

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

**Civil Writ Petition No. 11539 of 2012
Date of Decision:-10.01.2018**

M/s Hindustan Tin Works Ltd.

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another

...Respondents

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

Present:- Mr. Pawan Kumar Mutneja, Advocate
for the petitioner.

Mr. Rohit Arya, AAG, Haryana.

Mr. B.R. Vohra, Advocate
for respondent No.2.

P.B. BAJANTHRI J.(Oral)

In the instant writ petition the petitioner has challenged the award passed by the Labour Court, Panipat dated 27.12.2011 (Annexure P-22).

The respondent-workman was appointed as unskilled labourer on 15.9.1996, which is disputed by the respondent-workman stating that respondent-workman was appointed as Operator Grade-I. In support of statement of the respondent-workman there is a material. Respondent-workman while working as such fell ill and had applied for leave from

28.1.2002 to 08.2.2002. During the leave period he returned back to duty on 2.2.2002 and started abusing on the Supervisor. Supervisor reported the alleged incident to the Manager, HR Department. Respondent-workman also not furnished fitness certificate issued by the Medical Officer or Authority. On 7.2.2002 respondent issued a letter alleging that petitioner is not permitting to discharge the duty of the post held by him. Consequently, a protracted correspondence was made between the petitioner and the respondent-workman relating to absence and reporting for duty. Faced with these events respondent-workman issued a demand notice on 21.3.2002, for which petitioner filed reply stating that they are prepared to take back the respondent-workman for duty. When things stood thus, charge-sheet was filed on 14.8.2002 on the allegation of unauthorized absence by the respondent-workman. Thereafter, respondent-workman had not co-operated in the inquiry. Consequently, second show cause notice was issued. No reply has been filed to the second show cause notice. In this background reference No.140 of 2003 was decided by the Labour Court as if the petitioner's services have been terminated, the Labour Court proceeded to hold that petitioner has not provided ample opportunities in the inquiry and proceeded to pass award in favour of the respondent-workman to the extent of reinstatement with continuity of service with 50% of the back wages from the date of demand notice, thus the present petition filed.

Learned counsel for the petitioner submitted that having regard to the conduct of the respondent-workman during his leave period i.e. on

2.2.2002 and thereafter there is no appropriate response to the communications upto 21.3.2002. Further when the petitioner was ready to take back the respondent-workman for duty he filed industrial dispute. Even for charge-sheet he had not replied so also for second show cause notice. In fact for the purpose of giving ample opportunities, the disciplinary authority issued a paper publication relating to holding of inquiry on 13.11.2002 in the Amar Ujala newspaper for which the respondent has not acted upon to attend the inquiry. In view of these facts and circumstances the Labour Court has erred in not appreciating the actions of the petitioner from 7.2.2002 till issuance of second show cause notice. Therefore, award passed by the Labour Court is liable to be set aside.

Per contra, learned counsel for the respondent-workman submits that the petitioner has not given permission to report to duty on 7.2.2002. further in the inquiry also ample opportunities have not been given when the charge-sheet was issued to him so also issuance of notice by the inquiry officer. Copy of the newspaper published should have been communicated to him through registered post, therefore, there is no infirmity in the award passed by the Labour Court.

Heard learned counsel for the parties.

From the perusal of record it is evident that respondent-workman's conduct in not responding to various communications appropriately and petitioner has taken service of notice for the purpose of holding inquiry in the newspaper, opportunity has not been availed by

workman. On the other hand on 24.8.2002 respondent's advocate issued a legal notice in which he had admitted that the respondent has received the charge-sheet. The respondent failed to report for duty pursuant to the reply to the demand notice even assuming that the petitioner's admission relating to taking back to the respondent-workman for duty is an eye-wash in that event between 21.3.2002 to 14.8.2002 no efforts have been made by the respondent to the extent of reporting to duty or any communication on the part of the petitioner. That apart respondent failed to submit his reply to the charge-sheet even to the second show cause notice. Merely pendency of dispute does not waive of the submission of reply charge and to the second show cause notice. Thus, the Labour Court has erred in passing award in favour of the respondent-workman.

Accordingly, the award passed by the Labour Court dated 27.12.2011 (Annexure P-22) is modified to the extent that respondent-workman is entitled to compensation in view of service rendered by him from 15.9.1996 to February 2002. Petitioner is hereby directed to pay compensation of rupees 2.5 lakh within a period of three months from today failing which the respondent would be entitled to interest @ 6% per annum from today.

With these observations, the petition stands disposed of.

January 10, 2018
Vijay Asija

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No