

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

LPA Nos. 335 of 2018 (O & M)

Reserved on: 01.03.2023

Date of Decision: 15.03.2023

M/s. Hindustan Tin Works Ltd.

.....Appellant(s)

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another

....Respondent(s)

AND

LPA No. 1340 of 2019 (O & M)

Shiv Kumar Sharma

.....Appellant(s)

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Viranjeet Singh Mahal, Advocate,
for the appellant (in LPA No. 335-2018)
for respondent No.2 (in LPA-1340-2019).

Mr. Sandeep Lather, Advocate,
for the appellant (in LPA No. 1340-2019)
for respondent No.2 (in LPA-335-2018).

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two cross Letters Patent

Appeals i.e. LPA No. 335 of 2018 and LPA No. 1340 of 2019, arising out

allowing *CWP No. 11539 of 2012, M/s. Hindustan Tin Works Ltd. vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and another* filed by the Management, compensation of Rs.2,50,000/- was directed to be paid within a period of 3 months, failing which interest element @ 6% per annum was to run. Resultantly, both the Management and the workman are before us since the workman had a benefit of the reinstatement alongwith back wages in his favour which had been passed by the Labour Court, Panipat which has been upset.

A perusal of the paper book would go on to show that the learned Single Judge modified the order of the Labour Court on the ground that the respondent-workman's conduct was not appropriate while not responding to various communications and the Management had to resort to the service of notice through the Inspector qua the enquiry which was being held. It was noticed that in response to the notice of the management, the Advocate for the workman had also issued a legal notice dated 24.08.2002 wherein, there was an admission that he had received the charge sheet but he failed to report for duty. It was, thus, held that no effort has been made by the workman to report for duty or reply to any communication sent by the management and reply had also not been submitted to the charge sheet. Resultantly, it was held that the Labour Court erred in passing of the award in favour of the respondent-workman and a modification was done to the extent that for the service rendered from 15.09.1996 to February, 2002, compensation of Rs.2,50,000/- became payable.

A perusal of the paper book as such would go on to show that as per the demand notice dated 21.03.2002 (Annexure P-8), the claim of the

workman was that he was appointed as Setter Operator 'A' Grade in the Component Department on 04.09.1996 and was getting wages of Rs.3,046/- per month. He had been asked to stop his work on 02.02.2002 and put his signatures on blank paper, which he refused to do so and he was, thus, retrenched without following the procedure and was not allowed to be taken on duty despite written requests on 05.02.2002, 11.02.2002, 23.02.2002 and a legal notice dated 06.02.2002. The defence of the management was that he was on leave upto 08.02.2002 on medical grounds and he had not reported for duty since 02.02.2002 and he was also found sitting idle. He had been allowed to report for duty by a person who was not aware that he had been absent earlier. He had misbehaved and used derogatory language and notice was sent to him on 20.02.2002 for the said incident and then, instead of reporting for duty, he served legal notice dated 06.03.2002. Another letter was issued to him on 15.03.2002 through registered post but instead of reporting for duty, he gave a demand notice on 21.03.2002 giving wrong facts. Thus, the stand of the Management was that he was absenting from 02.02.2002 and was supposed to report for duty on 09.02.2002 and he never came till then. The alleged letters as such were also not received by the workman. It was further alleged that the applicant had also refused the offer of employment during conciliation which was without prejudice to the rights of the management to initiate action on the letter dated 20.02.2002.

A perusal of the notice dated 20.02.2002 (Annexure P-3) would on on to show that the absence was stated to be from 28.01.2002 and bed rest was till 08.02.2002 and he had come to the factory on 02.02.2002 without informing the office personnel and at that point of time, on being

asked, had uttered various unsavoury words to the superiors and misbehaved and had not reported for duty thereafter. On 07.02.2002 and 11.02.2002, letters had been sent that he was not being allowed to resume duties and an opportunity was given to him to report for duties immediately. In the meantime, he was to be treated as absent from duties. As per letter dated 23.02.2002, the workman had written that he does not understand English and asked for translation of the letter dated 22.02.2002. Legal notice was also served upon the Management on 06.03.2002, which was replied to on 15.03.2002 taking the same plea and he was asked to report for duties without prejudice to the right of the Management to take suitable action for the earlier misconduct. It is in this background, the Labour Court came to the conclusion that the charge sheet was served on 14.08.2002 and is an apparent after thought and the Enquiry Officer had not been summoned to produce and prove the inquiry and, thus, the defence that the workman had not participated in the inquiry would go on to show that it was an inconsistent stand of the respondents. It was accordingly held that the stand of the Management was not inspiring confidence and had amounted to retrenchment and his termination was not legal and the workman was provided protection under Section 25F of the Industrial Disputes Act, 1947 (in short 'the 1947 Act') read with Section 25B of the said Act as no enquiry was held. Resultantly, the reinstatement was ordered.

The factum of 240 days being completed in the preceding one year is not a matter of issue. It is only the apparent stand which would go on to show that the learned Single Judge was well justified to hold that the Management had even replied to the legal notice saying that he should join

but he had chosen not to and which had led to the departmental proceedings being initiated against him and resultantly, the matter had been referred to the Labour Court. Demand notice had been issued on 21.03.2002 and apparently before that only on 20.02.2002, the communication had been sent to the workman to join. A perusal of the statement submitted by the workman WW3 would go on to show that he admitted that he received a letter on 23.02.2002 and had asked for Hindi translation which was provided to him and, therefore, it is apparent that the Management as such had asked him to join, which he did not do. Similar is the stand of Suresh Singh, the Management witness, who in his affidavit, submitted that notice dated 20.02.2002 was sent and translation was sent on 01.03.2002 as per his demand dated 23.02.2002.

It is, thus, apparent that Management was asking him to join but he, as noticed above, did not wish to. The findings of the learned Single Judge, thus, are based on correct appreciation of the factual matrix which was subject matter of consideration before the Labour Court and this aspect missed the attention of the Labour Court. It is also to be noticed that at the time of the decision of the Labour Court dated 27.12.2011, the workman had been out of service for more than 9 years and it would not have been in the interest of industrial peace as such to put him back in service with 50% back wages, as ordered by the Labour Court. Keeping in view the period of service, which is almost 5-1/2 years, the learned Single Judge was thus well justified in modifying the order as such of reinstatement with back wages keeping in view the conduct of the workman himself, who was not cooperating and not joining and could not thus be a beneficiary and claim back wages though not joining, when asked

to.

In such circumstances, the awarding of compensation by the learned Single Judge as such for Rs.2,50,000/- for the period of service is justified so that the matter could be settled rather than putting back a recalcitrant workman who would not be willing to cooperate at that stage. The Management also was in error in not summoning the Enquiry Officer and proving the enquiry report, which led to the order being passed as such by the Labour Court for reinstatement. Therefore, apparently nothing was brought on record that proper departmental proceedings as such were conducted for the misconduct as such as no witness was produced alongwith the record to show that the Inquiry Officer had conducted the said proceedings and neither the said report was proved. The specific plea was that one Ragubhir Singh, Advocate had been appointed as an Enquiry Officer.

In such circumstances, we are of the considered opinion that in the present facts and circumstances, the relief which has been modulated by the learned Single Judge was the appropriate methodology adopted to bring out the industrial peace between the Management and the workman. Resultantly, we are of the considered opinion that there is no requirement as such to drag the proceedings further *inter se* the parties.

Accordingly, both the appeals stand dismissed.

(G.S. SANDHAWALIA)
JUDGE

15.03.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No