

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

CWP-11548-2016

Date of decision : 14.03.2023

M/s SKN Industries Ltd. and another

...Petitioners

Vs.

Kamal Prakash Kaushik and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Shiv Kumar, Advocate for the petitioners.

Mr. Deepak Sonak, Advocate for respondent No.2.

MANOJ BAJAJ, J.

By means of this writ petition under Article 226 Constitution of India petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the order dated 21.04.2015 as well as the *ex parte* award dated 05.10.2015 passed by respondent No.1, whereby petitioners were proceeded against *ex parte*, and later the industrial dispute raised by workman was accepted by directing his re-instatment with continuity of service alongwith 40% backwages.

Briefly, the facts leading to the petition are that Kamal Prakash Kaushik was working with respondent as Operator since 21.08.1992 and was drawing monthly salary of Rs.6274/-. As per the averments, respondents did not provide facilities to the workman and procured his signatures on the blank papers, vouchers and forms on the pretext of pension scheme and further pressurized him to tender his resignation. As the workman refused to resign, therefore, he was not allowed to perform duty on 11.02.2014 and his services

were terminated without complying with the mandatory provisions of Industrial Dispute Act, 1947. The workman raised a demand notice on 11.02.2014, whereupon the dispute reached the Labour Court, Faridabad, and as per claim statement, respondent No.1/workman prayed for his reinstatement with continuity of service and full back-wages.

The management contested the claim by filing written statement and refuted the stand of the workman by pleading that the reference is not maintainable in the eyes of law as services of the workman were never terminated by the employer. The workman had received his full and final dues amounting to Rs.85,925/- on his own will after tendering his resignation dated 08.02.2014 to the Management, which was duly accepted. It is further averred that the workman concealed the true facts in the demand notice as well as in the claim statement. Further, while denying the other averments in the claim, it was prayed that the claim be dismissed.

Thereafter, the Labour Court framed three issues and after considering the evidence adduced by the parties, accepted the claim of respondent No.1-Kamal Praksh Kaushik vide impugned decision dated 05.10.2015. Hence this writ petition.

In response to the notice of motion order passed on 02.06.2016, no reply has been filed to controvert the averments in the writ petition.

Learned counsel for the petitioners submits that during conciliation proceedings the workman had amicably settled the industrial dispute, who also received his full and final dues and was left with no grievance, therefore, had consented to withdraw the case. According to learned counsel, this was acknowledged by workman on copy of the demand notice

and further the details of settlement, as well as payment made to him through the cheque etc. were mentioned in the written statement, but after filing the written statement, the authorized representative of the petitioners did not appear, which resulted in *ex parte* proceedings against the management. Mr. Shiv Kumar, learned counsel has argued that the workman had not come to the Labour Court with clean hands, who concealed this receipt of payment from the Management towards his full and final settlement during his *ex parte* evidence, therefore, the impugned award is not sustainable. He has further invited the attention of the Court to the statement of accounts (Annexure P-8) to contend that the cheque bearing No.033740 dated 20.02.2014 amounting to Rs.80,000/- given towards liability of settled amount of Rs.85,925/- was encashed by the workman on 25.02.2014. He submits that the Labour Court has not appreciated the documentary evidence properly while allowing the claim of workman, therefore, the impugned award is not sustainable.

The prayer is opposed by learned counsel for the workman, who submits that the management has failed to prove its stand that the amount stands paid to the workman pursuant to the full and final settlement. According to him, the workman had filed replication to controvert the stand of management and denied the contents of para No.5 of written statement, wherein the particulars of the cheque etc. are detailed towards full and final settlement. He submits that the Labour Court has carefully examined the pleadings of the parties as well as evidence on record, therefore, no interference is called for by this Court.

After hearing learned counsel for the parties and considering the material on record, this Court finds that the written statement filed by the

petitioners contains all the details relating to the full and final settlement with the workman, who received total sum of Rs.85,925/- towards his dues at the time of tendering resignation dated 08.02.2014 and out of it an amount of Rs.80,000/- was paid to him through cheque bearing No.033740 dated 20.02.2014 drawn at Axis Bank, Faridabad, whereas Rs.5925/- was paid in cash through voucher No.CP-08003 dated 21.03.2014. No doubt, in the rejoinder filed by the workman, containing only one paragraph he denied the contents of the entire written statement while reiterating his claim, but such a denial cannot be construed as a specific and categoric denial of a particular fact pleaded by the petitioner in the written statement. The averment raised in the written statement is supported with the account statement, which shows that cheque of Rs.80,000/- bearing No.033740 dated 20.02.2014 was encashed in favour of the workman within few days after raising the demand notice, but he chose to conceal this fact even in his affidavit i.e.WW-1/A tendered in evidence.

A perusal of the award passed by the Labour Court shows that it had examined the stand of the management raised in the written statement relating to the full and final settlement with the workman, but ignored the same for lack of evidence and even did not confront the workman with the issue of payments.

Though, during the course of hearing, learned counsel for the workman made a prayer for remanding the case back before the Labour Court for deciding afresh, but considering the pendency of this industrial dispute for a long time, this Court is not inclined to remit the case back before the Labour Court. The account statements as well as the other pleadings raised in writ

petition have not been controverted by the workman by filing any written statement, therefore, this Court has no hesitation in holding that the stand of the management that a sum of Rs.80,000/- was paid to the workman has not been controverted by him.

Thus, this Court is of the considered opinion that the workman did not bring true facts before Labour Court, therefore, the impugned award dated 05.10.2015 warrants interference by this Court.

Consequently, the writ petition is allowed, the impugned award is set aside and the claim raised by the workman/respondent No.1 is hereby dismissed. No costs.

(MANOJ BAJAJ)
JUDGE

14.03.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No