

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

CWP-19905-2013

M/s Punjab Steel Forging and Argo Industries Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

..... Respondents

CWP-14440-2013

Mahadev Mandal Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and another

..... Respondents

Date of Decision: 29.04.2022

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harsh Aggarwal, Advocate,
for the petitioner (in CWP-19905-2013)
for respondent No.2 (in CWP-14440-2013)

Mr. Balbir Singh Saini, Advocate,
for the petitioner (in CWP-14440-2013)
for respondent No.2 (in CWP-19905-2013)

RAJBIR SEHRAWAT, J. (ORAL)

This common judgment shall dispose of two writ petitions, i.e. CWP-19905-2013 and CWP-14440-2013, which have been filed by the employer and the workman, respectively.

The employer has filed CWP-19905-2013 challenging the award dated 30.04.2013, whereby the Labour Court has held the termination

of service of the respondent-workman to be illegal and has ordered payment of compensation. The workman has filed CWP-14440-2013 for modification of award and to grant him the benefit of reinstatement with continuity of service and full back wages.

The common facts, as involved in these two writ petitions, are that respondent-workman asserted that he had worked with the petitioner-employer with effect from 01.02.2000 till 14.11.2007. However, on 14.11.2007, his service was terminated without any notice and without any payment of compensation. Hence, he raised the labour dispute. At the time of his initial attempt, the Deputy Labour Commissioner had not recommended reference of the dispute to the Labour Court, on the ground that the respondent-workman himself had abandoned the job and he had refused to join even during the conciliation proceedings. Then the respondent-workman filed a fresh demand notice, upon which the reference was made to the Labour Court even without notice to the employer. The said reference has been answered in favour of the respondent-workman to the extent of award of compensation of Rs.30,000/- along with interest at the rate of 6% per annum. The employer has challenged the validity of the award as such, and the respondent-workman has filed separate writ petition, as mentioned above, seeking reinstatement into service by modification of the award.

The stand of the petitioner-employer had been that the respondent-workman joined service with him on 12.09.2003 and he was working as a helper at the salary of Rs.2,300/- per month. He met with an

accident on 06.03.2005. After that accident, the respondent-workman got treatment from the ESI hospital from 07.03.2005 to 15.06.2005 (total 101 days) and for that duration, the respondent-workman had received wages from the ESI department. However, after getting the fitness certificate, the respondent-workman did not agree to join his duties. Although, he raised a labour dispute, but during conciliation proceedings, he was asked to join duties even in the presence of the Labour Commissioner. However, there also he made a statement that he was not willing to join the duties, rather, he be given his all wages and dues; as required under the Labour Law. Consequently, the respondent-workman was paid his dues under his valid signatures on 20.06.2005. He was paid money in lieu of un-availed leave for the years 2003, 2004 and 2005. He was also paid bonus for the year 2003-2004 and for the year 2004-2005. Beside this, service compensation worth Rs.1690/- was also paid to the respondent-workman. Hence, all the terminal benefits stood paid to the respondent-workman. Accordingly, nothing was left unpaid as per directions of the Labour Commissioner, Punjab. Hence, it was submitted that the claim of the respondent-workman in raising the industrial dispute was a concoction.

The parties led their respective evidence. The Labour Court found that it was not a case of abandonment of service. However, in stead of reinstatement, the Labour Court awarded the amount of compensation as mentioned above.

Arguing the case, learned counsel for the petitioner-employer has submitted that the respondent-workman himself abandoned the job. He

was offered to join back even during the conciliation proceedings. He had refused to join duties in the presence of the Labour Commissioner. Therefore, the terminal benefits were paid to the respondent-workman. In his second attempt, the respondent-workman got the reference made even without notice to the petitioner-employer. Learned counsel for the petitioner-employer has submitted that as per their consistent stand, they have no objection even now if the respondent-workman joins his duties. However, since he has not worked for this entire duration, he should not be granted any back wages. He has further submitted that since the petitioner-employer has never terminated the services of the respondent-workman, therefore, there is no question of awarding any compensation to him. Hence, the award is totally wrong in that regard. Finding further fault with the award, learned counsel for the petitioner-employer has submitted that there is no evidence on file that the respondent-workman had ever approached the petitioner-employer for joining the duties after recovering from the accident. On the contrary, the cross-question was put to the witness of the petitioner-employer and he has categorically deposed in his cross-examination that the respondent-workman never appeared for joining his duties after taking treatment from the ESI hospital. Learned counsel has further submitted that the fact that the terminal benefits were paid to the respondent-workman itself shows the abandonment of the job on the part of the respondent-workman. Hence, the petitioner-employer is not liable even to pay the compensation.

