

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.27636 of 2018
Date of decision: 03.07.2019

M/s Vatika Hotels Pvt. Ltd. and anr.

.... Petitioners

Versus

P.O. Labour Court and another

... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Adarsh Jain, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the writ petition is for quashing Award, Annexure P/1 dated 03.08.2018 passed by the learned Labour Court-II, Gurugram (hereinafter referred to as 'the Labour Court') allowing the reference and holding respondent No. 2 (hereinafter referred to as the workman) entitled to reinstatement in service with full back wages.

[2] Learned counsel contended that the workman had absented from service w.e.f. 02.11.2014 for more than two months, no evidence was led by him of leave having been sanctioned from 02.11.2014, that in the circumstances, services of the workman were terminated on 12.01.2015 where after full and final payment was made to the workman by cheque, that termination of services of the workman was in accordance with the terms and conditions of appointment, besides, general rules of service, therefore, the impugned award was unsustainable and liable to be set aside.

[3] Brief facts of the case leading to the writ petition are that before the labour court, the workman claimed to have been appointed as Mali by the petitioner on 01.09.2012 on monthly wages of Rs. 9008/-, of his services

having been terminated on 24.11.2014 without issuance of show cause notice, charge-sheet, domestic enquiry or compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') despite his having putting in more than 240 days of continuous service. The workman also pleaded that he had taken leave from 02.11.2014 to 22.11.2014 and on return on 24.11.2014, was told at 4 p.m. for a break where after he was not allowed on duty despite his visiting the company repeatedly. Workman, also, claimed to be unemployed since the date of his termination and his being ready to join duty.

[4] Plea of the management was and is that the workman was absent from duty without intimation w.e.f. 02.11.2014 as a result of which work of the Company suffered, therefore in view of abandonment of service, the company terminated the service of the workman vide letter dated 12.01.2015 in terms of clause 10 of the appointment letter read with Rule 14 of the General Rules and Regulations pertaining to the Company attached as Annexure-1 along with the appointment letter, that too after giving a warning letter and the workman refusing to join as per the terms of the Company. Submission of application for leave from 02.11.2014 to 22.11.2014 or of the petitioner having reported for duty on 24.11.2014 or his being told to go out from office or his pressurized to submit resignation was denied.

[5] I have considered the submissions of learned counsel.

[6] MW-1 Sachin Kumar, Manager of the petitioner in his cross-examination testified that the work of respondent No.2 was satisfactory. Secondly, although the stand of the petitioner was that the workman started absenting from duty w.e.f. 02.11.2014 and it issued a warning letter to the workman, however, no warning letter as is alleged to have been issued was

produced on record by way of evidence. Thirdly, it is also the case of the petitioner that as the workman was absenting from duty w.e.f. 02.11.2014 continuously for more than 8 days, it issued termination letter dated 12.01.2015 (i.e. Ex.M2) immediately on completion of one month's notice period as per Clause 10 of the appointment letter. However, perusal of award reveals that as per Ex.M2, services of the workman were terminated on 12.01.2015 with immediate effect and not on completion of one month's notice period as claimed. Besides, although it was the stand of the petitioner that the workman had issued a demand notice on 16.01.2015, yet MW-1 in his cross-examination admitted that the Management issued termination letter after receiving demand notice from the workman. Apparently the termination letter was issued by the Management for ulterior motive because MW-1 also admitted that prior to termination of services of the workman, the Management did not issue him any letter or charge-sheet nor conducted any domestic enquiry on account of workman remaining absent. In the light of the position as noted above as also of the workman having completed more than 240 days of continuous service in the preceding 12 months, and the plea of abandonment not having been proved by the petitioner by leading cogent evidence, adverse inference was rightly drawn against the Management.

[7] Moreover, it is settled law that there cannot be automatic termination in case of abandonment of duty except after compliance with the principles of natural justice. Reference in this context can be made to the decision of Hon'ble the Supreme Court in **D.K.Yadav vs. J.M.A. Industries Ltd. 1993(3) SCT 537**. Relevant extract of the same is reproduced as under :

*“11. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In **D.T.C. v. D.T.C. Mazdoor Congress and Ors.** (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.*

12. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No.13(2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Articles 14. When so read the impugned action is violative of the principles of natural justice.”

[8] Decision in **D.K. Yadav’s** case (supra) was followed by a Division Bench of this Court in case titled as **Punjab State Electricity Board vs. The Presiding Officer, Labour Court, Ludhiana 1998(1) SCT 683** while upholding the award of reinstatement of the workman therein with continuity of service and full back wages on the ground that termination of services of the workman in terms of standing orders without compliance with the principles of natural justice was bad. Relevant extract of the decision in **Punjab State Electricity Board’s** case (supra) is reproduced as under :

“13. We also agree with the learned Single Judge that the termination of the service of the respondent No. 2 was

liable to be declared as void on the ground of violation of principles of natural justice. Admittedly, the employer had struck off the name of the workman from its rolls under clause 17(2)(v)(m) without giving opportunity of hearing to him. In similar circumstances, the termination of the service of the workman has been held to be illegal in D.K. Yadav v. J.M.A. Industries, 1993(4) SLR 126 : 1993(3) S.C.T. 537. In that case, the action was taken by the employer under clause 13(2)(iv) of the Certified Standing Orders which empowered it to terminate the service of the workman if he remained absent for a period of 8 days. Their Lordships held that even though the employer may terminate the service of the workman by exercising power under Standing Orders, the principles of natural justice had to be complied with.”

[9] In the instant case, the workman was admittedly neither served any show cause notice nor was any enquiry conducted to prove wilful absence or abandonment of job. Learned counsel has tried to justify the action of the Management in violating the principles of natural justice by referring to Rule 14 of the General Rules and Regulations pertaining to the Company attached as Annexure-1 along with the appointment letter. Rule 14 is reproduced as under :

“14. In case you remain absent from your duty without prior express permission in writing of Management or if you proceed on leave without first getting it sanctioned for a continuous period of 8 days, your services would be liable to terminate purely at the discretion of the Management without any further reference to you.”

[10] Perusal of the Rule-14 reveals the same to be pari materia to the rule in consideration in **D.K.Yadav’s** case (supra) as also **Punjab State Electricity Board’s** case (supra) wherein the Court held that principles of natural justice must be read into such rules otherwise it would become arbitrary, unjust and unfair, violative Article-14 of the Constitution of India. Admittedly, in the present case, there is blatant violation of the principles of natural justice as no opportunity of hearing was afforded to the workman.

[11] In the light of the position as noted above, I find no reason whatsoever to interfere with the well reasoned award passed by the learned Tribunal awarding reinstatement with continuity in service and full back wages. The writ petition is bereft of merit and is accordingly dismissed in limine.

(B.S. Walia)
Judge

03.07.2019
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1. Whether speaking / reasoned : Yes / No.
2. Whether reportable : Yes / No.