

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

206

CWP No.819 of 2015 (O&M)
DATE OF DECISION: 26th MAY, 2022

M/s Shahi Exports Private Limited

.... Petitioner

Versus

Presiding Officer, Labour Court-1, Faridabad and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.S. Randhawa, Advocate and
Mr. Vansh Chawla, Advocate,
for the petitioner.

Mr. Shiv Kumar, Advocate
for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the award dated 28.10.2014 (Annexure P-3), passed by respondent No.1.

The facts in brief, as pleaded in the present petition and as submitted by the counsel for the petitioner, are that the respondent No.2-workman had asserted that he had worked with the petitioner-employer from March, 2000 till March, 2005. However, on 14.03.2005 the service of the petitioner was terminated. The respondent-workman was aggrieved against the termination of his service. He raised the industrial dispute.

The conciliation having failed, the appropriate government had referred the dispute to the Labour Court. That reference has been answered against the petitioner-employer and in favour of the respondent-workman. It is against that award, the present petition has been filed by the petitioner-employer.

Carrying forward the arguments, the counsel for the petitioner-employer has submitted that, in fact, the respondent-workman had joined the service with the petitioner-employer on 18.09.2000. The respondent-workman had voluntarily resigned from service of the petitioner-employer on 14.03.2005. Since, it was a voluntary resignation, therefore, the termination of service of the respondent was not covered in the definition of 'retrenchment' as defined by Section 2(oo) of the Industrial Disputes Act, 1947 (for short, the Act). However, the Labour Court has held the termination of service to be the retrenchment and has passed the award in favour of respondent-workman on a wrong presumption created by the Labour Court on the ground that the respondent-workman was not confronted with the resignation letter during his cross-examination. It is further submitted that the said document, in fact, was exhibited before the Labour Court as Ex.MW1/2. The said document bears the thumb impression and signatures of the respondent-workman. Therefore, the Labour Court should have accepted the version put up by the petitioner-employer and the reference should have been answered against the respondent-workman. The counsel for the petitioner has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***M.P. State Electricity Board Versus Jarina Bee, 2003(3) S.C.T. 625***, and rendered by Delhi High Court in the case of

Thankur Singh Rawat and others Versus Jagjit Industries Ltd., (2006)

ILLJ 755 Del, to contend that the Labour Court has wrongly granted full back wages with continuity of service; despite the fact that the petitioner had not even asserted in the claim statement that he was not gainfully employed after the date of submission of the resignation. Therefore, the award passed by the Labour Court deserves to be set aside in toto. In any case, the respondent-workman is not entitled to any back wages.

On the other hand, the counsel for the respondent No.2-workman has submitted that the respondent-workman had never submitted any resignation. The service of the respondent-workman was wrongly terminated by the petitioner-employer without complying with the provisions of law. Hence, the Labour Court has rightly passed the award in favour of the respondent-workman. The counsel for the respondent-workman has further submitted that so far as the resignation is concerned, the respondent-workman was not confronted with any such letter during his termination. Therefore, the said document cannot be relied upon by the petitioner-employer. Moreover, even during the examination of the witness of the petitioner-employer, the respondent-workman had disputed the authenticity of the said document, as such. It was specifically suggested to the witness of the petitioner-employer that the said document had been created by the petitioner-employer after the testimony of the respondent-workman before the Labour Court was over. Despite that, the petitioner-employer has not taken any steps to prove the authenticity of the said document. This itself shows that the said document is a fabricated one. On the relief granted by the Labour Court, the counsel has submitted that although the relief of reinstatement with

back-wages was rightly granted to the workman, however, at this stage the workman would be satisfied if he is granted an appropriate amount as the compensation, in lieu of reinstatement and the back-wages.

