

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

CWP No.2207 of 2016 (O&M)

Date of decision: 15.05.2017

M/s CBN Foundation

... Petitioner

vs.

The Presiding Officer, Industrial Tribunal-cum-Labour
Court-1, Gurgaon & anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.R.Kumar, Advocate
for the petitioner.

Mr. Sumeet Jain, Advocate
for respondent No.2.

RAJIV NARAIN RAINA, J.(ORAL)

The petitioner – CBN Multimedia Pvt. Ltd. claims itself to be a registered society for promotion of humanitarian activities and communal harmony through interfaith dialogue between all communities in India. The company claims to be involved in work which is spiritual and religious in nature and runs a pious mission to carry out ecclesiastical services through the means of religious counselling.

The petitioner has approached this Court assailing the award dated September 09, 2015 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon in a dispute based on Section 2A of Industrial Disputes Act, 1947 (hereinafter referred as 'the Act') read with Section 10(i)(c) thereof.

The discharged claimant has been held to be workman in an

employment relationship with the company and has been awarded reinstatement in service with 40% of the back wages w.e.f. September 10, 2012 onwards. Finding has been returned that the termination brought about on September 10, 2012 was illegal for non-compliance of mandatory provision of Section 25-F of the Act. The salary at the time of termination was ₹ 8,400/- per month.

In defence of the reference, the management pleaded that it was not an 'industry' since it was engaged in ecclesiastical activities. The workman's job profile was not included within the definition of 'workman' in Section 2(s) of the Act. The facts which are not in dispute are that the claimant was originally involved/engaged by the company as a "Counsellor". Thereafter, his services were transferred to CBN Foundation, Peach Tree Complex, 3rd Floor, Block-C, Sector 43, Sushant Lok-1, Gurgaon, which was the respondent before the Presiding Officer, Labour Court. The transfer from organisation to organisation was on similar terms and conditions as with CBN Multimedia Pvt. Ltd. The transfer was made with the consent of the workman. The workman did not perform his duties satisfactorily and behaved in an "unethical and unacceptable manner". He was issued a letter of warning on February 15, 2012. Subsequently, a show cause notice dated August 30, 2012 was issued calling upon the employee/claimant to explain his conduct since he violated disciplinary rules of the organisation. His explanation was not found satisfactory and therefore, his services were terminated on September 10, 2012. Advance notice pay and gratuity were sent to the claimant-workman. The petitioning

respondent averred that it had lost confidence in the workman due to his inappropriate behaviour, insubordination etc.

Three issues were framed by the Labour Court, which reads as follows:

- i) Whether the services of workman were illegally terminated? Whether he is entitled to any relief? OPW
- ii) Whether the reference is not maintainable in the present form? OPM
- iii) Relief?

Parties went to trial and produced oral as well as documentary evidence.

The management did not claim the issue; whether the claimant was a 'workman' by definition? It is urged by the learned counsel for the petitioner that such a plea falls under issue No.2 i.e. maintainability and the onus was on the management to, prove the claimant was a religious preacher engaged by the management and did not fall within the definition of workman. The Labour Court after appreciating the evidence on record came to the conclusion that the management had not adduced any cogent documentary evidence to prove that it had really undertaken any religious and spiritual activities as claimed.

The other argument is that the company did not fall within the definition of 'Industry' due to its religious character was held against the respondent. The Management witness admitted that the respondent had a Studio in Sector 43, Gurgaon where Telefilms are made. Significantly, the

witness also admitted in his cross-examination that the EPF Act, ESI Act, Gratuity Act, Payment of Bonus Act, Payment of Wages Act etc. are fully applicable to the respondent.

On the question of misconduct, the Labour Court rightly held that the termination was not preceded by an inquiry into the conduct of the ex-employee and therefore, the termination was not sustainable in law. If the inquiry was not held then the question of compliance of statutory provisions of Section 25-F of the Act would immediately emerge for answer for which there was no sufficient explanation nor could there be. The conditions precedent to termination had not been followed by serving notice, notice pay and payment of retrenchment compensation at the time of termination and by assigning reasons for the termination. It was in these premises that the award was answered in favour of the claimant. The Labour Court applied the law laid down in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324** in awarding relief.

