

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.10767 OF 2012

RESERVED ON: NOVEMBER 17, 2014

DATE OF DECISION: FEBRUARY 02, 2015

Narpal Singh

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour
Court, Gurgaon and another

.....Respondents

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

Present: Mr.Ashok Tyagi, Advocate for the petitioner.

Mr.Rajesh Garg, Senior Advocate with
Mr.M.K.Palwal, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 25.9.2009 passed by the Industrial Tribunal-cum-Labour Court, Gurgaon whereby the reference has been answered against the petitioner-workman and he has not been held entitled to any relief.

2. Learned counsel appearing for the petitioner would submit that the petitioner had joined respondent No.2 – Company on 14.10.1987 on the post of S.S.G.II on a monthly salary of ₹1,225/-. His services were dispensed with on 20.8.1993 and he was not given any notice or pay in lieu of notice period or retrenchment compensation and hence the action was in utter derogation of Section 25-F of the Industrial Disputes Act, 1947 (for

short 'the Act'). It has also been argued that the Management-Company has dispensed with the services of the petitioner by taking shelter under its Standing Orders and such course of action was not permissible without conducting a domestic enquiry as regards the charge of absence from duty. Towards such submission, reliance has been placed upon a judgment of the Apex Court in **D.K. Yadav v. M/s J.M.A. Industries Ltd., (1993) 3 SCC 259**. Further contention has been raised that the Labour Court has erred in overlooking the aspect that the two registered letters that had been allegedly sent to the workman calling upon him to join back on duty were sent at a different address than the one that had been mentioned in the demand notice. Learned counsel would contend that the petitioner-workman having served the Management-Company for a period of almost six years would be entitled to the benefit of re-instatement along with continuity and backwages on account of non-compliance of the provisions of the Act.

3. Per contra, learned senior counsel appearing for respondent No.2 has submitted that the services of the petitioner were never terminated and rather he had lost lien on his employment on account of having remained absent from duty for more than ten consecutive days, in the light of the certified Standing Orders of the Company. It has also been argued that two registered letters had been issued to the workman calling upon him to explain absence from duty and to which there was no response forthcoming, and as such, the reference had been rightfully declined.

4. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

5. The Labour Court has recorded a finding of fact as regards the workman having left service on his own accord. In this regard, evidence in the nature of Exhibit MW1/1 and Exhibit MW1/4 has been adverted to in the impugned award and which were two separate communications sent by registered post to the workman calling upon him to justify the period of absence and to report back for duty. The address in these notices was given as 'Narpal son of Prithvi Ram, Nurgarh, Gurgaon'. The workman, while appearing as PW1, had admitted in the cross-examination that such address was correct. A report Exhibit MW1/2 was also adduced in evidence as regards refusal. It is in the light of due appreciation of evidence that the Labour Court has concluded that the workman had abandoned service and it was not a case of termination. This Court, in exercise of its supervisory jurisdiction, would not go into the question of adequacy and sufficiency of evidence. The finding arrived at by the Labour Court does not suffer from any infirmity.

6. There would be no dispute with the proposition that the Management/employer before taking a decision to strike off the name of an employee from its rolls on account of absence from duty under the Standing Orders would have to comply with the principles of natural justice. In the facts of the present case, the Management-Company had issued two separate communications sent through registered notice. There was a report adduced in evidence to reflect refusal of service in regard

thereto. No evidence had been led on behalf of the petitioner-workman to demonstrate any explanation having been offered with regard to absence from duty or an attempt having been made to join back on duty. Under such circumstances, the contention raised on behalf of the petitioner that it would be imperative to conduct a regular domestic enquiry on the charge of absence from duty is without merit and is rejected. The principles of natural justice would be taken as complied with on account of the employer having called upon and granted opportunity to the workman to justify absence as also to report back on duty.

7. For the reasons recorded above, no case for interference in the impugned award dated 25.9.2009 is made out.

8. Writ petition is dismissed.

FEBRUARY 02, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? Yes/No