

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

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**CWP-26922-2015 (O&M)
Date of decision:08.01.2018**

Management Vaish Technical Institute, Rohtak and another

....Petitioners

Versus

State of Haryana and others

.... Respondents

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

Present: Mr.Sandeep Singal, Advocate for the petitioners.

Mr. Rohit Arya, AAG, Haryana.

Mr. M.K.Mittal, Advocate for respondents No.2 to 4.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioners have challenged the award passed by the Labour Court dated 02.01.2014 and 28.07.2015 (Annexures P3 and P4 respectively).

2. Services of respondent No.4-workman were engaged by the petitioners as a Lab Attendant on 15.01.1980. Thereafter, his services were removed. Once again he was appointed as Class IV employee on 03.07.1982. Thereafter, he was promoted to the post of Lab Attendant on 12.11.1982. Due to mental depression he was compelled to go on leave on 23.07.2002. From time to time respondent No.4-workman had submitted his leave applications with reference to medical ground however same was not supported by medical certificates. Thus, petitioners proceeded to initiate

inquiry on the allegation of remaining unauthorized absent. Before conclusion of the disciplinary proceeding, respondent No.4-workman was subjected to medical examination before the medical authority-PGI Rohtak. Medical Board has opined that respondent No.4-workman is suffering from mental depression and he is not fit to discharge the duties of the post. Such opinion has been given on 09.02.2003. However, petitioners concluded the inquiry and dismissed the respondent-workman w.e.f. 24.05.2004. Thus, respondent No.4-workman raised industrial dispute. Industrial Tribunal passed two orders. One is relating to whether inquiry was held appropriately or not. Other one is relating to dismissal. Both the issues were in favour of the respondent No.4-workman. Thus, petitioners are aggrieved by the orders passed by the Labour Court. Hence, the present petition.

3. Learned counsel for the petitioners submitted that respondent No.4-workman (deceased) during the period from 23.07.2002 to 24.05.2004 remained unauthorized absent and he has not co-operated in the inquiry. It was further submitted that respondent No.4-workman has admitted in his demand notice that he has been given ample opportunity in domestic inquiry. Therefore, finding of the labour court to the extent that inquiry was not conducted properly and further setting aside the order of dismissal are contrary to the factual aspects. Thus, there is error committed by the labour court in not appreciating the admitted facts to the extent that respondent No.4-workman failed to produce necessary material like medical certificate along with leave application further his admission in the demand notice.

4. Per contra, learned counsel for respondent No.4-workman

submitted that labour court has appreciated factual aspects to the extent that petitioner's management have failed to appreciate the fact that respondent No.4-workman was suffering from mental depression as opined by the medical board. Further labour court while examining one of the member of the inquiry committee/MW1-P.N.Sharma who stepped into witness box before the labour court and admitted to the extent that respondent No.4-workman was not given proper/ample opportunity. Thus, there is no infirmity in the award passed by the Labour Court.

5. Heard learned counsel for the parties.

6. Perusal of the records it is evident that respondent No.4-workman was subjected to medical examination before PGI-Rohtak. Medical experts have opined on 09.02.2003 that respondent No.4 is not in a position to discharge the duties of the post due to mental depression. Mental depression issue has not been taken note of by the Inquiring Officer before submitting inquiry report to the competent authority. Further competent authority while dismissing the respondent No.4 on 24.05.2004 has not apprised relating to medical board opinion dated 09.02.2003. It was beyond the control of deceased-4th respondent in not attending duties due to mental depression. That apart labour court has taken note of the fact that while examining one of the inquiry committee member-Mr. P.N.Sharma as MW1 who has deposed before the labour court that respondent No. 4 was not given proper/ample opportunity in the inquiry. Faced with these factual aspects matter could have been remanded to hold afresh inquiry. However during pendency of this petition respondent No.4-workman is stated to have

died on 28.02.2016. Therefore, question of remanding the matter for afresh inquiry do not arise. Thus, insofar as labour court award interference in respect of inquiry and dismissal order are concerned, cannot be modified. Having regard to the service rendered by the deceased employee from 15.01.1980 to 23.07.2002 with short break during the years 1980 to 1982 deceased employee has rendered sufficient number of years of service for the purpose of claiming retiral and consequential benefits. Had he been in service he would have retired on 09.10.2009. The State of Haryana has introduced pensionary benefit scheme on 31.12.2005. Therefore, legal heirs of respondent No.4-workman are entitled to benefits during the period from 23.07.2002 till 09.10.2009 only to count service towards retiral benefits, since deceased employee remained absent from 23.07.2002. In other words, deceased employee has not worked during the period from 22.07.2002 to 24.05.2004. Petitioners are hereby directed to extend the retiral benefits as if the deceased employee-respondent No.4 was on duty till 09.10.2009 the date on which petitioner would have retired had he been in service. Petitioners are hereby directed to calculate and disburse the retiral-monetary benefits to the legal heirs of the deceased employee- respondent No.4 within a period of 6 months from today.

7. With this observation, CWP stands disposed off.

08.01.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No