I have heard Mr. Kumar, appearing for the petitioner. His stand before the Court is one which harps on the behaviour of the claimant-respondent No.2, which was unethical and unacceptable and therefore, there was nothing wrong in terminating the services of the claimant-respondent.

The question is not whether the behaviour is unethical or unacceptable etc. on which charge termination may have sustained but since the claimant was a regular employee, he could have only be dealt with by following the principles of natural justice by going into the misconduct in a

regular inquiry. If the petitioner-company did not hold any inquiry then there was also nothing to stop it from seeking an opportunity from the Labour Court to lead evidence for the first time in the reference proceedings to establish the guilt of the claimant in support of the order of termination. On a specific query put, the answer is that the opportunity of defence under Section 11-A of the Act was not raised before the Labour Court.

I have read the written statement filed by the management before the Labour Court from where it is evident that such a precious plea was not raised. If that is so, then the right to avail opportunity stands waived and given up to start with. Since even in the writ petition, the question has not been raised, though it is another matter whether such a plea could have been entertained for the first time in writ jurisdiction the opportunity I should think is lost forever.

I have also read the letter of termination dated October 12, 2012 (Annexure P-7). The service of the workman began on January 01, 2007 and he was transferred to CBN Foundation vide transfer letter dated July 01, 2011. His present designation at the time of dispute coming into existence was "Follow Up Executive". The letter of termination is not simpliciter and recites the issuance of show cause notice, receiving the reply to the show cause notice, the same being not found satisfactory to the management and that due to unsatisfactory service, the services were terminated with immediate effect invoking Clause No.2.11(i) of the appointment letter. The provision of Clause 2.11(i) of the appointment letter recites that "The company reserves the right to terminate your employment

on ground of unsatisfactory performance.” The power may be subjective but it has to be reasonably exercised on objective criteria and by following the rules of natural justice.

I have also read the letter dated September 12, 2012, which is dated one month before the letter of termination. It records that a sum of ₹ 10,293/- was offered as retrenchment compensation vide cheque No.460455 dated September 10, 2012, which the claimant refused to accept and therefore, the letter goes on to say that the management is sending the termination letter and cheque to the residential address of the claimant at Wazirpur, Delhi. By letter dated October 08, 2012 (Annexure P-9), a sum of ₹ 17,384/- was paid to the claimant by cheque dated September 29, 2012 towards gratuity. A sum of ₹ 10,293/- for service render for 5 years could never represent retrenchment compensation, which had to be paid as per Section 25F of the ID Act calculated by 15 days average wages for each year of completed service. In the pleadings presented by the management before the Labour Court (Annexure P-12) it is averred that the claimant was appointed as a Counsellor w.e.f. September 28, 2006 and he was confirmed on July 01, 2007. The last salary paid to the respondent is admitted to be ₹ 8,400/-per month. The claimant's Provident Fund dues is also outstanding and the management offers in para. 5 of the preliminary submissions in the written statement filed before the Labour Court that it is still ready and willing to facilitate such payments.

The last argument which deserves to be noticed is that once management pleads in para. 7 of the preliminary submissions in the written

statement that the management has lost confidence in the claimant because of his inappropriate behaviour and habit of making false claims and indulging in acts of insubordination despite repeated cautions issued have all brought disrepute to and bad name for the management.

I would only say by repeating the words in para. 1 of the preliminary submissions that the object of the society is for furtherance of the Gospel of Lord Jesus Christ. If the petitioner company itself has lifted its work to such an exalted status, then every word used in its pleadings and evidence should reflect an ethical follower of the Gospel. It appears to me that the sole plan and purpose of CBN Multimedia Pvt. Ltd. is to misuse the name of Lord Jesus Christ to non-suit the claimant by claiming itself to be not an industry or the respondent workman. If the management speaks from such a high pedestal then, its actions and thoughts must conform to law in India and especially in the ID Act. There is sufficient evidence or the lack of it to suggest that the claimant was a workman and the activity an industry.

I have no reason to disturb the award as it does not suffer from any error apparent on the face of the record or legal infirmity. The petition is, accordingly, dismissed being devoid of merit.

(RAJIV NARAIN RAINA)
JUDGE

15.05.2017

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1. *Whether speaking/non-speaking?*
2. *Whether reportable?*

Yes
No