

**CM-1554-LPA-2022 in/and
LPA-670-2022**

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

**CM-1554-LPA-2022 in/and
LPA-670-2022
Date of Decision: 16.01.2023**

Anil Kumar

.....Appellant

Vs.

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

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

**Present: Mr. Vishal Yadav, Advocate,
for the applicant-appellant.**

G.S.SANDHAWALIA, J. (ORAL)

CM-1554-LPA-2022

By this application, the applicant-appellant seeks condonation of delay of 11 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by an affidavit of the applicant-appellant, the application is allowed and the delay of 11 days in filing the appeal is hereby condoned.

LPA-670-2022

The consideration in the present appeal is to the order dated 20.04.2022 passed by the learned Single Judge in CWP-1388 of 2015, whereby the writ petition of the respondent No. 2/management was allowed and the Award dated 03.12.2014 (Annexure P-12), passed by the Labour Court was set aside.

The reasoning given by the learned Single Judge is that the workman himself remained absent from duty from 17.01.2008 till 16.05.2008 and he had never completed 240 days. The Labour Court had wrongly assumed that there was a working period of 240 days and thus, wrongly adverse inference had been drawn that the original record had not been produced which is also contrary to the statement of witnesses produced by the employer showing that the original record was duly produced before the Court. The photocopies of the same were exhibited without any objection and therefore, the adverse inference drawn by the Labour Court was held to be not legally sustainable.

The explanation as such was that he has not absent from duty voluntarily and was facing medical problems, was also rejected on the ground that there was nothing on record to even remotely suggest the same; except the bald statement of the appellant-workman. The statement made by the witness before the Labour Court was to the effect that he was having ESI Treatment Card but he had never taken any treatment from any recognized ESI Hospital/Dispensary. The Labour Court reasoning was that dispensation of service has been done by treating the absence to be a mis-conduct was also not approved by the learned Single Judge, on the ground that the appellant had not joined back after the said date or made any representation for the same. However, the management had asserted that this is a case of abandonment by the employee. It was noticed by the learned Single Judge that letters were written to the appellant to join the duty but he has chosen not to join duty and once he had not completed 240

days of service, there was no requirement of holding any enquiry to dispense with the service of the respondent-workman. The appellant attained the statutory status protection by the retrenchment clause, and it was a pure and simple 'master-servant relationship' between the employer and the employee, giving an absolute right of 'hire and fire' to the employer.

Learned counsel for the appellant has tried to convince us that on account of the illness as such which is in the form of mental depression as such, the employee had been absent and since the Award dated 03.12.2014 (Annexure P-12) had been passed in his favour by the Labour Court, Gurugram, to reinstate him with 40% back wages w.e.f. 02.09.2008 onwards, it should not have been interfered with, keeping in view the settled principle of law that the writ Court should not interfere with the finding of fact.

We have gone through the record and find out that it is a admitted case as such of the appellant-workman himself that he was absent from 17.01.2008. In the demand notice dated 21.05.2010, issued under the provisions of Section 2A of the Industrial Disputes Act, 1947 (Annexure P-3) shows that he had claimed that he had been initially appointed on the post of Assistant Fitter in the month of November 2005 and worked continuously upto 16.01.2008 and thereafter, was absent and joined duty only on 01.06.2008. The defence before the Labour Court of the Management was that he had initially joined as Helper in January 2007 and has not completed 240 days. There was also denial of his poor mental

health and the fact that he had joined duty on 01.06.2009. It was also pleaded that the management advised the appellant to report for duty through various communications which were duly received by him and in reply of the same, the appellant submitted forged and fabricated medical certificate. The appellant had also never approached ESI for his treatment. It was further pleaded that the appellant visited the premises of the respondent/management and also threatened that if he would not be allowed to do his duties as per his own will, then he will implicate them in a false case of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989. Apart from that, the appellant visited the respondent/management on 05.11.2008 and used unparliamentary language and threatened to get closed the respondent company by lodging the false case under the Act of 1989. The appellant also misbehaved with one Sh. Bani Ram Yadav, Manager-HR and become aggressive to beat him.

The case of the appellant was that he had worked till 16.01.2008 whereas the case of the Management was that he had worked till January 2007. The management had produced the attendance record (Annexure P-13) from January 2007 to October 2008 in the writ petition which would go onto show that he did not complete 240 days before he had left the service in January 2008. The learned Single Judge has referred to the statement of MW-1 Jaswant Singh to show that the original record was shown to the Court and the photocopies were exhibited on the file and thus, the factual aspect is clear that 240 days were not complete preceding

June 2008, the alleged date of termination.

In such circumstances, the right to seek reinstatement would only arise on the strength of having served for 240 days. In the absence of the same, the Labour Court could not have ordered reinstatement as the violation of Section 25-F of the Act cannot be said to be committed by the management. It is also to be noticed that the notice dated 29.04.2008 (Annexure P-9) also been appended which was also brought on record Annexure R-15 which was sent to him after he remained absent from January 2008. A perusal of the same would go onto show that he was absent from 17.01.2008 which is his own case also and therefore, he had been put to notice. Similar notice was also issued on 05.06.2008 (Annexure P-10), referring to the earlier notice dated 29.04.2008 and rejecting the medical certificates and also the fact that he had not informed the ESI Corporation. The demand notice under Section 2A of the Industrial Disputes Act, 1947, was served after a period of 02 years claiming reinstatement and the dispute was then referred to the Labour Court.

In view of the above facts and circumstances, it would go onto show that the learned Single Judge was well justified in setting aside the Award of the Labour Court as it has suffered from the basic infirmity of law and that the statutory protection could only be invoked on a completion of 240 days. Management had brought sufficient material on record and it is the own case of the appellant as such that he remained absent from 17.01.2008. No relevant material could be brought on record by him to show that he was appointed in the month of November 2005 as

alleged in the claim petition and therefore, in the absence of not having been completed 240 days, there was no requirement for holding any enquiry to dispense with his service.

In view of the above, we do not find any ground to interfere in the order of the learned Single Judge.

Accordingly, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

January 16, 2023
nitin

(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	No