

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

CWP No.24956 of 2019

Date of decision: 09.09.2019

M/s Capital Engineers

.....Petitioner

versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-III,
Faridabad and another

....Respondents

Coram: **Hon'ble Mr. Justice B.S. Walia**

Present: Mr. Sandeep Vermani, Advocate for the petitioner.

B.S. Walia, J.

[1] Writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of a writ of Certiorari for quashing Award (Annexure P-8) dated 20.07.2018, passed by the learned Presiding Officer, Industrial-cum Labour Court-III, Faridabad (hereinafter referred to as '*the Tribunal*'), ordering reinstatement of respondent No.2 with continuity of service and 50% back wages w.e.f. the date of demand notice and by taking into account his last drawn salary as ₹10,500/- per month.

[2] Brief facts of the case leading to the filing of the writ petition are that as per the stand of the respondent-workman he was appointed as Tool Room Dye Fitter on 03.05.2010 on monthly salary of ₹10,500/-. His work and conduct remained satisfactory during the tenure of his employment with the petitioner and no complaint of any sought was given to the petitioner. However, legal facilities were not given by the petitioner as per law, instead the petitioner obtained his signatures on blank papers and vouchers on the pretext of preparation of pension plan. On 10.10.2014, he met with an

accident, in which he sustained fracture on his left hand. He received treatment for the same by the petitioner in a private hospital, as well as ESI Hospital and after getting a medical fitness certificate dated 23.12.2014 from ESI Hospital, he was taken back on duty by the petitioner on 24.12.2014 but on asking for legal facilities, the petitioner refused to take him back on duty w.e.f. 11.02.2015 without any order in writing. Accordingly, after waiting for a long time, he filed demand notice dated 06.04.2015, copy of which was also supplied to the Assistant Labour Commissioner, Circle-III, Faridabad and thereafter a settlement under Section 12(3) of the Industrial Disputes Act, 1947 was arrived at between the parties. In pursuance thereof, the workman claims that he was taken back on duty by the petitioner on 15.06.2015 on a monthly salary of ₹6200/- instead of ₹10,500/- drawn by him prior to his termination. Besides he was not paid his earned wages for the month of June, 2015 and 13 days of July, 2015. The workman also alleged that junior Dye Fitter to him was now working in his place in contravention of Section 25-F and 25-G of the Act, besides he had worked for more than 240 days in a calendar year preceding his termination and served the demand notice (Annexure P-6) dated 15.07.2015 on the petitioner to the above said effect.

[3] On the aforementioned basis, the workman prayed for reinstatement with continuity in service and full back wages. In reply, the petitioner took up the stand that the workman had not come to Court with clean hands and that the workman was appointed as Dye Fitter by the petitioner on 03.05.2010 but for his better future prospects, he had tendered his resignation voluntarily on 07.10.2013, which was duly accepted on 08.10.2013. The workman had received his full and final payment amounting to ₹16,035/- and acknowledged receipt of said amount on 28.10.2013.

Thereafter, the workman again approached the petitioner for his re-employment and was re-employed as Tool Room Dye Fitter on 01.10.2014 but due to his on negligence, he met with an accident on 10.10.2014 and an accident report was submitted to the ESI Department. After getting fitness certificate, he again joined the petitioner-Company on 24.12.2014 and had taken an advance of ₹15,000/- on 10.01.2015 as per his application dated 05.01.2015 and thereafter he left the job on 10.02.2015 without any intimation. It was further alleged that the workman had not completed 240 days of continuous service after 01.10.2014, therefore, he was not entitled to get any relief of reinstatement with full back wages and continuity in service. The workman had left the service of the petitioner on 13.07.2015 without any intimation or prior permission of the petitioner and the petitioner also sent a letter to the workman regarding his absenteeism on 22.07.2015 but the workman did not join duty and instead filed a demand notice dated 15.07.2015. Prayer was made for rejection of the demand notice and for dismissal of the reference.

[4] The Tribunal took into account that the petitioner in the written statement had pleaded that the workman was re-employed as Tool Dye Fitter on 01.10.2014 and that he met with an accident on 10.10.2014 and after obtaining fitness certificate, the workman again joined the petitioner-Company on 24.12.2014 but left his job on 10.02.2015. However, settlement (Ex. W-6) dated 11.06.2015 had taken place between the workman and the petitioner-Company before the Assistant Labour Commissioner, Circle-III, Faridabad, wherein it was settled that the workman would be taken back on duty by the Company with continuity of his previous service and the workman would join duty on 15.06.2015.

