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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25285-2017 (O/M)

Date of decision : 06.11.2023

Smt. Paramjit

... Petitioner

Versus

Industrial Tribunal, Gurdaspur through its Presiding Officer
and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Harkirat Singh Ghuman, Advocate
for the petitioner.

Mr. Rajdeep Singh Cheema, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioner (Smt. Paramjit) has filed the instant writ petition under Article 227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the Award dated 30.01.2017 (Annexure P-1), passed by the Industrial Tribunal, Gurdaspur (hereinafter referred to as 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner regarding termination of her services by respondent No. 2-DAV Public Senior Secondary School, Gurdaspur (hereinafter referred to as 'respondent-Management'), has been answered against her.

Petitioner further seeks a writ of mandamus for directing respondent-Management to reinstate her in service alongwith continuity of service and back wages with effect from 05.12.2013.

2. Briefly, the petitioner raised an industrial dispute regarding termination of her services. The said dispute was referred for adjudication to the Tribunal below. The petitioner claimed that she was working as a part time Sweeper before 01.04.2001 and she was a member of Employee Provident Fund Scheme, 1952 from 01.04.2001 and deductions were being made from her salary regularly. The petitioner stated that her husband Shri Charan Das was also working as a Chowkidar-cum-Gate Keeper in respondent-School since 1987 and they were performing their duties day and night. The petitioner claimed that respondent-Management had allotted them a room for living and her minor daughter used to do domestic work of Principal of respondent-Management, who was also living in the school. The petitioner stated that her daughter had fallen ill due to dengue fever and as such, she refused to do the work as doctor had advised her for rest, whereupon the Principal of respondent-Management got annoyed and asked them to vacate the room of the school, whereupon they vacated the room on 05.12.2013. The petitioner claimed that on the next day when they went to the school on duty then the Principal of respondent-Management did not allow them to enter the school and stopped them from performing their duties. It was therefore claimed by the petitioner that her services have been terminated in violation of provisions of Section 25-G and Section 25-H of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act').

3. The aforesaid claim of the petitioner was contested by respondent-Management on the plea that it is the petitioner who had abandoned her job at her own by absenting herself from duty w.e.f. 05.12.2013 and she had failed to join her duty despite repeated notices.

It was further stated that the petitioner was engaged as a part time Safai Sewak without any sanctioned post on 01.04.2001. The petitioner's last drawn salary was Rs. 1,800/- per month (consolidated) and joining of Charan Dass (husband of petitioner) as a temporary Chowkidar on 01.05.1993 was admitted. The allotment of room to the petitioner and her husband by the school was also admitted, however, it was stated that the Management had got the same vacated on 05.12.2013. It was denied that the room was got vacated on account of refusal of domestic work by the minor daughter of the petitioner. Respondent-Management claimed that they had sent various notices to the petitioner on 24.12.2013, 29.01.2014 and 24.02.2014, calling upon the petitioner to join her duty, however, she absented herself and abandoned her service for the reasons best known to her. It is further stated that the unauthorized absence of petitioner from duty was reported to the Local Managing Committee of the School in its meeting dated 21.04.2014 and the Management after discussing the matter, unanimously decided to retrench her services after serving one month notice alongwith retrenchment compensation in accordance with law instead of imposing punishment for misconduct of unauthorized absence from duty. It was stated that consequently services of the petitioner were retrenched, vide letter No. 2999 dated 11.07.2014 after paying retrenchment compensation and one month pay in lieu of notice, vide cheque No. 728857 dated 09.07.2014 for Rs. 13,500/- and the said cheque already stand encashed by the petitioner. It is, therefore, submitted that respondent-Management has already complied with the provisions of Section 25-F of 1947 Act. Accordingly, prayer for dismissal of reference was made.

4. On the basis of the pleadings of the parties, the following issues were framed :-

- “1. Whether the claimant is workman as defined under Section 2 (s) of the Industrial Disputes Act, 1947 ?*
- 2. Whether the claimant herself absented from duty ? If so, to what effect ?*
- 3. Whether termination of services of workman is justified and in order ? If not, to what relief to what extent is he entitled to ?*
- 4. Relief.”*

5. In order to substantiate her claim, petitioner her stepped into witness box as WW-1 and tendered her affidavit Ex-W1 alongwith documents ExW-2 to Ex-W6.

On the other hand, to rebut the evidence of petitioner, respondent-Management have examined its Principal Smt. Raminder Bawa as MW1, who tendered her affidavit Ex-M1 alongwith documents Ex-M2 to Ex-M10.

6. After considering the material/evidence available on record, the Tribunal below, answered the reference against the petitioner.

7. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

8. I have heard learned counsel for respective parties and have also perused the paperbook with their able assistance.

9. In the instant case, the petitioner had raised an industrial dispute on the plea that respondent-Management had terminated her services without complying with the provisions of 1947 Act on account of the reason that her minor daughter had refused to do domestic work of the Principal of school,

whereupon Principal of school got annoyed and they were asked to vacate the room provide to the petitioner by the school. Subsequently, when the petitioner went to perform her duty, she was not permitted to do the duty and her services were illegally terminated.

