

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

CWP No. 9779 of 2004

Date of Decision: 05.02.2019

General Manager, Punjab Roadways, Amritsar-I

...Petitioner

Vs.

Sukhbir Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Virmani, Addl. AG Punjab.

Mr. Karanjit Singh, Advocate
for respondent No.1.

RAJIV NARAIN RAINA, J. (Oral)

1. I have no reason whatsoever to differ with the finding of the Presiding Officer, Labour Court Amritsar in her award dated 18.12.2002 contained in paragraphs Nos. 9 to 11 of the award and in the concluding paragraph No.12 declining reference, that this is a fit case for reinstatement of the claimant with continuity in service with right to full back wages from the date of demand notice i.e. 28.06.1997 as dispensed in a judicious manner after appreciating the evidence on record. It would be best to reproduce the reasoning verbatim:

9. In this case, the management has lead no evidence and plea has been taken up in the written statement that no termination order is passed. The workman has absented himself from duty. Learned

authorised representative of the management relied upon the cross-examination of the workman Sukhbir Singh WW-I and argued that documents Ex. M-1 to Exc. M-10 are proved on record which prove that the workman was absent from duty. I have perused said documents. Vide these documents, a charge sheet has been issued to the workman on the ground that he is absent from duty with effect from 7th June, 1996. It is admitted by Sukhbir Singh WW- in the cross-examination that he availed on month leave from 7th May, 1996 to 6th June, 1996 as per his affidavit Ex. W-1. He has submitted that after availing said leave, he reported for duty but he was not given duty and finally on 27th June, 1996, the General Manager told him to go away as he has been removed as he insulted him by filing Ex. W-6 (Writ petition in the Hon'ble High Court).

10. *The workman is litigating with the management since 1985 and when the reference was answered in his favour and a duty was casted upon the management to reinstate him along with back wages from the date of previous demand notice. The management did not fulfil the said duty and the*

workman has to approach the Hon'ble High Court for getting the enforcement of the said order. All above discussed documents reveal that workman had been requesting the management from time to time to allow him to join duty. So previously to the management has been resisting his reinstatement. This clearly shows that the attitude of the management was biased towards the workman. Hence keeping in view such circumstances, I believe the evidence of the workman that he is not wilfully absent from duty but he has been forced to remain absent and he was not allowed to join his duty. This amounts to oral termination of the workman. The evidence of the workman is unrebutted. The concerned officer who was incharge of the workman on 7th June, 1996 was the best witness to appear in the Court and to make a statement on oath to rebut the evidence of the workman. Since none of the management witnesses has stepped into the witness box to make statement that he was wilfully absent, so, from this point of view too, the evidence of the workman is to be believed.

11. *There is nothing on the record that the services of the workman were terminated on account*

of mis-conduct. Moreover, compliance of provisions of Section 25-F of the Act was not made before making order of oral termination. Hence, oral termination of the workman is illegal. Accordingly, both these issues are decided in favour of the workman and against the management. Relief:

12. In view of my findings on the above issues, the reference is answered in favour of the workman and against the management who is enjoined upon to reinstate the workman with continuity of service and full back wages from the date of demand notice dated 28th June, 1997 as indicated in the reference itself. No order as to costs. The workman is directed to report for duty within 30 days of the publication of the award.

2. To that nothing further can be added except that the workman died on 05.02.2013, and, therefore, reinstatement part is over. The LRs of the petitioner are on record in the present petition for monetary benefits under the award. It may further be noted that the workman had to litigate for the years together to secure an award in his favour in the year 1994. The Punjab Roadways resisted implementing the award for a long time which compelled the workman to approach this Court for execution of the award. It was under the directions of this

Court that the award was implemented, workman reinstated and his dues paid to him.

3. When he returned to service, he proceeded on one month leave from 07.05.1996 to 01.06.1996. The Labour Court records in paragraphs No. 9 that after availing the leave he reported to duty but he was not assigned duty and finally on 27.06.1996, the General Manager told him to go away as he had been removed from service.

4. Mr. Virmani appearing for the department submits that a telegram was sent to the respondent asking him to rejoin his duties but he failed to and therefore the workman appears to have abandoned his job. To reinforce this argument he urges that dispute was raised in 1997 by serving demand notice and delay should go against the workman.

5. The fact that workman had been litigating since 1985 for reinstatement and the resistance applied by the management to the award of 1994, shows a biased mind towards the workman dispensing with the services of the petitioner again by order dated 27.06.1996. Workman's plight cannot be disbelieved looking to the facts and circumstances of the case, starting from the date of original termination in the year 1985.

6. Mere absence from work is not mis-conduct. Absence can be explained. But it does not necessarily mean abandonment of job or an intention to quit. It is significant that after the impugned award was passed on 18.12.2002, an enquiry was started against the petitioner for

his absence long ago in 1996-97. The result of the enquiry matters little in the face of the reference as to the legality and validity of the order of termination/retrenchment. It stares the petitioner in its face that none from the management stepped into witness-box to make a statement that workman was willfully absent and, therefore, the Labour Court was right in believing the version of the workman in the absence of any rebuttal either oral or documentary by the management.

7. I don't find any fundamental flaw of reasoning or any other irregularity or error apparent on the face of the record. Perfectly sound findings on the evidence have been recorded by the Labour Court after appreciating the evidence and the writ Court is not a Court of appeal to substitute opinion and discretion judiciously exercised on the basis of materials on record. In the absence of perversity, irrationality or palpable error, no fault can be found with the award of the Labour Court. The challenge to the award is repulsed. The petition is dismissed. The petitioning-Department is directed to compute the monetary dues under the award and disburse them to the LRs of the deceased workman within two months from the date of receipt of certified copy of order, failing which, the amount in default will carry interest @ 10% till realization.

(RAJIV NARAIN RAINA)
JUDGE

05.02.2019

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*