

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

CWP-6048-2020 (O&M)
Date of decision : 17.08.2023

SURESH KUMAR

...Petitioner

Versus

MANAGEMENT NESTLE INDIA LTD. SAMALKHA THROUGH
ITS MANAGING DIRECTOR AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ashwani Vaishnav, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Suresh Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *mandamus* for directing respondent No.1-Management to take back petitioner in service by setting aside the order dated 26.04.2012 (Annexure P-9), whereby, services of the petitioner were terminated and for setting aside Award dated 22.05.2019 (Annexure P-10) passed by learned Industrial Tribunal-cum-Labour Court, Panipat; whereby, the reference of industrial dispute raised by the petitioner regarding termination of his services, has been answered against him.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. In the claim statement, the petitioner had stated that he was engaged as unskilled labourer on 07.10.1995 and he worked till 08.09.2011. It is submitted that during his service period, the work of the

petitioner was found satisfactory and no complaint of any kind was there against him. It is the pleaded case of the petitioner that he was implicated in case FIR No.434 dated 24.05.2011 under Sections 302, 309, 120-B IPC registered at Police Station Chandani Bagh; wherein, he was arrested on 08.09.2011 and he remained in judicial custody till the date of his acquittal i.e. 20.02.2014. Petitioner claims that at the time of his arrest, his salary was Rs.22,000/- and his absence from duty w.e.f. 08.09.2011 was neither intentional nor deliberate but for the afore-said reason. Petitioner claims that after acquittal, he went to the office of respondent No.1-Management, Nestle India Limited, Samalkha (here-in-after referred to as 'the Management'); to rejoin his duties; however, he was not permitted to do so and was informed that his services have been terminated w.e.f. 26.04.2012. Petitioner claimed that before terminating his services, the respondent-Management did not hold any enquiry nor any opportunity of hearing has been afforded to him and his services have been terminated under clause 19.14 of the Certified Standing Order, which is arbitrary and unjustified. Accordingly, the petitioner claimed reinstatement with continuity of service and full back wages and other consequential benefits.

3. On the other hand, the afore-said claim of the petitioner was contested by the respondent-Management on the plea that the petitioner had received full and final dues and had also withdrawn his provident fund accumulations. It is stated that vide letter dated 22.06.2012, the petitioner had expressed his inability to serve the company on account of pending legal proceedings and asked for waiver of his loan amount of Rs. 66,664/- and further submitted an application for claiming gratuity amount; whereupon, an amount of Rs.1,23,440/- was paid to him. It was also stated by the

Management that the petitioner had submitted an application for settlement of his EPF dues and in the said application, he has mentioned the reason for leaving service as “resignation”. It is submitted that after the petitioner had claimed his full and final dues, he ceased to be a workman. Apart from the above, the Management had also stated that the petitioner had started absenting himself from duty w.e.f. 08.09.2011; whereupon, a notice dated 28.09.2011 was sent to him by registered post, calling upon him to join his duties and to submit his explanation on 02.11.2011. It was stated that the Management had received a communication from Sh. Lehri Singh, Advocate that the petitioner was implicated in a criminal case. It was stated that the petitioner was governed by Certified Standing Orders and as per clause 19.14 thereof, the petitioner could not claim leave for his arrest and being in jail.

With the afore-said pleas, dismissal of the claim of the petitioner was sought for.

4. On the basis of the pleadings of the parties, the following issues were framed :-

“1. Whether the termination of the services of workman Sh. Suresh Kumar is legal and valid? If not so, to what relief, the workman is entitled? OPW

2. Relief.”

5. The parties led their respective evidence in support of their claim.

6. The Tribunal below vide Award dated 22.05.2019 (Annexure P-10) dismissed the claim of the petitioner.

7. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the learned Tribunal below has erred in law and facts in dismissing the claim of the petitioner without appreciating that the absence of the petitioner from duty was not intentional but on account of the reason that he was implicated in a criminal case; wherein, he was subsequently acquitted. It is submitted that the services of the petitioner have been wrongly terminated by the Management. Accordingly, he prayed for setting aside of impugned Award as well as the termination order.

9. I have heard learned counsel for the petitioner and have perused the paper book with his able assistance.

10. In the instant case, the learned Tribunal below has returned the following findings :-

“11. Having considered the rival contentions of both parties, it is hereby observed that the workman has claimed various payments relating to amount of gratuity and EPF accumulations and waiver of loan in terms of his handwritten request Ex.M-1 and he is not competent to urge at this belated stage that his signatures were obtained on blank paper and this plea is by way of afterthought. The workman is not competent to claim any relief from respondent against his own request dated 22.06.2012. Workman during cross examination has admitted that he claimed EPF withdrawal on the basis of Ex. M-4 and in column 6, the reason for leaving service is described as “resignation” and further urged that workman admitted documents Ex.M-2 form for claiming gratuity and further admitted that he filled up this form to claim gratuity amount and application contained his signatures. From the afore-discussed evidence of the respondent, it is explicit that the termination of services of workman is as per clause 19.14 of certified standing order

and subsequently workman made request showing his inability to serve respondent and claimed benefits and now he is debarred to seek any relief.

12. Hence, in my considered opinion, the workman has miserably failed to prove that his services have been illegally and malafidely terminated without following the procedure as prescribed under section 25-F of the Act. Therefore, as a sequel to my above detailed discussion, this issue is decided against the workman and in favour of the respondent.

RELIEF

13. As a sequel to the findings on the sole issue above, the claim statement dated 10.04.15 filed by the workman is hereby dismissed and an Award is passed accordingly. Copy of this Award be sent immediately to Deputy Labour Commissioner, Panipat for information and necessary action. File be consigned to the record room after due compliance.”

11. A perusal of the above extracted findings returned by the learned Tribunal below would manifest that after the petitioner was arrayed as an accused in case FIR No.434 dated 24.05.2011, he was arrested on 08.09.2011 and remained in judicial custody till his acquittal i.e. 20.02.2014. It has come on record that vide letter dated 22.06.2012, the petitioner had expressed his inability to serve the company on account of pending legal proceedings and on the request of the petitioner himself, the loan amount of Rs. 66,664/- was waived off by the Management and even the gratuity amount was paid to him. Further, the petitioner had applied for settlement of his EPF dues and had also claimed his full and final dues from the Management, which were duly paid to him.

The afore-said factual aspect in respect of submission of letter dated 22.06.2012 and also regarding receipt of full and final settlement is not disputed by the petitioner.

Once the petitioner himself had expressed his inability to serve the company on account of pending cases and had also taken his full and final dues, therefore, in my considered opinion, there was no relationship of employee and employer left between the parties. Consequently, the petitioner had no right to seek any relief regarding termination of his services for alleged non-compliance of Section 25-F of the Industrial Disputes Act, 1947. Accordingly, I do not find any merit in the instant writ petition and the same is, hereby, dismissed.

12. All pending application/s, if any, shall also stand closed.

August 17, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No