

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

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CWP-23439-2014

Date of decision : 11.05.2023

Hotel Kamal Palace

...Petitioner

Vs.

Avtar Singh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Atul Nehra, Advocate for the petitioner.

None for respondent No.1.

Mr. P.K. Longia, Advocate for respondent No.2.

MANOJ BAJAJ, J.

Petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari for quashing the award dated 14.12.2011 (Annexure P-1), as well as the order dated 20.03.2012 (Annexure P-4), whereby workman/respondent No.1 has been reinstated in service with continuity alongwith 50% back-wages and subsequently petitioner's application for reviewing the award was also dismissed. Further, prayer is for quashing the order dated 03.05.2014 (Annexure P-5) passed in execution proceedings, whereby objection petition filed by petitioner was also dismissed.

Learned counsel for the petitioner submits that the respondent No.1-workman raised an industrial dispute by way of claim statement dated 13.05.2003, pleading that he was employed as Receptionist/Cashier by petitioner-management on 11.02.2000 and his services were

terminated on 27.05.2004 illegally without any notice or compensation. The dispute raised by him reached the Labour Court through reference bearing No. 339 of 2004, wherein the petitioner through written statement on 10.10.2005 refuted his claim and pleaded that his services were never terminated, as he had voluntarily left the job w.e.f. 05.04.2004. At that stage, the petitioner had also received his full and final payment on 07.05.2004. Learned counsel for the petitioner has further pointed out that in the written statement, an offer was also made to the workman to join the service again, but he refused to join the duty during the pendency of the case. Learned counsel submits that the Tribunal vide award dated 14.12.2011 (Annexure P-1) accepted the claim of respondent No.1, thereby directing his reinstatement with continuity of service alongwith 50% backwages by holding that he was not gainfully employed.

Learned counsel further submits that after the award dated 14.12.2011, the respondent No.1 was asked to join the duty through registered letter dated 04.02.2012, and petitioner had also reserved a right to challenge the award and in response to the said communication the workman contacted the petitioner on 08.02.2012 for joining, but thereafter, he did not report on duty. Learned counsel has drawn the attention of the Court to Annexures P-2 and P-3 to submit that after passing of the award dated 14.12.2011, the petitioner-Management came to learn that workman was gainfully employed as an agent of Life Insurance Corporation of India, who was earning in lacs. He submits that

the petitioner also moved an application under RTI Act, 2005, asking about the remuneration paid to the respondent No. 1-workman, but the said information was not delivered, because respondent No.1 had requested Life Insurance Corporation to not to deliver this information.

Learned counsel argued that since this information was not available with the petitioner when the claim by workman was contested, therefore, evidence in this regard could not be adduced, but in this writ petition, the specific pleadings have been made and even Life Insurance Corporation of India has also been impleaded as respondent No.2. Learned counsel has further drawn the attention of the Court to the short reply filed by way of an affidavit of Mrs. Hem Lata, Manager, Life Insurance Corporation of India and submitted that as per the record of Life Insurance Corporation, respondent No.1-Avtar Singh being an agent of respondent No.2 was allotted Agency Code No. 01906151 since 2003 to 2004 and he earned income in the form of commission as an agent as per the business procured by him from time to time. According to learned counsel, the workman on the basis of award dated 14.12.2011 (Annexure P-1) initiated execution proceedings wherein the petitioner-management submitted its objections, but the same were dismissed vide order dated 03.05.2014 (Annexure P-5) on the ground that the Executing Court cannot go on beyond the decree. He submits that since the workman had willfully and deliberately concealed the material facts from the Labour Court while raising his claim under the Industrial Dispute Act, 1947 and

dishonestly claimed backwages which were awarded, therefore, in these compelling circumstances, the petitioner has invoked the writ jurisdiction of this Court to set aside the impugned award dated 14.12.2011 (Annexure P-1) as well as the order dated 20.03.2012 (Annexure P-4) passed by Industrial Tribunal.

The notice of motion in this writ petition was issued on 27.11.2014 and in response, respondent No.1 appeared through his counsel Mr. Viney Puri and filed written statement dated 18.09.2017.

Today, no one has appeared on behalf of respondent No.1. Mr. Longia appearing on behalf of respondent No.2 submits that as far as the correctness of the impugned award is concerned, the Life Insurance Corporation is not a necessary party, however, as per short reply respondent No.1 was engaged with respondent No.2 as an agent w.e.f. 2003-2004.

Upon hearing the learned counsel for the parties and analyzing the pleadings, this Court finds that according to the management it had offered the respondent No.1-workman to resume his work, however, he did not accept the said offer and continued to press his claim with a stand that after removal from service, he was never gainfully employed and decided to wait for the adjudication of the Labour dispute. The Labour Court in the award dated 14.12.2011 (Annexure P-1) believed the stand of the workman that he was illegally removed from service and was not gainfully employed, but the material now placed on record with

the writ petition by way of the documentary material shows that the workman was not interested in pursuing his job with the petitioner-Management as he was working as an agent of Life Insurance Corporation since 2003-2004, when the respondent No.2 issued him the agency code. Apart from it, the petitioner-Management has made specific averments in the writ petition relating to the workman's engagement with LIC, but the workman's response in the written statement is evasive, who while denying the contents of para 2 and 3 of writ petition, stated that no information was given regarding Avtar Singh Agent by LIC. Further, a reading of Communication (Annexure P-3) shows that while denying the information under RTI Act, 2005 to the petitioner-management, it is clearly mentioned by LIC-respondent No.2 that on the basis of request by Avtar Singh the information asked for can not be delivered. In this regard, the Manager of LIC in her short affidavit has specifically mentioned that respondent No.1 has been receiving commission as per the rules of business.

Thus, this Court has no hesitation in holding that the workman-respondent No.1 was not willing to continue with his job as Receptionist with the petitioner-Management and even declined the offer to rejoin the duties after raising the industrial disputes. He being gainfully employed was getting commissions from LIC every year and in his written statement, he has nowhere mentioned that no commission was ever received by him. Consequently, even after passing of the award

directing his reinstatement he has shown no interest in resuming his job with petitioner-Management.

Resultantly, in view of the above discussion, this Court finds it to be a fit case for exercise of extra ordinary writ jurisdiction, therefore, the impugned award dated 14.12.2011 (Annexure P-1) as well as order 03.05.2014 (Annexure P-5) passed by Executing Court are set aside.

The writ petition is allowed.

(MANOJ BAJAJ)
JUDGE

11.05.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No