

2023:PHHC:166328

228

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

CWP-15282-2015

Date of Decision: 06.11.2023

M/s Jindal Pex Tubes Pvt. Ltd. and others

..... Petitioners

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon and
another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Tushar Madaan, Advocate,
Ms. Amarpreet K.Kooner, Advocate and
Mr. Mansur Ali, Advocate for the petitioners.

Ms. Abha Rathore, Advocate for respondent No.2.

HARSH BUNGER J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside impugned award dated 23.04.2015 (Annexure P-7) passed by the learned Industrial Tribunal-cum-Labour Court-1, Gurgaon (hereinafter referred to as 'the Tribunal'), whereby reference of industrial dispute raised by respondent No.2-workman (Rajeshwar Singh), regarding termination of his services, has been answered in his favour and he has been held entitled to reinstatement in service with 40% back wages w.e.f.

11.11.2009 onwards.

2. Briefly, respondent No.2-workman raised an industrial dispute regarding termination of his services, wherein he claimed that he joined the petitioner-Management (M/s Jindal Pex Tubes Pvt. Ltd.) as Electrician w.e.f. 01.06.2006. It was stated by respondent No.2 that no appointment letter was given to him at the time of his appointment and that initially he was appointed at Delhi and subsequently, he was transferred to Dehradun. It was further stated by respondent No.2 that despite the fact that his work and conduct was good, his services were illegally terminated w.e.f. 10.11.2009, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'). Accordingly, respondent No.2-workman prayed for reinstatement in service along with all the consequential benefits.

3. The aforesaid claim of respondent No.2-workman was contested by the petitioner-Management on the plea that respondent No.2-workman was working on the post of Chowkidar on daily wage basis and his services were never terminated rather he (workman) himself started remaining absent from duties, w.e.f. 11.11.2009, without obtaining any prior sanction. Petitioner-Management stated that letters dated 20.01.2010 and 17.02.2010 had been sent to respondent No.2-workman, directing him to resume to his duties, however, without any result. The other allegations levelled by respondent No.2-workman were also denied by the petitioner-Management; and prayer was made for dismissal of the claim of petitioner.

4. From pleadings of the parties, following issues were framed by the Tribunal:-

*“(i) Whether the services of workman were illegally terminated?
Whether he is entitled to any relief? OPW*

(ii) Whether the reference is not maintainable in the present form?

OPM

(iii) Relief. ”

5. Thereafter, both the parties led evidence in support of their respective case. Respondent No.2-workman examined himself as PW-1, Sh. Rati Ram as PW-2 and Sh. Rajesh Bajoria (PW-3). On the other hand, the petitioner-Management examined Sh. Rajesh Bajoria as MW-1.

6. After considering the material/evidence available on record, the Tribunal vide impugned Award dated 23.04.2015 (Annexure P-7) returned the findings, which can be summed up as under:-

(a) Petitioner-Management admitted that respondent No.2-workman was employed with them at the relevant time.

(b) Petitioner-Management miserably failed to prove that respondent No.2-workman had started remaining absent from duty, w.e.f. 11.11.2009, as claimed by them.

(c) It was incumbent upon the petitioner-Management to have conducted a regular departmental enquiry against respondent No.2-workman, regarding the charge of his unauthorized absence from duty.

(d) Petitioner-Management rushed in terminating the services of respondent No.2-workman, without holding any departmental enquiry against him.

(e) Petitioner-Management did not comply with the provisions of Section 25-F of the 1947 Act before terminating the services of respondent No.2-workman.

On the basis of the aforesaid findings, Tribunal below granted the following relief to respondent No.2-workman:-

“13. In view of the law laid down by Hon'ble Supreme Court of

India in Deepali Gundu Surwase V/s Kranti Junior Adhyapa Mahavidyalaya (D. Ed.) and others, 2013, LAB, IC-4249, the workman has become entitled to reinstatement in service with appropriate back wages. In the given facts and circumstances, the respondents are directed to reinstate the workman with 40% back wages with effect from 11.11.2009 onwards.”

7. Being aggrieved against the aforesaid impugned award dated 23.04.2015 (Annexure P-7), the petitioners have filed the instant writ petition before this Court.

8. Learned counsel for the petitioners submits that the Tribunal has erred in law and fact in allowing the claim of respondent No.2-workman, primarily relying upon the fact that no evidence was led by the petitioner-Management regarding notices which had been sent to respondent No.2-workman for his absence from duty.

Learned counsel for the petitioners refers to Annexures P-2 and P-3, which are stated to be the letters dated 17.02.2010 and 20.01.2010 sent to respondent No.2-workman. Learned counsel further refers to Annexure P-8 (Colly.), which are the letters dated 08.06.2015 and 10.06.2015 issued by the Jindal Polybuttons Pvt. Ltd., indicating that respondent No.2-workman was their employee since 01.10.2011 and he had earlier also worked with them as an Electrician from 01.12.2004 to 31.03.2005.

On the strength of the above referred documents, i.e. Annexures P-2, P-3 and P-8, learned counsel for the petitioners submits that the said documents clearly corroborate the stand of petitioner-Management and in view of the same, impugned award dated 23.04.2015 is unsustainable in the eyes of law.

With the aforesaid submissions, learned counsel for the petitioners has prayed for setting aside impugned award dated 23.04.2015

and rejecting the claim of respondent No.2-workman.

9. Per contra, learned counsel for respondent No.2-workman has opposed the prayer made on behalf of the petitioners by submitting that Tribunal has passed a well reasoned and justified order, after considering and appreciating the material/evidence available on record. It is submitted by learned counsel for respondent No.2-workman that the documents, being Annexures P-2, P-3 and P-8, which are relied upon by learned counsel for the petitioners before this Court, were never produced before the Tribunal below, much less proved in accordance with law; therefore, no reliance can be placed upon the said documents. Accordingly, prayer has been made for dismissal of the instant writ petition.

10. I have heard learned counsel for the parties and perused the paper book with their able assistance.

11. In paragraph No.5 of the instant writ petition, it is clearly admitted by the petitioners that Annexures P-2, P-3 and P-8 were not brought on record before the Tribunal below. Accordingly, no fault can be found with the findings returned by Tribunal to the effect that petitioner-Management had failed to prove its pleaded case that it was the workman, who had remained absent from his duties.

It is apposite to state here that the aforesaid documents, i.e. Annexures P-2, P-3 and P-8, upon which reliance is being sought by learned counsel for the petitioners; were required to be not only produced before the Tribunal below but also proved, in accordance with law, before the said documents could be accepted in evidence. Apparently, the said course has not been adopted by the petitioners herein and now by simply placing the aforesaid documents on record, no benefit can be extended to the petitioners.

Furthermore, the Hon'ble Apex Court in *“Nicks (India) Tools*

Versus Ram Surat”, 2004 (4) S.C.T. 130 had upheld non-consideration of additional evidence sought to be brought before High Court for first time by observing that the same was not brought on record in a manner known to law.

12. In the instant case, the petitioner was not diligent enough to have produced the evidence before the Tribunal below and the same cannot be allowed now at this belated stage, therefore, the petition deserves to be dismissed on the touch stone of the doctrine of due diligence.

13. In this view of the matter, no interference is required to be made in impugned award dated 23.04.2015 (Annexure P-7) passed by the Tribunal below; resultantly, the instant writ petition fails and the same is accordingly dismissed.

14. All pending application(s), if any, shall also stand closed.

06.11.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No