Having heard the counsel for the parties, this Court does not find any force in the arguments raised by the counsel for the petitioner-employer. It is not even in dispute that the respondent-workman has worked with the petitioner-employer for about five years. Therefore, the completion of service of 240 days in twelve calendar months immediately preceding the alleged termination of service of the respondent-workman is not even in dispute. Once, undisputedly, the respondent-workman had completed 240 days of continuous service during the twelve calendar months preceding the date of severance of status of the employer-employee relationship, the employer comes under statutory obligation to comply with the provision of Section 25(f) of the Act and should have paid the consequent compensation and other benefits available to the respondent-workman. Undisputedly, that has not been done. Although the counsel for the petitioner-employer has submitted that the respondent-workman had tendered his resignation and the said fact has been duly proved before the Labour Court, yet the Labour Court has wrongly discarded the assertion of the petitioner-employer, however, even this argument of the counsel for the petitioner is to be noted only to be rejected. Undisputedly, when the respondent-workman appeared in the witness box, no such resignation letter was ever put to him. Even during the testimony of the petitioner-employer, there was a specific question put to the witness of the petitioner-employer that the said document, the alleged resignation letter, was fabricated and was

prepared after the testimony of the respondent-workman was over. Yet the petitioner-employer had not taken any step to prove on record the factum that the said letter bears the signatures or the thumb impression of the respondent-workman. In case, the petitioner-employer claimed the document to have been signed and carrying the thumb impression of the respondent-workman, which was denied by the latter, then least the petitioner-employer was required to do, was to prove these thumb impression or the signatures of the respondent-workman on the same by examining some handwriting expert or by other appropriate and legally recognized method. However, no such step had been taken. Therefore, this Court does not find any illegality in the conclusion arrived at by the Labour Court that the factum of resignation of the respondent-workman has not been proved on record.

The counsel for the petitioner-employer has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***M.P. State Electricity Board (supra)***, and the one rendered by Delhi High Court in the case of ***Thankur Singh Rawat (supra)***, to submit that the respondent-workman could not have been awarded the full back wages because there was not even an assertion of the factum that the respondent-workman was not gainfully employed. However, this Court finds the said argument, as well; to be inconsistent with the basic principles of the labour law, as contained in the Industrial Disputes Act and as applicable in the present case. The pleading and filing of affidavit qua not being gainfully employed is an exclusive concept applicable to the claim raised under Section 17-B of the Act, as statutorily provided.

There is no such requirement under any other provision of Industrial

Disputes Act regarding any pleading to that effect. Moreover, the respondent-workman cannot even claim any back wages as a matter of right. It has been held in catena of judgments that in case of termination being found illegal by the Labour Court, the relief to be granted to a workman, is an exclusive discretion of the Labour Court. To make the discretion of the Labour Court lean in his favour, the workman may plead and lead something in evidence to show that he was not gainfully employed in the interregnum, however, mere fact that he had not so pleaded, would not stop the Labour Court from granting any relief of back wages. Even in absence of any such pleading or proof, the Labour Court is fully entitled to grant any relief as deemed it appropriate by it; in the facts and circumstances of the case. However, in the present case, the counsel for the respondent-workman has himself submitted that, at this stage, instead of seeking reinstatement, the respondent-workman would be satisfied, if he is compensated by grant of compensation in lieu of reinstatement with full back wages, even if this Court finds the award passed by the Labour Court to be sustainable. Therefore, the issue of back-wages is no more relevant; as such.

In view of the above, since the award passed by the Labour Court has been found to be valid and the respondent-workman has expressed his desire to get compensation, and even the latest trend is in favour of grant of compensation instead of reinstatement, therefore, this Court finds it appropriate to mold the relief as granted by the Labour Court to the grant of compensation instead of reinstatement with full back wages. Hon'ble the Supreme Court has indicated the standards to be adopted in case the compensation is to be awarded, as laid down in the

case of **BSNL Vs. Bhurumal, 2014 (3) SCT 49**. Adopting the essence of said judgment, the respondent-workman is held entitled to a lump sum compensation of Rs.4.00 Lakh, keeping in view the undisputed fact that he had rendered about five years service with the petitioner-employer.

The petitioner-employer is directed to make the payment of compensation of Rs.4.00 Lakh to the respondent-workman, within a period of six weeks from today.

The present petition is disposed of and the award passed by the Labour Court is modified to the extent as mentioned above.

The pending miscellaneous application, if any, is also disposed of as such.

26th MAY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes