

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

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**CWP No. 1388 of 2015 (O &M)
Date of decision : 20.4.2022**

M/s Uniproducts (India) Limited

.....petitioner

Vs.

**Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon and
another**

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Sandeep Kotla, Advocate, for respondent No.2

Rajbir Sehrawat, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for quashing and setting aside the award dated 3.12.2014 (Annexure P-12), passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon, against the petitioner-employer. It is further prayed that the respondents be directed to forebear from enforcing the award as the workman-respondent No.2 cannot take benefit of his own wrong.

The facts, as involved in the present case, in brief, are that the respondent-workman claimed that he was working with the petitioner-employer since November 2005 and continued upto 8.6.2008. The respondent-workman was suffering from depression for a period from 17.1.2008 till 16.5.2008 and he had taken treatment during that period. However, thereafter, the respondent-

workman has joined the duties on 1.6.2008 and worked upto 8.6.2008. Thereafter, the respondent-workman was not permitted to work. Hence, the service of the respondent-workman was dispensed with without any notice and without payment of the retrenchment compensation. The respondent-workman raised the industrial dispute; which was ultimately referred to the Labour Court. The Labour Court has answered the dispute in favour of the respondent-workman and passed an award dated 3.12.2014 granting reinstatement into service and 40% of back-wages. The petitioner-employer has filed the present petition challenging the said award passed by the Labour Court.

Arguing the case, counsel for the petitioner-employer has submitted that the respondent-workman was never employed with the petitioner-employer since November 2005; as asserted by the respondent-workman. The respondent-workman had been employed pursuant to a job requisition published by the petitioner-employer. Accordingly, he joined the duties on 1.1.2007. However, w.e.f. 17.1.2008, the respondent-workman remained absent upto 16.5.2008. Thereafter, the respondent-workman was asked to join the duties by sending him the notices. He joined the duty for few days pursuant to the notice. However, again he stopped coming to the duty. Hence, the petitioner-employer had never dispensed with the service of the respondent-workman. Rather, the respondent-workman had stopped coming to the duty; on his own. Counsel has submitted that before the last date, upon which the respondent-workman stopped coming to the duty, he had not completed 240 days in preceding 12 calendar months. Since the respondent-workman had not completed 240 days in 12 calendar months preceding the date of his abandonment of the duty, therefore, the petitioner-employer was

under no liability to follow any provision regarding the payment of retrenchment compensation etc. There is no material on record to establish that the respondent-workman had completed 240 days. Hence, the Labour Court has gone wrong in law in assuming the fact that the respondent-workman had completed 240 days in service in 12 calendar months and awarding him the relief of reinstatement with back-wages.

Finding further fault with the award passed by the Labour Court, counsel for the petitioner-employer has submitted that the Labour Court has wrongly written in the award that the original record was not produced by the petitioner-employer. Referring to the statement of MW-1 Jaswant Singh, counsel has submitted that the said witness has stated before the Court that original record was shown to the Court and the photocopies were exhibited on the file. There is no objection qua this assertion made; either by the respondent-workman or by the Courts. Hence, it is wrong to assume that the original of the record was not produced before the Court. Therefore, the Labour Court has gone wrong in law in assuming the completion of 240 days by drawing adverse inference against the petitioner-employer for non-production of record. Counsel has further submitted that even the requirement of holding of a regular enquiry has wrongly been incorporated by the Labour Court in the award. Since the petitioner-employer had never terminated the service of the respondent-workman, therefore, there was no question of holding any enquiry of any kind.

On the other hand, counsel for the respondent-workman has submitted that the Labour Court has rightly come to the conclusion that the respondent-workman had completed 240 days in preceding 12 calendar months

before the date of his termination. Counsel has submitted that the respondent-workman had not remained absent voluntarily. Rather, he was facing the medical problem and was taking the treatment for the same. The medical record was submitted to the petitioner-employer. However, the same has not been produced by the petitioner-employer before the Labour Court.

Having heard counsel for the parties, this Court finds substance in the argument of counsel for the petitioner-employer. Without much adumbration, it deserves mention that while appearing as a witness, the respondent-workman himself has admitted in cross examination that he had remained absent from duty from 17.1.2008 till 30.5.2008. By taking out this period from the service rendered in the year 2008, by any means, the respondent-workman does not complete 240 days. Although the Labour Court has assumed working of 240 days by drawing adverse inference on the ground that the original record has not been produced by the petitioner-employer, however, the statement of the witness produced by the petitioner-employer shows that the original record was duly produced before the Court. The photocopies of the same were exhibited without any objection, either from the respondent-workman or without any restrictive observations from the Labour Court. Hence, it cannot be said that the petitioner-employer had not produced the original record, and to draw adverse inference against the petitioner-employer is not legally sustainable.

Although counsel for the respondent-workman has submitted that the respondent-workman was not absent from the duty voluntarily and that he was facing medical problem, however, there is nothing on record to even remotely suggest the same; except the bald statement of the respondent-

workman. Even through his cross examination, this fact was put up by the petitioner-employer to the respondent-workman. He has admitted that there is no medical record available with the petitioner-employer. Not only that, the respondent-workman has not made any effort to prove the assertion that he was facing any medical problem. On the contrary, the statement made by this witness before the Labour Court shows that he was having ESI Treatment Card but he had never taken any treatment from any recognized ESI Hospital/Dispensary. Accordingly, the assertion of the respondent-workman that he was facing medical problem and therefore, the absence was not voluntarily, cannot be sustained.

The Labour Court has tried to introduce the concept of holding departmental enquiry for dispensing with the service of the respondent-workman, by treating the absence to be a mis-conduct. But this would have been a case only if the respondent-workman had ever joined back after the said date or made any representation for the same or the petitioner-employer had claimed the same to be mis-conduct. However, the petitioner-employer has asserted this to be a case of abandonment of employment by the respondent-workman. It is the positive case of the petitioner-employer that letters were written to the respondent to join duties. However, he chose not to join duty. In any case, once the person had not even completed 240 days of service, there was no requirement of holding any quarry to dispense with the service of the respondent-workman. Till the respondent-workman attained the statutory status protected by the retrenchment clause, it is pure and simple 'master-servant relationship' between the employer and the employee, giving an absolute right of 'hire and fire' to the employer. Hence, the employer cannot be

faulted for not holding any enquiry for dispensing with the service of the respondent-workman who had not completed 240 days of service.

In view of the above, finding merit in the present petition, the same is allowed. The award dated 3.12.2014 passed by the Labour Court is set aside.

(RAJBIR SEHRAWAT)
JUDGE

20.4.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No