

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

DECIDED ON : 17.02.2020

1

CWP No. 7915 of 2015 (O&M)

Sacred Heart Convent School

...Petitioner

versus

Presiding Officer and another

...Respondents

2

CWP No. 14970 of 2015(O&M)

Ashok Kumar Gupta

...Petitioner

versus

Presiding Officer and another

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present : Mr. Sumit Mahajan, Advocate, for the petitioner.

Mr. Sharwan Sehgal, Advocate for respondent No.2.

GIRISH AGNIHOTRI, J. (ORAL)

This common order shall dispose of aforesaid two writ petitions since identical questions of law and facts are involved in the same. For the sake of convenience the facts are being taken from CWP No. 7915 of 2015.

Petitioner-Sacred Heart School, Samrala, District Ludhiana, has filed a present writ petition, *inter alia*, praying for quashing the award dated 11.02.2015 (Annexure P-10).

This Court finds merit in the submissions made by the learned counsel for the petitioner. The writ petition is allowed for the reasons notice hereunder.

Learned counsel for the petitioner argued that in fact the stand

of the petitioner-School throughout has been that it was the workman who started absenting from duty. He further submits that School had issued different letters asking the workman to report for duty but even then he did not turn up. In furtherance of this, he had made reference to letter dated 25.07.2007 (which is appended as Annexure P-1 and it is also Ex.PM8 before the Labour Court), which clearly shows that the workman had in fact started absenting from duty. The letter reads as under:-

“Ref. No.....

Dated:25/07/2007

Ashok Kumar S/o Kashi Nath Gupta

Gentleman, Please note that you are absent from your duty unauthorisely and illegally without any prior sanction of leave w.e.f. 25th July 2007.

You are directed to report for duty immediately on this receipt of this notice/letter and explain the reasons for your willful absence failing which we shall be compelled to provisions of law.

C.C.:- To Labour Inspector, Samrala, for information and further necessary action.

*Principal
Sacred Heart Convent School
Maria Nagar Samrala”*

Learned counsel for the petitioner further submits that the said letter was sent by registered post, the proof thereof has been appended as Annexure P-2. He has also relied upon the reply submitted by School to the demand notice served upon by the workman. He submits that in that also it was clearly mentioned that the workman is better advised to withdraw the demand notice and report for duty immediately.

Learned counsel for the respondent, Mr. Sharwan Sehgal, who appears for the workman, submits that he has also filed CWP No.14970 of 2015. This writ petition has been filed on behalf of the workman, *inter alia*, with the prayer to modify the award so as to grant full back wages. He

submits that in fact 25.07.2007 is the alleged date of termination and the demand notice was served upon by the workman on 28.07.2007 (within 3 days) which clearly shows that workman was willing to join services. The workman, is therefore, entitled to full backwages.

This Court after hearing learned counsel for the parties finds force in the submissions made by learned counsel for the petitioner. In fact the letter dated 25.07.2007 (Ex.P1, sent by registered post i.e. Annexure P-2) has not been found to be authentic by the Industrial Tribunal in its award dated 11.02.2015. This Court finds that the stand of the Management from the very beginning that they were and are always willing to allow the petitioner to join the services clearly shows that the stand of the Management was in fact supported by letter dated 25.07.2007. On 27.04.2016, this Court while issuing notice of motion observed as under:-

“Learned Senior counsel for the petitioner inter alia contends that before initiating the conciliation proceedings before the Labour Court, the Management had been given offer to the workman for re-employment but the workman never joined duty. The workman had made a statement Before the Labour Court that he is willing to join duty but he has not joined. Thus, in essence, according to the contention, it amounts abandonment of service.

In support of his aforesaid contention, he relied upon the judgment of Hon'ble the Supreme Court in State of Haryana vs. Om Parkash and another 1998 (8) Supreme Court Cases 733 and Delhi High Court in Maharashtra Hybrid Seeds Co. Ltd. vs. Govt. of Nct and others 2014 (4) LLJ 61. Notice of motion for 03.09.2015.

In the meantime, operation of the impugned Award shall remain stayed.”

For the facts noticed above, especially the fact that Management was willing to take workman in job, the writ petition i.e. CWP

No.14970 of 2015 is disposed of finding no merits to enhance the back wages.

CWP No.7915 of 2015 is also disposed of with the following directions:-

- (i) The respondent-workman may now offer himself for joining within two months from the date of receipt of the certified copy of the order.
- (ii) This Court in order to rest finality to the litigation deems it appropriate to award lump sum Rs.1 lakh (towards 25% of backwages so awarded). To this extent the Award dated 11.02.2015 is modified while making it clear that the workman shall not be entitled to anything under any other head except Rs.1 lakh.
- (iii) The records of the case show that application under Section 17B was filed on 20.07.2015. On 20.07.2015 notice of the application was issued. The petitioner has filed a counter reply to the said application. However, in view of the directions given above there shall be no orders for payment of any wages under Section 17B of the Act as Rs.1 lakh is found to be full and final payment under all the heads.

February 17, 2020

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**(GIRISH AGNIHOTRI)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO