

CWP-12689-2018

-1-

104

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

CWP-12689-2018

Date of Decision: 22.08.2023

Nakul Kumar

....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour
Court-III, Faridabad and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bharat Bhushan Sharma, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

1. Petitioner (Nakul Kumar) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the impugned award dated 31.03.2016 (Annexure P-3), passed by Industrial Tribunal-cum-Labour Court-III, Faridabad (in short 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner regarding termination of his services has been answered against him. A further prayer has been made by the petitioner that his claim be accepted.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by respondent No.2- M/s Sarvodya Hospital (in short 'respondent-Management'). The said dispute was referred for adjudication to the Tribunal below. In the claim statement, petitioner stated

CWP-12689-2018

-2-

that he was appointed by the respondent-Management as Gas Plant Operator on 07.11.2009 and his salary was fixed @ Rs.8,000/- per month. Petitioner claimed that he was allotted ESI Card, however provident fund facility had not been granted to him. Petitioner claimed that his work and conduct during his service was satisfactory. It is the claim of the petitioner that non-issuance of appointment letter, wage slip and even the ESI Slip became the point of tussles with the Management, whereupon, the services of the petitioner were terminated on 03.10.2010, without issuing any notice or conducting any enquiry and therefore, his termination was contrary to the provisions of the Industrial Disputes Act, 1947 (in short '1947 Act'). Accordingly, he prayed for reinstatement with continuity of service and full back wages.

3. The aforesaid claim of the petitioner was contested by the respondent-Management by submitting its written statement, wherein the claim of the petitioner was denied and prayer was made for dismissal of the claim of the petitioner.

4. From the pleadings of the parties, the Tribunal below framed the following issues:

“1. Whether the termination of services of the workman is proper and justified or not, if so then to what relief the claimant is entitled? OPW

2. Relief.”

5. In order to prove his case/claim, the petitioner/workman-Nakul Kumar, examined himself as WW-1 and tendered his affidavit as Ex. WW1/A. In documentary evidence, he produced on record Ex.W1 to Ex.W3/3.

6. On the other hand, the respondent-Management examined Vinay Gera as MW1, who tendered his affidavit as Ex. MW1/A and in

CWP-12689-2018**-3-**

documentary evidence he produced on record Ex.M1 to M7. The respondent-Management also examined Kapil Sharma, Security Officer of respondent-Management as MW2; who tendered his affidavit as Ex.MW2/A.

7. Upon considering the material/evidence available on record, the Tribunal below vide impugned award dated 31.03.2016 (Annexure P-3), rejected the claim of the petitioner.

8. In the aforementioned circumstances, the petitioner has filed the present Writ Petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner. Petitioner claimed that he had completed more than 240 days of service under the respondent-Management, therefore he was entitled to the protection under Section 25-F of the 1947 Act. It is submitted by learned counsel for the petitioner that the services of the petitioner were terminated without serving him any notice or notice pay, nor any retrenchment compensation was paid, therefore termination of the petitioner was illegal and against the provisions of the 1947 Act. With the aforesaid submissions, learned counsel for the petitioner prays that the impugned award be set aside and necessary relief be granted to the petitioner.

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

11. A perusal of the order sheets of this case would show that the instant Writ Petition was listed for hearing on 21.05.2018, when a query had been put to learned counsel appearing for the petitioner as to whether, the petitioner had worked elsewhere thereafter and learned counsel appearing

CWP-12689-2018

-4-

for the petitioner had submitted that he shall file an affidavit in that regard. Accordingly, it was ordered that the matter be listed as and when an appropriate application is moved.

12. It would be apparent from the perusal of the file that after May, 2018, no effort was made on behalf of the petitioner to comply with order dated 21.05.2018 and ultimately, the aforesaid Writ Petition was listed by the Registry of this Court with the note that since learned counsel for the petitioner has not filed any application to place on record the requisite affidavit, therefore, the case is put up before the Bench for appropriate orders after informing the counsel for the petitioner of the date fixed.

13. Thereafter, the matter was listed and was taken up on 26.07.2023, when again a request for adjournment was made by learned counsel appearing for the petitioner to comply with order dated 21.05.2018. Accordingly, the matter was adjourned to 16.08.2023. On 16.08.2023, learned counsel appearing for the petitioner made a statement that he has not been able to contact the petitioner and even the registered letters sent to him have been returned. From the aforesaid facts, the conduct of the petitioner is evident.

