

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 7151 of 2008

Amrendra Shankar Dubey S/o late Shri Mani Shankar Dubey, R/o Opp.
Old Power House, Torwa, Bilaspur (CG)

---- Petitioner

Versus

Orien Paper Mill & Industries Ltd. Through Factory Manager, Village –
Dekha, Post Masturi, Darrikatha, District Bilaspur, CG

----Respondent

For Petitioner	:	Mr. S. P. Kale, Advocate.
For Respondent	:	Mr. N. K. Vyas, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

08/07/2019

1. The challenge in the present writ petition is to the order passed by the Industrial Court dated 10.07.2008 in Civil Appeal Case No. 49/CGIR Act/A-II/07. Vide the said order the learned Industrial Court has set aside the order passed by the Labour Court in Case No. 249/CGIR/2004 dated 04.10.2007 wherein the learned Labour Court had awarded the petitioner 3/4th of the salary for the period between 21.02.2004 to 08.02.2005.
2. The facts, relevant for adjudication of the present dispute, are that the petitioner was working as an Executive (Raw Material) with the respondent. In the capacity of an employee of the respondent he was also a member of the Employees State Insurance Corporation. While working with the respondent, the petitioner on account of his ill health

could not attend the office of the respondent for quite sometime i.e. between 13.11.2003 to 20.02.2004. During the said period, the petitioner was under treatment at ESI hospital. The petitioner after recovering from his illness reported for duty on 21.02.2004. However, the Factory Manager did not permit the petitioner to join his duty. Subsequently, the petitioner again tried on a couple of occasions to join but was not successful as the Factory Manager denied him joining. Finally, the petitioner raised a conciliation before the appropriate authority under ID Act and the matter was later on referred to the Labour Court. As soon as the matter was referred to the Labour Court, the Factory Manager immediately permitted the petitioner to join his duty on 09.02.2005. Since the respondent had granted joining to the petitioner, the dispute pending before the Labour Court got reduced to the extent of determining only as to how the intervening period during which the Factory Manager is said to have refused joining to the petitioner i.e. from 21.02.2004 to 08.02.2005 has to be treated.

3. The petitioner/workman examined himself before the Labour Court and on behalf of the respondent, the Factory Manager and a security officer were examined.
4. After recording of the evidence, the Labour Court finally vide its order dated 04.10.2007 allowed the application of the petitioner to the extent of holding that the petitioner would be entitled for 3/4th of the salary for the intervening period between 21.02.2004 to 08.02.2005 along with interest @ 10% per annum. It is this order which was challenged by the respondent before the Industrial Court in Civil Appeal Case No. 49/CGIR Act/A-II/07.

5. The Industrial Court while deciding the appeal took a different view and set aside the order of the Labour Court vide impugned order Annexure P-1 dated 10.07.2008 holding that the petitioner is not entitled for any relief leading to the filing of the present writ petition.
6. Contention of the counsel for the petitioner assailing the order of the Industrial Court was that the Industrial Court failed to appreciate the evidence which has been led by the petitioner and has without any strong basis unnecessarily interfered with the reasoned order passed by the Labour Court which was based on evidence brought before the Court. According to the petitioner, the finding of the Industrial Court is also not sustainable for the reason that the same has been passed without appreciating the evidence that the petitioner had adduced so far as the intervening period between 21.02.2004 to 08.02.2005 is concerned. The discussion held by the Industrial Court and the main portion of the evidence adduced by the Management all were concentrating upon the period of absence. There is no strong material or evidence adduced by the Management in respect of the period between 21.02.2004 to 08.02.2005. Moreover, for the period of absence the petitioner had produced document to show that he was not well and he had undertaken treatment from the ESI hospital itself. Thus, counsel for the petitioner prayed for quashment of the order of the Industrial Court thereby affirming the order passed by the Labour Court.
7. Per contra, counsel appearing for the respondent, opposing the petition, submits that the finding of the Industrial Court is a well reasoned speaking order and it does not warrant any interference. According to the respondent, this Court would not substitute itself as a second

appellate body over the finding of the Industrial Court which itself has exercised the appellate powers. Further contention of the respondent was that the petitioner has also failed to adduce cogent evidence in respect of his absence from duty at the first instance and secondly the petitioner having no strong case of establishing that he had given his joining on 21.02.2004 and the Factory Manager had rejected joining of the petitioner. According to the respondent, in the absence of strong evidence led by the petitioner himself, the finding of the Labour Court was bad in law and therefore, the Industrial Court has rightly interfered with the order of the Labour Court and has set aside the same. Thus, the writ petition deserves to be rejected on its merit.

8. Having heard the contentions put forth on either side and on perusal of record, the undisputed facts in the present case are that the petitioner was an employee under the respondent working as an Executive (Raw Material). The petitioner was also a member of the ESI Corporation. The petitioner on account of his ill health was absent from duty between 13.11.2003 to 20.02.2004. During the said period he took treatment from ESI hospital and was declared fit for duty w.e.f. 21.02.2004 onwards. It is here that the dispute starts of the petitioner having reported for duty and the factory manager having denied the same. In between, the petitioner approached the conciliation officer raising his dispute seeking for a direction to the respondent to permit the petitioner for joining his duty. Pending the dispute before the Labour Court, the respondent permitted the petitioner to join and which the petitioner immediately complied with on 09.02.2005.

9. The case of the petitioner gets strengthened from the fact that the petitioner had raised a conciliation proceeding before the Labour Officer and unless the petitioner had been refused of his joining, he would not have raised a dispute seeking for joining. There is no evidence led by the management in rebuttal of this fact. There is also no dispute so far as the petitioner remaining absent on account of ill health between 13.11.2003 to 20.02.2004. If the respondent had not objected to the joining or vice versa, the petitioner could have been given joining immediately or at least when the conciliation proceeding had been raised. Thus, the finding of the Industrial Court does not seem to be proper, legal and justified.
10. Another aspect which needs to be looked into is the scope of interference which the Industrial Court has done. If we read the order of the Labour Court, it would clearly reflect that the Labour Court in fact has considered all the evidences which were adduced before it and also discussed upon the evidence brought before the Court as well as before the Enquiry Officer.
11. It is settled position of law that unless the finding of the trial Court is totally perverse or the finding being contrary to the evidence, the Industrial Court could not have set aside or reversed the order of the Labour Court. Likewise, merely because another view was possible also cannot be a ground for the Appellate Court to have interfered with the finding of fact by the Labour Court. If we see the order passed by the Labour Court, it clearly reflects that the finding given by the Labour Court is in fact based on the pleadings as well as the evidence adduced and as such becomes a finding of fact. There is no strong material or

evidence by the respondent to rebut the statement of the claimant. At the same time, the finding of the Industrial Court seems more based on assumptions and presumptions without there being cogent concrete material. For the said reasons, the finding of the Industrial Court seems to be unsustainable and the same deserves to be and is accordingly set aside.

12. Coming to the issue of interest awarded to the petitioner by the Labour Court, this Court is of the opinion that since the matter is pending consideration before this Court for the last 11 years and the Management as such is not directly responsible for the delay caused, ends of justice would meet if the petitioner is awarded interest at the rate of 6% per annum instead of 10% per annum on the 3/4th of the salary as fixed by the Labour Court for the period between 21.02.2004 to 08.02.2005.

13. With the aforesaid modification of the order of the Labour Court regarding the rate of interest, the writ petition stands allowed. The impugned order passed by the Industrial Court being devoid of merit stands rejected. The order of the Labour Court stands affirmed except the rate of interest which stands reduced to 6% per annum instead of 10%.

**Sd/-
(P. Sam Koshy)
Judge**