

CWP No. 10706 of 1993

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 10706 of 1993.
Date of Decision : 03.05.2016.

Notified Area Committee, Manimajra

...Petitioner

Versus

Presiding Officer, Labour Court, U.T. Chandigarh and another

...Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Ms. Deepali Puri, Advocate for the petitioner.

Mr. Pawan K. Sharma, Advocate for respondent No. 2

P.B. Bajanthri, J.(Oral)

In the instant petition, the petitioner had questioned the validity of award dated 03.08.1992 passed by Labour Court at Annexure P-7 by which the Labour Court while setting-aside the order of termination has held that the workman shall be deemed to be in continuous service and will be entitled to the benefit of continuity of service and back wages @ 80%.

Brief facts of the case are that the respondent No. 2 workman was appointed as an Assistant Draftsman on 04.06.1981 and he joined his duties on 15.06.1981. His services were terminated on 29.05.1984 on the allegations that the respondent No. 2-workman submitted leave application for

certain days in the month of April, 1984. After completion of the leave period, the respondent workman did not report. Faced with this, the petitioner had taken into consideration certain complaints received against the workman while terminating service of the workman. To that effect, on 29.05.1984 a communication had been made from the President, Notified Area Committee, Manimajra (U.T. Chandigarh), wherein, it is stated that with reference to office memo No. NAC-81/2849, dated 04.06.1981 and further stated that it is to inform you that your services are no longer required by the Committee. The termination order was subject matter before the Labour Court. The Labour Court in this award set-aside the termination order and further it is held that the workman respondent shall be deemed to be in continuous service and will be entitled to the benefit of continuity of service and back wages @ 80%.

Learned counsel for the petitioner submitted that conditions imposed in the order of appointment, made clear that the respondent-workman's services can be dispensed without issuing notice, therefore, there is no infirmity in the order of termination. Consequently, the award is contrary to the conditions imposed in the appointment order.

Per-contra, learned counsel for the respondent submitted that the workman was on probation. He remained absent beyond the leave period, which was beyond his control due to domestic problem. The petitioner has taken undue

advantage of absent of the workman and so also relied on various complaints in order to dispense with the services of the respondent-workman. As on the date of termination, the workman-respondent had completed his probation period, however, for administrative reason, the probation period is stated to have been extended. The order of termination is without notice and without holding an enquiry when there are serious allegations made against the workman-respondent. The Apex Court held that even in the case of temporary employees, a temporary employee is to be dispensed with on certain allegations and minimum requirement of holding an enquiry or issuance of show cause notice is mandatory.

In the present case, services of the workman-respondent have been terminated, therefore, there is no infirmity in the order of Labour Court. Insofar as 80% back wages is concerned, the workman-respondent was not on duty during the intervening period from the date of termination till date of re-instatement, therefore, back wages is modified from 80% to 50%. The petitioner shall pay the back wages of 50% to the workman within a period of two months from today. Service benefits, if any due to workman shall be granted to him within a period of six months.

Petition stands dismissed.

May 03, 2016.
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(P.B. BAJANTHRI)
JUDGE