

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

CWP No. 9099 of 1994 (O&M)

Date of decision: 03.08.2016

Himalaya Public School, Karnal

.... Petitioner

Versus

Presiding officer, Industrial Tribunal-cum-Labour Court, Rohtak and
another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. P.K.Mutneja, Advocate for the petitioner.

Mr. Prateek Gupta, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the present petition, the petitioner-Himalaya Public School has assailed the award passed by the Labour Court dated 15.04.1994 vide Annexure P8.

The respondent was appointed as an apprentice by paying his stipend of Rs.650/- on 18.12.1987. The same is disputed according to the respondent-workman that he was appointed as a Clerk and in the year stipend for apprentice of Rs. 650/- is doubtful. On 23.03.1989 respondent was not allowed to discharge the duties of the post held by him. Thereafter, he has issued demand notice during the conciliation settlement was arrived and the workman was directed to report for duty on 27.04.1989 accordingly

he has reported. The management sought fresh bio-data of the workman and the same was furnished by the workman. Thereafter, on 28.04.1989 the workman remained absent from duty. The version of the management is that the petitioner did not work even on 27.04.1989 and he remained absent from 28.04.1989. In the meanwhile, the workman had submitted an application under Section 33C(2) regarding disputed wages that he had worked for overtime since he was working in boarding school. In this background, petitioner's services were dispensed. Reference No. 492 of 1992 was placed before the Industrial Tribunal-cum-Labour Court, Rohtak. The Labour Court framed the following issues:-

“Whether the termination of services of Shri Raj Mukut Singh is justified and in order? If not, to what relief he is entitled?”

The labour Court held that the respondent-workman is entitled to be reinstated with continuity of service with 50% back wages. Thus, the petitioner aggrieved by the award of the Labour Court dated 15.04.1994, presented this appeal.

Learned counsel for the petitioner submitted that evidence on record has not been taken into consideration by the Presiding Officer who passed the Award. It was further submitted that there is a non-application of mind for the reasons that evidence adduced by the Management has not been discussed even though it is stated in Para 7 of the Award. There is no finding in the Award. It was also submitted that the Labour Court erred in granting 50% back wages to the respondent-workman since the workman has not made out a case before the Labour Court that he is an unemployed and also in the absence of pleading to that effect workman is not entitled for 50% back wages. In support of non-consideration of evidence, learned

counsel for the petitioner relied on the decision of the Apex Court reported in 1964(5) SCR 64 titled as ***Syed Yakoob versus K.S.Radhakrishnan and others*** (Para7). In so far as grant of back wages, in the absence of plea taken by the workman he relied on decision of the Apex Court reported in (2005)5SCC 124 titled as ***Allahabad Jal Sansthan versus Daya Shankar Rai and another*** (para 6). In view of these contentions, the Award dated 15.04.1994 passed by the Labour Court is liable to be set aside.

Per contra, learned counsel for the respondent vehemently submitted that the workman was not allowed to discharge the duties of the post held by him in the back drop that the workman had submitted an application under Section 33C(2) of the I.D.Act relating to wages dispute that workman worked overtime and he is entitled to additional wages and the same has not been extended to the workman. Since the workman had approached court against the management, management took decision that workman should not be allowed to work. It was further contended by learned counsel for the respondent that workman did not hand over sum of Rs.2000/- which was encashed in a Bank on the instructions of the Management. This transaction is relates back to of October, 1988. This contention was taken before the Labour Court stating that the workman has failed to deposit a sum of Rs.2000/- due to the school. It was further submitted that no material has been produced in respect of depositing a sum of Rs.2000/- to Mr. Navjot Singh, who is Registrar of the School. In the absence of necessary material rightly the Labour Court has held that the respondent is entitled for reinstatement with continuity of service with 50% back wages. In so far as back wages is concerned, learned counsel for the respondent submitted that he has filed an independent CWP No.14374 of

1994 with CWP No. 9099 of 1994. In the said writ petition he has prayed for full back wages. In the said writ petition, he has taken a ground that he remained unemployed during the intervening period therefore, grant of 50% back wages is not sufficient and he is entitled for full back wages.

Heard learned counsel for the parties.

