

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

CWP-19747-2016 (O&M)

Date of Decision: 16.02.2018

M/s N.K. Industries

... Petitioner

Vs.

Presiding Officer and another

... Respondents

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

Present : Mr. Balwinder Singh Sudan, Advocate for the petitioner.

Mr. Ramesh Goyat, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has assailed the award passed by the Labour Court dated 10.03.2016 (Annexure P-18).

2. Respondent-workman was appointed as a Semi-Skilled Casual Workers with the then M/s ENNKAY Industrial Automation on 10.02.2003. Management changed the name of the firm as M/s N.K. Industries Pvt. Ltd. Consequently, respondent-workman's services have been switched over to the new firm on 5.1.2006. His services were terminated on 2.6.2008. Respondent issued a demand notice relating to oral termination. Labour Officer-cum-Conciliation Officer submitted his failure report. Thereafter, reference was made. Labour Court proceeded to hold that there is violation of provision of the Industrial Disputes Act, 1947 (for short "ID Act"). Consequently, respondent is entitled to reinstatement with continuity of service and 50% back wages from the date of demand notice i.e 27.12.2008. Hence, the present petition by the management.

3. Learned counsel for the petitioner submitted that Management have shown their readiness to take back respondent-workman to duty.

However, respondent-workman has not reported for duty. The same has

been recorded by the Labour Officer-cum-Conciliation Officer in his report regarding failure of conciliation proceeding. It was further contended that Labour Court has erred in extending the benefit of back wages and continuity of service when the Management was ready to take back respondent-workman to duty. Thus, Labour Court has erred in extending the benefit of 50% back wages and continuity of service. It was also submitted that respondent-workman was not averred that he was gainfully employed or not. In the absence of statement of the respondent-workman, Labour Court has extended the benefit of 50% back wages. In support of this contention, learned counsel for the petitioner relied on the following decisions: Sonal Garments v. Trimbak Shankar Karve; 2003 (1) SCT 427; Purafil Engineers, Pune v. Shaikh Anwar Abdul Rahman; 2000-III- LLJ 456; U.P. State Brassware Corporation Limited v. Uday Narain Pandey; 2006 (1) SCC 479; Kendriya Vidyalaya Sangathan and another v. S.C. Sharma; 2005 (2) SCC 363 and Regional Manager, SBI v. Rakesh Kumar Tewari; (2006) 1 SCC 530.

4. Per contra, learned counsel for respondent No.2 submitted that in the demand notice, respondent-workman has specifically requested for his reinstatement with continuity of service and full back wages. This shows that he was unemployed. He has adduced evidence in which he has urged that he was unemployed. It is evident that he is entitled for back wages. Thus, Labour Court has not committed any error in passing the impugned award.

5. Heard learned counsel for the parties.

6. Having regard to the conduct of the respondent-workman in not accepting the proposal made by the management before the Conciliation

Officer to the effect that they were ready to take him to duty and the fact that Labour Officer-cum-Conciliation Officer in its failure report stated as under:

“Whereas the workman has stated that he is ready to join the duty only on the payment of his full back wages.

The management is ready to take the workman on duty and also ready to give his lawful account, but the workman is not ready to go on duty. As such, the workman is not interested to go on duty, hence, it is recommended to reject the above-said demand notice.”

7. Respondent-workman could have accepted the offer made by the management relating to reinstatement. If he is still aggrieved by the non payment of back-wages, he had remedy before the appropriate forum insofar as seeking back wages from the date of termination till reinstatement. Therefore, respondent-workman is not entitled for back wages. Bombay High Court in the case of Sonal Garments v. Trimbak Shankar Karve; 2003(1) S.C.T. 427 held as under:

“4. However, as the offer of petitioner to reinstate the respondent was not accepted, he is not entitled to the relief of reinstatement and any backwages at all. His conduct lends support to the version of the employer that he had abandoned the employment and that he never came back to report for duty and that it was not a case of termination by the petitioner-employer. Whenever the employer offers to reinstate the workman at any stage of the dispute or proceedings and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any back wages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and, therefore, continue

to contest for the relief of back wages, if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me hereinbefore, he is not entitled to get reinstatement with full back wages at all.”

8. Whereas present case is also similar to the aforesaid decision that respondent-workman had refused to accept the offer of reinstatement. In view of these facts and circumstances, Labour Court has erred in extending the benefit of 50% back wages. Hence, award passed by the Labour Court dated 10.03.2016 is modified to the extent that respondent-workman is entitled for reinstatement with continuity of service and not back wages.

Petition stands allowed in part.

16.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**