

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

CWP No.23415 of 2012

Date of Decision:04.10.2017

Rajbeer

... Petitioner

Vs.

Presiding Officer and another

... Respondents

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

Present : Mr. Ram Pal Verma, Advocate for the petitioner.

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

P.B. BAJANTHRI J. (Oral)

Petitioner has challenged the award passed by the Labour Court dated 20.04.2012 (Annexure P-4).

Petitioner was working as a workman with respondent No.2 from 4.9.1974. While working as such, he met with an accident as a result of which he lost eye sight of one of the eye and even he had injuries on his neck and shoulder.

Faced with these factual aspect, respondent No.2 proceeded to charge-sheet the petitioner on 13.6.2005 on the score that work of the petitioner is not upto mark. Petitioner submitted his reply. When things stood thus, respondent No.2 terminated the services of the petitioner on 30.6.2005. Labour Court proceeded to pass award in favour of respondent No.2-management. Thus, the present petition.

Learned counsel for the petitioner submitted that during the course of the employment, petitioner sustained injuries. Therefore, respondent No.2 should have sympathetically considered his employment.

On the other hand, respondent No.2 issued charge-sheet on 13.6.2005.

Further instead of completing the inquiry, on the allegation that petitioner

work was not upto mark, respondent No.2 resorted to terminate the services of the petitioner on 30.6.2005 by short circuit method. Thus, without inquiry, petitioner's services have been terminated. The same is not appreciated by the Labour Court when termination is without enquiry and the fact that petitioner had rendered service from 4.9.1974 to 30.6.2005. Therefore, award passed by the Labour Court dated 20.04.2012 is liable to be set aside.

Per contra, learned counsel for respondent No.2 submitted that petitioner could not be accommodated as his work was not satisfactory after sustaining injuries on 7.11.2000. From 2000 to 2005, on trial and error method, respondent No.2 has continued the petitioner in service. It was further submitted that in the normal course, petitioner would have retired on 15.5.2010 i.e. hardly he had five years of service. It was further submitted that on 15.12.2016, respondent-company was closed. Therefore, question of reinstatement and other things do not arise at this stage. On the last occasion, this Court was pleased to direct respondent No.2 to verify whether petitioner could be accommodated with reference to the Disabilities Act, 1995. It was submitted that Disability Act is Central Legislation which is not applicable to the respondents which is a private company. Learned counsel for respondent No.2 further submitted that petitioner is getting ESI benefit. Therefore, he is not entitled for any benefit. Further he relied on the judgment passed by this Court in **Groz Beckert Asia Pvt. Ltd. v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh and another**; 2009 (7) SLR 361 as well as the judgment passed by Bombay High Court in **Ramaswamy Muruges** v. **S.G. Bhonsale**; 2006(8) SLR 685 relating to interpretation of Section 2(oo)

(c) of the Industrial Disputes Act, 1947 to the extent that termination of service due to ill-health and incapacity is upheld.

Heard learned counsel for the parties.

Undisputed facts are that petitioner has rendered service from 4.9.1974 to 30.6.2005. It was also not disputed that petitioner met with an accident on 7.11.2000 during the course of his employment which has resulted in loss of one eye sight permanently and sustaining injuries on the body. Faced with these, petitioner was allowed to work upto 30.6.2005 from 7.11.2000. Respondent No.2-company is closed on 15.12.2016.

In view of the above facts and circumstances, aforementioned decisions cited by the learned counsel for respondent No.2 are distinguishable with reference to the fact that respondent No.2 has not given any compensation as and when petitioner sustained injuries during the course of the employment on 7.11.2000. Further insofar as ESI benefit is concerned, in the normal course, workman is entitled for ESI benefit since his name has been enrolled under the ESI Act. Petitioner has rendered more than 3 decades of service and before his termination on the allegation of work was not satisfactory a detailed enquiry should have been held. In fact respondents initiated enquiry and side tracking the same and by short cut method terminated the services which is illegal and highly arbitrary. Therefore, petitioner was entitled to reinstatement and continuity of service since petitioner would have retired from service on 15.5.2010 and respondent-firm is closed on 15.12.2016. Accordingly, award passed by the Labour Court dated 20.04.2012 (Annexure P-4) is modified. Respondent No.2 is liable to pay compensation of ₹ 2,00,000/- alongwith interest @ 8% from the date of award. Further it was noticed that petitioner who is entitled

for gratuity amount, the same has not been released for want of certain procedure like submission of application by the workman. Learned counsel for respondent No.2 today furnishes gratuity amount of ₹ 52463/- in the form of a cheque. Petitioner-workman is entitled to interest on the gratuity amount for the reasons that gratuity amount was lying with respondent No.2 from the date of termination. Therefore, respondent No.2 is liable to pay interest on the gratuity amount @ 8% per annum from the date of termination. Supreme Court in the case of Y.K. Singla v. Punjab National Bank and others; (2013) 3 SCC 472 held interest on gratuity is permissible.

Paras 25 and 26 of the said judgment reads as under:

“25. We, therefore, have no hesitation in concluding that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the least that the appellant would be entitled to are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded above). We therefore hold that the appellant herein is entitled to interest on account of delayed payment in consonance with sub-section (3-A) of Section 7 of the Gratuity Act.

26. We, accordingly, direct PNB to pay to the appellant, interest at “. . . the rate notified by the Central Government for repayment of long-term deposits”. In case no such notification has been issued, we are of the view, that the appellant would be entitled to interest, as was awarded to him by the learned Single Judge of the High Court vide order dated 4.5.2011 i.e. Interest @ 8%. PNB is directed to pay the aforesaid interest to the appellant within one month of the appellant's furnishing to PNB a certified copy of the instant order. The appellant shall also be entitled to costs quantified at Rs.50,000/-, for having had to incur expenses before the writ court, before the Division

Bench, and finally before this Court. The aforesaid costs shall also be disbursed to the appellant within the time indicated hereinabove.”

Respondent No.2 is hereby directed to calculate interest both on compensation and gratuity amount and disburse the same within a period of four months from today.

With the above observation, petition stands disposed of.

04.10.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No