14. Be that as it may; in the instant case, the Tribunal below has returned the following findings :-

“Issue NO.1 :

8. Shri C.L. Gera, AR for the workman has stated that the claimant Nakul Kumar was appointed on 7.11.2009 on a fixed salary of Rs.8000/- P.M. The workman has stated that Nakul Kumar was made to work for 3 shifts of 36 hours continuously and the applicant was highly tired and as the time of the kitchen had been closed. Hence he went to the dietician Ms Charu

Malik and asked for food which is kept for the persons who were doing 36 hours duty but no food was kept for him so there were heated arguments between him and Ms. Charu Malik.

On the other hand it has been argued by AR for the respondent that on 3.10.2010 a complaint was received from a lady employee (Dietician) that the claimant Nakul Kumar has misbehaved with her on 3.10.2010 and his conduct was unbecoming of an employee towards a lady employee of hospital. It was also complained by the lady employee that Shri Nakul Kumar had used abusive language towards her. On the same day, Manager HR Personnel Department issued a show cause notice. The claimant was called and the show cause notice was offered to him but he refused to take the notice. The employee had offered the show cause notice to the claimant had written a note on the show cause notice that the claimant had refused to take the notice and left the hospital. Therefore, show cause notice was sent to the claimant by post. The respondent had not terminated the services of the workman and the workman himself did not report back on duty w.e.f. 4.10.2010. The claimant raised a demand notice on the management dated 11.10.2010 alleging that on 3.10.2010 he was stopped by the security stall and not allowed to join his duty which is contrary to the facts. As a matter of fact he had joined duty and worked upto the lunch interval and had misbehaved with a lady employee during the lunch time. MWI Shri Vinay Gera has stated that he was working as HR Manager W.E.F. 1.10.2006 of Sarvodya Hospital and Research Centre, YMCA Road, Sector 8, Faridabad.

10. Ex. M3 is absent report to the effect that Nakul Kumar was remained absent w.e.f. 4.10.2010; Ex. M2 is the report that Nakul Kumar helps in liquor consumption with Mr. Kapil, Security Man. The management proved oral as well as documentary evidence and had also proved that the respondent had not terminated the service of Nakul Kumar rather the

*claimant did not report for duty himself after 4.10.2010. Reliance in this regard is placed in the case titled as **Air India Corporation, Bombay Versus V.A Rebellow and another 1971 LLJ 501** in which it has been held that in a case wherein bonafide loss of confidence is affirmed then termination is held to be permissible and is immune from challenge.*

11. *It has been further argued by Shri S.S. Saini, AR for respondent that Nakul Kumar was on probation for a period of six months which may extended upto one year in two stretches of 03 months each and he has not completed 11 months of his service. At the time of appointment it was stated in the appointment letter that he shall be on probation of one year and his services can be terminated at any time without any notice in the event of insubordination, indiscipline, dishonesty or negligence of duty. In para 20 of the appointment letter it has been written that the absence for continuous period of 10 days including absence when leave through applied for is not granted or when the claimant overstay for more than 10 days would entail automatic loss of his lien on the job without any notice or intimation by the management. He further argued that a complaint was received against Shri Nakul Kumar from the Security Deptt that on 3.6.2010 at about 8.40 AM he took with him in the hospital and attendant of a patient and made arrangement for his drink with snacks. This was objected by the Security Guard and Shri Nakul Kumar misbehaved with the security guard and made filthy and scandalous remarks about the hospital. The complaint is Ex.M2 and the warning letter issued to the claimant is attached as Ex.M3. It was further argued that the Dietician namely Charu Malik whose duty is to advise the patient about the food to be served to them made a written complaint dated 2.10.2010 against the claimant stating that he had misbehaved, insulted and threatened her while she was on duty in the hospital. The complaint is Ex.M4. On the basis of the complaint the claimant was issued a show cause*