10. On the other hand, it is the categoric case of respondent-Management that it is the petitioner who had unauthorisedly absented herself from duty with effect from 05.12.2013 and despite issuance of various notices dated 24.12.2013, 29.01.2014 and 24.02.2014, petitioner failed to join her duty, whereupon the matter was taken up by the Local Managing Committee of School in its meeting dated 21.02.2014 and after discussing the matter, it was decided to retrench the services of the petitioner by serving one month notice alongwith retrenchment compensation instead of imposing punishment for mis-conduct of unauthorized absence from duty. It was the specific stand of respondent-Management that the services of petitioner were retrenched, vide letter dated 11.07.2014 after payment of retrenchment compensation and one month pay in lieu of notice, which was paid to the petitioner, vide cheque No. 728857 dated 09.07.2014 for Rs. 13,500/-. It was also categoric stand of respondent-Management that the aforesaid cheque amount already stand encashed by the petitioner, therefore, respondent-Management has complied with the provisions of Section 25-F of 1947 Act and the retrenchment of the petitioner was in accordance with law.

11. The Tribunal, upon considering the relevant material, has returned the following findings :-

*“16. In the light of allegations levelled by workwoman,
it was incumbent upon her to prove the truth of*

allegations. It is pertinent to mention her that husband of Paramjit was also allegedly stopped from working but there is nothing on record as to what had happened with him. It is further important to mention here that her husband has not been examined to support the allegations and to my mind he was the best person to corroborate version of workwoman. No doubt, it is well settled proposition of law that it is quality of evidence and not quantity of evidence that weighs in the mind of court but in this case, bald statement of Paramjit workwoman to corroborate her allegation is not enough rather it is contrary to her plea and shaky in nature. In her cross-examination, she has admitted that she had received a cheque for Rs. 13,500/- from respondent which was accompanied by letter dated 11-7-2014. Copy of said letter is exhibited as Ex-M9, contents of which are re-produced as below for ready reference :

“ You were reported unauthorised absence from duties since 5-12-2013 not reported on duty inspite of receipt of letter No. 2809 dated 24.12.2013, letter No. 2835 dated 29-01-2014 and letter No. 2849-A dated 24-2-2014. However you submitted your reply dated 28-2-2014, which considered and found unsatisfactory, you made no efforts to resume your duties.

Your engagement in the school as part time sweeper was without adopting the proper procedure of without any sanctioned post by the then Principal of the School. From your reply dated 28-2-2014, it is observed that you are no more interested in your job in the school.

Your case of unauthorised absence from duty reported to Local Managing Committee of the School in its meeting dated 21-4-2014 and management vide its agenda No. 5 after discussing all the pros and cons of the case, unanimously decided to retrench your services after serving one month notice alongwith retrenchment compensation in accordance with law instead of imposing punishment for the misconduct of unauthorised absence from duties.

As authorised by the LMC, in the resolution I m conveying the decision of Local Managing Committee of the School effecting your retrenchment from the job as only part time employee w.e.f. 5-12-2013 the effective date of retrenchment, expiry of one month notice. You will not be paid wages for the period of unauthorised absence from duties. You are being paid retrenchment compensation, equivalent to fifteen days average pay for every completed year of continuous service or part thereof, in excess of six months vide cheque No. 728857 dated 9-7-2014 for Rs. 13,500/-.

Please acknowledge the receipt.

Sd/-

Principal

Smt. Dhan Devi

D.A.V. Public

Sr. School, Gurdaspur”

17. It is shows that she was given compensation as per law and she accepted it without any objection. Now, she does not have any right to agitate her claim on that

basis. To wriggle out of situation, Smt. Paramjit has volunteered that amount of Rs. 13,500/- was towards arrear of her salary, but this explanation is not digestible to legal conscience for the apparent reason, that there is no allegation in the demand notice and statement of claim any arrears of pay was due to her. In such circumstances, this explanation cannot be accepted and I do not find any reason to differ with learned authorised representative for respondent on the point that retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947 has already been paid to workwoman when she herself discontinued to work with them and did not resume duty despite repeated reminders.

18. As a consequence of my above discussion, I hold that workwoman is not entitled to any relief from this Tribunal. Both these issues are accordingly decided in favour of respondents and against workwoman.”

A perusal of above extracted findings would manifest that the services of the petitioner were retrenched after paying her retrenchment compensation alongwith one month salary in lieu of notice by way of a cheque, which was accompanied by a letter dated 11.07.2014 (Ex.M9). The said amount was accepted by the petitioner without any objection and it is the categoric stand of respondent-Management that the amount of Rs. 13.500/- paid to the petitioner already stand encashed by the petitioner. The aforesaid fact has not been disputed by learned counsel for petitioner.

12. Once, the services of the petitioner have been retrenched after complying with provisions of Section 25-F of 1947 Act i.e. by paying her

retrenchment compensation alongwith one month pay in lieu of notice, which has been duly accepted by the petitioner and even the amount stand encashed, the petitioner cannot be permitted to agitate that her services were terminated in violation of provisions of Section 25-F of 1947 Act, however, the petitioner tried to change her stance by stating that the amount of Rs. 13,500/- was on account of arrears of her salary, however, the said plea was rightly not accepted by the Tribunal below by stating that there was no such averment/allegation in the demand notice and/or in the statement of claim regarding any arrears of pay due to her.

13. Considering the totality of circumstances, there is no scope for any interference by this Court in the impugned award dated 30.01.2017 (Annexure P-1), 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 stand closed.

(HARSH BUNGER)
JUDGE

06.11.2023

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No