learned counsel during the course of arguments, has not pressed such grounds towards impugning the award.

5. Per contra, Mr.Birinder Singh Khehar, learned counsel appearing for the legal heirs of the deceased workman, would justify the passing of the award by submitting that the workman was a confirmed employee of the University and had proceeded on three days casual leave after getting the same sanctioned.

Thereafter, on account of illness, the brother-in-law of the

workman had submitted two leave applications, Exhibits M6 and M7, and which were declined by the University on flimsy grounds as the same having not been signed by the workman himself. He has argued that no enquiry had been conducted against the workman by the University prior to taking a decision of treating the post to be vacant on the charge of unauthorized absence from duty. It has further been contended that a finding with regard to non-compliance of Section 25-F of the Act having been recorded, the workman was vested with a right in law to be reinstated in service.

6. Learned counsel for the parties have been heard.

7. Certain uncontroverted facts may be noticed. Workman was appointed as Head Watchman and joined service on 31.5.1974. He was confirmed after the expiry of one year i.e. upon successful completion of probation period. Three days casual leave i.e. from 12.8.1981 to 14.8.1981 was duly sanctioned by the University on 11.8.1981. Applications for extension of leave had been submitted by a close relative of the workman. Thereafter, sick leave had also been applied for. Such requests apparently did not find favour with the University on the ground that leave applications were not signed by the workman himself and were not supported by a medical certificate. Notices were even sent to the workman by the University to report back on duty. Ultimately, vide order, dated 2.12.1981, the post that the petitioner held was declared vacant w.e.f. 16.8.1981.

8. Action of the petitioner-University is sought to be justified on the strength of Statute 75 (vi) contained in Chapter 2,

Vol.2 of the Guru Nanak Dev University, Volume I, which reads as under:

"If a Class 'C' employee over-stays his leave, he shall forfeit all his salary during the time of his absence, and if he over-stays for more than one week, his post shall be liable to be declared vacant."

9. Such provision at best can be construed as an enabling provision under the Service Rules for the employer to take action against an employee on account of unauthorized absence from duty. However, by taking resort to such provision, the University could not have put to an end to the service tenure of a workman without complying with the principles of natural justice. Admittedly, the workman was a regular and confirmed employee of the University. It is also the conceded position of fact that no enquiry was initiated and held by the University on the charge of unauthorized absence from duty. Action on the part of the Management/employer to have straightway taken under the Standing Orders/Service Rules to dispense with the services of an employee and to bring to an end to his tenure without resorting to holding of an enquiry has been frowned upon by the Hon'ble Supreme Court in **DK Yadav v. M/s J.M.A.Industries Ltd., 1993(3) RSJ 696**. Such judgment was thereafter followed in **Uptron India Ltd. v. Shammi Bhan and another, AIR 1998 (SC) 1681** and **M/s Laxshmi Precision Screws Ltd. v. Ram Bhagat, AIR 2002 (SC) 2914**.

10. It is also the conceded position of fact that prior to taking decision dated 2.12.1981, the University did not serve

notice or grant pay in lieu of notice period or release retrenchment compensation to the workman. Under such circumstances, the finding recorded by the Labour Court in the impugned award as regards there being violation of Section 25-F of the Act would not require any interference and such finding is rather affirmed.

11. However, one issue that would require consideration is as to whether the Labour Court has rightfully exercised discretion in granting the relief of reinstatement to the workman with continuity and full backwages.

12. The pleadings on record would make it apparent that even though the post held by the petitioner had been declared vacant by the University vide order, dated 2.12.1981, yet the workman had raised the industrial dispute only in terms of serving a demand notice dated 15.9.1986. Even though no period of limitation has been prescribed, but such delay on the part of the workman in having raised the industrial dispute i.e. of nearly five years, has been completely overlooked by the Labour Court. The impugned award was passed on 15.12.1992 i.e. almost eleven years after the decision of the University having declared the post in question vacant and having dispensed with the services of the workman. Certain intervening circumstances while taking a final view in the matter may also be noticed. The workman had already attained the age of superannuation on 31.12.1995. He thereafter has unfortunately expired on 2.7.1998. The present proceedings are now being pursued by his legal heirs who were brought on record vide order dated 16.9.2003.

13. This Court is of the considered view that the ends of justice would be met if adequate compensation is awarded to the legal heirs of the workman (since deceased) rather than directing the petitioner-University to treat the workman to be deemed in service. Ordered accordingly.

14. For the reasons recorded above, the present petition is partly allowed. The impugned award dated 15.12.1992 is modified in terms of granting a lump sum compensation of ₹3 lacs in lieu of reinstatement. In quantifying such amount, this Court has taken notice of the admitted position of fact that the operation of the award having been stayed by this Court on 21.5.1993, the University has complied with the provisions of Section 17(b) of the Act i.e. paid last wages drawn till the date of superannuation of the workman i.e. 31.12.1995. It is further directed that the lump sum compensation amount of ₹3 lacs be released in favour of the legal heirs of the workman within a period of eight weeks from today, failing which the same shall carry interest @ 8% per annum.

15. Petition is allowed in the aforesaid terms.

FEBRUARY 13, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether referred to the Reporter? (Yes/No)*