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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21.02.2023

1. CWP-15445-2020

Microtek International Pvt. Ltd.

...Petitioner

Vs.

Presiding Officer and another

...Respondents

2. CWP-13902-2020

Anu Bala

...Petitioner

Vs.

Microtek International Pvt. Ltd.
and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Akhil Kashyap, Advocate for
Mr. Parveen K.Kataria, Advocate for the petitioner.

Mr.Vipin Kumar, Advocate for the respondents.

MANOJ BAJAJ, J.

The above writ petitions have been filed by the respective petitioners under Article 226 Constitution of India for issuance of a writ of certiorari to challenge the impugned award dated 20.01.2020 (Annexure P-2) passed by Industrial Tribunal & Labour Court, U.T.Chandigarh, whereby the industrial dispute between the parties has been decided in favour of the petitioner-Anu Bala by ordering her reinstatement in service with 25% back wages. The limited grievance of Anu Bala pertains to the refusal of full back wages, whereas the Management is aggrieved against the award ordering her

reinstatement.

Briefly, the facts leading to the petition are that Anu Bala joined as Telephone Attendant on 05.01.2015 with Microtek International Pvt. Ltd., and later on, vide letter dated 11.02.2015 she was designated as Customer Care Executive. As per averments, she remained in service till 30.01.2016 and had applied for maternity leave w.e.f. 01.11.2015 through e-mail as her expected date of delivery was 20.11.2015. On 30.01.2016, when she went to her workplace, she was not allowed to enter the premises and was illegally removed from service. At that time, the employee was drawing monthly salary of Rs.9,180/- and because her services were terminated without complying with the mandatory provisions of Industrial Dispute Act, 1947, therefore, she filed a demand notice on 04.04.2016, whereupon the dispute reached to the Labour Court. As per claim statement, petitioner-Anu Bala claimed reinstatement with continuity of service and full back-wages.

The management contested the claim by filing written statement and refuted the stand of the petitioner by pleading that the work-lady never reported for duty after 31.10.2015 and even her leave was never sanctioned. The other averments relating to her joining the management are not disputed, but according to management, Anu Bala voluntarily left the job and as per the averments in the written statement, the management is still ready to allow her to join duty in case she gives up her back wages. The management had also offered to pay the retrenchment compensation to the worklady, if, she is prepared to settle the dispute in the reference. Further, while denying the other averments in the claim, it was prayed that the claim be dismissed.

Thereafter, the Labour Court framed two issues and after

considering the evidence adduced by the parties, accepted the claim of respondent No.2-Anu Bala vide impugned decision dated 20.01.2020. Hence these writ petitions.

Learned counsel for the petitioner-Anu Bala has argued that once the termination of the petitioner-Anu Bala was found to be illegal and violative of the provisions of Industrial Disputes Act, 1947, the Labour Court while ordering reinstatement of work lady, ought to have granted full back-wages instead of 25% back-wages. He submits that to this limited extent the impugned award deserves to be set aside and the petitioner be awarded full back wages.

While controverting the arguments of petitioner-Anu Bala, learned counsel for the management has argued that the petitioner herself abandoned the job, who did not report for duty and since she had worked only for the period of approximately eight months, the Labour Court has erroneously allowed her reinstatement. He has further submitted that even after passing of the award, petitioner has not shown any inclination to join the service, therefore, the stand of the petitioner-Anu Bala that she was illegally terminated from services is not believable. Learned counsel has argued that in the given facts and evidence on record, the reinstatement of petitioner-Anu Bala is unjustified, but the Labour Court has proceeded to accept the claim only on the ground that she was employed by the management and the plea of willful absence raised by it was wrongly brushed aside on the ground that no notice was served upon her for absence from duty. He submits that even today the management has no objection to the reinstatement, in case petitioner-Anu Bala gives up her back-wages.

At this stage, learned counsel for the petitioner-Anu Bala states that the petitioner is not willing to resume her services with the management as she is occupied in bringing up her two children. He states that though the Labour Court awarded reinstatement, but she gives up her claim for reinstatement and confines her prayer for awarding full back wages.

After hearing learned counsel for the parties and considering the above background, it transpires that the facts pleaded by the parties are not in much conflict and it is clear that the petitioner-Anu Bala worked with the management approximately for a period of eight months ever since she joined the services in February, 2015. The stand of petitioner-Anu Bala that she was illegally terminated from service does not appear to be true for two reasons, that even at the stage of reconciliation, the management had offered her reinstatement in case she is willing to give up the back wages and also during the hearing of this petition, the same offer is reiterated by management, but again this offer is declined by the learned counsel for the petitioner-Anu Bala as she is bringing up her two minor children.

Further, while analyzing the claim of the petitioner-Anu Bala, it becomes clear that when she joined her service with the management in February, 2015, she had conceived as her expected date of delivery was 20.11.2015, who even did not wait for sanctioning of the leave and left the services and approached the management for joining in service on 01.02.2016, after delivery of the child. A perusal of the claim statement dated 30.03.2016 shows that she raised the demand notice to challenge verbal termination order, but the same does not appear to be true considering the stand of the management, who has been consistently offering her reinstatement, therefore,

this Court has no hesitation in holding that the petitioner-Anu Bala had herself abandoned her job because of her family circumstances. A reading of the impugned award shows that the Labour Court has not evaluated the facts and evidence in proper manner while accepting the claim of worklady, and the findings returned on material issues are perverse.

Thus, in view of the above reasons, the impugned award dated 20.01.2020 is not sustainable, therefore, the same is set aside. The reference/claim of petitioner-Anu Bala is dismissed.

(MANOJ BAJAJ)
JUDGE

21.02.2023
vanita

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