[5] The petitioner in its written statement did not plead that the workman did not join duty on 15.06.2015 as per settlement dated 11.06.2015 i.e. Ex. W-6, but instead pleaded in the written statement that the workman left service on 13.07.2015. In the aforementioned circumstances, the Tribunal held that it stood established on the record that the workman worked with the petitioner-Company continuously from 01.10.2014 to 13.07.2015. The Tribunal also took into account that as per Section 25(B) (1) of the Act, the period during which the workman did not work in the Company on account of injury sustained by him in the accident, which took place on 10.10.2014 was to be included while calculating the service period of the workman with the petitioner. Thus prior to 13.07.2015, the workman had completed 240 days of continuous service with the petitioner-Company.

[6] The Tribunal also took into account that the petitioner-management had placed on record copy of notice / letter dated 22.07.2015 (Ex.M-11) and postal track report (Ex. M-12) and claimed that it had sent notice to the workman to explain his absence from duty but perusal of demand notice of the workman showed that the demand notice was dated 15.07.2015.

[7] Pursuant to demand notice dated 06.04.2015, a settlement was arrived at under Section 12(3) of the Act before the Assistant Labour Commissioner, Circle-III, Faridabad on 11.06.2015 as per which, the workman was taken back on duty w.e.f. 15.06.2015. Thereafter, the stand of the petitioner-Company is that the workman left service on 13.07.2015, whereas it served a notice / letter (Ex. M-11) dated 22.07.2015 to explain his absence from duty but the workman had given demand notice dated 15.07.2015 through speed post to the petitioner-Company. Thus, it is clear

that the demand notice was sent by the workman to the petitioner-Company prior to sending of notice/letter (Ex. M-11) dated 22.07.2015. Therefore, the letter dated 22.07.2015 (Ex. M-11) is of no avail to the petitioner to prove that the workman had absented from duty.

[8] Further taking into account that the provisions of Section 25-F and other relevant mandatory provisions of the Act had not been complied with by the petitioner before terminating the services of the workman, the workman was held entitled to reinstatement in service with continuity of service and 50% back wages as there was no evidence on the record to show that he had remained gainfully employed after termination of his services, till date.

[9] Learned counsel for the petitioner contended that the award passed by learned Tribunal is liable to be set aside, as the same wrongfully ignored the show cause notice sent by the petitioner on 22.07.2015 to the respondent-workman, seeking his explanation for unauthorized absence from duty. The show cause notice as also the postal report was duly proved in evidence by the management and it was the stand of the management that despite service of the show cause notice, the workman did not file any reply to the show cause notice and chose to voluntarily remain absent from duty.

[10] I have considered the submissions of learned counsel for the petitioner and have gone over the relevant record.

[11] A demand notice was served by the workman on 15.07.2015 to the petitioner-management by speed post whereafter, the management served a notice (Ex. M-11) dated 22.07.2015 upon the workman, seeking his explanation *qua* his alleged absence from duty. However, in view of the demand notice having been served by the workman on the petitioner-

management prior to sending of notice (Ex.M-11) dated 22.07.2015, the same is of no avail to the petitioner-management and does not help the management to prove that the workman had absented from duty. Besides in view of there being non compliance with the provisions of Section 25-F and other mandatory provisions of the Industrial Disputes Act before terminating the services of the workman, the award directing reinstatement and payment of 50% back wages on account of the workman not having been gainfully employed after his termination, till date does not call for any interference.

[12] 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.”

[13] 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** where 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.”*

[14] In the instant case, the workman was admittedly served with a show cause notice but the same was belated and a mere counter action to the demand notice served by the workman on 15.07.2015. Moreover, no inquiry in respect of the show cause notice sent was conducted to prove willful

absence or abandonment of job nor any offer of rejoining was made to the workman.

[15] In the circumstances, I find no reason whatsoever to interfere with the well reasoned award passed by the learned Tribunal awarding reinstatement with continuity in service and 50% back wages. The writ petition is bereft of merit and is accordingly *dismissed*.

(B.S. Walia)
Judge

September 09, 2019
'Rajneesh'

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