

[106] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.42936 of 2018
Date of decision: 17.07.2019

M/s Max Flow Pumps India (P) Ltd.

.... Petitioner

Versus

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

.... Respondents

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

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

B.S. Walia, J. (Oral)

[1] Challenge in the writ petition is to award, Annexure P-5 dated 04.05.2017 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Gurugram (Annexure P-5) (hereinafter referred to as 'the Tribunal') ordering reinstatement of respondent No.2-workman with continuity in service and full back wages w.e.f. the date of termination i.e. 03.03.2012 till reinstatement. Learned counsel has reiterated the submissions made before the Tribunal. I have considered the submissions and gone over the pleadings.

[2] Brief facts of the case leading to the filing of the writ petition are that before the Tribunal, respondent No.2/workman pleaded that he was appointed as Turner in the petitioner-Company on 01.08.1996. However, the name of the Company was changed from M/s Iron Max Flow Pumps India Ltd. to M/s Max Flow Pumps India Pvt. Ltd. and his services were illegally terminated on 03.03.2012 without issuance of notice, notice pay and

payment of retrenchment compensation or conducting domestic enquiry. Respondent No.2/workman stated that his entire service record was unblemished and after termination of his services, he was unemployed. The workman claimed reinstatement with continuity in service with full back wages and other consequential benefits.

[3] The petitioner/Management on the other hand took up the stand that respondent No.2/workman used to remain absent from duty without any prior permission or sanction of leave from the Management, therefore, he was directed to report for duty without any further delay. Besides, he had not completed 240 days in the employment of the Management in any completed year from the date of his appointment or preceding 12 months. Further, the workman instead of following settled procedure of law had mechanically submitted demand notice before the Conciliation Officer without raising with demand with the Management. The petitioner further took up the stand that the Management had vide various letter advised the workman to report for duty and submit written explanation in respect of his unauthorized and illegal absence, but he did not pay any heed and raised the dispute just to extort money from the Management and since the Management had never terminated the services of the workman, therefore, it was not required to pay any retrenchment compensation etc. In the aforementioned background, prayer was for dismissal of the claim.

[4] Replication was filed by respondent No.2/workman controverting the stand of the petitioner/Management and affirming the assertions made in the demand notice as well as in the claim statement. On the basis of the pleadings between the parties, the following issues were framed:-

- “(1) Whether the termination of the services of the workman is illegal and unjustified, if so to what effect? OPW
- (2) Whether the reference is not maintainable? OPM
- (3) Relief.”

[5] The Tribunal on the basis of evidence led by the parties came to the conclusion that the reference was liable to be answered in favour of the workman as there was clear admission in the evidence of MW-1 that the workman joined the Management on 01.08.1996 as Turner and his last drawn salary was ₹ 8255/- per month, that the Company had changed its name and the workman absented w.e.f. 03.03.2012 without any prior permission or sanction of leave. The learned Tribunal also took into account the submission on behalf of the workman that without passing any written order, the workman was denied entry in the Company premises that he went to the Company premises repeatedly but was not allowed to join duty and in the aforementioned circumstances, the workman raised demand notice upon the Management with copy thereof to the Labour-cum-Conciliation Officer, Gurugram. Therefore, the objection that the workman had mechanically submitted his demand notice straightly without following settled procedure was rejected. The learned Tribunal also rejected the plea of 240 days not having been completed on the ground that MW-1 in his evidence had admitted that the workman had joined service with them on 01.08.1996, but in order to avoid the workman's case, the Management had taken plea that the workman had left his job himself. The learned Tribunal held that it was incumbent upon the Management to prove the plea of abandonment of service in view of the decision in case titled as **O.K. Play India Ltd. v. Raj**

Kumar and others, 2016 LLR 669, Guru Nanak Public School v. Arjun,

2013 (13) FLR 673 and **MCD v. Nirankar Singh etc. 2013 LLR 562**

failing which a presumption was liable to be drawn that the services of the workman were illegally terminated without conducting an enquiry. The Tribunal also held that although in the pleadings, the Management had taken the stand that when the workman started to absent from the duty, they issued various letters to him advising him to report for duty and also to submit his explanation but during evidence, they failed to produce any such letters, therefore, their oral version was not believable. Reliance was also placed on **Dilbag Singh v. Presiding Officer and others, 2015 LLR 1030** wherein the High Court held that the presumption that the workman had abandoned the job only on the basis of being absent unauthorizedly was not sustainable if the Management had not informed about it nor called the workman to report for duty and that such inaction on the part of Management required compliance with Section 25-F of the Industrial Disputes Act. The learned Tribunal held that in the absence of any letter addressed to the workman having been placed on record by the Management, mere oral stand of the Management was not enough to say that the workman had himself abandoned his job.

[6] In the light of the position as noted above, the learned Tribunal held that the Management had failed to prove the plea of abandonment, therefore, it was a case of illegal retrenchment because prior to dispensing with the services of workman mandatory provision of Section 25 (F) of the Industrial Disputes Act had not been complied with. Accordingly, the workman was held entitled to reinstatement with consequential relief, continuity in service and full back-wages w.e.f the date of termination till reinstatement .

[7] The plea that respondent No.2/workman had not completed 240 days is devoid of merit in view of it being admitted that respondent No.2/workman had joined service as Turner w.e.f. 01.08.1996 but had started absenting himself w.e.f. 03.03.2012. Besides, petitioner/Management did not produce record that respondent No.2/workman did not perform duty for a period of 240 days in the preceding 12 months prior to 03.03.2012 to controvert the stand of the workman in his cross-examination that he had got record to show that he had worked for 240 days in each of the years as well as in the preceding 12 months prior to his termination.

[8] Accordingly, the plea that respondent No.2/workman did not complete 240 days is devoid of merit and is rejected. Since the Management failed to produce letters allegedly written by it to the workman to join duty before the learned Tribunal as also before this Court despite opportunity given vide order dated 14.02.2019, it is clear that no letter was written by the petitioner to the workman with regard to his alleged absence or requiring him to join duty. It having been established before the learned Tribunal that the services of the petitioner who had completed 240 days had been terminated without conducting any enquiry, issuing show cause notice or complying with the mandatory provision of Section 25-F of the Industrial Disputes Act, the award passed by the learned Tribunal ordering reinstatement with continuity in services with full backwages does not warrant any interference.

[9] Accordingly, the writ petition is dismissed in limine.

(B.S.Walia)
Judge

1.

Whether speaking/reasoned

:

Yes/No.
2.

Whether reportable

:

Yes/No.