

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 14976 of 2015
Date of decision : July 27, 2015

M/s Modelama Exports Ltd.

..... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,II,
District Gurgaon,Haryana and another**

..... Respondents

CWP No. 15028 of 2015

M/s Modelama Exports Ltd.

..... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,II,
District Gurgaon,Haryana and another**

CWP No. 14999 of 2015

M/s Modelama Exports Ltd.

..... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,II,
District Gurgaon,Haryana and another**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Kunal Dawar, 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).

This order of mine shall dispose of CWP Nos.

14976, 15028 and 14999 of 2015 as common question of fact and law involves in all the cases. For the sake of convenience, facts are taken from CWP No. 14976 of 2015.

Smt. Seema along with other workman who had been appointed as thread cutter continued to work for almost seven years and their services were terminated on 25.4.2009. However, during conciliation proceedings they were taken back into service but again their services were terminated on 11.7.2009. On entering reference in pursuance to demand notice after a period of two months i.e. 14.9.2009, the Labour Court after taking into consideration the oral and documentary evidence found that it was a case of termination as the Management did not resort to the provisions of Section 25-F, of the Industrial Disputes Act, 1947 therefore, ordered for reinstatement along with continuity of service, much less full back wages.

Learned counsel for the petitioners submits that the conduct of the petitioners was of such nature that they were not required to be retained in service and in this regard they had issued a show cause notice and letters Ex. M-5 , M-6 and M-7 but the workman did not report for duty, therefore, the Labour Court has committed illegality and perversity, in ordering reinstatement much less back wages.

He further submits that at the best, in case the Labour Court found that the termination was bad, it could not have ordered payment of full back wages.

I have heard learned counsel for the petitioners and

perused the paper book.

Ex. M-5 to M-7 pertain to the period prior to the reinstatement which was done on 9/10.6.2009, however, thereafter their services were again terminated on 11.7.2009 but no such communication, as has been done in the past had been issued /or proved by the Management in this regard.

It has become a common feature of the Management to arrive at a settlement in the conciliation proceedings, take back the employee and thereafter indulge into unfair labour practice, which compelled the workman to knock the door of the conciliation officer. The workman had immediately raised the demand notice and specifically averred that they were not gainfully employed during the period they remained out of service. Thus, there has been a specific compliance of the ratio decidendi culled out in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others (2013) 10 SCC 324** that once the workman had specifically pleaded/stated in the demand notice that he was not gainfully employed during the period he remained out of service, the onus to disprove the same shifted on the Management. The Management has failed to discharge the burden, thus, the statement made before the Labour Court, in the absence of any proof to the contrary, is deemed to have been believed. The Hon'ble Supreme Court in **Jasmer Singh Vs. State of Haryana in Civil Appeal No. 346 of 2015 decided on 13.1.2015** has held that once the Labour Court found that the workman has rendered a service of 240 days in a relevant year and the Management has not held any enquiry, much

less issue a show cause notice, before terminating services of workman as he/she is entitled for reinstatement. In the instant case, after reinstatement, the termination/dispensation of services of the workman amounts to unfair labour practice and therefore the order of termination is void ab initio and the workman is not only entitled to reinstatement but full back wages.

In view of what has been observed above, there is no merit in the writ petitions. The award of the Labour Court is fair, legal and justified. The question of law raised in the writ petitions is wholly misconceived for the reasons stated above.

Accordingly, the writ petitions are dismissed.

(AMIT RAWAL)
JUDGE

July 27 , 2015
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