Learned counsel for the petitioner submitted that sufficient evidence was adduced before the Labour Court. The same has not been considered as is evident from para 7 of the Award. Para 7 of Award reads as under:-

“7. Ex.W-1 is the order passed by the Principal Director of Himalya Public School, Karnal to Raj Mukut Singh workman mentioned that he joined duty on 27.04.1989 after a voluntary and unauthorized absence from 23.03.1989. Since he had asked to give a fresh Bio-Data which you did. You were also reminded that you have not deposited Rs.2000/- due to the school drawn by you from the Bank and he was asked to either apply for leave for unauthorized absence for ex-port facto sanction or specify in writing the name and detail of the persons allegedly terminated your services as stated by him. He was also advised to work honestly and sincerely as a residential public school needs dedicated staff to take care of the young boarder living away from their parents, but without assigning any reasons you left the school voluntarily and without any reasons you left the school without any leave. He was again cautioned that he is absent without leave and liable to disciplinary action. This letter was written on 27.04.1989.

Ex.WW-2 is the letter written by workman to the Principal, H.P.S. Karnal mentioned that it was amicably settled in the office of the Labour Inspector, Karnal dated 27.04.1989 he joined the duty and rest of allegations of the letter given by Principal Director were false and manipulated. It is further mentioned that he has drawn Rs.2000/- from the Bank and handed over the same to his son Mr. Navjot Singh who is also Registrar of the school and this was never pointed out or given in writing for non depositing of this amount and now you have not taken action prior from the date 27.04.1989 so he once again request to kindly allow him to join duty and pay his all previous dues including the disputed period for which he was also entitled. The workman had given the Bio-data along with the letter Ex.W-2 E.W-3 is representation made by the workman to the Labour Commissioner, Haryana requesting him to reinstate as he was dismissed from job without compliance of the law.”

Thus, there is a non-application of mind by the Presiding Officer while passing the Award dated 15.04.1994. Perusal of the allegations stated in Para 7, the petitioner have not produced any material to show that they had issued a show cause notice for remaining absent from 28.04.1989 onwards. That apart, there is an allegation against the workman that he was asked to encash a sum of Rs.2000/- and the same shall be deposited with Mr. Navjot Singh, Registrar of the School. It is a serious allegation. The petitioner could have charge sheeted the workman to find out whether the workman has not deposited amount of Rs.2000/- with Mr.

Navjot Singh as the transaction relating to October, 1988. Between October, 1988 to 27.04.1989 there is not even whisper of framing of charge for misappropriation of Rs.2000/- by the workman. Therefore, the allegation of mis-appropriation of Rs.2000/- in the month of October, 1988 is an after thought.

In view of these facts and circumstances, for non-consideration of evidence adduced in para 7 of the award, at this juncture, it is not feasible to remand the matter to the Labour Court.

Learned counsel for the petitioner submitted that workman-respondent is not entitled for back wages as ordered by the Labour Court. Since there is no plea to the extent that he was not gainfully employed in support of his contention he relied on (2005)5SCC 124 titled as *Allahabad Jal Sansthan versus Daya Shankar Rai and another* (para 6).

It is admitted that workman has not pleaded anywhere that he is unemployed and he is entitled for back wages to that extent Labour Court has erred in granting 50% back wages. The petitioner has not disputed that the workman had filed the application under Section 33C(2) of the I.D.Act as is evident from the written statement filed by them before the Labour Court vide Annexure P-7 in which they have stated that there was a dispute to the tune of Rs.14750.50 which is alleged claim pertaining to overtime, extra leave, and Sundays' pay etc. In view of these facts and circumstances, the Award dated 15.04.1994 is modified to the extent that petitioner is entitled for reinstatement with continuity in service only.

The petitioner has filed a CM for bringing facts which are not part and parcel of the Labour Court vide Annexures P9 and P10. In view of Annexure P9 dated 23.09.2000 and 27.09.2000, the petitioner's contention

that they have made efforts to assign work to the respondent-workman but he has failed to join. After filing of the present writ petition in the year 2000 it was stated on 21.09.2000 that he reported for duty and thereafter, he has not worked.

In view of these facts and circumstances, the respondent-workman is directed to report before petitioner and the petitioner is directed to take him to duty within a period of 3 months from today.

Disposed of.

03.08.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons: Yes/No

Whether Reportable: Yes/No