

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

1. CWP-8830-1999

Chhote Lal

... Petitioner

Vs.

Presiding Officer and others

... Respondents

2. CWP-1673-2001

Punjab State Civil Supplies Corporation

... Petitioner

Vs.

Chhote Lal and another

... Respondents

Date of Decision: 23.02.2018

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

Present : Mr. Sunny Singla, Advocate
for the petitioner.

Mr. Arun Walia, Sr. Advocate with
Mr. Marinal Sharma, Advocate
for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In these appeals, both workman as well as management have challenged the award passed by the Labour Court dated 21.04.1999.

2. Learned counsel for the workman submitted that he was appointed as a Chowkidar on 1.5.1979 and he has worked upto 30.04.1987. It was submitted that on 30.4.1986, services of the workman were transferred to Patiala to Nabha. He has disobeyed the order of transfer and remained absent. Consequently, management initiated disciplinary proceedings for remaining absence and proceeded to impose the penalty of termination on 9.9.1988 with effect from 30.04.1986. Workman raised industrial dispute stating that his services have been terminated orally from 1.5.1987. It is evident from the record that workman has failed to challenge the order of termination dated 9.9.1988 which has been given effect from 30.4.1986. He continued to contest with reference to oral termination w.e.f.

1.5.1987. Labour Court has passed reference against him. Hence, the present petition.

3. Management challenged portion of the award in particularly para-11 wherein Labour Court has held that order of termination dated 9.9.1988 is not justified.

4. Learned counsel for the workman submitted that order of termination dated 9.9.1988 never communicated to him. Having regard to the service rendered by the workman from 1.5.1979 to 1987, he is entitled for reinstatement with continuity of service in view of the illegal termination as held by the Labour Court in para-11.

5. Per contra, learned counsel for the management submitted that there was a domestic inquiry for remaining unauthorized absent and resulted in termination and it has not been challenged by the workman as long as it is not challenged, question of whether order of termination is justified or not cannot be gone into by the Labour Court. Therefore, Labour Court has erred while holding in para-11 of the award that order of termination dated 9.9.1988 is not justified.

6. Heard learned counsel for the parties.

7. Having regard to the conduct of the workman that he remained absent as and when he has been transferred from Patiala to Nabha, even though, it is contended by the workman that he has worked upto 30.4.1987 for which he has been paid wages. In other words even after transfer from Patiala, workman was allowed to work upto 30.04.1987 from 30.04.1986. There is continuity of disobeying the order of transfer dated 30.4.1986 even as on 30.4.1987. Having regard to the fact that workman has worked upto 30.4.1987, Labour Court has erred in determining order of termination dated

09.09.1988 as not justified in the absence of issue before the Labour Court.

No doubt order of termination dated 09.09.1988 has been given effect from 30.04.1986 i.e. retrospectively terminating the services of the workman which is impermissible. However, it can be read down from the prospective date i.e. w.e.f. 09.09.1988. If the order of termination is given effect from 9.9.1988, in that event, workman is entitled to wages during the intervening period from 1.5.1987 to 9.9.1988.

8. Accordingly, management is hereby directed to calculate wages during the intervening period from 1.5.1987 to 9.9.1988 and disburse the same alongwith interest @ 9% per annum to the respondent-workman.

10. Petitions are disposed of accordingly.

23.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**