

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

CWP-12209-2017

Date of Decision: April 03, 2024

Gulab Sharma

...Petitioner

Versus

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

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sukhdev Singh, Advocate,
for the petitioner – Workman.

Mr. N.K. Chhokar, Advocate,
for respondent No. 2 – Management.

SANJAY VASHISTH, J.

1. Petitioner – Gulab Sharma (here-after referred to as, ‘the Workman), has preferred this petition, under Articles 226/227 of the Constitution of India, for quashing the impugned award dated 07.09.2015 (Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court-II, Gurgaon (for short, ‘the Tribunal’), to the extent of awarding a lump-sum compensation of Rs. 40,000/- instead of reinstatement with full back wages. The workman also prayed for issuance of a writ in the nature of mandamus, directing respondent No. 2 – Management, to reinstate him in service with full back wages.

2. Facts in brief are that an industrial dispute was raised by the workman, which was referred to the Tribunal for adjudication, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, ‘the Act’), being

Reference No. 118 of 2011, dated 06.06.2011. In the demand notice, the

workman pleaded that he was appointed as Storeman with the management on 10.12.2007, without issuing any appointment letter. And, on 19.10.2010, without clearing his final dues, resignation was obtained from him by the management forcibly. The workman also claimed that at the time of removing him from service, his monthly salary was Rs.10,000/-. It was, thus, pleaded that termination of the workman was in violation of the provisions of Section 25-F of the Act, and claimed reinstatement in service with continuity of service with full back wages and other benefits.

3. In the written statement, the management opposed the claim of the workman, by raising preliminary objection that he does not fall under the definition of 'workman', as defined under Section 2(s) of the Act, because the workman was discharging duty in managerial and supervisory cadre. It was also highlighted that it is not a case of termination of services, rather the workman had tendered his resignation. On merits, the management took the stand that a complaint of thefts of goods of company, was received against the workman. For probe, when the workman was asked to come along with the supplier, for clarification in the matter, he opted to resign from the job. The management also admitted the last wages of the workman as Rs.10,500/- per month.

4. After completion of pleadings, the Tribunal vide order dated 09.04.2012, framed the following issues:-

- “(1) Whether the termination of the services of workman is illegal and unjustified, if so to what effect? OPW*
- (2) Whether the workman is not covered under the definition of 'workman' under I.D Act? OPM*
- (3) Relief.”*

5. While taking up Issue Nos. 1 and 2 together, being inter-connected, the Tribunal has held that the workman falls under the definition of 'workman', because the management failed to prove or show that he was discharging the Supervisory/Managerial functions.

6. On the issue of 'forcible resignation', as claimed by the workman and opposed by the management, the Tribunal, after analysing the evidence led by both the parties, came to the conclusion that the management has not placed anything on file to prove the factum of acceptance of the resignation allegedly submitted by the workman. Further noticed that the workman had sent letter (Ex. P-3) through registered post, by virtue of which he has withdrawn his resignation. Thus, it has been proved that the resignation submitted by the workman was withdrawn by him, vide letter (Ex. P-3).

7. With regard to non-payment of full and final dues of the workman, while referring to the testimony of S.P. Yadav (MW-1), the Tribunal has noticed that the management has not cleared the full and final dues nor they have raised a demand on the workman that after adjusting the dues how much amount of the management is due towards him. Rather, the stand taken by said witness (MW-1) was that the management was still ready to take the workman back on duty. However, no such stand was taken before the Labour-cum-Conciliation Officer.

8. Lastly, the Tribunal recorded its finding in relation to reinstatement and back wages, by opining that it is not a fit case where reinstatement and back wages could be granted, because despite calling the

workman by the management, to reconcile the stock, he never turned up for the said purpose. Thus, the Tribunal has awarded only a lump-sum compensation amount of Rs.40,000/-, in favour of the workman, to be paid by the management. The observations made by the Tribunal, in para Nos. 14 and 15 of the impugned award, says as under:-

“14. One thing is very clear that the workman has not been allowed to work by the management after they received email of resignation. It is also clear that the workman after submitting the resignation but prior to 8.3.2010 had not worked in the company. It has also come on the file that a complaint Ex. M-10 was received by the company from their vendor. Whether the complaint was genuine or not, the management has not been able to prove that on file nor they have been able to place on file any material that they conducted any domestic enquiry into the alleged irregularities committed by the workman. But since the workman has not been able to show that he has worked in the company from the date of submission of resignation till 8.3.2010 when the same was withdrawn. So, there appears to be also some sort of unwillingness from the bank (?) side to continue with the job in the management company.

