

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

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**CWP-4708-2013 (O&M)
Date of decision:25.09.2017**

Naresh Kumar

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court-II, Gurgaon and another

.... Respondents

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

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

Mr. R.S.Malik, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the validity of the award passed by the Labour Court dated 18.07.2012 (Annexure P21).

2. The petitioner is stated to have been appointed as Apprentice with respondent No.2 for the period of 2 years. During apprenticeship, respondent No. 2 has extended benefit of salary vide Annexure P-2 on 01.04.2003 which reads as under:-

“Sub:Salary Revision for the year April 2003-March 2004.

It gives us pleasure to inform you that the management has decided to revise your salary ("Base Up") w.e.f 1st April 2003, as under:-

Level	:	Staff
Grade	:	T3
Salary Table	:	2
Current TFI (2002-2003)	:	4266
Revised TFI(2003-2004)	:	4550

3. The petitioner stated to have remained absent consequently, respondents have made a correspondence with the petitioner to the extent that he remained absent. Consequently, notice was issued. The petitioner raised an industrial dispute regarding his removal from service dated 20.8.2003 (Annexure P-15) by raising a demand notice on 21.07.2006. The Labour court proceeded to dismiss the petitioner's reference only on the score that he was Apprentice. Therefore, industrial dispute Act and its provisions are not attracted. Learned counsel for the petitioner submitted that when he has been paid salary from 1.4.2003 therefore, as on the date of removal from service on 20.08.2003 (Annexure-P15) he was drawing salary. Consequently, he is a workman. It is also evident from correspondence like Annexures P13 to P15. The labour court erred in holding that petitioner is not a workman.

4. Per contra, learned counsel for respondent No.2 vehemently, contended with reference to standing order, other than the workman no notice shall be necessary for the termination of the service of any other class of employee. Since the petitioner is an Apprentice therefore, question of issuance of show cause notice and order of termination do not arise.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether the petitioner is Apprentice or Workman? Respondent No.2 have failed to produce necessary material to show that as on 01.04.2003 petitioner has been paid salary of Rs.4,550/-. If there is any error in identifying pay slip as a salary revision for the year March, 2003-April, 2004 instead of stipend revision for the year April, 2003-March, 2004 no documentary evidence has been placed on record to show that petitioner's status would get the salary of particular amount so also the stipend revision for the year April, 2003/March, 2004 the Apprentice would get a sum of Rs.4550/- as a stipend. In the absence of the documentary evidence in respect of salary and stipend as on April, 2003-March, 2004 labour court has erred in holding that petitioner as apprentice so as to deny the relief so also entertaining the reference. Since the petitioner has been paid salary that too revision of salary in the year April, 2003-March, 2004 vide Annexure P2. Further respondents in their communication vide Annexures P13 to P15 the word used by them is job. Therefore, as on the date of Annexures P13 to P15 petitioner would be workman. Therefore, one has to draw the inference that petitioner is a workman. He is not entitled for reinstatement for the reasons that he remained absent for number of days. Consequently, his services were terminated by letter on 20.08.2003. From 20.08.2003 to 21.10.2006, the date on which he had issued a demand notice petitioner kept quiet. Therefore, there is delay in raising demand notice consequently, petitioner is not entitled to reinstatement. At the best, he is entitled for compensation.

Respondent No.2 is hereby directed to pay compensation of Rs.1 Lac to the petitioner within a period of 4 months from today failing which petitioner is entitled to interest @ 6% per annum. Award of Labour court stands modified to the above extent.

7. With this observation, CWP stands disposed of.

25.09.2017

pooja saini

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

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No