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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Judgement Reserved on: April 15, 2024

Judgement Pronounced on: May 01, 2024

M/s Prompt Security Services

.... Petitioner

Versus

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

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. Deepak Sonak, Advocate, and
Mr. Vikas Sonak, Advocate,
for respondent No. 2.

SANJAY VASHISTH, J.

1. Petitioner – M/s Prompt Security Services, being management, has filed the present writ petition, impugning the award dated 07.11.2016 (Annexure P-1), passed by the Industrial Tribunal-cum-Labour Court-II, Faridabad (hereafter referred to as, ‘the Tribunal’), whereby Reference No. 111 of 2013, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, ‘the 1947 Act’), has been answered in favour of respondent No. 2 – Mahabir Singh (workman).

The Tribunal has held that termination of the workman is in complete violation of the statutory provisions of the 1947 Act and, thus, held

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him entitled for reinstatement, with continuity of service and 25% back wages, from the date of demand notice.

2. Pledged case of the workman is that he worked with the management as 'Field-Worker' since 01.04.2005, and was drawing monthly salary of Rs.7,250/-. He had availed leave from 15.12.2010 to 30.09.2012, and on return from leave, when went to join duty with fitness certificate on 30.09.2012 and again on 01.10.2012, he was not allowed to do so. He was stopped on the gate of the factory on the ground that there was no work for him, which, in fact, was nothing but an illegal act of termination of service, in violation of the provisions of the 1947 Act.

3. In defence, the management pleaded in its written statement that the workman was appointed as 'Field Officer' w.e.f. 01.03.2009. Since he was suffering from some chronic disease, he remained on leave from 15.12.2010 to 29.09.2012. On 30.09.2012, he came to duty alongwith his fitness certificate, but refused to join the work as 'Field Officer', expressing his inability to do so on account of weakness. Thereafter, he never reported for duty, and rather joined duty somewhere else in October, 2012.

Management also pleaded that, in fact, it is not a case of removal from service, rather the workman himself abandoned the job and, thus, there was no occasion to make compliance of the statutory provisions of the 1947 Act.

4. After filing of rejoinder by the workman, the Tribunal framed following three issues on 08.09.2014:-

“1. Whether the termination of the services of workman Sh. Mahabir Singh is illegal. If so, to what relief he is entitled? OPW

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2. *Whether the workman himself left the job as alleged. If so, its effect? OPM*

3. *Relief.”*

5. It is an admitted case of the management that workman was its employee and he was on medical leave from 15.12.2010 to 29.09.2012. As per fitness certificate (Mark A-6), the workman was certified to be fit for resuming duty w.e.f. 30.09.2012.

Despite all this, Manish Taneja, who appeared as MW-1, i.e. witness of the management, in his cross-examination admitted that name of the workman was struck-off in the attendance register w.e.f. 01.10.2012, without making payment of full and final dues.

6. Looking at the pleadings and the conduct of the management, the Tribunal examined the Failure-Report (Ex. W-3), which was prepared during course of conciliation proceedings, and thereupon gave its finding that had the stand taken by the management been true, there could not be any reason that at the time of conducting of conciliation proceedings, why the management would not offer the workman to take him back on duty or to pay his full and final dues. Thus, the stand taken by the management was held to be not trustworthy and the Tribunal reached to the conclusion that termination of the services of the workman is against the provisions of the 1947 Act. The findings recorded by the Tribunal in paragraph Nos. 10 and 11 of the impugned award, are reproduced as under:-

“10. Undisputedly, the workman was an employee of the respondent and it is also an admitted fact that he had remained on medical leave during the period from 15.12.2010 to 29.09.2012. Mark A6 is the copy of the Fitness-Certificate of the workman wherein he has been certified to be fit for

resuming the duty w.e.f. 30.09.2012. Though, the respondent has denied the factum of its having terminated the services of the workman but it is pertinent to mention here that during his cross-examination, the afore-said MW1 has stated that they had struck-off the name of the workman in the Attendance-Register w.e.f. 01.10.2012 and had not paid him the full and final dues at that time. Exhibit W3 is the copy of the Failure-Report wherein it has been specifically recorded that during the conciliation proceedings, the respondent did not offer to take the workman back on the duty or to pay his full and final dues and did not submit any written comments. All the above-discussed facts and circumstances unequivocally lead to the only irresistible conclusion that the respondent had terminated the services of the workman in contravention of the mandatory provisions of the Act and in these circumstances, the workman is entitled to the relief of his reinstatement with continuity of service.

