

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 1821 of 2016(O&M)

Date of decision : March 15, 2016

**Deputy Manager, Human Resources, Alembic Pharmaceuticals
Ltd.and others**

..... Petitioners

Versus

Vikas Sharma

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Chatrath, Advocate
for the petitioners.

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).

Learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved of the dismissal of the application filed under Order 7 Rule 10 & 11 CPC in a suit for declaration with consequential relief of permanent injunction on the premise that the respondent-plaintiff is their employee and the challenge to the letter dated 14.10.2014 would fall within the definition of Section 2 (k) and 6 (2) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act'). The civil court would not have jurisdiction.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that on plain reading of Section 2(k) and 6(2) of the Act and as well as para 5 of the plaint it would be apparent that the challenge in the suit is with regard to the letter dated 14.10.2014 whereby the respondent-plaintiff had been called upon to hand over the Company's property and belongings to

the Zonal Sales Manager, in my view, the said grievance would not fall within the definition of Section 2(k) much less 6(2) of the Act, as for the purpose of adjudication of the *lis* particularly when an application under Order 7 Rule 10 & 11 CPC has to be seen in affirmation and not in defence. Para 5 of the plaint reads thus:-

“That now the defendants have issued a letter dated 14.10.2014 in which it is mentioned that due to the continue absence from the field due to the scheduled program, the territory has remained unattended which has caused substantial sales loss to the company and the plaintiff has been advised to handover all the company's property and belongings to Mr. Naveen Kaul-Zonal Sales Manager. This letter dated 14.10.2014 is illegal and null and void because the plaintiff never remained absent and since appointment, he has been performing his duty regularly and is in continuous service. The defendants due to their malafide intention are not marking the presence of plaintiff and they have withheld the salary and other benefits of the plaintiff since 16 August, 2014. The alleged allegations of absence and causing substantial sales loss to the defendants levelled against the plaintiff are absolutely false and baseless. Infact, the plaintiff has been performing his duty regularly and never caused any loss to the defendants. The plaintiff has been performing his duty in the fields at Rohtak as his head quarter is Rohtak. Copy of illegal letter dated 14.10.2014 is enclosed. The plaintiff also sent email messages to the defendants from time to time to the effect that he has been regularly performing his duty. As per letter of probation and subsequent

confirmation letter, the plaintiff has a legal right to remain in service and will retire from the services of company/defendants on completion of 58 years of age. He has also a legal right to get salary, working allowance and travelling fare etc. and the defendants are liable to pay the same. As and when, the plaintiff requested the defendants to mark his presence, to withdraw the illegal notice, to release the salary etc., the defendants instead of paying any heed to the request of plaintiff have threatened to terminate the services of plaintiff. This threatened act of the defendants is also illegal. The malafide intention of the defendants is very clear from the fact that the plaintiff was entitled for Foreign Trip, but the same has been given to some other employee. First the name of the plaintiff was in the list but lateron, this benefit was given to some other employee. Hence the act of the defendants is not only illegal but discriminatory also. The passport of the plaintiff is also in illegal possession of defendants and they are not giving the same to the plaintiff. Since appointment, the work and conduct of the plaintiff is satisfactory and there has never been any complaint against him. The plaintiff has been working under the guidance and supervision of his superiors/defendants and is following all the instructions. The plaintiff is fully capable of performing the job assigned to him. Hence the alleged letter dated 14.10.2014 in which it is mentioned that it is presumed that the plaintiff had abandoned his services on his own accord is illegal and bad in law because the plaintiff has been in continuous service and performing the job assigned to him. It is submitted here that even through email

dated 1.10.2014, the defendants called the plaintiff at Mumbai office. The plaintiff sent a mail to the defendants/company in which the plaintiff asked for date and time to meet the HR Manager at Mumbai office, but the defendants/company did not give any reply. It is also submitted that the presence of the plaintiff was being marked by way of email but that system is locked since 16.8.2014 and as such the presence of the plaintiff is not being marked whereas the plaintiff has been performing his duty regularly and made repeated requests to unlock/open the presence marking system but in vain.”

Petitioner-defendant can raise such a plea treating the issue of maintainability and jurisdiction as a preliminary issue but not in the manner and mode adopted by him as it is a mixed question of fact and law.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

March 15, 2016
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