

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2550 of 2017 (O&M)

Date of Decision: 13.2.2017

Shri Guru Ram Dass Coop. House Building Society Ltd., Ludhiana

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Ludhiana and another

...Respondents

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

Present: Mr.Harit Sharma, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

1. The respondent-workman served as a Mali with the petitioner-Society from 29th June, 1996 by Resolution Ex.R/1 appointing him on a salary of ₹ 1500/- per month. Vide Resolution dated 24th July, 2009 Ex. R/2 the services of the respondent-workman were terminated. On dispute raised the reference to the Labour Court was as to whether the services of the respondent-workman had been terminated in a legal and valid manner and was it justified.

2. The Management alleged that the workman remained on unauthorised absence from duty w.e.f. 17th June, 2009. He visited the petitioner-Society on 20th July, 2009. He had been paid salary for the period 1st June, 2009 to 16th June, 2009. The Management pleaded that the workman abandoned service on 20th July, 2009 and did not turn up despite

them sending messages to him to join duty and ultimately vide Resolution

dated 24th July, 2009, his services were terminated by paying him a cheque towards wages for 16 days in June, 2009. Since the workman himself abandoned the job, he was not entitled to reinstatement or benefits under Section 25F of the Industrial Disputes Act, 1947 (for short “the Act”).

3. On the evidence led by the parties, the Labour Court turned down the plea of the Management disbelieving the stand that due to wilful absence from duty his services were terminated vide Resolution Ex.R/2 . The Labour Court found on file not even an iota of evidence to prove that at the time of passing of Resolution dated 24th July, 2009, neither the workman was present nor was any evidence showing that he visited the respondent-Society on 20th July, 2009 on record of acceptance of a cheque for wages due for the period from 1st June, 2009 to 16th June, 2009. No documentary evidence was let in by the Management showing that the workman was issued a notice asking him to attend duty. No witness had been examined by the petitioner-Society to prove its plea that messages were sent to the respondent-workman asking him to resume duty. The Labour Court concluded that the services of the workman were terminated on an allegation of unauthorized absence from duty which was in the nature of misconduct which required an enquiry to establish guilt since it constituted serious misconduct. A proper and reasonable opportunity ought to have been given to the workman to enable him to put forth his case in defence. A proper enquiry was necessary before terminating the services.

4. When there was charge of absence from duty, it was incumbent upon the Management to serve a charge-sheet and hold an enquiry. If the workman did not join enquiry, only then it would be competent to terminate the services of the workman, otherwise only by strictly complying with the

the Act was not followed and the action of the Management was unjust, the reference was liable to be accepted. The Labour Court did not accept the false plea of abandonment of employment raised by the Management and the defence was neither just nor legal. The factual position was that no proceeding was initiated against the workman on account of alleged absence from duty.

5. The right to be treated fairly and in accordance with law is exacerbated when the workman had put in 14 years of service and then being shown the exit door. That was a substantial period for operating the protection in the law of industrial disputes. Furthermore, it was an admitted case of the Management that after termination of the services of the workman, some other person has been employed in his place. The termination was, therefore, illegal and arbitrary only to get rid of him.

6. On the question of relief, it has come in evidence during cross-examination of the workman appearing as his own witness WW-1 that during the period following termination, the workman held a job in a school and was getting a salary of ₹ 7600/- per month. The Labour Court held that it could not be said that the workman remained out of employment from the date of termination of services by the Management. The Labour Court found that the demand notice was served on 14th November, 2009 speedily raising an industrial dispute within four months of the termination and for these reasons scaled down the relief to 25% of the back-wages from the date of issuance of demand notice. Accordingly, the Labour Court reinstated the workman with continuity of service, but restricted back-wages to 25% of the arrears from the appointed date. The award dated 2nd November, 2016 passed by the Presiding Officer, Industrial Tribunal, Ludhiana has been

7. I have heard Mr. Harit Sharma, learned counsel for the petitioner at some length.

8. Learned counsel for the petitioner is unable to convince me that this was a case of abandonment of service nor could it be wriggled out of the finding of the Labour Court that the workman had not abandoned his services. He is also unable to get out of the situation that the resolution terminating the services of the petitioner itself speaks of misconduct of absence from duty and is, therefore, not a termination simpliciter. The charge of absence from duty in the resolution could not be taken *ex-parte* and the workman was within his right to assert that he was prejudiced when a reasonable opportunity was not offered to him to explain his case in defence.

9. I am therefore inclined to think that it would not be fair and proper to upset the findings of the Labour Court to the extent it awards reinstatement with continuity of service. As far as employment in another school is concerned, the workman had admitted that he was employed in a job in another school and earning salary of ₹ 7600/- per month. The Labour Court was well within its discretion exercised judicially to impose a substantial cut of 75% of the arrears of back-wages and awarded them to the extent of 25%. Substantial relief has been awarded to the Management on this account by factoring subsequent employment in another school as discredit. I would think it not proper to unsettle this finding as well only to take a different view while acting under Article 226 of the Constitution of India and held back under the restrictions imposed upon it while judicially reviewing decisions of Tribunals by the law settled in Syed Yakoob v. K.S. Radhakrishnan; AIR 1964 SC 477. In the absence of perversity, irrationality

in the impugned award of the Labour Court which even otherwise suffers from no palpable legal infirmity or an error apparent on the face of record.

10. In view of the above, I find no merit in this petition which is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

13.2.2017
MFK/hemlata

Whether speaking/reasoned

Yes

Whether Reportable

No