

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

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**CWP-21374-2012 (O&M)
Date of decision: 25.05.2016**

M/s Orchid Overseas Pvt. Ltd.

....Petitioner

Versus

Presiding officer and others

.... Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Rajiv Sharma, Advocate for the petitioner.

Mr. Ashwani Bakshi, Advocate for respondent No.2.

P.B. Bajanthri, J. (Oral)

In this petition, the petitioner has questioned the award dated 09.08.2012 vide Annexure P15 passed by the Industrial Tribunal-cum-Labour Court-II, Gurgaon. The petitioner was appointed as a Tailor in the company of respondent No. 1 on 01.04.1997. On 14.11.2007, she remained absent from duty. The petitioner issued letters dated 01.12.2007, 10.12.2007 and 28.12.2007 asking respondent No.2 -workman to report for duty failing which action would be taken. Thereafter, a show cause notice was issued on 22.01.2008. Since there was no response from respondent No.2-workman, petitioner proceeded to terminate workman on 04.02.2008.

Matter was heard by the Labour Court and passed an Award on 09.08.2012

holding that workman is entitled for reinstatement in services with

continuity in service with 50% back wages from the date of her termination till her reinstatement in job.

2. Petitioner aggrieved by the award of the Labour Court dated 09.08.2012, presented this petition.

3. Learned counsel for the petitioner contended that respondent No.2-workman remained unauthorized absent on 14.11.2007 without informing the petitioner. Thereafter, she has not returned for work. Consequently, communications have been made to workman on 01.12.2007, 10.12.2007 and 28.12.2007 asking her to report back to duty failing which action would be taken against her. Show cause notice was issued on 22.01.2008 and her services were terminated on 04.02.2008.

4. In view of these facts and circumstances, procedure has been followed for terminating services of the respondent No.2-workman. The Labour Court has erred in not considering the events like issuance of letters and show cause notice. The Labour Court failed to appreciate the communications dated 01.12.2007, 10.12.2007 and 28.12.2007. Hence, the Labour Court award dated 09.08.2012 is liable to be rejected. It was further contended that back wages of 50% be reduced since there is a lapse on the part of the workman in not responding to letters and she must have worked elsewhere during the intervening period from the date of dismissal till the date of award.

5. On the other hand, learned counsel for the respondent-workman submitted that workman was abruptly denied entry into the premises of the petitioner and asking her for settlement in order to throw her away from the work on 14.11.2007. It was further contended that the communications cited above has not been communicated to the workman for the reasons that

there was incomplete address. Therefore, rightly Labour court has held that the communication of asking of workman to report back to duty is incomplete. Hence there is no infirmity in the award.

6. Reading of para 17 of the Award, it is crystal clear that communication of the petitioner asking the workman to report back to duty has not been delivered to workman due to incomplete address. Extract of para 17 is reproduced herein:-

“17. Ex.R-3 is the copy of letter dated 28.12.2007 shown to have been issued to the workman by the respondent through registered post. In letter dated 28.12.2007 Ex.R-3, it is mentioned that letters dated 01.12.2007 and 10.12.2007 were sent through registered post to the workman, but the same were received back undelivered with the remarks of incomplete address. RW-1 Pawan Kumar, in his cross-examination, has admitted that he does not know whether the respondent has permanent or temporary address of the workman or not. Hence, it is clear that letters dated 01.12.2007 Ex.R-1 and letter dated 10.12.2007 Ex.R-2 was not received by the workman.”

7. In view of the findings of the Labour Court, there is no infirmity in the order of the Industrial Tribunal-cum-Labour Court (II), Gurgaon dated 09.08.2012.

8. CWP stands dismissed.

25.05.2016
pooja saini

(P.B.BAJANTHRI)
JUDGE