

**IN THE HIGH COURT OF PUNJAB AND HARYAN AT
CHANDIGARH**

**CWP No. 11842 of 2015
Date of Decision : 29.5.2015**

Sun Pharmaceuticals Industries Ltd.Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad and
another
.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. MPS Mann, Advocate, for the petitioner

Mr. Sidharth Batra, Advocate, for the caveator/respondent No.2

Amit Rawal, J.

Challenge in the present writ petition is to the award dated 20.2.2015 passed by the Labour Court whereby the reference qua the alleged termination of the workman has been answered in his favour and he is held entitled to the reinstatement into service along with full back wages.

Mr. Mann, learned counsel appearing for the petitioner very fairly, at the outset, submits that he would not be pressing the order of the Labour Court, granting reinstatement but are only qua awarding of the full back wages.

Thus, finding of the Labour Court viz-a-viz department are hereby affirmed.

Mr. Mann submits that the Labour Court should not have awarded full back wages as the workman failed to make any averment much

less any whisper in the affidavit submitted by way of examination in chief that he was not gainfully employed during the period he remained out of service, therefore, the Labour Court has committed illegality. In this regard, he relied upon Judgment of the Supreme Court in **'U.P. State Brassware Corporation Limited and another v. Uday Narain Pandey, (2006) 1 SCC 479'**.

Mr. Siddharth Batra, learned counsel appearing for the workman submits that the workman in Para No. 7 of the claim petition has categorically averred that he was not gainfully employed and such averments suffice the compliance of the principles culled out in the case of **'Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, 2013(10) SCC 324'** and therefore, the award of the Labour Court awarding back wages is justified.

I have gone through the contentions of learned counsel for the parties.

Before answering the aforementioned question raised on behalf of the petitioner, it would be apt to refer to Para 7 of the claim petition which is as under :-

“That the applicant who is serving since long continuously with the organisation and his being thrown out of the employment in the mid stream of life is sitting ideal and not doing any job the service of this organisation was only base of applicants whole family. The action of management is illegal, unconstitutional and against the principle of natural justice and equity.”

Mr. Mann has vehemently relied to the averments made in the affidavit Annexure P4 dated 19.1.2011 to submit that there is no averment

with regard to the fact that the petitioner remained gainfully employed during the period he remained out of service. Therefore, the ratio culled out in '**U.P. State Brassware Corporation** (supra) is not applicable.

I am afraid that from the perusal of the cross examination of workman, the employer has put a specific question and answer was in this manner :-

“It is incorrect that I am employed.”

Once the management has put a specific question to the workman, the question of shifting the onus much less the burden does not arise. The parties were alive to the situation regarding the gainful employment.

The proposition culled out in **Deepali Gundu's case** (supra) does not require any interpretation. For the sake of brevity, principle (iii) reads thus:-

“Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to

specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

Once the workman has made a specific averment in the claim petition, though the same has been denied in the written statement, management had put a question in the cross examination to the workman with regard to the aforementioned averment claimed in the claim statement, burden in this regard is deemed to have been discharged. The award of the Labour Court is based on appreciation of oral and documentary evidence much less appreciation of law.

There is no illegality or perversity in the award of Labour Court dated 20.2.2015 viz-a-viz awarding full back wages.

The writ petition is accordingly dismissed.

(AMIT RAWAL)
JUDGE

29.5.2015
Ashwani