

2023:PHHC:119706

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

**CWP-26639-2016 (O&M)
Date of Decision: 06.07.2023**

Dinesh Kumar

..... Petitioner

Versus

M/s Urban Improvement Company Private Limited and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Mr. Anil Shukla, Advocate
for respondent No.1.

HARSH BUNGER J. (ORAL)

1. Petitioner (Dinesh Kumar) has filed the instant petition under Articles 226/227 of the Constitution of India seeking quashing of *ex-parte* award dated 31.08.2015 (Annexure P-3) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (respondent No.2), whereby claim petition of the petitioner has been dismissed. A further prayer has been made seeking direction to respondent-Management to reinstate the petitioner with full back wages and continuity in service.

2. Briefly, the petitioner raised an industrial dispute by serving a demand notice (Annexure P-1), wherein it was claimed that the petitioner was appointed as a Driver on 01.10.1996 by respondent No.1 (M/s Urban Improvement Company Private Limited, Plot No.3324, Block C, Green Field Colony, Faridabad) and thereafter, he was promoted as Security

Supervisor, w.e.f. 01.12.2009. Petitioner claimed that he was working regularly with respondent No.1-Company and on 09.01.2014, his services were terminated without following the legal procedure, accordingly he claimed reinstatement with continuity in service and full back wages. Subsequently, a reference was made by the appropriate Government as to whether the services of claimant (petitioner herein) were terminated illegally and if so, what relief could be granted to him. It appears that the demand notice (Annexure P-1) was adopted as a claim statement by the petitioner, which was contested by the respondent-Management by filing its written statement on the ground that the petitioner was a Security Supervisor and his last drawn salary was Rs.21,519/- per month and it was stated that he was not a workman. The appointment of petitioner as a Driver and his re-designation as Assistant Security Supervisor was admitted by the respondent-Management. It was the stand of respondent-Management that on 09.01.2014, the service of petitioner was terminated by the Management in accordance with law as per Clause (e) of the Appointment Letter dated 27.09.1996 and all the dues of petitioner were paid to him vide cheque No.230859 dated 09.01.2014 for a sum of Rs.2,13,567/-, which was duly encashed without any protest. It was also claimed by the respondent-Management that petitioner was gainfully employed.

3. From the pleadings raised by both the parties, the following issues were framed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (respondent No.2):-

- i) Whether the termination of the services of workman is illegal? If so, to what relief he is entitled? OPW.
- ii) Whether the reference is not maintainable? OPR
- iii) Relief.

4. It appears that petitioner failed to lead any evidence in support of his case, accordingly, his evidence was closed by the Court order. Thereafter, the Tribunal vide award dated 31.08.2015 (Annexure P-3), answered the reference against the petitioner/claimant by holding as under:-

“The claimant alleged his appointment as driver on 1.10.1996 and termination of services on 9.1.2014. Appointment is not disputed but there is no evidence documentary or oral to prove claimant's case regarding alleged termination as alleged. He has failed to step into witness box to depose in terms of his pleadings. So claimant has failed to prove his illegal termination and as such he is not entitled to any relief.”

5. In view of the aforementioned circumstances, the instant writ petition has been filed on behalf of the petitioner.

6. Learned counsel for the petitioner submits that the petitioner was appointed as a Driver on 01.10.1996 and with due course of time, he was promoted to the post of Security Supervisor on 01.12.2009. It is stated that the petitioner was performing his duties to the satisfaction of his superiors and there was no complaint of any kind against him. Learned counsel further submits that services of the petitioner were terminated illegally and arbitrarily on 09.01.2014, without assigning any reason and without complying with the provisions of Section 25(F) of the Industrial Disputes Act, 1947 (for short, '1947 Act'). It is stated that at the time of termination of services of the petitioner, no notice, pay or retrenchment compensation was given to him. Learned counsel argues that the petitioner had engaged a counsel to represent him before the Tribunal, however, the counsel did not appear before the Tribunal, and accordingly, the petitioner could not lead any evidence on his behalf. It is contended that due to the fault of counsel, litigant should not be made to suffer. Learned counsel for the petitioner submits that the learned Tribunal failed to take into

consideration the averments made by the petitioner in the demand notice/claim statement and erroneously answered the reference against the petitioner by holding that he is not entitled for any compensation/relief. It is thus contended that the termination of services of the petitioner without complying with the mandatory provisions of the 1947 Act amounts to unfair labour practice, and therefore, the petitioner is entitled to the relief of reinstatement with full back wages and continuity of service.

7. On the other hand, learned counsel for respondent No.1-Management submits that the petitioner was appointed as Driver vide Appointment Letter dated 27.09.1996 and he joined his duties on 01.10.1996 and later on, he was re-designated as Assistant Security Supervisor. It is submitted that services of the petitioner were terminated by the Management on 09.01.2014, in accordance with law, as per Clause (e) of the aforesaid appointment letter. It is the categorical stand of the respondent/Management that all dues of the petitioner were duly paid to him vide cheque bearing No.230859 dated 09.01.2014 for a sum of Rs.2,13,567/- which was encashed without any protest on 25.02.2014; and nothing was due against the respondent/Management. It is also the stand of respondent/Management that the petitioner was working in a 'supervisory capacity' and accordingly, he was not a 'workman' under the provisions of 1947 Act. Learned counsel for respondent No.1 contends that the Tribunal has answered the reference against petitioner by holding that although appointment of petitioner is not disputed, however, there is no documentary or oral evidence to prove his case with regard to illegal termination of his services, as alleged by him, and furthermore, the petitioner failed to step into the witness box to depose his pleadings. Accordingly, prayer for dismissal of the instant petition has been made.

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

9. Concededly, no evidence was led by the petitioner in support of his claim before the Tribunal that his services were terminated illegally. Furthermore, he has not shown as to how his termination was illegal or bad in law, more so, when it is not disputed by the petitioner that he was paid his dues by the respondent-Management through cheque dated 09.01.2014 for a sum of Rs.2,13,567/-, which is stated to have been encashed without any protest. I am also not impressed by the submission that the petitioner had engaged a counsel and it was on account of counsel's negligence/fault that no evidence was led. It has not been shown by petitioner as to whether any complaint/action was taken by petitioner against the said counsel and in the absence of same, a bald assertion of petitioner cannot be accepted.

10. In view of the aforementioned circumstances, I am of the considered view that when the petitioner has failed to discharge his onus to prove that his services were terminated illegally and he failed to step into the witness box, accordingly, no relief can be granted to the petitioner in the present petition and the same is accordingly dismissed.

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

06.07.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No