

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7105-2010 (O&M)

Date of Decision:-26.04.2018.

Manju

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon and
another

.....Respondents

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

Present: Mr. Pankaj Jain, Advocate for the petitioner.

Mr. Nitin Thatai, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 7.12.2009 (Annexure P-8).

2.) Petitioner was appointed as a Helper on 10.9.1996. She is stated to have been transferred from one Unit to another Unit and she has not obeyed the order of transfer. She has reported at the original posting on 22.08.1999. Concerned respondent did not accept the duty report in view of the transfer. Thereafter, instead of obeying the order of transfer, petitioner raised a demand notice as if petitioner's services have been dispensed/terminated. Respondents have shown their interest to take back the petitioner before the conciliation proceedings and it was not acceptable to the petitioner. During the pendency of the reference proceedings, petitioner shown interest to work with the respondents. However, respondents have expressed that already a person is working against the post held by the petitioner, therefore, question of taking him back on duty

against the petitioner-workman. Hence, the present petition.

3.) Learned counsel for the petitioner submitted that it is true that petitioner has not challenged the validity of the transfer order before the appropriate forum. At the same time, petitioner's grievance is that before taking any action against the petitioner by the respondents, insofar as not allowing her to discharge the duties, they should have held inquiry for disobeying the order of transfer and remaining unauthorized absent in view of para 12.1.3 of the Standing Orders vide Annexure R-5. Thus, there is a non-compliance to the aforesaid statutory order. Consequently, petitioner is entitled to reinstatement with consequential benefits.

4.) *Per contra*, learned counsel for the respondents while resisting the petitioner's contention submitted that having regard to the conduct of the petitioner, she is not entitled to any benefits and no interference is called for in respect of the award passed by the Labour Court. It was also contended that Para 12.1.3 of the Standing Order (Annexure R-5) is not attracted in the present case. It is a discretionary power vested with the competent authority either to hold an inquiry or not in respect of remaining unauthorized absent and so also disobeying the order of transfer by an employee. Further it was pointed out from the order of appointment to the extent that *"If on being transferred the workman does not obey the orders, it shall be assumed that the workman is leaving the job of his own will"* In the order of appointment, there is no condition that for disobeying the order and continue to remain absent disciplinary action is attracted.

5.) Heard the learned counsel for the parties.

6.) Perusal of the records, it is evident that there is a total inaction

on the part of the petitioner in not obeying the order of transfer. She has not

challenged the validity of transfer. Respondents' contention that condition imposed in the order of appointment would not hold good in view of the Standing Order Para 12.1.3. Para 12.1.3 of the Standing Orders is only attracted in particularly where workman has been transferred and if he/she has disobeyed, disciplinary action is to be resorted. Undisputedly, in the present petition, respondents have not proceeded to comply para 12.1.3. The contention of the respondents is that it is discretionary power and it is not mandatory to the extent that in respect of workman disobeying the order of transfer and remained absent invariably disciplinary action is required to be taken would not hold good in view of the language employed in para 12.1.3 (Annexure R-5). In fact the respondents have shown their interest at the initial point of time when conciliation proceedings was in vogue to the extent that they were prepared to take back the petitioner. At the same time petitioner refused. Thereafter, petitioner has shown interest to work with the respondents and it was rejected by the respondents. Having regard to the conduct of the petitioner as well as respondents and in order to give quietus to the litigation, it is appropriate to award some compensation in view of the fact that petitioner has rendered service from 1998 to 1999. In view of these factual aspects, petitioner is entitled to compensation of ₹ 1,00,000/-. Compensation shall be paid by the respondents within a period of 3 months from today.

7.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

April 26, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.