

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

**CWP-5392-2016
Date of decision : 01.05.2023**

M/S PRinIndia

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal-
cum-Labour Court II, Gurgaon and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vivek Singla, Advocate for the petitioner.

None for the respondent No.2.

MANOJ BAJAJ, J.

Petitioner-management has filed this writ petition under Article 226 Constitution of India to challenge the award dated 04.12.2015 (Annexure P-9) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon, whereby the industrial dispute raised by respondent No.2-Mrs. Anjali Chowdhary through reference No. 133 of 2013 was decided and answered in her favour, directing the petitioner-Management to reinstate her in service with continuity of service and full backwages.

Briefly, the facts of the case are that the respondent No.2-Mrs. Anjali Chowdhary joined the petitioner-Company M/s. PRinIndia in May 2011, as Manager-Human Resources and her salary was fixed as Rs. 33,000/- per month. The respondent No.2-Mrs. Anjali Chowdhary raised the industrial dispute against alleged illegal termination of her services on 25.07.2012,

whereupon reference bearing No.133 of 2013 was sent to the Industrial Tribunal-cum-Labour Court, Gurgaon. As per the claim statement by respondent No.2-Mrs. Anjali Chowdhary, she discharged her duties with honesty and devotion, but the management illegally terminated her services in violation of the provisions of Industrial Disputes Act, 1947 as no prior notice or retrenchment compensation was paid to her. Further, it was pleaded that she had worked for more than 240 days in a calendar year and her services were terminated without any inquiry. She prayed that the management be directed to reinstate her in service with continuity of service and full backwages.

The claim was contested by the petitioner-Management by filing a written statement wherein a preliminary objection was raised that by virtue of the nature of duties, responsibilities and salary drawn by respondent No.2, she would not fall within the definition of workman as defined under Section 2(s) Industrial Disputes Act, 1947. As per the averments in the written statement, respondent No.2-Mrs. Anjali Chowdhary was engaged to perform managerial, administrative and supervisory work, which included recruitment and selection of persons for the Company. Apart from that, it was averred that the employee had voluntarily tendered her resignation on 18.07.2012 (Annexure P-2), which was accepted by the Management on 20.07.2012 (Annexure P-3). The management further pleaded that the work and conduct of the petitioner was not proper, who not only disrespected the seniors, but she also used to pick up fights with other staff members. Denying the other averments in the claim petition, in the end it was prayed that the claim raised by Mrs. Anjali Chowdhary be dismissed.

In order to controvert the written stand of the Management, the

employee filed an application and reiterated the averments contained in the claim statement.

Upon considering the pleadings of the parties, the Labour Court framed three issues vide order dated 09.09.2014 and thereafter, the parties adduced their respective evidence. After considering the evidence on record, the Labour Court vide award dated 04.12.2015 (Annexure P-9) accepted the claim of the respondent No.2 and ordered her reinstatement in service with continuity of service and full backwages.

Hence this writ petition.

Pursuant to the notice of motion order dated 29.04.2016, the respondent No.2 appeared through her counsel and filed written statement on 05.08.2016. This Court on 04.10.2016 had directed learned counsel for the petitioner to get necessary instructions for taking back respondent No.2 in service subject to the result of the writ petition, and by interim order also stayed the consequential benefits. In response to the order dated 04.10.2016, the petitioner filed an additional affidavit dated 14.02.2018 and stated that since the appointment of respondent No.2 was on the post of Manager-Human Resources with a salary of Rs.33,000/- per month, who resigned voluntarily, therefore, the petitioner is unable to take her back in service.

Lastly, learned counsel for respondent No. 2 appeared in this case on 01.02.2018 and thereafter, there has been no representation on behalf of respondent No.2. Even on the last date of hearing, the direction was issued to the Registry to intimate the learned counsel for respondent No.2 about the date of hearing fixed in this case. As per office report, the requisite information has been given to the counsel for respondent No.2 through email, but again, no one

has appeared on behalf of the respondent No.2.

Learned counsel for the petitioner has argued that the Labour Court has committed a serious error of law in treating the respondent No.2 as a worklady while deciding issue No.1 in her favour, because the relevant material on record has not been considered. Learned counsel has drawn the attention of the Court to the appointment letter Ex.M-4 and submitted that Mrs. Anjali Chowdhary was appointed on the post of Manager-Human Resources with a salary of Rs. 33,000/- per month, and this itself makes it amply clear that she would not fall within the definition of “workman” as contained in Section 2(s) Industrial Disputes Act, 1947, therefore, the claim could not have been entertained by the Labour Court. He submits that the nature of job performed by the respondent No.2 was administrative in nature and she has not adduced any evidence on record to show that the nature of job performed by her would bring her within the definition of worklady. He submits that the findings on issue No.1 by the Labour Court are not sustainable, and deserve to be set aside.

