

CWP-18652-2012

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

CWP-18652-2012

Date of Decision: 4th December, 2019

Bhakra Beas Management Board, through its Deputy Chief Engineer

...Petitioner

Versus

The Presiding Officer & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Pal Singh, Advocate
for the petitioner.

Mr. Madan Mohan, Advocate
for respondents No.2 to 4.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the award dated 10.01.2012 (Annexure P-12) passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (hereinafter referred to as 'the Tribunal'), whereby, reference as made has been answered in favour of private respondents No.2 to 4, who admittedly were working with the petitioner – Management, when according to the petitioner, they absented themselves from duty for more than 10 days and never reported for duty after March, 1990, whereas, stand of the private respondents is that their services were terminated on 18.07.1990.

2. It is the contention of the learned counsel for the petitioner that the private respondents were appointed as casual labour. They have

been performing their work when they left their assignment and did not turn up. Because of the absence on the part of the private respondents, the management should not be held liable for the same and in any case, he contends that the claim of the private respondents would be hit by the provisions of Clause 21 Sub-Clause (ii) of the Standing Orders. His contention is that since the private respondents have not completed more than three months of continuous service with the petitioner – management and were on an assignment for a specified period, they are not entitled to the benefit as has been granted by the Tribunal in the impugned award. Assertion has also been made that the private respondents have not completed 240 days of service in a calendar year and therefore, not entitled to the benefit of reinstatement under the Industrial Disputes Act, 1947. Prayer has, thus, been made for setting aside the impugned award dated 10.01.2012 (Annexure P-12) passed by the Tribunal.

3. On the other hand, learned counsel for the private respondents has admitted the fact that the private respondents have not completed more than 240 days of service with the petitioner – management in the preceeding twelve months from the date of their termination. He, however, contends that the services of the private respondents have been terminated. In any case, he contends that even if the contention of the learned counsel for the petitioner – management is accepted that the case of the private respondents would fall under the provisions of Clause 21 Sub-Clause (ii) of the Standing Orders, the same

in any case would not help the case of the petitioner – management. In this regard, he has made a reference to the provisions of Clause 21 Sub Clause (ii) of the Standing Orders to contend that each of the private respondents have admittedly worked for more than 100 days with the petitioner – management and therefore, would have completed more than three months of service. Assertion has also been made that the definition as provided in Clause 21 Sub Clause (ii) does not refer to three months continuous service. It simply mentions three months of service, which admittedly private respondents have completed with the petitioner – management. In any case, even if it is a case of abandonment, private respondents were always ready and willing to join and work with the petitioner – management and if Clause 21 Sub Clause (ii) is taken into consideration, the petitioner – management was required to give ten days notice to the private respondents, which admittedly have not been so given. He, therefore, supports the award dated 10.01.2012 (Annexure P-12) passed by the Tribunal.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned award as well as the pleadings.

5. The case as has been build by the petitioner – management is based upon Clause 21 Sub Clause (ii) of the Standing Orders. The said clause has been reproduced by the petitioner in para 4 of the writ petition, which reads as follows:-

“21. Termination of Employees

(i) XXXX XXXX XXXX

(ii) in cases which are not covered by the sub-clause (i) the services of the employee with less than one year of service shall be terminable on 10 days notice in writing or on payment of pay and allowances in lieu thereof, by either party. However, no notice shall be required to terminate the service of a workman with less than 3 months service or in case of persons employed for a specified period.”

6. A perusal of the above Clause 21 Sub Clause (ii) of the Standing Orders would clearly lay down that where service of an employee is less than one year, the same would be terminable by giving 10 days notice or on payment of pay and allowance in lieu thereof by either party. Admittedly, this part of Sub Clause (ii) has not been complied with by the petitioner – management. Reliance has also been placed upon the subsequent part of the Sub Clause (ii), where it has been mentioned that no notice is required to terminate the service of a workman, whose services are less than three months or in case of persons employed for a specified period.

7. Admittedly, private respondents have served the petitioner – management for more than 100 days in the preceeding year prior to the date of termination of their services. If that be so, the contention of the learned counsel for the petitioner cannot be accepted as, what has been mentioned therein is that the services of the workman had to be less than

three months. What is apparent and notable is the missing of the word 'continuous service'. With the word 'continuous service' having not been there, it could even be in and/or with breaks in service, which when counted should be less than three months, which admittedly is not in the case of the private respondents. The Clause further says that notices are not required in case the person is employed for a specified period. No evidence has been led by the petitioner – management before the Tribunal to substantiate this aspect that the services of the private respondents were for a specified period. In the absence of any such evidence, this part of the Clause would also not be applicable to the case of the private respondents.

8. In view of the above, it is apparent that the private respondents having completed more than three months of service in the preceding one year with the petitioner – management, prior to their termination, notices, as mandated under Clause 21 Sub Clause (ii), had to be served upon the private respondents, which has admittedly not been done. If that be so, the impugned award dated 10.01.2012 (Annexure P-12) passed by the Tribunal cannot be faulted with. Let the private respondents report to the petitioner – management within a period of four weeks from today.

9. Counsel for the private respondents states that in pursuance to the impugned award dated 10.01.2012 (Annexure P-12) passed by the Tribunal, private respondents have already submitted their joining reports on 30.03.2012, which fact is disputed by the learned counsel for the

petitioner.

10. It goes without saying that the private respondents would be entitled to the benefits as per the impugned award dated 10.01.2012 (Annexure P-12) passed by the Tribunal and the consequential benefits be released to them within two months of their submitting the joining report.

11. The writ petition being devoid of merits, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

4th December, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No