

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

CWP 23113 of 2017 (O&M)

Date of Decision: May 28, 2021

Marriott Hotels India Private Limited ...Petitioner
Versus
Presiding Officer, Industrial Tribunal-cum-Labour Court-I
Gurugram and another
.... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Ashwani K. Chopra, Sr. Advocate with
Ms. Rupa Pathania, Advocate for the petitioner.

Service of respondent No.1 already dispensed with
vide order dated 06.10.2020 passed by this Court.

Respondent Puneet Duggal in person.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of outbreak of pandemic COVID-

19.

The petitioner, Marriott Hotels India Private Limited

being the Management (in short '**the Management**') has through this invocation assailed the award dated 01.08.2017 of the Court of Learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurugram in consequence of reference made under Section 10(i)(c) of the Industrial Disputes Act 1947, (in short, **the Act**) leading to the passing of the award in terms of 2-A of the Act, whereby, the Tribunal had while allowing the reference granted the reinstatement of respondent/workman Puneet Duggal and awarded 40% of the back-wages.

Heard Mr. Ashwani K. Chopra, Sr. Advocate assisted by Ms. Rupa Pathania, Advocate the petitioner and respondent in person and with their valuable assistance had the opportunity to go through the records.

Undisputedly, the respondent No.2-Puneet Duggal was appointed on 05.03.2021 as "Global Reservation Customer Care and Sales Agent", (in short, **the Agent**) on salary of Rs. 20,951/- per month. It is during the course of events, the services of the agent were dispensed with w.e.f.

14.04.2015 after the agent had put in almost four years and one month. The agent served demand notice dated 11.05.2005 (actual date is 11.05.2015) and after the conciliation proceedings before the Labour Officer did not fructify reference was made as to non-compliance of mandatory provisions of Sections 25-F, 25-H and 25-N of the Act.

The precise stand of the Management is that it had implemented **Local Standard Operation Procedure (LSOP)** by virtue of which that where bookings are made wrong or arrival dates are not correctly depicted would tantamount to adherence of the minimum performance standard, under which, the Management could issue warning letters to the employee and after three warning letters, the Management reserves the right to terminate the services of its employee. Since the agent failed to fulfil the minimum performance standard and in adherence to Local Standard Operation Procedure (LSOP), his service stood terminated and ruled out that there was no necessity of any inquiry. Since there is not much disparity over the factual

scenario. The own cross-examination of the agent as PW1 clearly illustrates that he admits his signatures on the warning letters and the fact that they were issued on 16.03.2015 and 18.03.2015 and the fact that on account of wrong bookings dated 21.06.2015 to 25.06.2015 for 10.03.2015 to 11.03.2015 and wrong bookings were made on 15/16.03.2015 for 1st May 2015. The agent further accepts the fact that the warning letters were issued to him on various occasions. Though with much fanfare, the respondent/agent has sought to seek support from print outs sent before this Court through e-mails and which were never part of the evidence before the Tribunal and from WP(C) No. 4902/2003 decided on 11.02.2008 titled as **Bishwanath Traders and Investment Ltd Vs. Ajay Kumar Singh and another.**

To counter the same, reliance has sought to be placed on Civil Appeal No. 2419 of 2011 decided on 10.03.2011 titled as **Rajesh Kumar Srivastava Vs. State of Jharkhand and others, Davender Arora Vs. Management of Albert &**

David 2002 (94) FLR 250, Supita Choudhury Vs. State of Assam and others (2004) 3 Gauhati Law Reports 390, M/s Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, 1969 (3) Supreme Court Cases 653, Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and others 1978 AIR 1380, Ms. Rashmi B. Singh Vs. Mahesh Chand Sharma 2011 SCC Online Del 3829, Civil Appeal No. 8071 of 2010 decided on 12.09.2019 titled as General Manager, Electrical Rengali Hydro Electric Project Vs. Orissa and others Vs. Sri Giridhari Sahu and others, Appeal (Civil) 1769 of 2008 titled as Sita Ram and others Vs. Moti Lal Nehru Farmers Training Institute, W.P. (C) No. 6287 of 2015 decided on 09.03.2017 titled as Satish Joshi Vs. Union of India and others and W.P. (C) No.9060/2016 decided on 25.11.2016 titled as Gurvinder Singh Saini Vs. Director of Education and others by Mr. Chopra to bring about his point of view in submissions that it was a simplicitor termination which was not stigmatic and, therefore, having failed to fulfil the Local Standard Operation

Procedure (LSOP), the Management reserves the rights to bring an end to this engagement which was affecting the very reputation of the business of the Management, for which, the respondent cannot take refuge of any premise.

The allegations by the Management on the face of it clearly enlist that the agent lacked potential to run the international business of the Management which had “Global Customer Care Centre” for hotel and travel bookings. One cannot lose sight of the fact that a single mistake in bookings would have catastrophic repercussions on the business of the Management and, therefore, it is the Management which is to adjudge the very suitability of the employee and the Court cannot be delegated with the function as has come about in the impugned award. The learned Presiding Officer on the grounds that there was no due inquiry and opportunity has drawn conclusion leading to the passing of the award and it is not a case where the Management is trying to trim down the work force. The various documents admitted by the agent in his

cross-examination as PW1 and which are the errors from 05.05.2011 till 15.03.2015 are clearly illustrative that the agent did not have the acumen for this particular job which has unduly tarnished the image of the Management. The termination in the present case does not carries any stigma and it was the failure of the employee to show minimum potential in the discharge of his duties has resulted in this putting to an end of the relationship of Management and agent between the parties.

Taking an overall view of the scenario in the light of the nature of the employment of the agent and the business being run by the Management, this Court is of the view that reinstatement of the agent as has been ordered by the Tribunal would be highly inexpedient which would have its repercussions on the business of the Management, which is catering to international clients and in which even a single error is sufficient enough to put an end the business of the Management. No doubt, the agent has served the Management for a little about 04 years but throughout there has been documentary evidence

of his non-performance, this Court reiterates the fact that in such a situation, confidence and trust of the Management in its employee has to be there and once a situation has come about that the Management loses confidence and trust in its work force, it would be nigh impossible to run the business of the Management. In case, the respondent/agent is made to join the petitioner, a piquant situation would come about where the Management would not be able to delegate authority to the agent with the apprehension of another traumatic experience by their clients impacting the Management and its business interest and, therefore, to the mind of this Court such retention of the employee in such a situation would be highly inappropriate and it would be in the best interest of both the sides to prevent further spitting of venom on each other and taking support from **Moti Lal Nehru Farmers Training Institute's case (supra)**, an Apex Court view in a similar situation where it was opined that payment of adequate amount of compensation in place of directing reinstatement in service would serve the ends of

justice. Keeping in view that the respondent/agent admittedly was drawing salary of Rs.20,951/- per month, and has worked for around 4 years, this Court holds out that it would further the ends of justice if the agent is allowed compensation equally to three years' salary as compensation which shall be paid by the Management within one month of the receipt of the copy of this judgment. In case the Management fails to make the payment, the agent shall be entitled to interest @ 12% per annum from the date of this judgment till the realization of the amount.

The present writ petition stands partly allowed and disposed off accordingly.

May 28, 2021

amit rana

(FATEH DEEP SINGH)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No