

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10273 of 2013 (O&M)
Date of Decision:-09.12.2016.

M/s Star Wire (India) Limited

.....Petitioner

Versus

B.L. Tomar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. A.P. Bhandari, Advocate for the petitioner.

Mr. Deepak Sonak, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has assailed the award dated 28.2.2013 by which the Labour Court allowed the claim of the respondent-workman while holding that he is entitled to be reinstated in service with continuity thereof along with 50% back wages from the date of dismissal.

2.) Learned counsel for the petitioner submitted that the respondent-workman was appointed as a Security Guard. On 01.04.1998 Thereafter, he was promoted to the post of Security Supervisor. While working as such, on certain allegations relating to disobedience of orders of his superiors, the respondent-workman was charge sheeted on 22.7.2004. The disciplinary proceedings concluded in imposing the penalty of dismissal from service on 31.1.2005. The respondent-workman raised an industrial dispute. Thus, the Labour Court while considering Reference

No.R/9/06 passed the award. Feeling aggrieved by the award dated 28.2.2013, present petition has been filed.

3.) Learned counsel for the petitioner submitted that the Labour Court framed the following issues:-

- “1. As per reference?OPWM*
- 2. Whether the enquiry conducted by the management was not fair and proper as alleged? OPW*
- 3. Whether the claimant is not a workman as defined under Section 2(a) of the Act? OPM*
- 4. Relief.”*

Having regard to the framing of issues, the Labour Court proceeded to decide issue No.2 only. The Labour Court held that the Inquiring Officer was the Legal Adviser of the company, hence, no fair and impartial inquiry is expected from him. Thus, it was held that the inquiry proceedings are not in accordance with the procedure and fair and proper opportunity has not been given to the respondent-workman. The learned counsel contended that all the issues have not been considered. It is merely stated that the impartial inquiry is not forthcoming for the reasons that Legal Adviser of the respondent company was appointed that does not suffice to hold that the inquiry is not in accordance with law. Therefore, the award is liable to set aside.

4.) On the other hand, learned counsel for the respondent-workman submitted that the respondent-workman had raised bias against the Inquiring Officer during the course of inquiry. The same has not been taken into consideration. Therefore, rightly the Labour Court has held that Inquiring Officer was not an impartial person to hold the inquiry. It was

further submitted that though the award is for reinstatement in service with 50% back wages, however, as on the date of passing the award i.e. 28.2.2013, the respondent-workman had retired from service therefore, it is impracticable to implement the award dated 28.2.2013. Hence, he sought for modification of the award insofar as reinstatement in service with 50% back wages to that of compensation.

5.) Heard learned counsel for the parties.

6.) Perusal of the award, it is evident that all the issues have not been decided by the Labour Court. It has gone merely on the presumption that Inquiring Officer was the Legal Adviser of the company, therefore, the respondent-workman did not have the fair and impartial inquiry. Such a finding is given in the absence of necessary material to show that the Inquiring Officer was biased. Moreover, no material evidence has been produced to show that the Inquiring Officer was biased after appointment of Inquiring Officer. Therefore, the award passed by the Labour Court dated 28.2.2013 is set aside and the matter is remanded to the Labour Court to decide Reference No.R/9/06 afresh within a period of six months from today. The parties are directed to appear before the Labour Court on 10.1.2017 and they were permitted to raise all the contentions including question of bias of Inquiring Officer.

Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

December 09, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.