

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

CWP No.9190 of 2017 (O&M)
Date of decision: 01.05.2017

The Managing Director Axis Securities and
Sales Limited & anr.

... Petitioners

VS

Presiding Officer, Central Govt. Industrial Tribunal
-cum-Labour Court-1, Chandigarh and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. B.S.Badhran, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J.

1. The issue which was sent for trial to the Presiding Officer, CGIT-cum-Labour Court-1, Chandigarh was whether the action of the management in dismissing the services of the workman w.e.f. 20.04.2010 was legally just and valid and what relief the workman is entitled to and from which date in case it is so.

2. The finding of fact returned by the Tribunal is that the dismissal was illegal and brought about out unethically by avoiding compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947. This departure is to the peril of the petitioner company.

3. By its impugned award dated 14.01.2016 the Tribunal has awarded reinstatement but has deprived the workman of his back wages for wrongful dismissal. Liberty has been granted to the management to hold a regular inquiry as per rules into the charges levelled against the respondent workman by following the rules of natural justice.

4. The management tried to justify its action before the Tribunal pleading that the employee was not the 'workman' as defined by Section 2(s) of the ID Act. The workman's salary was paid @ ₹ 11,900/- per month, which pay was increased to ₹ 13,250/- per month. He was confirmed in service w.e.f. 09.06.2008 vide letter dated 19.09.2008. The management dismissed the workman on 20.04.2010. The dismissal was as a result of the charge sheet issued on 26.03.2010 to which the workman replied on 27.03.2010.

5. The admitted position on file was that no departmental inquiry was held against the workman. The complaint on the basis of which the workman was dismissed from service had been withdrawn by the complainant Charan Singh. His services were dispensed with without notice, notice pay and retrenchment compensation and his juniors were retained in service and other employees were appointed in his place after his services were terminated.

6. Ex. M2 was brought on record by the management, which was self destructive to the plea that the employee did not qualify as 'workman' under Section 2(s) of the Act. Flow Chart Ex.M2 belongs to Axis Sales Ltd. and its header was noted as 'Confidential'. Table 4 of Ex. M2 designates different categories of employees in Grades and Corresponding Designations in the 'Non-Managerial Cadre'. Table 5 outlines the Structure in the Non-Managerial Sales Cadre at the Branch. The designation given to the petitioner was Team Leader (Grade S1), which job fall in Table 5. The management asserted that the employee was performing the duties of Team Leader (Sales) and was fully responsible to manage the activities of the

officers/executives working directly under him. Thus, they said that he was performing the work of a managerial and supervisory nature. His salary was ₹ 11,900/- which was more than ₹ 10,000/-. These were bold statements outlining the nature of duties assigned to the post to show that he was not a workman.

7. It is well settled in law that mere designation and rate of wages/salary of a post is inconsequential to the determination of the question when the nature of duties assigned should be such that they should bear a strong stamp of managerial responsibility of making appointments, passing punishment orders, assigning duties in writing, suspending an employee, granting leave, issuing warnings, suspending employees, writing ACRs, hearing grievances of workers, entering into contracts binding the employer and other sundry responsibilities which mark a man out from the rank and file of labour etc. None of these elements is present in this case by way of evidence on the file both documentary and oral.

8. The bald and faceless stand of the management is belied by their own document Ex.M-2 which proves an employee if falls in non-managerial cadre, which fatal document itself is strong enough to rebut the presumption of the employee being on the managerial side of the organization. The Tribunal has placed implicit reliance on Ex.M-2 as I would. The document demolishes the case of the petitioner beyond redemption. If the finding of fact is returned on categorizing the respondent in "Non Managerial Cadre" the petitioner cannot be heard to wriggle out of its own classification by grades.

9. There is nothing on record by way of evidence and proof to

show that the respondent was performing supervisory and managerial duties and therefore, his case would not fall in the exclusions in Section 2(s)(iv), which includes by definition persons employed in a supervisory capacity drawing wages up to ₹ 10,000/- exercising either by the nature of duties attached to the office or by reasons of power vested in them functions mainly of a managerial nature. The Tribunal has examined the facts and returned proper findings and I have no reason to veto them in a proceeding under Articles 226 and 227 and sit in appeal over the Tribunal.

10. Besides, the services of a regular employee could be terminated on allegations of misconduct only if accompanied by a regular enquiry, which liberty the Tribunal has given to the management and for that reason has denied back wages altogether. To award reinstatement the Tribunal has relied on the Full Bench of this Court in *Hari Palace, Ambala City vs. The Presiding Officer, Labour Court, Rohtak and another*, 1979(3) SLR 296 holding that illegal dismissal would result in reinstatement and full back wages unless there are reasons necessitating departure.

11. If the claimant indulged in unethical practice of taking money from the customers of the company then the complainant had withdrawn the complaint but the facts of that incident are not available in detail on record nor disclosed except in skeletal form and therefore, no opinion is expressed thereon. It need not be enquired into, since all that is left by the Tribunal to the management in case it holds an inquiry but that can be only after reinstatement.

12. I find no justifiable reason to interfere with the award which makes sense. As a result of the above discussion, the writ petition is devoid

of merit; it fails and is dismissed at the threshold.

13. Copy of this order shall be sent by the office to the private respondent.

(RAJIV NARAIN RAINA)
JUDGE

01.05.2017
sonia

- | | |
|---------------------------------------|-----|
| 1. Whether speaking/non-speaking? | Yes |
| 2. Whether reportable/non-reportable? | No |