

CWP-17327-2023**112****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17327-2023
Date of Decision: 09.08.2023

S.S.M. Senior Secondary School

...Petitioner

Versus

Presiding Officer, Industrial Tribunal , Amritsar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGERPresent : Mr. Amandeep Singh Manaise. Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner-School has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 09.05.2023(Annexure P-1) passed by learned Industrial Tribunal, Amritsar; whereby the reference of the industrial dispute raised by respondent No.2-workman (Ravi Kumar) regarding termination of his services has been answered in his favour.

2. Briefly, respondent No. 2 (Ravi Kumar) raised an industrial dispute, which was referred for adjudication to the learned Industrial

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Tribunal, Amritsar (*herein after “the Tribunal below”*) under section 2A and 10(1)(c) of the Industrial Disputes Act, 1947 (*in short “the 1947 Act”*).

3. As per the claim statement, respondent No.2-workman (Ravi Kumar) claimed that he was appointed with the petitioner-School as Rickshaw Puller for plying school children on 01.06.1996 and thereafter, he worked as a Peon, Chowkidar and Conductor as per the requirement of petitioner. Respondent No.2-workman claimed that earlier his services were terminated by the Petitioner and a written settlement was arrived at under Section 12(3) of the 1947 Act on 07.01.2015 before the Labour-cum-Conciliation Officer, Gurdaspur thereafter, the workman joined his duty as conductor but he was not allowed to enter the School Premises upon which he filed a complaint before the Labour-cum-Conciliation Officer on 17.12.2015 and during the pendency of the complaint proceedings the services of the workman were terminated *w.e.f* 06.04.2016 without any notice, compensation, notice pay etc. It was also claimed by respondent No.2-workman that he was not paid wages from October 2015 to 06.04.2016 and the EPF was deducted from his wages. Respondent No.2-workman further claimed that his termination is illegal, unjustified and against principles of natural justice and contrary to the provisions of the Industrial Disputes Act, 1947, accordingly, he prayed for reinstatement with continuity of service and back wages.

4. The aforestated claim of the workman was opposed by the Petitioner- School by submitting its reply wherein it was inter-alia stated that the workman did not disclose the true facts as he was not terminated on 06.04.2016 rather the workman had abandoned the job in October, 2015. It

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was further stated that the workman misbehaved with school staff and colleagues. It is the case of petitioner-School that the workman was appointed on daily wages without following proper procedure and as per the settlement dated 07.01.2015, he was taken back on duty without any benefit from the date of settlement but he did not come back on duty after September, 2015 and abandoned his job. The plea of workman regarding his EPF Number was admitted and other averments were denied and prayer for dismissal of claim statement was made.

5. From the pleadings of the parties, the learned Tribunal framed the following issues:

“I. Whether the workman was never engaged as Rickshaw Puller by the management no. 1? OPM-1

II. Whether the workman abandoned the job of management no. 1 in October, 2015? OPM-1

III. Whether any settlement arrived between the workman and the management no. 1 on 07.01.2015? OPM-1

IV. Whether the workman took advance of Rs. 38300/- upto October 2015 and the remaining amount of Rs. 18653/- of EPF is lying with the management no. 3? OPM-3

V. Whether the workman is entitled to be reinstated? OPW

VI. Relief.”

6. In order to prove his case/claim, the respondent No.2-workman (Ravi Kumar), examined himself as WW-1 and Kuljit Kaur, Teacher as WW-2.

7. On the other hand, the petitioner-School examined Balwinder Singh, Secratray as MW-1 and examined Kuljit Kaur, Teacher as MW-2.

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8. After considering the case of respective parties and also the material on record; learned Industrial Tribunal, Amritsar vide impugned award dated 09.05.2023 (Annexure P-1) decided the reference of the industrial dispute in favour of the respondent No.2-workman.

9. Being aggrieved against the impugned award dated 09.05.2023 (Annexure P-1) *ibid*, the petitioner has filed the instant writ petition.

10. Heard Learned counsel for the petitioner.

11. In the instant case, the Tribunal below returned the following findings:

“16. The employer-employee relationship between the parties is an admitted fact. Once the employer-employee relationship is admitted, it was for the management no. 1 to establish that the workman has left the job of his own but no reliable evidence has been produced by management no. 1 to prove above plea. The aforesaid management has also failed to adduce cogent evidence that the workman had misbehaved with his colleagues or female members or that he used to come on work in drunkard condition. MW2 Kuljit Kaur had admitted during her cross-examination that the management no. 1 did not conduct medico legal examination of the workman when he used to come in drunkard condition. She also admitted that the above management did not report the matter to the Police. She also stated that the management no. 1 had not made any report to the Police that the workman was harassing the lady staff. Though, the workman had admitted during his cross-examination that 3 complaints were filed by lady staff against him but he has specifically stated that the abovesaid complaints were false. The management no. 1 has failed to establish the allegations levelled against the workman and above

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management has also failed to prove that the workman had left the job of his own. There is nothing on record that the service of the workman was terminated by following the provisions prescribed under Section 25F of the I.D. Act. Hence, this Tribunal is of the considered opinion that the service of the workman was illegally terminated by the management no.1, as such, the workman is entitled to reinstatement with continuity in service.