15. On the other hand, the management had been calling workman by writing email to reconcile the stock and there is nothing on the file that to show that for compliance of this email the workman ever went to the company to reconcile the stock. Therefore, in my considered opinion, this is not a fit case where reinstatement and back wages should be granted, rather I am of the view that a lump sum compensation is required to be granted to the workman because the management has neither accepted his resignation nor conducted domestic enquiry into the alleged irregularities committed by the workman. Therefore, in the given set of facts and circumstances of the case since the company has also not followed the mandate of section 25-F of the Act and the workman had put in approximately two years of service in the company, so the workman is held entitled for a lump sum compensation of Rs. 40,000/- to be paid by the management. Hence, issues No. 1 & 2 are decided in favour of the workman and against respondent.”

9. During course of hearing of the writ petition, learned counsel

representing the workman has not been able to pin point any illegality or perversity in the findings recorded by the Tribunal, except that a meagre compensation amount of Rs. 40,000/- has been awarded in favour of the workman. In this regard, attention of the Court has been drawn to the fact that even as per own admission by the management in its written statement, the workman was drawing the last wages of Rs.10,500/- per month, and he has rendered service for more than 2 years, from 10.12.2007 to 08.03.2010. Thus, it has been argued that the workman will be satisfied if the impugned award is modified to the extent of enhancement of compensation amount suitably.

11. On the other hand, learned counsel for respondent No. 2 – Management while opposing the prayer made, submits that the Tribunal after seeing the act and conduct of the workman, as well as other facts and circumstances of the case, has awarded a just and reasonable compensation, which requires no interference by this Court, in exercise of jurisdiction under Articles 226/227 of the Constitution of India.

12. This Court has gone through the documents appended with the writ petition, perused the impugned award and also heard the submissions advanced by learned counsel for the parties.

13. Taking into consideration, the totality of circumstances, reading out the documents appended with the writ petition, I find that a well reasoned award has been passed by the Tribunal, after analysing the evidence brought on record before it.

Considering the fact that despite withdrawal of resignation by

the workman, vide letter Ex. P-3, the management has not taken the required steps to inquire into the matter of alleged complaint against the workman, and that there was also lapse on the part of the workman in not appearing before the management to reconcile the stock, this Court is in tandem with the view taken by the Tribunal that it is not a fit case for reinstatement with continuity of service and back wages. Yet, after taking into account the length of service rendered by the workman and the last wages of Rs.10,500/- per month, being drawn by him, this Court feels that the lump-sum compensation amount of Rs. 40,000/-, as awarded by the Tribunal, needs to be enhanced to Rs. 2,00,000/-.

For coming to this conclusion, this Court is guided by the Division Bench judgement of this Court (Punjab and Haryana High Court), rendered in the case of Deputy General Manager (Telecom), Bharat Sanchar Nigam Limited, Sangrur v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another (LPA No. 1334 of 2009, decided on 30.01.2014).

14. As a result of above discussion, impugned award dated 07.09.2015, passed by the Tribunal is modified to the extent that the workman shall be entitled to receive lump-sum compensation amount of Rs.2,00,000/- (Rupees Two lacs only), and same shall be paid by respondent No. 2 - management on or before 03.06.2024. In case of default/non-compliance to pay said amount within the prescribed time period, respondent No. 2 – management would also be liable to pay interest @ 6% per annum over the amount of Rs.2,00,000/-, with effect from the date of this

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judgement till the date of actual payment.

15. With the above observations and modification, this writ petition, stands **disposed of**.

(SANJAY VASHISTH)
JUDGE

April 03, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes/No
Whether reportable?	✓ Yes/No