

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-9455-2004(O&M)
Date of Decision:16.04.2024

PEPSU ROAD TRANSPORT CORPORATION

.... Petitioner

Versus

PRESIDING OFFICER, LABOUR COURT AND ANR

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

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

Mr.R.K. Arora, Advocate and
Mr. Jugam Arora, Advocate
for respondent No.2

SANJAY VASHISTH, J.(Oral)

1. Present writ petition has been filed by the Management-Pepsu Road Transport Corporation, against the award dated 24.03.2004 (Annexure P-2) passed by learned Labour Court, whereby reference No.126 of 1998 filed under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'), has been answered in favour of respondent No.2-Workman.

2. This Court, while admitting the writ petition on 02.07.2004 had stayed operation of the impugned award subject to the provisions of Section 17 B of the Act of 1947.

3. Mr. R.K. Arora, counsel representing respondent No.2-workman points out that the impugned award is dated 24.03.2004 and

immediately thereafter, petitioner-Management had passed an order dated 11.06.2004 (Annexure R2/1), whereby workman was reinstated in the service in compliance to the award with continuity of service and salary was also fixed after counting his annual increments during the period of his termination. Not only this, the workman was declared to be retired on 31.12.2001 on account of attaining the age of superannuation i.e. of 58 years on 14.12.2001.

For the sake of convenience, order dated 11.06.2004 is reproduced herebelow:

*‘ Pepsu Road Transport Corporation,
Bathinda Depot.
No.194/Admn. Dated 11.06.04*

ORDER

In compliance with the award dated 24.03.04 passed by the Hon'ble Presiding Officer, Labour Court Patiala termination order No. 555 Dated 22.07.92 of Sh. Amarjit Singh, Driver No. 59-A is hereby cancelled. He is reinstated in service in the Pepsu Road Transport Corporation with immediate effect. After granting him continuity of service and after counting his annual increments for the period of termination, his salary is 'being fixed but he will not be entitled for any back wages for the period of termination.

Sh. Amarjit Singh, Driver No. 59 A who had attained the age of 58 Years on 14.12.2001 is relieved from service of the Pepsu Road Transport Corporation w.e.f 31.12.2001.

Endst. No: 1309 / Admn

*Sd/- General Manager,
P.R.T.C Bathinda.
Dated:’*

4. Immediately thereafter, on 18.06.2004 another order was passed for withdrawal of the earlier order dated 11.06.2004.

For the sake of convenience, the order dated 18.06.2004 (Annexure R-2/2) is reproduced herebelow:

*‘ Pepsu Road Transport Corporation,
Bathinda Depot.*

No.194/Admn. Dated 11.06.04

ORDER

Order No. 194 / Admn Dated 11.06.2004 of this office passed in respect of Sh. Amarjit Singh Driver No. 59 - A in compliance with the award dated 24.03.04 passed by the Hon'ble Presiding Officer, Labour Court Patiala is hereby withdrawn with immediate effect because the competent authority regarding the appointment of this employee is the Hon'ble Managing Director, P.R.T.C Patiala.

Sd/-

*General Manager,
P.R.T.C Bathinda.*

Endst. No: 1441 / Admn

Dated: 18.06.04'

Thus, Mr. R.K. Arora, learned counsel for respondent No.2-workman submits that by concealing both the aforementioned orders, petitioner-Management succeeded in obtaining the order of stay of operation of the impugned award dated 24.03.2004.

5. Learned counsel for respondent No.2 further submits that even the provisions of Section 17-B of the Act of 1947 were never complied with, during the pendency of the present writ petition.

6. At this stage, learned counsel for the parties have agreed to address their submissions on the merits of the case for its disposal.

7. Brief factual matrix of the case is that respondent No.2- Amarjit Singh (workman) raised an industrial dispute under Section 10 (1) (C) of the Act of 1947 against the order of his termination from service and same was forwarded to the Industrial Tribunal-cum-Labour Court, Patiala as reference No.126 of 1998.

8. After examining the record, learned Tribunal recorded its findings that workman remained absent unauthorisedly for a period of three months, but he has rendered his satisfactory service of 23 years

to the Management (petitioner herein). Accordingly, by setting aside the termination order, learned Labour Court reinstated him with continuity of service, however, nothing was granted towards the back wages. The explanation in regard to the absence from duty has been given by the workman during proceedings that his wife was seriously ill and therefore, he was looking after her.