On the other hand, learned counsel for the respondent-workman has submitted that the respondent-workman had gone to join duty after

getting recovered from the injuries sustained during the accident. However, the petitioner-employer had not permitted him to join. Qua the receipt of the terminal benefits, learned counsel has submitted that the respondent-workman was never paid any money and the documents were created by getting his signatures on blank receipts. Learned counsel for the respondent-workman has relied upon a judgment rendered by this Court in the case titled as **Senior Medical Officer, Incharge, Primary Health Centre, Dudhan Sadhan, Patiala Vs. Sukhwinder Singh and another, 2007(2) S.C.T. 112**, to contend that since the respondent-workman had completed 240 days in service, therefore, the petitioner-employer could not have terminated his services without payment of retrenchment compensation. Hence, the respondent-workman is entitled to reinstatement.

Having considered the arguments raised by the learned counsel for the parties and having pursued the record, this Court finds substance in the arguments raised by the learned counsel for the petitioner-employer. It is the positive case of the petitioner-employer since beginning that they had never refused the respondent-workman to join the duties. This assertion made by the petitioner-employer is substantiated by the order dated 23.12.2005 (Annexure P-8) passed by the Deputy Labour Commissioner wherein it is recorded that the petitioner-employer had offered the respondent-workman to join back duties, however, the respondent-workman had refused joining.

In view of this situation, the factum of completion of 240 days of service and payment of retrenchment compensation is rendered irrelevant.

Although, the learned counsel for the respondent-workman has submitted that it was not a case of abandonment of duties, rather, his services were terminated by the petitioner-employer, however, he has not even brought on record any evidence to show that he ever approached the petitioner-employer to join the duties after recovering from the accident. On the contrary, in a suggestion put up by the workman to the witness of the management, while appearing before the Labour Court, the witness has categorically denied the fact that the respondent-workman ever approached the petitioner-employer for joining duties. Moreover, all the terminal benefits stand paid to the respondent-workman. The receipts qua the said payments, duly signed by the respondent-workman, upon a revenue stamp, were produced before the Labour Court. The respondent-workman has not even denied his signatures on the said receipts. Although, the respondent-workman asserts that his signatures were obtained on blank papers, however, no evidence has been led by him even on that count. The assertion of the petitioner-employer that the respondent-workman himself was not interested in joining the duties is supported by the fact that when confronted by the Deputy Labour Commissioner during conciliation proceedings, he refused to join the duties, and second time, he approached the appropriate Government for making reference only after two years. Hence, the findings of the Labour Court to the extent that it was a case of termination of service by the employer and not of abandonment of the job by the respondent-workman, are not supported by any evidence on file.

On the contrary, even before this Court, learned counsel for the

petitioner-employer has made an offer to the respondent-workman that he can join the duties even now, however, since he has not actually worked for this period, therefore, he would not be paid any back wages. Even this offer made by the learned counsel for the petitioner-employer substantiates that their offer to the respondent-workman has been consistent that he could have joined the duties at any time, but without insisting upon the wages for the period for which he had not actually worked. However, even before this Court, the respondent-workman has refused to join the duties unless he is paid back wages. Hence, it appears that the emphasis of the respondent-workman is to get money only without sticking to any commitment to join duties or to continue with the petitioner-employer for any specified time. Moreover, the said offer made by the petitioner-employer is despite the fact that there is nothing on record to show that the services of the respondent-workman were terminated by the petitioner-employer. Even this opportunity has not been availed by the respondent-workman.

Although, the learned counsel for the respondent-workman has relied upon the judgment of *Sukhwinder Singh and another's* case (supra), however, the said judgment is totally distinguishable. The said judgment is qua the proposition that once the employee has completed 240 days of service and he is retrenched from service, then, he is entitled to get retrenchment compensation, failure in payment of which, the Court has to order reinstatement of service. Although, this proposition of law cannot be disputed but this proposition of law pre-supposes existence of 'retrenchment' as contemplated by Section 2(oo) of the Industrial Disputes Act. Unless

the termination of service of a workman falls within the definition of retrenchment, there is no obligation upon the employer to serve any notice or to pay any compensation. In the present case, the respondent-workman has not led any evidence to show that he had ever approached the petitioner-employer for joining after recovering from the injuries. On the other hand, the consistent stand of the petitioner-employer has been that the respondent-workman never approached the authorities to join his duties; and that they are ready to permit him to join even now. This shows that the termination of services of the respondent-workman does not falls under the definition of 'retrenchment' as per the provisions of the Industrial Disputes Act. Hence, there was no requirement of serving any notice or payment of any retrenchment compensation.

In view of the above, the writ petition, i.e. CWP-19905-2013 filed by the petitioner-employer is allowed and the writ petition, i.e. CWP-14440-2013 filed by the respondent-workman is dismissed. The award passed by the Labour Court is set aside.

(RAJBIR SEHRAWAT)
JUDGE

29.04.2022
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No