

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12659-2013 (O&M)

Decided on: 27.07.2017

M/s. Puri Traders (Air-Tel Distributors)

.... Petitioner

Versus

The Presiding Officer, Labour Court, Gurdaspur and another

..... Respondents

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

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Arvind Kashyap, Advocate,
for respondent No.2.

P.B. BAJANTHRI, J (ORAL)

In the instant writ petition, the petitioner has questioned the award passed by the Labour Court dated 20.11.2012 (Annexure P-8).

The respondent No.2 is stated to have been employed by the petitioner in the month of June 2007 in connection with sale of recharge card of mobile phone etc. In other words, the services of respondent No.1-workman were engaged for the purpose of moving in and around the city to collect information and money on behalf of petitioner. Respondent No.1-workman disappeared on 19.01.2009. In this regard, father of the respondent No.1 gave a missing complaint to the jurisdiction police on 20.01.2009 and so also petitioner. Thereafter, respondent No.1-workman issued a demand notice after lapse of about 4 months. Consequently, reference was made on 25.08.2009. Reference reads as under:-

“whether the respondent/management terminated the services of workman Deepak Sharma in illegal and unjustified manner? If yes, then to what benefits the workman entitled to?”

Learned Labour Court proceeded to pass the following order:-

“In the light of my findings on the above issue, I have no hesitation in accepting the version of the workman that he has not been paid his wages for the period from January 2008 to 19th January, 2009 @ Rs.3000/- plus petrol expenses of Rs.1500/- i.e. total amount of Rs.4500/- per month. Since the respondent has closed his business and in view of the litigations between the parties, it is not in the interest of either party to order reinstatement. I therefore, award a sum of Rs.56000/- towards wages for the period January, 2008 to 19th January, 2009 plus Rs.25000/- lump sum in lieu of his illegal termination, harassment, notice pay etc. The respondent is directed to pay this amount to the workman concerned within three months from the date, the award becomes enforceable, failing which the respondent shall be liable to pay interest @ 12% per annum on the said amount. File be consigned to the record room.”

Aggrieved by the order of Labour Court, the petitioner preferred this petition.

Learned counsel for the petitioner submitted that Labour Court proceeded to pass an award as if there is a reference in respect of wages was not paid to the respondent No.1-workman during the period from January 2008 to 19.01.2009, which was not subject matter of reference. Thus Labour Court exceeded its jurisdiction. It was further submitted that there is no demand by the respondent No.1-workman relating to non-payment of wages during the period from January 2008 to 19.01.2009 so as to sustain the award passed by the Labour Court. It was also submitted that services of respondent No.1-workman were never terminated, on the other hand he himself abandoned the services as is evident from the missing complaint dated 20.01.2009. In view of these facts and circumstances, award passed

by the Labour Court dated 20.11.2012 (Annexure P-8) is liable to be set aside.

Per contra learned counsel for the respondent No.2 resisted the claim of the petitioner by contending that services of respondent No.1-workman have been terminated, further there is no infirmity in the award passed by the Labour Court to the extent of granting certain wages for which respondent No.1 is entitled in view of non-payment of wages from the period from January 2008 to 19.01.2009. Respondent worked for 240 days. Therefore, before order of terminating the services of respondent No.1, he is entitled for compliance of various sections of the Industrial Tribunal. Hence, there is no infirmity in the award.

Heard counsel for the parties.

Question for consideration in the present petition are:-

(i) Whether services of respondent No.1 have been terminated or not?

(ii) Whether wages have been paid to respondent No.1-workman from January 2008 to 19.01.2009 or not?

Having regard to the fact that respondent No.1-workman was missing from 19.01.2009, which is corroborated by evidence and complaint by the father of respondent No.1-workman. Therefore, it is evident that respondent No.1 has abandoned the services, the question of terminating his services do not arise. In so far as granting wages from January 2008 to 19.01.2009 is concerned, there is no reference in so far as non-payment of wages that apart respondent No.1 has not produced any evidence that he has not been paid wages during the period from January 2008 to 19.01.2009 + Rs.25,000/- lump sum in view of his illegal termination etc.

In view of these facts and circumstances, Labour Court failed to appreciate various factual aspects and so also granting wages holding that workman-respondent is entitle to Rs.25,000/- in lieu of illegal termination would be arbitrary and labour exceeded its jurisdiction.

Accordingly, petition is allowed and award passed by the Labour Court dated 20.11.2012 (Annexure P-8) is hereby set aside.

(P.B. BAJANTHRI)
JUDGE

27.07.2017

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No