IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 27262 of 2016
Date of decision: 9.1.2017

M/s ACE Facilities Management Services … Petitioner

Versus

Tejbir Chauhan & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Saini, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

The only argument raised by the petitioner in challenge to the award of the Labour Court is that issues were not framed and evidence produced to reach a conclusion that the termination of the workman/respondent was illegal and void for non-compliance of the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court is under no bounden duty to frame issues like a civil court for the reason that the Labour Court receives reference with the issue framed for adjudication, so long as both the parties to the dispute know what the case is against each other. The argument based on absence of issues framed is not tenable and is rejected. The demand notice was issued by the workman on 3.12.2013 praying for justice by way of reinstatement with consequential benefits. The notice was served on both the respondents i.e. the Sahara Mall and the petitioner-management. In paragraph 2 of the written statement filed by the management before the Labour Court the following admissions have been made:-

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> "That, the present statement of claim/ demand notice is false, frivolous and based on concocted story. The present matter is without cause of action, in that no Industrial Dispute exists because the services of the said alleged workman were never retrenched or terminated by answering management and merits rejection. It is submitted that the service of the said alleged workman was never terminated. In fact the alleged workman misbehaved with their seniors, subordinates and also with the answering management. The answering management has sent show cause/ warning letter calling upon the alleged workman to file reply of the same, vide letters dated 14th August, 2013, 06th Sep. 2013 and 08th October, 2013, copies of the same are annexed herewith and thereafter the alleged workman willfully stopped to come on duty from 01th November, 2013, but he did not resume duty. The management has no objection if the alleged workman comes with written cause of said illegal/ unauthorized absenting and performs his duties."

In view of these specific averments, the management cannot be heard to dispute the 'employee-employer relationship'. Only an employer can issue show cause notice and warning letter to a workman employed by it. Merely because the workman did not submit reply to the letters dated 14.8.2013, 6.9.2013 and 8.10.213, does not per se mean that he had abandoned his service or there was no direct relationship, as argued before me. Abandonment is consequently ruled out of consideration in view of proximity of service of demand notice for justice

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served within about a month of retrenchment raising an industrial dispute. If it is a case of alleged misconduct on the part of the workman then disciplinary proceedings were not conducted by serving charge sheet to establish guilt and therefore, I have no reason to interfere with the well-reasoned order of the Labour Court granting reinstatement and 40% back wages vide award dated 2.9.2016 and would refuse interference in writ jurisdiction.

As a result of the above discussion, setting aside of the impugned award is wholly unwarranted against the exercise of discretion properly exercised by the Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon on the evidence produced by the parties. The petition is devoid of merit and is dismissed. The dismissal of petition will not be read as final in case the workman approaches the Court for enhancement of wages. In case such a petition is filed, it will be decided on merits without reference to this order except that it upholds reinstatement to service.

(RAJIV NARAIN RAINA)
JUDGE

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Whether speaking/reasoned *Yes*
Whether Reportable: *No*

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