

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

Date of decision: 19.04.2017

CWP No.7840 of 2017

Manager, M/s Bee Kay Hosiery

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal -cum-
Labour Court, Panipat & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Harish Bhardwaj, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

As I read the Award, I can only appreciate the work of the learned Presiding Officer, Industrial Tribunal -cum- Labour Court, Panipat in a well reasoned and balanced judgment on all the aspects which were put to trial on the reference.

The second respondent – Sunita Rani had completed continuous service of 240 days with the petitioner during the reckonable period; the provisions of Section 25-F of the Industrial Disputes Act, 1947 were observed in the breach; the relationship of employment was established; the defence of the management was disbelieved; the imputations of misbehavior with co-workers or any supervisor and other employees of the petitioner – company, when such a steadfast and hard stand was taken by the management denying the claim for relief altogether that the worker was not its employee was well appreciated on the evidence adduced by the parties, then the fate of the management was sealed by the learned Presiding Officer.

Allegations of misconduct were replete in the written defence but were not

backed by an enquiry to establish misconduct. Such allegations are to be disbelieved when they are not made in front of the person indicted and have to be ignored and not acted upon. All these issues have been duly considered to hold the termination illegal.

The documented period of service found by the Labour Court was from 10.09.2007 to 18.07.2009 and the worker's (Sunita Rani) statement that she was appointed on 01.01.2005 as skilled *Karigar* was not accepted on a careful consideration of the evidence on record. The story of willful absence taken by the management brought with it the onus to prove the plea placed rightly on the shoulders of the management. The onus had to be discharged by them which they failed to discharge. No letter or supporting documentary evidence was presented before the Labour Court asking Sunita Rani to report for duty in case she was willfully absent. The Labour Court found the pleas of the management vague in the written statement and such which "needed to be deprecated with the strongest possible words". The Labour Court was right in law in observing that pleadings cannot take the place of proof. The conclusive finding returned by the Judge was that Sunita Rani was forcibly removed from service. The question of abandonment did not arise since the demand notice was served close at heels of the termination. No evidence was produced before the Labour Court that she misbehaved with anyone at the work place. The moot point as to absence was answered in favour of Sunita Rani. To sum up, Sunita Rani was got rid-off by the petitioning management paying two hoots to the law. When the defence to the reference is falsified by evidence then management deserves no equity. Relief must follow just as costs follow the event.

For these reasons, the impugned award was answered in favour of the workman and I support it. There is neither legal infirmity nor any perversity in the findings recorded by the learned Labour Court. Hence, the petition is dismissed.

A few more words are necessary as far as relief granted is concerned as awarded. There appears at first sight a minor contradiction in the amount of back wages recorded in the second last para.19 concluding the reasoning and the last para.20 granting relief. Sunita Rani was found entitled to reinstatement in services with continuity of service with 25% back wages in para.19, whereas in the operative relief part, the Court has awarded 50% back wages. One would have to go by the relief part in para.20 [under heading “Relief”] which removes doubt and this is also how the petitioner has understood the award in para.7 of the petition and in prayer clause (i) accepting that the Court has awarded 50% back-wages and challenge is based on such acceptance under the relief heading. Thus, 25% mentioned in para.19 is at best an accidental slip, a typo or an erratum.

I, therefore, have no hesitation in upholding the relief part i.e. reinstatement with continuity of service and 50% back wages from the date of demand notice. The award will be so read.

19.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>