

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

CWP-6744-1997

Date of Decision:08.03.2018

Nav Bharat Industries

... Petitioner

Vs.

Presiding Officer and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. P.K. Mutneja, Advocate
for the petitioner.

Mr. Kamal Sharma, Advocate
for respondent No.2.

P.B. BAJANTHRI J. (Oral)

Learned counsel for the petitioner submitted that cost of Rs.10,000/- which was directed to be paid to respondent No.2-workman vide order dated 21.12.2017 has been paid.

2. In the instant petition, petitioner has challenged the award passed by the Labour Court dated 28.01.1997 (Annexure P-10).

3. Respondent No.2 was stated to have been appointed as unskilled labourer on 05.02.1981. While he was working as such, he was regularized on 28.04.1981. Due to illness, he remained absent on 11.10.1990. He was taking treatment in the Civil Hospital, Rohtak as a out-patient. Petitioner communicated a letter asking respondent No.2 to report back to duty within stipulated period. The said letter was not communicated to respondent No.2 as he was not available at the address furnished to the petitioner as is evident from Annexure P-3. Postman had visited to residential address of respondent No.2 to deliver letter on 31.10.1990, 1.11.1990, 2.11.1990 and 5.11.1990. Thus, postman was unable to serve letter dated 23.10.1990 to respondent No.2. When things stood thus,

respondent No.2 is stated to have informed the petitioner on 11.10.1990 stating that he was unwell, by means of sending a letter under certificate of posting. Thereafter, there was no response from respondent No.2 during the period from 12.10.1990 to 24.01.1991. Thus, petitioners have invoked para 9 (f) (ii) of Certified Standing Order and terminated services of respondent No.2. Respondent No.2 issued a demand notice on 29.03.1991. Since conciliation proceedings failed, reference was made. Labour Court proceeded to pass award in favour of respondent No.2 on the score that respondent No.2 being permanent employee for remaining unauthorized, he should be afforded ample opportunity including of holding of inquiry. Thus, present petition by the Management.

4. Learned counsel for the petitioner submitted that having regard to the conduct of respondent No.2 that he remained absent from 11.10.1990 and for the first time he had informed the petitioner on 24.1.1991 stating that he was suffering from illness and he had produced certificate issued by the Medical Officer of the Civil Hospital Rohtak. Therefore, petitioner rightly invoked para 9(f)(ii) of Certified Standing Order. Hence, award passed by the Labour Court is liable to be set aside. Learned counsel for the petitioner further pointed out that medical certificate dated 24.01.1991 is not relating to advise to take rest during the period from 11.10.1990 and further period. It was also submitted that he was not in-door patient so as to show his inability to inform the petitioner-management as he was out patient (out-door patient). He could have informed the management during the intervening period from 11.10.1990 to 24.1.1991. Receipt of under certificate of posting dated 11.10.1990 has been denied since no such letter was received by the management. Learned counsel for the petitioner

submitted that Labour Court has erred in not appreciating Annexures P-1 to P-5 which are relating to communication as well as medical certificate to the extent that respondent No.2 was an out-patient (out-door patient). He had every opportunity to apprise the management relating to his absence due to illness by making necessary communication on his own or through his relatives/friends. Thus, the conduct of respondent No.2 has not been taken into consideration for the purpose of appreciating the contention of petitioner before the Labour Court. Decision relied upon by the Labour Court in D.K. Yadav's case in respect of remaining unauthorized absent by an employee; inquiry is necessary so also giving of opportunity to an employee could be distinguishable having regard to the conduct of respondent No.2 during the intervening period from 11.10.1990 to 24.01.1991 since he had not taken any steps either to report for duty or to inform the management. Therefore, Labour Court has erred in passing award in favour of respondent No.2.

5. Per contra, learned counsel for respondent No.2 submitted that as and when he was suffering from illness on 11.10.1990, he had sent a letter to the management under certificate of posting relating to his illness. Thereafter as and when Medical Officer of the Civil Hospital, Rohtak had certified that respondent No.2 is fit to resume his duty. He has informed the management. Doctor had advised him rest until he recover to normal in the health. Certificate itself shows that he was suffering from illness of fever followed by Infective Hepatitis w.e.f. 11.10.1990 vide OPD No.54603. Learned counsel for respondent No.2 pointed out that Labour Court has not committed any error with reference to Paras 12 and 13 of the award since Labour Court has apprised the communications as well as examination of

medical certificate. He also pointed out from para-15 whereby Labour Court has taken note of the decision relating to D.K. Yadav's case (supra). Thus, petitioner has not made out a case so as to interfere with the award passed by the Labour Court.

6. Heard the learned counsel for the parties.

7. Crux of the matter in the present petition is whether respondent No.2-workman has made any effort during the period from 11.10.1990 to 24.1.1991 to communicate to the management that he is suffering from illness or not?

8. Perusal of the medical certificate (Annexure P-4), it is evident that respondent No.2 was an out-patient (out-door). In other words, he was not an admitted patient so as to contend that he was unable to move necessary application/representation or any communication to the management through relatives/friends stating that he is suffering from illness. Therefore, there is total in-action on the part of respondent No.2 in remaining unauthorized absent from 11.10.1990 to 24.01.1991. Clause 9 (f) (ii) of Certified Standing Order specifically empowers the management to take action against an employee who remained absent for more than 10 consecutive working days. Labour Court failed to appreciate these factual aspects. Respondent No.2 has not made any efforts to communicate to the management about his absence due to illness from 11.10.1990 to 24.1.1991. Even assuming that respondent No.2 communicated about his illness on 11.10.1990 under certificate of posting still from 12.10.1990 to 24.1.1991, respondent No.2 was silent. Thus, the clause 9 (f) (ii) of Certified Standing order is attracted so as to empower the management to take appropriate action. Question of holding inquiry against unauthorized absentee would

arise if he had shown his bona fide for his unauthorized absence. In the present case bone fide of illness is taken into consideration. Respondent No.2 was not admitted patient so as to say that he was not in a position to make any communication to the management either of his own or through his relative/friend. Therefore, it is clear case of abandonment of job by respondent No.2. Thus, Labour Court has erred in not appreciating the conduct of respondent No.2.

9. Accordingly, award passed by the Labour Court dated 28.01.1997 is set aside. Petition stands allowed accordingly.

08.03.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**