

LPA-1205-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1205-2022 (O&M)

Date of Decision: 21.04.2023.

Ashok Kumar

....Appellant.

Versus

Presiding Officer and another

...Respondents.

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

Present: Mr. Anil Shukla, Advocate for the appellant.

M.S. RAMACHANDRA RAO, J.(Oral)

CM-2907-LPA-2022

Prayer made in the application is for condonation of delay of 86 days in refiling the appeal.

On perusal of the application, we are satisfied that the sufficient reasons have been shown by the applicant for condonation of delay of 86 days in refiling the appeal and as such the said delay is condoned.

Application is allowed.

CM-2908-LPA-2022

Allowed, as prayed for.

LPA-1205-2022

The instant LPA has been preferred against the order dt.13.05.2022 in CWP-19908-2021 of the learned Single Judge.

2. The appellant had filed the said writ petition for quashing of an award dt.04.12.2018 passed by the Presiding Officer, Industrial Tribunal-

cum-Labour Court-III, Faridabad (for short, 'the Labour Court'). The award came to be passed on a reference by the State Government, Haryana, regarding the dispute between the appellant and respondent No.2 on the termination of the services of the appellant from respondent No.2-company.

3. The appellant contended that he was a workman and his services were terminated on 18.09.2013 in an arbitrary manner without any reason and against the principles of natural justice in violation of the provisions of Industrial Disputes Act, 1947. He also alleged that there is violation of Section 25F, 25G and 25H of the said Act.

4. Respondent No.2 filed its written statement denying therein that the appellant was a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. He further stated that he was dismissed through a letter dated 04.10.2014 after a full-fledged domestic inquiry. According to respondent No.2, there is no industrial dispute existing in terms of Section 2-A defined in the Act. It also contended that the appellant was working as a personnel officer with respondent No.2 and was incharge of the HR Department and he was participating in various cases before the Labour Officer and Labour Courts as management's representative. It is contended that the appellant had absented himself from duty without any lawful permission or authorization w.e.f. 19.09.2013 and he thus committed serious acts of misconduct. It is also contended that appellant did not participate in the disciplinary inquiry and so he was proceeded against ex-parte and findings were given adverse to the appellant on the basis of which he was dismissed from service on 04.10.2014.

5. Before the Labour Court, the appellant examined himself as WW-1 and marked Exhibits W1 to W7. Respondent No.2 examined MW1

to MW3 and marked Exhibits MW1 to MW3/8.

6. On a consideration of the evidence on record and the several decisions cited by the parties it was held that there is a fair and proper domestic inquiry conducted by the management of respondent No.2-company against the appellant and that the punishment imposed on him was also proportionate to the allegations of misconduct. On the aspect as to whether the appellant was a “workman” or not, after examining the evidence on record, in particular the oral evidence led by the management, the Labour Court held that no suggestion had been given to MW2 and MW3 that the appellant was not working as a HR manager as was contended by them in their written statement, and so it was concluded that he was not a “workman” as defined under Section 2(s) of the Act and therefore, he is not entitled to any relief.

7. Assailing the same, the appellant had filed CWP-19908-2021 before this Court.

8. The said writ petition also dismissed by the learned Single Judge affirming the findings of the Labour Court on 13.05.2022.

9. The learned Single Judge, in our opinion, had rightly held that the burden to show that the appellant was a “workman” had to be on the appellant himself and not on management as it cannot prove the 'negative' and the management had duly proved the fact that the appellant was not a 'workman' and the Labour Court had given correct reasons for also accepting the stand of respondent No.2 in that regard.

10. We have perused the award of the Labour Court as well as the order of the learned Single Judge and we are satisfied that the evidence on record was properly appreciated by the Labour Court and the same was

rightly accepted by learned Single Judge as well.

11. Therefore, we do not find any merit in the LPA and the same is dismissed in limine. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

21.04.2023
Komal

(SUKHVINDER KAUR)
JUDGE

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