Further, Mr. Singla, learned counsel for the petitioner has drawn the attention of the Court to the communication dated 18.07.2012 sent by respondent No.2 through email to contend that she voluntarily left the job and also tendered her apologies for some unpleasant incident, therefore, she preferred to leave the job, and the petitioner-management in response to the said communication, accepted her resignation on 20.07.2012. He submits that these two communications were noticed by the Labour Court in the impugned award, but it decided the issue No.2 in favour of respondent No.2 primarily on the ground that the email dated 18.07.2012 did not amount to resignation and

finally proceeded to answer the reference in favour of the respondent No.2. Learned counsel submits that the findings on both these issues are against the evidence on record, therefore, the interference is warranted by this Court.

Learned counsel for the petitioner has been heard and with his assistance, the case file has been perused carefully.

Before advertng to the merits of the case, this Court deems it appropriate to examine the definition of workman contained under Section 2

(s) Industrial Dispute Act, 1947 and the same reads as under:-

“Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

Now, while examining the evidence on record, it comes out that the petitioner in her claim statement stated that she was appointed on 02.05.2011 as Clerk and at the time of her removal on 25.07.2012, she was drawing a monthly salary Rs. 18,500/-, but in her cross examination she admitted that she was working on the post of HR Manager with the Company and her salary was Rs.33,000- plus bonus and when she was terminated from

the Company her salary was Rs.37,000/- per month. A perusal of the appointment letter (Ex.M-4/Ex.PW-2) shows that she was engaged as Manager-Human Resources on salary of Rs.33,000/- per month w.e.f. 02.05.2011 and the duties and responsibilities mentioned in the said appointment letter reflects that her job was more in administrative nature.

Though, the respondent No.2 claimed that she worked as a Clerk, but in her affidavit tendered in examination-in-chief, it is nowhere stated that the nature of duties performed by her were of a Clerk. Apart from it, the cross-examination of respondent No.2 shows that before joining the petitioner-company, she had worked with ICICI Bank Private Limited as Human Resources (Executive) and at that stage her salary was Rs.10,000/- per month.

Besides, the stand of the writ petitioner maintained in para 3.II that the respondent No.2 sent an email on 18.07.2012 (Ex. M-1) and tendered her apology for her inappropriate behavior and resigned from the Company have not been denied in the written statement. The corresponding reply on merits of Para 3.II reads as under :-

“That the contents of corresponding paragraph 3.ii of the petition under reply in so far pertains to the record are not denied. However, it is pertinent to mention that if in case the this communicate is seen in its entirety there is a plausible reason and cause of its genesis namely the main concerned about the incentive of 2% despite of the fact that admittedly the KRA’s of the answering respondent consisted of with a whole gambit of professional activities i.e. Recruitment, Selection, Training, Employees Grievances Management, Formulating and implementation of policies Development of future goals, Appointment of employees, Grant of leaves, marking attendance and giving leaves as such these activities/professional duties were under the direct control and superintendence of Chairman Mrs. Shivani Gupta and as such admittedly a raise of meager 2% not only puts a big question mark on the transparency within the

petitioner Company but also speaks in volume about the high handedness/hire and fire policy. Under any stretch of imagination this communicate cannot be and is not a Resignation Letter but on the contrary the answering respondent crave indulgence of the management to get her work appreciated in true earnest but for the obvious reasons the management sought to make the answering respondent a scapegoat which fact got vindicated in the judgment/award of the appropriate Court dated 04.12.2015 for which reason the petitioner be put to strict proof thereof.”

A reading of the above, further gives fillip to the stand of the petitioner that the respondent was performing the duties of an administrative nature, which include formulation and implementation of policies, appointment of employees and grant of leaves etc, therefore in this background, the stand of the respondent No.2 that she would fall within the definition of work-lady contained in Section 2 (s) Industrial Dispute Act, 1947 is misplaced. During her cross-examination, she made a categorical admission that she had joined the petitioner-company on the post of Manager-Human Resources and worked in accordance with the appointment letter, therefore, her stand that she worked as a Clerk is not acceptable for lack of any evidence in this regard. Thus, the findings recorded by the Labour Court in this regard on issue No. 1 is unsustainable and the same is accordingly set aside.

Apart from the above, the contents of the email dated 18.07.2012 (Ex. M-1) have not been denied by the respondent No.2, and even if, it is assumed that it is not a resignation by the employee, but at the same time it shows that the employee had expressed unwillingness to continue with her job with the Company. The email dated 18.07.2012 was immediately responded to by communication Ex.M-2 dated 20.07.2012 by the petitioner-Company asking the officer to complete the formalities, but in the claim statement Mrs. Anjali

Chowdhary has not at all mentioned these two important communications and challenged the order dated 25.07.2012. As per the petitioner’s stand, the respondent No.2 again misbehaved with the senior officials of petitioner-Company while asking for increase in her salary, therefore in the compelling circumstances, the order dated 25.07.2012 was passed. Otherwise, also since this Court has already set aside the finding on issue No.1 by holding that respondent No.2 is not covered under Section 2(s) Industrial Disputes Act, 1947, therefore, issue No.2 is rendered insignificant.

Resultantly, the writ petition is allowed and the award dated 04.12.2015 (Annexure P-9) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon is set aside.

(MANOJ BAJAJ)
JUDGE

01.05.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No