

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14068-2015

Date of Decision : August 06, 2018

Sumit Kumar

.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court,
Union Territory, Chandigarh and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by Mr. Sajjan Singh Malik, Advocate
for the petitioner.

Mr. Sachit Dhawan, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition by the workman under Article 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the impugned award dated 17.02.2014 (Annexure P/1) passed by Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh (for short, "**the Tribunal**") to the extent that the petitioner has been awarded 25% of his basic pay as back wages from the date of demand notice till the date of award and deprived him of reinstatement with continuity of service, full back wages and other consequential reliefs.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner was appointed as Professional Sales Representative on

...

31.01.2002 and was confirmed on 11.11.2002. Subsequently, he was promoted as Senior Field Officer on 30.04.2004. However, his services were terminated on 06.01.2007 vide letter dated 05.01.2007 on account of his absence from duty. The workman raised a demand notice on 09.04.2007, on the basis of which reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as '**the Act**') was made to the Industrial Tribunal and Labour Court, U.T., Chandigarh (for short, '**the Tribunal**') and the Tribunal pronounced the award (Annexure P/1) and the management was directed to pay the workman 25% of his basic pay as back wages from the date of demand notice till the date of award.

3. At the time of arguments, learned counsel for the petitioner contended that the petitioner was in continuous service from 2002 to 2007 and during this period, he performed his duties to the best of his ability and he was promoted in recognition of his good services. The petitioner was on medical leave from 31.12.2006 to 07.01.2007 on account of Lumbar Spine Strain (LS Strain). However, his services were terminated on 06.01.2007 vide letter dated 05.01.2007 without issuance of any charge sheet or holding regular enquiry. Although, learned Tribunal pronounced the award (Annexure P/1) holding that the management has terminated the services of the workman illegally, yet the Tribunal directed the respondent-management to pay the workman 25% of his basic pay as back wages from the date of demand notice till the date of award instead of ordering reinstatement of the workman with continuity of service and full back wages.

4. While arguing on this point, learned counsel for the

...

respondent-management submitted that the petitioner was absent from duty and it was a case of abandonment of service on his part. As regards to the plea taken by learned counsel for the petitioner that because of his ailment, the petitioner could not come for duty, no record was produced before the management-authority that the petitioner was ever admitted in the hospital on account of his ailment at any point of time. The plea of ailment was taken by the petitioner just to legalize his absence from duty, which the management did not find to be justified and the services of the petitioner were dispensed with. The Tribunal has rightly awarded 25% of basic pay as back wages from the date of demand notice till the date of award and the said finding deserves to be upheld.

5. Having considered the submissions made by learned counsel for the parties and perusal of the record, this Court is of the considered view that the facts are not disputed, that the petitioner remained under the employment of the respondent-management from 2002 to 2007 and his services were terminated on 06.01.2007 on account of his alleged absence from duty from 31.12.2006 to 07.01.2007. Thus, the alleged absence is for seven days only as his services were terminated w.e.f. 06.01.2007. Undisputedly, no charge sheet was issued nor any enquiry proceedings were initiated against the petitioner before passing the order of termination. Learned Tribunal while considering all these facts recorded positive finding that the the workman did not abandoned his services and his service were terminated by the management without following the procedure as prescribed in Section 25-F of the ID Act and held that the management has terminated the services of the workman illegally. However, the

...

Tribunal simply ordered for payment of 25% of basic pay as back wages from the date of demand notice till the date of award. That shows complete non-application of judicious mind and mis-appreciation of facts and evidence on record. Once the termination of the petitioner-workman has been held to be illegal, the petitioner-workman is certainly entitled to consequential relief of re-instatement with continuity of service. He is also held entitled to 50% back-wages from the date of termination in view of the law-laid down by Hon`ble Supreme Court in **Union of India and others Vs. Ramchander and another**, 2005 (9) SCC 365 wherein while dealing with award of back wages, Hon`ble Apex Court held as under:-

“....However, the direction of the High Court for payment of entire salaries and allowances for the period they were out of service was not justified under the circumstances. The termination of the respondents was from 11.1.1995 and now a fairly long period has passed and in the meantime, the respondents must have been engaged in employment in any other work. Therefore, we direct the appellants to re-employ the respondents with 50% back wages from the date of their termination till their re-employment. The appellants shall re-employ the respondents within a period of one month.”

6. Resultantly, this writ petition is accepted and the award of the Tribunal dated 17.02.2014 (Annexure P/1) is modified to the effect that the respondent-Management is directed to reinstate the petitioner in service with continuity of service and 50% back wages from the date of demand notice till reinstatement. Let the order be complied with within a period of three months from the date of receipt of copy of this order, failing which the management shall pay interest @ 9% per annum on the amount of back-

...

wages. However, the Management shall be at liberty to initiate and decide the disciplinary proceedings against the workman for alleged absence from duty for 7 days i.e., from 31.12.2006 to 07.01.2007.

(SHEKHER DHAWAN)
JUDGE

August 06, 2018.
som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes