

CWP-4740-1999 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CWP-4740-1999 (O&M)

Decided on : 23.04.2024

Oriental Carbon and Chemical Ltd.

. . . Petitioner(s)

Versus

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

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Arshnoor Singh Chugh, Advocate
for the petitioner(s).

Mr. Ashwani Bakshi, Advocate
for respondent No.2.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Oriental Carbon and Chemical Ltd., Dharuhera (Rewari), has filed the present writ petition for quashing of award dated 13.10.1998 (Annexure P-6), passed by learned Industrial Tribunal-cum-Labour Court, Gurgaon (in short, ‘learned Tribunal’), whereby, reference No.195/89, filed under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), has been answered in favour of respondent No.2 – K.C. Sharma (workman).

Learned Tribunal has held the workman (respondent No.2) to be entitled for reinstatement with continuity of service and full back-wages.

2. Through demand notice and claim statement, workman pleaded that he joined the service as ‘Fitter’ with the Management on 01.05.1986, and his services were illegally terminated on 15.12.1987. He was drawing the salary of Rs.1050/- per month at the time of termination, which has been

done in violation of Section 25-F of the ID Act, as neither any notice, nor notice pay or retrenchment compensation amount has been given to the workman.

In the written statement filed by the Management, it is pleaded that the workman himself had submitted his resignation on 14.12.1987, which was accepted on the same date i.e. 14.12.1987, after paying him full and final payment.

3. In the replication, workman pleaded that his signatures were obtained by the Management under duress and immediately, thereafter, he had made complaints to the police and Labour Department, through registered post.

4. After framing the issues on 13.02.1990, evidences were led by the respective parties. Workman – KC Sharma appeared as WW-1 and altogether denied his resignation and stated that resignation letter Ex.M-1 was not written by him. He further stated that his signatures over the voucher (Ex.M-5) were forcibly obtained by the Management and that no experience certificate was given to him.

5. Management examined its witnesses Mr. R.K. Krishnan as MW-1, who produced the resignation letter, which was forwarded to the Personnel Manager of the Company. However, in his cross-examination, said witness of the Management stated that the resignation was not written in his presence by the workman and Ex.M-3 is the photocopy of letter dated 14.12.1987, regarding acceptance of resignation of the workman. Another witness of Management i.e. G.D. Sharma, who appeared as MW-3, for proving the fact that vide voucher (Ex.M-5) payment mentioned therein was made to the workman. In regard to the signatures over the resignation letter,

Management examined witness Sh. Som Nath Aggarwal (Hand Writing Expert) as MW-3, who after making comparison of the signatures, was opined in favour of the Management by stating that all the disputed signatures were written by the writer K.C. Sharma.

On the other hand, workman also examined one handwriting expert namely; Naresh Kataria (WW-2), and as per his report (Ex.WW-2/11), he opined disputed signatures marked Q-1 to be forged one.

6. Since, it is settled law that the opinion of the handwriting expert is a weak evidence and can never be conclusive because it is, after all opinion evidence and same cannot be made the sole basis for deciding the real issue. Without getting influenced or impressed with the reports of the handwriting experts produced by both the sides, learned Tribunal has also done certain exercises by itself examining the admitted signatures and disputed signatures over the resignation letter.

7. Learned Tribunal found that Ex.M-4, Ex.M-5 & Ex.M-6, are the admitted signatures of the workman. Disputed signature on comparison does not seem to be same. Learned Tribunal also noticed that signatures of the workman were obtained on the basis of knife and revolver and on the comparison, learned Tribunal concluded that the admitted signatures does not correspond with the disputed signatures.

8. For answering the reference in favour of the workman, learned Tribunal examined the issue from another angle that if the workman had submitted his resignation, why the Management had paid to the workman. The contents of Ex.M-4 and Ex.M-5 reflects that amount of Rs.890/- were paid in lieu of one month notice. In fact, taking note of all the aspects, it seems that the Management wanted to remove the workman from job by

CWP-4740-1999 (O&M)

- 4 -

giving him one month notice pay. It is only after change of mind, the story of resignation was prepared and produced by the Management. It has also been found that the reason to target the workman was simply that he was an active member of the labour union, as was admitted by the witness of the management, namely, R.K. Krishnan (MW-1).

9. In the totality of the circumstances, learned Tribunal found that there is nothing in the story put-forth by the Management, and therefore, same being not believable, the reference has been answered in favour of the workman. Thus, finding recorded by the learned Tribunal is hereby maintained to the extent of committing violation of Section 25-F of the ID Act, by the Management.

10. However, counsel representing both the sides submit that workman had rendered his services to the Management for a period of 19 months i.e. from 01.05.1986 to 14.12.1987. He was drawing a salary of Rs.1050/- per month at the time of termination. After filing of the present writ petition, since the year 1999, workman had been receiving the last pay drawn i.e. Rs.1050/- per month, even he continued to receive the salary for three more years after the date of retirement, because after attaining the age of superannuation, workman had already retired in October, 2015.

Thus, counsel for the petitioner – Management, submits that in any case, the reinstatement with continuity in service, would not be possible, for an employee, who served for a short period and that too, more than 35 years back. Not only this, workman has been receiving the amount under Section 17-B of the ID Act uptill September, 2018, whereas, actual date of retirement was October 2015, after attaining the age of superannuation.

Thus, total amount of Rs.31,331/- has been paid in excess to the workman.

Therefore, for settling the grouse of the workman (respondent No.2 herein), one time lump-sum compensation amount can be ordered to be paid in terms of the observation made by Hon'ble Apex Court in **Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma, 2018 AIR (Supreme Court) 5280 : Law Finder Doc Id # 1273657.** The relevant part of the judgment is reproduced as under:-

“14. In a case of this nature, and having regard to the fact that many decades had passed in between with no evidence adduced by the respondent that whether he was gainfully employed from 1977 onwards or not, the Labour Court should have awarded lump sum money compensation to the respondent in lieu of the relief of reinstatement along with payment of back wages and continuity of service by taking recourse to the powers under Section 11–A of the Act, rather than to direct his reinstatement with all consequential benefits.

*15. In other words, having regard to the peculiar nature of the respondent's appointment and rendering of services by him for a very short duration (just 240 days only) and with no evidence as to whether he worked for gains or not after his services came to an end in 1977, this was a fit case where the Labour Court should have awarded lump sum compensation to the respondent instead of directing his reinstatement in service with consequential benefits. The Labour Court was empowered to pass such order by taking recourse to the powers under Section 11–A of the Act. This has also been the view of this Court in such type of cases. (See– **Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal Assistant Engineer Rajasthan***

CWP-4740-1999 (O&M)

- 6 -

Development Corporation vs Gitam Singh 2010(2) S.C.t. 609 : (2010) 6 SCC 733 and Assistant Engineer, Rajasthan Development Corporation & Ors. vs. Gitam Singh, 2013(92) S.C.T. 30 : (2013) 5 SCC 136).

16. *In view of the foregoing discussion, we allow this appeal in part and while modifying the impugned order and the award of the Labour Court, direct the appellant to pay a sum of Rs. 50,000/- in lump sum to the respondent (employee) by way of compensation in lieu of respondent's right to claim reinstatement in service.*

17. *The amount of compensation is fixed by this Court after taking into account all facts and circumstances of the case including the fact of making payment to the respondent by way of monthly salary during pendency of the writ petition/intra court appeal by the appellant under Section 17-B of the Act. In our view, it is a reasonable compensation in the facts of this case.*

18. *Let the amount of Rs.50,000/- be paid to the respondent by the appellant within three months from the date of this order."*

11. I have heard counsel for the parties and perused the relevant material available on record., therefore, after considering the totality of the circumstances, while maintaining the award only with respect to the violation of Section 25-F of the ID Act, the other findings are modified, and the workman would be paid lump-sum amount of Rs.3.00 lakhs, as compensation, because, he was forced to be out of job for last more than 36 years.

Besides, considering the agony and pain of the workman, the

CWP-4740-1999 (O&M)

- 7 -

total amount of compensation of Rs.3.00 lakhs towards all the claims as granted under the impugned award would be paid by the Management (petitioner herein) within a period of three months from today i.e. on or before 27.07.2024, failing which, petitioner – Management would be liable to pay the lump-sum amount of compensation of Rs.3.00 lakhs along with interest @ 6% per annum, from 25.07.2024 onwards.

12. With the aforesaid modification in the impugned award, the writ petition stands **disposed of**, in the above terms.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

April 23, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~