17.Now coming to the facts of present reference, the workman has specifically stated in his affidavit Ex. WW1/A that after the termination from service, he could not find any job despite his best efforts and has remained unemployed. On the other hand, the management no.1 has not adduced any evidence that the workman was gainfully employed and was getting wages equal to the wages he was drawing prior to termination of his service. Hence, the law laid down in the above mentioned judgement is clearly applicable to the facts of the present reference and the workman is also entitled to back wages.

In view of the above discussion, both these issues are decided in favour of the workman and against management no.1.

Issue no. 1:-

18. The onus to prove this issue was upon the management no. 1. Above management has admitted the employer-employee relationship between the parties but it has not lead any evidence to establish that the workman was initially engaged as Rickshaw Puller. Hence, this issue is decided against the management no. 1 and in favour of the workman.

Issue no. 3:-

19. The onus to prove this issue was upon the management no.1. Both the workman as well as management no. 1 have admitted that a settlement was

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arrived at between the parties before the Labour-cum-Conciliation Officer, Gurdaspur on 07.01.2015, as such, there was no need to frame this issue as parties were not at issue on this aspect. Hence, this issue is hereby disposed of.

Issue no. 4:-

20. The onus to prove this issue was upon the management no. 3 but no evidence in this regard has been produced by the above management. In this regard, it is pertinent to mention here that in this reference, there is no dispute between the workman and the management no. 3. The aforesaid management has filed the written statement as per its record and the workman has also not filed any replication to deny the averment contained in the written statement of the above management. However, in the absence of any affirmative evidence, it cannot be said that the management no. 3 has proved the allegations contained in its written statement regarding the amount in question. Hence, this issue is decided against the management no.3 and in favour of the workman. However, it is made clear that this observation shall not be used by the workman against the record of the management no.3 regarding any amount taken as advance by him from the above management.

Issue no. 6:-

Relief:-

21. In view of the observation of this Tribunal on issue no. 1 to 5, the present reference is hereby answered in favour of the workman and against the managements. The termination of service of workman is hereby declared illegal and the management no. 1 is directed to reinstate the workman in service with continuity of service and with full back wages from the date of termination from service till the date of his reinstatement and other consequential

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benefits which accrue to him by virtue of his employment with the above management. In case the back wages are not paid by the above management within 2 months from the publication of this Award in official gazette, the above management shall be liable to pay interest to the workman at the rate of 6% per annum till realization. Reader of this Tribunal is directed to forward a copy of this Award to the Assistant Labour Commissioner/Labour-cum-Conciliation Officer, Gurdaspur, as required under section 15 of the I.D. Act read with Notification No. S.O. 66/C. A.14/1947/S.17/2008 dt. 01.10.2008. Copy of this order be also sent to the court of the Ld. Civil Judge (Sr. Division), Gurdaspur as required under Section 11 (10) of the I.D. Act. File be consigned to record room."

12. A perusal of the above extracted findings returned by the Tribunal below would show that the petitioner-School failed to produce any evidence with regard to the averment that the workman had left the job of his own. The petitioner-School has also failed to establish the alleged misbehaviour with the female staff and consumption of alcohol during working hours. It is observed that mere bald statement by the Petitioner-School regarding the misconduct of the workman is not sufficient, something more was required in the shape of documents to prove his misconduct. It would be pertinent to mention that in cross examination of MW-2 Kuljit Kaur, Teacher it was stated that the Petitioner-School did not conduct the Medico Legal Examination of the workman and did not report the matter to the police. There is nothing on record to show that the petitioner-School followed the provisions of the 1947 Act while terminating the services of the workman. Petitioner-School has not shown any material to dislodge the findings returned by the learned Tribunal below.

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13. Resultantly, it is not possible on the basis of the evidence produced before the Tribunal below to reach a conclusion or record a finding other than what has been returned by the Tribunal below as a result of appreciation of evidence which "cannot be reopened or questioned in writ proceedings" as explained in *Syed Yakoob v. K.S.Radhakrishnan and others*, *AIR 1964 Supreme Court 477*.

14. Accordingly, there is no scope for interference in the award passed by learned tribunal below and the writ petition is accordingly dismissed in *limine*.

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

09.08.2023

Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No