

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

CWP No.25517 of 2014 (O&M)

Date of Decision:20.12.2017

M/s Drish Shoes Limited

... Petitioner

Vs.

Mohan Parshad and another

... Respondents

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

Present : Mr. Arjun Sharma, Advocate for the petitioner.

Mr. H.S. Saini, Advocate for respondent No.1-workman.

P.B. BAJANTHRI J. (Oral)

Mr. A.R. Singh, Director of the Petitioner-company is present in Court.

Perused the communication dated 13.11.2017 made by the petitioner in which they have stated that 50% of the back wages if calculated as Rs.8875/- for the period from 20.12.2010 to 22.7.2014, it would be a sum of Rs.1,95,250/-. It is learnt that respondent-workman has rendered 16 years of service. Perusal of the record, it is evident that there is a total misunderstanding between the petitioner and the respondent-workman insofar as respondent-workman employment. Therefore, in order to give quietus to the litigation, respondent-workman is entitled for a sum of Rs.4,00,000/- as full and final settlement. The petitioner is hereby directed to pay the aforesaid amount within a period of four months from today. If the petitioner failed to comply the aforesaid direction, in that event, respondent-workman is entitled to interest @ 6% per annum from today.

At this stage, learned counsel for the respondent-workman submits that he is entitled to gratuity amount.

This order will not come in way of extending the benefit of gratuity amount to the respondent-workman.

Petition stands disposed of accordingly.

At this stage, learned counsel for the petitioner is not satisfied with the above order. Therefore, matter is required to be decided on merits.

Matter is to be taken up at 2:00 P.M.

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 22.7.2014 (Annexure P-12) to the extent of reinstatement with continuity of service and extending the benefit of 50% back wages from the date of demand notice till reinstatement.

Respondent-workman is stated to have joined petitioner as a workman on 18.02.1995. Respondent has earned promotion to the cadre of Supervisor on 01.08.2001. Respondent-workman is stated to have been abandoned service on 20.12.2010. The same is disputed by the respondent-workman. On 13.1.2011, respondent-workman raised a demand notice. Conciliation proceedings have failed due to the proposal made by the petitioner to the extent “that the management is opted to take him on duty provided he submits his explanation to the satisfaction of the management fully explaining the reasons of his unauthorized absence from duty.” In the said written comments, they have also pointed out initiation of inquiry while framing of charge-sheet and non-receipt of the reply etc.

Petitioner failed to appear before the Labour Court in reference No.60 of 2011 decided on 08.12.2011. Thereafter, ex parte award was recalled and reference No.60 of 2011 was restored in the meanwhile. Petitioners were pursuing the inquiry proceedings like order of appointing inquiry officer and further action relating to non cooperation of the

respondent-workman to the extent of publishing notice in the newspaper on 9.2.2011. Inquiry officer has completed inquiry on 14.02.2011 and submitted his report on 16.2.2011. Thereafter, copy of the inquiry officer report was made available to the respondent-workman. Consequently, no action has been taken by the petitioner. Labour Court passed award on 22.07.2014. Hence, the present petition.

Learned counsel for the petitioner vehemently contended that conduct of the respondent-workman from 20.12.2010 till furnishing of inquiry officer report seeking petitioner's explanation, it is evident that he has not co-operated. Thus, he is not entitled for the back wages of 50% awarded by the Labour Court. He has relied on following decisions of the Supreme Court: (i) **State of Punjab v. Jagir Singh**; 2004 (4) SCT 443 and (ii) **Vijay S. Sathaye v. Indian Airlines Limited and others**; 2013 (3) CLR 612 to the extent that if conduct of the workman is not fair while discharging the duties of the post read with non reporting to duty and despite asking concerned workman to join duties to the extent of publishing in the newspaper and further workman who has abandoned the service, he is not entitled to back wages.

Per contra, learned counsel for respondent No.1-workman while resisting the petitioner's contention submitted that petitioner did not allow him to discharge the duties of the post held by him from 20.12.2010. Thereafter, he has issued demand notice on 13.01.2011. For no fault of the respondent-workman, petitioner imposed condition before the conciliation proceedings. Further, it was pointed out in respect of holding of domestic inquiry like framing of charge-sheet on 05.01.2011 and asking the respondent-workman to furnish his reply within 48 hours. Such a

communication has been made from State of Punjab to State of Bihar where respondent-workman is stated to have been residing at the relevant point of time. It was also submitted that appointment of inquiring officer is dated 24.01.2011 and on the very same day inquiry officer issues notice to the respondent-workman to appear before him. Even publication of notice in the newspaper is dated 9.2.2011. Whereas the inquiry officer had fixed the date for further inquiry on 14.02.2011 and it was concluded on the same date. These dates and events reveal that somehow petitioner wanted to get rid of the respondent-workman. He has also pointed out that various communication relating to domestic inquiry which has been addressed to incorrect address as is evident from the record while addressing some of the communication is with reference to Panchkula and Mohali which are part of different State. Therefore, conduct of the petitioner is required to be taken note of for the purpose of back wages of 50% awarded by the Labour Court.

Heard learned counsel for the parties.

Crux of the matter is whether respondent-workman is entitled for reinstatement with continuity of service and 50% of back wages as awarded by the Labour Court is in order or not?

Perusal of the statement made before the conciliation officer, it is evident that petitioner has already determined to get rid of respondent-workman for the reasons that they have initiated inquiry and for eye wash, they have made a statement that they are ready to take him to duty by imposing condition that he has to furnish his explanation for his unauthorized absence from duty. When the dispute was pending consideration before the Labour Court, petitioner proceeded to initiate

inquiry for unauthorized absence and they have not completed for no reason. Having regard to the proceedings like framing of charge-sheet till furnishing and inquiry officer report, it is evident that in a jet speed, petitioner wanted to complete inquiry proceedings without giving appropriate opportunity. For example, issuance of charge-sheet is dated 5.1.2011 which was issued from Panchkula addressed to resident of respondent in State of Bihar asking respondent-workman to submit his explanation in 48 hours; appointing inquiry officer on 24.01.2011; on the very same day inquiry officer issued notice to the respondent-workman for his appearance; so also issuing notice through newspaper is on 09.02.2011; inquiry officer completes proceedings on 14.02.2011 which is not even a week time from the date of issuing notice in the newspaper. These events show that petitioner is in a hurry to throw out the respondent-workman. Reliance on the decisions of the Supreme Court referred to above is not applicable to the present case for the reasons that conduct of the respondent as stated above shows that there is a total non cooperation of the petitioner. Even it is evident from the ex parte award issued on 08.12.2011. In other words, petitioner has not appeared before the Labour Court when it was decided ex parte on 8.12.2011. Hence, decisions cited by the petitioner are distinguishable. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the award passed by the Labour Court. Since petitioner has accepted the duty report of the respondent-workman and he was extended all service benefits from time to time. Therefore, what remains is only payment of 50% back wages. Hence, petitioner is hereby directed to pay 50% back wages along with 6% interest within a period of three months from today.

Accordingly, petition stands dismissed.

20.12.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No