

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

418

**CWP-13369-1997 (O&M)
Date of decision:20.09.2017**

Satbir Singh

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour court, Rohtak and another

.... Respondents

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

Present: Mr. Ramesh Hooda, Advocate for the petitioner.

None for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

Despite giving sufficient opportunity there is no representation on behalf of the 2nd respondent. On 01.09.2017, it was made clear that if there is no representation on behalf of 2nd respondent matter would be decided with reference to the available records.

2. In the present writ petition, petitioner has challenged the award passed by the Labour Court dated 27.08.1996 (Annexure P-3).

3. Petitioner was appointed as a Hammer Man in the respondent-Sugar Mill on 21.10.1991 on probation for a period of one year which would be extendable. The respondents terminated the petitioner's services

on 23.10.1993 with reference to factual aspect that the petitioner was subjected to criminal case FIR No. 92 dated 06.08.1974 in which he was convicted under Section 354 of IPC. Learned counsel for the petitioner submitted that against the order of conviction he had preferred a criminal appeal in which it was ordered that appeal was accepted partly while setting aside the sentence and petitioner was ordered to be released on probation on his entering into bond of Rs.2000/- and further with a condition that an undertaking to keep the peace and be of good behaviour for a period of one year etc. The petitioner raised an industrial dispute relating to his termination. Labour court proceeded to pass award against the petitioner while interpreting Section 2(OO)(bb) relating to termination of the services of workman as a result of the non-renewal of the contract employment between the employer and the workman. Thus, the present petition.

4. Learned counsel for the petitioner submitted that petitioner was appointed against regular post on probation. Therefore, question of appointing him on contract basis do not arise. Thus, the labour court has erred in interpreting Section 2(OO)(bb) of the Industrial Disputes Act, 1947. Perusal of the order of appointment do not reveal whether petitioner has been appointed on contract basis or not. Therefore, labour court finding is contrary to the order of appointment. It was further submitted that before order of termination with reference to conviction, petitioner has not been heard in the matter. The respondents have also not taken into consideration order in criminal appeal dated 20.04.1978 since as on the date of termination dated 23.10.1993 it was very much available. Therefore, the

respondents have acted in terminating the petitioner with reference to conviction order dated 10.03.1976 without giving opportunity is liable to be set aside.

5. None appears for respondent No.2.

6. Heard learned counsel for the petitioner.

7. Perusal of the order of appointment dated 21.10.1991 it is crystal clear that petitioner had been appointed against a regular vacancy on probation for a period of one year which is extendable further. Therefore, the labour court has erred in interpreting that the petitioner was appointed on contract basis. Consequently, he is not entitled for any relief before the labour court. That apart, the petitioner's termination is with reference to conviction order dated 10.03.1976 for the offences punishable under Section 354 of IPC. Thereafter, he had preferred a criminal appeal in which the order dated 10.03.1976 was set aside and it was modified to the extent that petitioner was released on probation with bond of Rs.2000/- with one surety etc. The respondents have not appreciated date of conviction and date of appointment. Even assuming that conviction order is required to be taken into consideration for the purpose of termination, petitioner has not been heard before order of termination. In view of these facts and circumstances, labour court award dated 27.08.1996 (Annexure P-3) is set aside. Consequently, order of termination dated 23.10.1993 (Annexure P-2) is set aside. Since the petitioner is out of service from 23.10.1993 it is not appropriate for reinstating the petitioner into service in view of Supreme Court's decision rendered in ***BSNL versus Bhurumal*** reported in 2014(7)

SCC 177. Hence, respondents are hereby directed to pay compensation of Rs.5 Lacs to the petitioner within a period of 6 months from today failing which petitioner is entitled to interest on the compensation amount @ 6% per annum from today.

20.09.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No