

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

211

**CWP-25203-2013 (O&M)
Date of decision:25.08.2017**

Ms. Manju and another

....Petitioners

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon,
Haryana and others

.... Respondents

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

Present: Mr. Pankaj Jain, Advocate for the petitioners.

Mr. D.S.Patwalia, Sr. Advocate with
Mr. Gaurav Rana, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioners have questioned validity of the award passed by the Labour Court dated 05.04.2013 (Annexure P-3).

2. Deceased employee is stated to have been appointed as Welder in the year 1991 with respondent No.2-company. The same is being disputed by the respondent No.2-company to the extent that deceased employee was appointed on 20.06.1994. During the year 2001 to 2002 for two spells deceased employee remained absent for 10½ days and 16 days. During second spell respondent No.2 proceeded to initiate disciplinary proceedings

by framing chargesheet in the month of July, 2002. While concluding the domestic inquiry, respondent No.2 imposed the penalty of termination on 21.11.2002. Thus, deceased employee raised an industrial dispute and reference was decided on 05.04.2013 while considering the factual aspects of remaining absent for few days in the year 2001 and 2002. Labour court has come to the conclusion that order of termination would be too harsh. Thus, proceeded to pass order that deceased employee is entitled to compensation of Rs.1 Lac in lieu of reinstatement and back wages. Workman died in the month of May, 2013. Consequently, legal representatives of the deceased employee-workman presented this petition in challenging the award.

3. Learned counsel for the petitioners submitted that deceased employee should have been reinstated with back wages having regard to the alleged charge of remaining absent for 10½ and 16 days for two spells in the year 2001 and 2002 penalty of termination would be too harsh to that extent labour court findings supports. It was further submitted that before ordering termination on 21.11.2002 deceased employee has not been heard to the extent of issuing notice. In other words, no notice has been issued before order of termination. Therefore, labour court has erred in holding that deceased employee is entitled to compensation of Rs.1 Lac instead of reinstatement, continuity of service with back wages.

4. Per contra, learned counsel for the respondents submitted that absence from duty during the period from 2001 and 2002 for two spells for 10½ and 16 days were proved. The same was appreciated by the Labour

Court. Labour Court has proceeded to pass award of compensation only on the score that order of termination for the alleged absence would be too harsh. Therefore, question of reinstatement with continuity of service or back wages is not made out. Hence, writ petition is liable to be dismissed.

5. Heard learned counsel for the parties.

6. Undisputedly, deceased employee has served for about 8 years and few months. For remaining absent for 10 ½ days and 16 days in the year 2001 and 2002 with reference to the service rendered by the deceased employee during the period from 1994 to 2002, would be too harsh. Therefore, rightly, labour court has held that order of termination is disproportionate to the charge. Insofar as extending benefit of compensation of Rs.1 Lac would be arbitrary having regard to the decision of the Supreme Court in the case of **BSNL versus Bhurmal** reported in 2014(7) SCC 177. Therefore, petitioners-legal representatives of the deceased employee is entitled to higher compensation. At the same time, it is to be noted that respondents have not filed a writ petition against award of Labour Court. In other words, respondents have accepted Labour court's finding that penalty of termination is disproportionate. That apart before passing order of termination no notice was given to deceased employee.

7. In view of these facts and circumstances, compensation of Rs.1 Lac for having rendered service of about 8 years and few months may not be correct and it is too meager. In view of the decision of the Supreme Court in the **Bhurumal's case (supra)** respondent No.2 is hereby directed to pay compensation of Rs. 6 Lacs to the petitioner-legal heirs within a period

of 4 months from today. If the enhanced compensation is not paid to the petitioners within the stipulated period in that event petitioners-legal heirs are entitled to interest @ 6% per annum.

8. To the above extent, award of Labour Court dated 05.04.2013 (Annexure P-3) is modified and CWP stands disposed of.

25.08.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No