

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16618-2015 (O&M)

Date of Decision:-08.03.2018.

Baljit Singh

.....Petitioner

Versus

M/s Vee Kay Polycoats Limited and another

.....Respondents

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

Present: Mr. Ashwani Bakshi, Advocate for the petitioner.

Mr. Rajiv Sharma, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 12.07.2014 (Annexure P-6).

(2.) Petitioner was appointed as a Packer on 4.12.1996. While working as such, Driver post with the respondent-Management became vacant. Consequently, having regard to the knowledge of driving and eligible to hold the post of Driver, on oral instructions of the respondent-Management, petitioner was stated to have been appointed as a Driver on 11.7.1997. While working as such, he applied for leave for some period. It was sanctioned. As and when petitioner returned from the leave period, he was directed to hold the post of Packer instead of Driver. Thus, petitioner raised a dispute that he is entitled to hold the post of Driver as no notice or order has been passed to post him as a Driver when respondents have not

disputed that petitioner has rendered service as a Driver during the period from 11.7.1997 to 04.05.1998 with enhanced pay. Respondent-Management were insisting that petitioner shall hold the post of Packer. Thus, resulted in termination of the petitioner. Before the conciliation authority, respondent-Management have filed a written statement in which they have stated that petitioner's work was not satisfactory. Further he remained absent without any intimation. In other words, based on the allegations, petitioner was directed to hold the post of Packer. In this background, respondent-Management have terminated the petitioner's services orally. Consequently, petitioner raised a industrial dispute. Labour Court passed award against the petitioner. Hence, the present petition.

(3.) Learned counsel for the petitioner submitted that undisputed facts are that petitioner was initially appointed as Packer. While working as such, respondent-Management *suo motu* orally appointed the petitioner as a Driver and his pay was enhanced to that of Packer. Thus, he has right to continue to hold the post of Driver as posting him as Packer, has civil consequences. It was further submitted that before the conciliation proceedings, respondents have taken the contention that petitioner's work was not satisfactory and was also for remaining absent he was asked to hold the post of Packer. These things have not been appreciated by the Labour Court. Thus, there is an error on the part of the Labour Court. Consequently, award passed by the Labour Court is liable to be set aside.

(4.) *Per contra*, learned counsel for the respondent while resisting the petitioner's argument submitted that petitioner has no statutory right to claim over the post of Driver in the absence of order of appointment. While

consequently, he has been posted back as Packer. Thus, there is no infirmity in the decision of the respondent-Management in terminating the services of the petitioner. Issue relating to termination and insisting to hold the post of Driver by the petitioner has been examined by the Labour Court at length to the extent that petitioner has not established his right to hold the post of Driver. Therefore, there is no infirmity in the award passed by the Labour Court.

(5.) Heard learned counsel for the parties.

(6.) Undisputed facts are that petitioner was appointed as a Packer. Thereafter, suo *motu*, respondent-Management have posted him as Driver orally. Consequently, he has been extended higher pay in the post of Driver from 11.7.1997 to 04.05.1998. As and when he returned from the leave, respondent-Management have made necessary arrangement for Driver post. Consequently, petitioner was directed to hold the post of Packer. No doubt petitioner has no right to hold the post of Driver as he has not been appointed on regular basis so also there is no order of appointment. Therefore, petitioner cannot insist for Driver post. Having regard to the decision taken by the respondents to post the petitioner as a Packer that his work and conduct was not satisfactory and he remained absent without intimating the Management, these are all the allegations made against the petitioner. Therefore, before asking the petitioner to hold the post of Packer instead of Driver, they should have held inquiry as is evident from the record that before conciliation proceedings, respondents have made allegations against the petitioner. Therefore, Labour Court has erred in not noticing the contentions of the respondents so as to why the petitioner has not been assigned the work of Driver as and when he returned from leave.

Since the petitioner has rendered short service from 4.12.1996 to 14.05.1998, question of reinstatement at this juncture may not be appropriate as held by the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177**. Consequently, petitioner is entitled to compensation of ₹ 2,00,000/-. Compensation shall be disbursed to the petitioner by the respondent-Management within a period of 4 months from today failing which, petitioner is entitled to interest @ 6% per annum from today.

(7.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

March 08, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.