

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 10597 of 2015
Date of decision : May 25, 2015

Satya Metal Industries

..... Petitioner

Versus

Presiding Officer Industrial Tribunal , Jalandhar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bhriagu Dutt Sharma, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present writ petition is to the award dated 25.8.2014 (Annexure P-4) whereby the reference has been answered in favour of the workman and he has been reinstated with 30% backwages.

Learned counsel for the petitioner submits that the award of the Labour Court is erroneous, much less against the settled proposition of law, therefore is not sustainable in the eyes of law. He further submitted that respondent No.2-workman was appointed as a part time Accountant and he allegedly stated that his services were terminated on 18.6.2004 but infact he absented himself therefore has abandoned the job, therefore there was no

need of holding an enquiry and the award of 30% backwages is not sustainable in view of the ratio decidendi culled out in the judgment in

Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others (2013) 10 SCC 324.

I have heard learned counsel for the parties and appraised the paper book.

The letter dated 4.6.2004 (Annexure P-3) purported to have been sent under postal certificate, though at the address of the workman but the workman has denied the receipt of the same but only admitted the address. The argument that after the award another letter dated 4.12.2004 through registered post was sent at the address of the Union whereby respondent No.2 was called upon to report for duty but despite the same he has not joined the duty. The plea of abandonment does not have any substance, much less, is devoid of merit, for the reasons that the registered letter dated 4.12.2004 (Annexure P-5) is alleged to have been sent at the address of the Union and not at the available address of workman. The Management was not prevented to send the letter at the address which has been admitted by the workman. The said act shows that the Management is not only playing hide and seek in not taking back the workman on duty but also creating the evidence to show that it is the case of abandonment and not of alleged termination. The Management had not sent the letter dated 4.6.2004 by way of registered post and since the workman has denied receipt of the same, the Management should have sent a chargesheet and initiated an enquiry and it was upon the workman to either join the enquiry or

remain absent but the Management could have proceeded with the enquiry. Since the Management has not held any enquiry calling abandonment of the workman and not holding of the enquiry is not justified and the act of the Management in consonance with the ratio decidendi culled out in the judgment in **D. K. Yadav Vs. JMA Industries Ltd. (1993) 3 SCC 259** it was incumbent upon the Management to serve show cause notice or hold enquiry. Therefore, the action of the Management is not sustainable.

The award ordering reinstatement is based on appreciation of law and therefore is in consonance with the settled proposition of law as there is a categorical finding by the Labour Court that there is violation of Section 25-F of the Industrial Disputes Act, 1947. There is no averment that he was not gainfully employed during the period he remained out of service. The law awarding backwages is no longer res intergra as it has been stated in **Deepali Gundu Surwase's case (supra)** that once the workman fails to make a specific averment in the claim petition or in the demand notice, he is not entitled to back wages. In the absence of any relief having sought in the averments/pleadings or in the demand notice the workman thus, would not be entitled to any back wages.

In the absence of any averment, that he was not gainfully employed during the period he remained out of service, I do not deem it appropriate to issue notice to the workman, as the workman would be require to incur expenses to engage the Advocate to contest the case, but ultimately, as per settled law would not been entitled to backwages.

I deem it appropriate to set aside the finding qua awarding 30% backwages only. It is made clear that the award of reinstatement with continuity of service is upheld.

With the aforementioned observations, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

May 25 , 2015
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