9. It is a case where the petitioner has admitted his absence from the office i.e. petitioner-Management, but said absence has been attributed to the reason of illness of his wife. Learned counsel for respondent No.2-workman relies upon the order dated 09.07.2007 passed by the Division bench of this Court, passed in CWP-18908-2006, titled as '*Pepsu Road Transport Corporation and another Vs. Presiding officer, Labour Court and another*' and submits that in almost similar circumstances, the service period of around 21 years was considered by the Labour Court qua the driver, who was employed with PEPSU Road Transport Corporation (same corporation), when the reason for his absence was his own illness.

10. While taking note of the judgments of the Hon'ble Apex Court, titled as '*Hussaini Vs. The Hon. The Chief Justice of High Court of Judicature at Allahabad and others, AIR 1985 SC 75*' and '*Ex. Const. Ranbir Singh No.323/SPT Vs. The State of Haryana and others, 1999(1) RSJ 527*', Hon'ble Division of this Court agreed with the view of the Labour Court and thus, upheld that instead of

dismissal from service, the employee may be taken to have retired and be paid retiral benefits as per rules.

For the sake of convenience, order dated 09.07.2007 passed by the Division bench of this Court is reproduced herein below:

'CORAM:- HON'BLE MR. JUSTICE

ADARSH KUMAR GOEL

HON'BLE MR. JUSTICE AJAI LAMAB

*Present: Mr. S.P. Garg, Advocate for
the petitioners.*

*Ms. Sonia G. Singh, Advocate
for respondents.*

ORDER:

This petition challenges award of the Labour Court, directing the petitioners to release the retiral benefits to respondent No.2- workman by treating his period of absence as period of leave without pay

Dispute was referred to the Labour Court at the instance of the workman. Claim of the workman was that he was appointed as Driver with the petitioners in the year 1978 and his services were terminated on 15.4.1999 without holding any proper inquiry.

Management took the plea that the workman absented from 28.5.1998 and after ex-parte inquiry, his services were terminated vide order dated 15.4. 1999,

The Labour Court held that the allegation of willful absence of the workman after 28.5.1998 was duly proved, but since he was suffering from a serious ailment and had already attained the age of retirement, he was entitled to reinstatement without any backwages. As a result of reinstatement, he will be entitled to retirement benefits as per rules.

Learned counsel for the petitioners submitted that once the workman was willfully absent, the Labour Court was not justified in holding that the workman was entitled to any benefit.

Learned counsel for the respondent-workman, however, submitted that the workman had already rendered 21 years of service and had become eligible for retirement benefits. Reliance was placed on a judgment of the Hon'ble Supreme Court in

Hussaini v. The Hon. The Chief Justice of High Court of Judicature at Allahabad and others AIR 1985 SC 75 and a judgment of this Court in Ex.Const. Ran bir Singh No.323/SPT v. The State of Haryana and others 1999(1) RSJ 527

Even though the reasoning given by the Labour Court for holding that the workman was entitled to reinstatement, may be open to doubt, but even without going into the said question, we find that the workman had already rendered 21 years of service and was suffering from serious ailment on account of which he was absented. In these circumstances, the view taken by the Labour Court that instead of dismissal from service, he may be taken to have retired and paid retirement benefits as per rules, cannot be held to be suffering from any patent error so as to call for interference of this Court under Article 226 of the Constitution of India.

The petition is dismissed.

July 09, 2007

*sd/-Adarsh Kumar Goel
Judge*

*Sd/- Ajai Lamba
Judge'*

11. If the view point taken by the Hon'ble Division Bench is made applicable to the facts and circumstances of the present case, the arguments submitted by counsel for the workman are fortified, because in present case also the plea taken by the workman is that his wife was suffering from serious ailment and for that reason he absented from the duty. It is also admitted position in the present case that workman joined as Driver with PEPSU on 17.12.1969 and after holding a departmental inquiry, he was terminated from service on 20.07.1992. Thus, the workman had rendered 23 years of service to the Management and there is nothing on record to indicate any kind of complaint of misconduct against the workman during the said period.

12. Accordingly, the present writ petition is allowed and the impugned award is modified to the extent that the order of termination dated 20.07.1992 would be considered as ineffective and the petitioner-Management would pass a fresh order, by considering the workman to be compulsorily retired after rendering his service of 23 years.

Accordingly, all the retiral benefits available to him as per the rules would also be extended, without any unnecessary delay.

April 16, 2024	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no