

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

CWP No.9574 of 2017 (O&M)
Date of decision: 05.05.2017

M/s Electro Gears Pvt. Ltd.

... Petitioner

vs

Presiding Officer, Industrial Tribunal, Patiala and ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mehardeep Singh, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This petition has been filed against an order passed in an application filed under Section 15(2) of Payment of Wages Act, 1936 before the statutory Authority on 11.01.2011 directing the petitioner-company to pay respondent-workwoman a sum of ₹ 80,161/- under different heads of claims such as wages, leave encashment and bonus etc. on a total length of service spent with the petitioner management from 17.07.2004 to 18.07.2010.

The respondent-workwoman worked as Electrician with the petitioner private company.

Accordingly, challenge is to the order dated 11.04.2011 under Payment of Wages Act, 1936 and an award dated 29.11.2016 passed in reference No.484 of 2011 between the same parties in reference proceedings under Section 10 of the Industrial Disputes Act, 1947. There appears to be a fatal defect of misjoinder of causes of action and a common petition would not be maintainable before this Court.

Be that as it may, the order of the Authority being the cause of action prior to termination the same stands independent from the cause of action of before the Tribunal in the industrial dispute.

As far as the ex parte order of the Authority is concerned under PWA, the same was filed and concluded in the year 2011 and as against the order the challenge is brought in this writ petition presented in 2017 without any sufficient cause show by way of explanation for humongous delay and laches and therefore the challenge to the order dated 11.04.2011 of the Authority (Annexure P-1) fails and is rejected on delay and laches.

So far as the award is concerned, I find no legal infirmity in the it since it stands proved from the oral as well as documentary evidence led by the workwoman that she was in continuous employment of the petitioner from 01.06.2006 to 18.07.2010 salaried @ Rs.3,500/- per month and her services were terminated illegally by the petitioner in violation of Section 25F of the Industrial Disputes Act, 1947.

One Mr. Subhash Darshan, Advocate appeared on behalf of the petitioner-company before the Authority but without any authorised letter and the case was adjourned for 28.02.2011 to produce reply and authority letter of the company. On that date, neither management nor any authorised person from the company turned up. Therefore, the petitioner-company was proceeded against the ex parte and ex parte order was passed.

Before the Presiding Officer, Labour Court on behalf of management, MW-1 Mr. Kulwinder Singh deposed that claimant had left the job on her own volition.

Had she left the job herself without tendering resignation there could be either a case of misconduct of willful absence from duty or a case

of abandonment of service but the labour court to the contrary found nothing on record that suggested that an inquiry was held against respondent regarding absence from duty. MW-1 admitted in cross-examination that management had never endeavoured to get publication done in any newspaper regarding her absence or a call to her to resume duty, failing which to face consequences. MW-1 could not remember whether any inquiry was held against the workwoman. Even no notice regarding absence was placed on record. She was not issued any notice regarding absence from 19.07.2010 onwards but management specifically stated that she herself tendered her resignation on 19.07.2010 and never returned on duty thereafter. Management said that she was directed to a scribe a formal resignation in writing by them on 28.07.2010 but she never responded to the direction. The management admitted that her services were regularised on 01.06.2006 after completion of two years of services. There was no resignation letter brought on record. The inference was termination, thought the labour Court for good and sufficient reason by elimination of other modes of cessation of service. Abandonment could not be accepted since dispute was raised through demand notice without delay and referred in 2010-11 before the Tribunal to test the validity of the termination. The reference was whether the termination was illegal and unjustified and if yes, then what relief the worker would be entitled to.

Without any reliable documentary evidence, the defence of the management has failed before the Tribunal which inspired confidence and trust and was not a story made up pleading that she left the job on her own on 19.07.2010.

On the other hand, the respondent led sufficient evidence in

support of her case that termination was illegal when brought about without complying with the mandatory provisions of Section 25 F of the Industrial Disputes Act, 1947.

I have no reason to differ with the findings of fact recorded by the Tribunal after appreciating the evidence on record. There is no flaw found in the award or error apparent on the face of the record warranting interference in writ proceedings. The award of reinstatement with continuity of service with 50% backwages is just and meet and serves the ends of justice when *ex facie* substantial justice has been done by the Tribunal. I would be loath to interfere in the reasoned award in the extraordinary and supervisory jurisdiction of this Court under Article 226 of the Constitution and would dismiss the present petition by upholding the award.

The petition is dismissed in limine as devoid of substance.

(RAJIV NARAIN RAINA)
JUDGE

05.05.2017

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