*notice dated 3.10.2010. This show cause notice was offered to Shri Nakul Kumar but he had refused to receive the same. The refusal has been duly witnessed by the hospital employees. The show cause notice was sent to the claimant by post and postal receipt dated 5.10.10 is Ex.M6. The claimant had not submitted the reply to the show cause notice till date. After refusing to receive the show cause notice the claimant left the hospital premises and did not report for duty thereafter. He is absenting from his duties since then and the management had not terminated his service. Reliance in this regard is placed in the case titled as **M/S Nicks (India) Tools Versus Ram Surat and another 2004 (103) FLR 102** in which it has been held that burden of proving that the claimant voluntarily left the services is upon the management. In this case management had amply proved that inspite of sending several notices to the claimant, the claimant did not turn up to resume his duty. Similar law is laid down in the case titled as **Triloki Nath (Shri) Versus Shri Dharam Paul Arora and another 2006 LLR 1043** which it has been held that in a case of claimant fails to resume duties, then it would be the case of self abandonment of duty. In the present case also management asked several times to the claimant to come but he refused every time to come up and remained absent w.e.f. 4.10.2010.*

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15. *In view of the aforesaid discussion of facts and law given by Hon'ble Supreme Court and by Hon'ble Kerala High Court and other States High Court, there is no merit in the reference petition accordingly issue no. 1 is decided against the workman and in favour of respondent.*

16. *As a sequel of my aforesaid discussion, the claim fails and the reference is answered against the workman holding that he is not entitled to any relief against the respondent. No costs. Copies of award be sent to the authorities concerned and the file be consigned to records after due compliance."*

CWP-12689-2018

-8-

15. A perusal of the above referred findings returned by the Tribunal below would reveal that the respondent-Management has led sufficient evidence on record to show that the petitioner had misbehaved with the Security Guard and also used filthy and scandalous remarks for the respondent-Management, regarding which complaint (Ex. M2) was submitted against him and a warning was issued to the petitioner, which is attached as Ex. M3. It has further come on record that the petitioner had misbehaved with the dietician namely Charu Malik, regarding which she had submitted a complaint dated 02.10.2010 (Ex. M4) and on the basis of the said complaint, show cause notice dated 03.10.2010 was issued to the petitioner, however he had refused to receive the said notice. The show cause notice was also sent to the petitioner through registered post and postal receipt dated 05.10.2010 is Ex. M6, however still the petitioner did not submit any reply to the same and after refusing to receive the show cause notice, the petitioner had left the respondent-Management and did not report on duty thereafter. It has been proved on record by the respondent-Management that inspite of sending several notices to the petitioner, he did not turn up to resume his duty.

A perusal of the impugned award would further show that the respondent-Management had asked the petitioner several times to come, however he had refused everytime and had remained absent w.e.f. 04.10.2010. The evidence led on behalf of the respondent-Management has not been controverted by the petitioner either before the Tribunal or before this Court.

16. In *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association*, 2000 (2) AWC 2,23 (SC) (NOC) : (2000) 5 SCC 65, the

CWP-12689-2018

-9-

Hon'ble Supreme Court held that where a show cause notice is served upon the delinquent employee and the employee chooses not to respond to the said notice even after expiry of the notice-period, the employer has a right to presume that the employee does not want to say anything and he is no more interested in the services of the employer. The Court observed as under:

"It is no point laying strength on the principles of natural justice without understanding their scope or real manner. There are two essential elements of natural justice which are: (a) no man shall be a Judge in his own cause; and (b) no man shall be condemned either civilly or criminally without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements..... the bank had followed the requirement (of law)..... Under these circumstances it was not necessary for the bank to hold an enquiry before passing the order. An enquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the bank or contend that he did report for duty but was not allowed to join by the bank. Nothing of the like has happened here. Assuming for a moment that enquiry was initiated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation for his absence from duty and did not report on duty within thirty days of the notice..... It is undoubtedly relevant on the principles of natural justice by the Tribunal and even by the High Court has certainly led to a miscarriage of justice as far as the bank is concerned. The conduct of Dayananda, as an employee of the bank, had been astounding."

17. In *M/s Nicks (India) Tools v. Ram Surat and Anr. 2004 (103)*

FLR 102 the case of the workman was that he was in service of the management till his services were wrongfully terminated. The employer

CWP-12689-2018

-10-

took the stand that the workman had voluntarily left the service after receipt of the dues. In that context it was observed that as the workman was in service till the agreed date, the burden to prove that he had voluntarily left the services was on the management.

18. In the facts and circumstances of the instant case the burden of prove that the petitioner had voluntarily left the service has been satisfactorily discharged by the management.

19. No other point has been urged.

20. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for any interference by this Court in the impugned award 31.03.2016 (Annexure P-3), passed by the Tribunal below. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

22.08.2023*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No