

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18599 of 2013

Date of Decision:-20.07.2017.

Sh. Bijender Singh

.....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-Labour Court, Rohtak and
another

.....Respondents

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

Present: Mr. M.S. Rana, Advocate for the petitioner.

Mr. Ramesh Hooda, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

Petitioner has assailed the award passed by the Labour Court dated 1.5.2013 (Annexure P-5).

Petitioner has been appointed as a Bearer on contract basis on 16.9.2004. He is stated to have remained absent for about a month. Taking into that event for the purpose of terminating petitioner's service, respondent-management issued a show cause notice as per clause 3 of the appointment letter dated 16.9.2004. Petitioner is stated to have submitted his reply to the show cause notice. Respondent-management found that it was unsatisfactory and proceeded to terminate petitioner's services vide order dated 16.11.2009 (Annexure P-3). Feeling aggrieved by the order of

termination, petitioner raised an industrial dispute. Reference No.153 of 2010 was decided by the Labour Court on 1.5.2013 against the petitioner with reference to clause Nos.3 and 7 imposed in the order of appointment vide Annexure P-1 dated 16.11.2009.

Learned counsel for the petitioner submitted that foundation of the termination order of the petitioner's services is with reference to unauthorized absence for the period of one month. It amounts to misconduct. Therefore, without holding inquiry, petitioner's services cannot be terminated. Hence, order of termination is arbitrary and illegal. The Labour Court has failed to appreciate that Annexure P-1 order of appointment would be only from 16.9.2004 to 31.12.2004 and beyond that Annexure P-1 has no effect. At the same time, respondent-management have extended the petitioner's services beyond 31.12.2004 in the absence of any order upto 16.11.2009. It was also submitted that in order of termination while deciding the petitioner's reply to the show cause notice, nothing has been considered except stating that petitioner was served notice and reply was received by the respondent-management and the same was found to be unsatisfactory. In other words, contents of the reply has not been taken into consideration by the respondent-management while passing the order of termination dated 16.11.2009. Therefore, order of termination is highly arbitrary and illegal and object of issuing notice would be empty formality and it is defeated.

Per contra learned counsel for the respondent No.2 resisted the claim of the petitioner contending that Annexure P-1 order of appointment dated 16.9.2004 is binding on the petitioner as well as respondent No.2.

issued for extending the petitioner's service. Therefore, it is binding. Further it is submitted that Labour Court has not erred in rejecting the petitioner's claim. When the petitioner has not resisted the clause imposed in the order of appointment in particularly Clause Nos.3 and 7, he cannot contend that those clauses could be applied upto 31.12.2004 and not beyond that period. Moreover, petitioner's appointment was for a limited purpose. Therefore, petitioner has not made out a case.

Heard learned counsel for the parties.

Short question for consideration in the present petition is whether order of termination dated 16.11.2009 (Annexure P-3) is a speaking and reasoned or not. Order of termination reads as under:-

“The services of Sh. Bijender Singh, Bearer S/o Sh. Dalip Singh working in Director's Office PGIMs, Rohtak is hereby terminated as per clause-3 of his appointment letter with immediate effect on the basis of reply submitted by him in response to show cause notice served vide this office letter No.PGIMS/C-II/09/8417 dated 12/11/09 vide his letter dated 15/11/09 was considered and found unsatisfactory.”

Reading of the order of termination, it is crystal clear that there is total non-application of mind by the respondents in not considering the petitioner's contention raised in his reply to the show cause notice. On this score itself order of termination is liable to be set aside on the ground of arbitrariness. Further in respect of the clause mentioned in the order of appointment in particularly clause Nos.3 and 7 of the appointment order dated 16.9.2004 cannot be invoked beyond 31.12.2004, for the reasons that order of appointment dated 16.9.2004 is upto 31.12.2004. The respondents have failed to issue fresh order of appointment or extension of contract

appointment. Since petitioner has rendered service from 16.9.2004 to 16.11.2009. In the absence of any appointment order on contract basis, it is presumed that petitioner's services were continued beyond 31.12.2004 on the score that petitioner's service is satisfactory. That apart, petitioner's termination is based on the allegation that petitioner remained unauthorized absent for a period of one month which amounts to misconduct for which the respondent-management are liable to hold an inquiry insofar as alleged misconduct of unauthorized absence. Supreme Court time and again held that even in the case of temporary employee if he has committed misconduct, minimum requirement of holding of disciplinary proceedings is mandatory. In view of the facts and circumstances and the fact that the petitioner is out of service beyond 16.11.2009, he is not entitled for reinstatement. At the best, he is entitled for compensation as held in **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177** wherein para 33 reads as under:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.”

In view of the principle laid down by the Supreme Court (supra), petitioner is entitled for a compensation of ₹ 2,00,000/-. The same shall be paid by the respondents within a period of 4 months from today. If the compensation amount is not disbursed within the stipulated period, petitioner is entitled for interest @ 6% per annum.

Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

July 20, 2017.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.