11. As regards the relief qua the back wages as claimed by the workman, it is worthwhile to mention here that the services of the workman were terminated by the respondent on 30.09.2012 but a perusal of Exhibit MW2/5, i.e. the copy of the record regarding the ESI contributions of the workman, shows that his contributions were being deposited with ESIC since October, 2012 and MW2 Sunil Kumar, the Assistant in the Branch Office of the ESI Corporation, Faridabad, has categorically deposed during his examination-in-chief itself that presently, the workman is employed with Om Industries but however, the fact remains that admittedly, the workman was drawing the monthly salary to the tune of Rs. 7250/- while working with the respondent whereas in Exhibit MW2/5, his salary during the period from October, 2012 till March, 2016 is shown to be ranging between Rs. 4000-6000/- approximately except for the period from May to July, 2013 and the month of December, 2015. In these circumstances, it is explicit that the workman has been working with his above-said present employer at a salary lesser than the afore-said monthly salary as was being (paid?) to him by the respondent. It being so, this Court is of the considered opinion that the ends of justice will best be served if he is granted the back wages @ 25% from the date of the demand notice.”

7. While addressing submissions, Mr. Harsh Aggarwal, learned counsel representing the petitioner-management, submits that as per the record of the Employees State Insurance Corporation (ESIC), which was proved by the management as Ex. MW2/5 [attached as Annexure P-4 (colly)]

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with the present writ petition], workman – Mahavir Singh, having Insurance No. 1306212595, was appointed on ‘01.10.2012’ with the employer, namely, Om Industries, having its Employer Code No. 13000484090000699, and drawn wages of Rs.4980/-, for 31 days in October, 2012, from the said employer. Meaning thereby, the workman was already in service from 01.10.2012 onwards with some other employer. Thus, learned counsel submits that the finding recorded by the Tribunal that termination of services of the workman on 01.10.2012, is in violation of the provisions of the 1947 Act, is liable to be set aside being totally misplaced.

8. Learned counsel for the petitioner-management further submits that had the workman approached the management to join duty on 01.10.2012, there was no reason for him to be present on the rolls of some other company on the same date i.e. 01.10.2012, which is duly registered with the Employees State Insurance Corporation (ESIC), as is evident and proved from Ex. MW2/5 [Annexure P-4 (colly)].

9. On the other hand, learned counsel for respondent No. 2 – workman vehemently controverted the said argument by submitting that the fitness certificate (Mark A6), is dated 30.09.2012 and as per the statement of the workman, he alongwith the fitness certificate, reached to the factory gate to join duty on 30.09.2012 itself and not on 01.10.2012. Therefore, the material date in the present case is 30.09.2012, to ascertain the job status of the workman, as also whether the action of the petitioner-management in denying the workman to join the duty, is sustainable and in accordance with law or not.

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Learned counsel for respondent No. 2 – workman also argued that in the given situation, the workman being a needy person, immediately joined the service with some other company on 01.10.2012, for the purpose of earning his livelihood. Therefore, while defending the impugned award, learned counsel prayed for dismissal of the writ petition.

10. Even otherwise also, admittedly while working with the petitioner-management, the workman was drawing monthly salary to the tune of Rs.7,250/- and the document Ex. MW2/5 would establish that from October, 2012 till March, 2016, he was working in some other company on monthly wages ranging between Rs.4000/- to 6000/-, except from May to July, 2013 and December, 2015. It has been so observed by the Tribunal also in paragraph No. 11 of the impugned award. In any case, the document relied upon by the petitioner-management i.e. Ex. MW2/5, rather would help the workman to say that in the compelling circumstances, he had joined the duty on a lesser salary, with some other company, namely, Om Industries.

11. I have gone through the pleadings raised in the present writ petition; other documents appended with it; apart the reasoning assigned in the impugned award; and the submissions addressed before this Court.

After thoroughly examining the same, I am of the considered opinion that there is no illegality in the findings recorded by the Tribunal in the impugned award because the issue for examination under the provisions of the 1947 is of dated 30.09.2012 only. It will not affect the merits of the case, if on the very next day i.e. 01.10.2012, the workman is shown to be working in the office of some other company. Merely mentioning of the name of the workman in some ESIC scheme would not debar him from

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seeking adjudication of the industrial dispute for which the right had accrued to him on 30.09.2012.

12. However, proceeding further this Court deems it appropriate to examine the case from the angle of the conduct of the petitioner-management also. It is admitted case of the workman that because of illness, he was granted leave from 15.12.2010 to 29.09.2012, i.e. for 1 year, 9 months and 14 days. In other words, the petitioner-management had duly considered the need of the hour and granted leave to the workman for getting himself treated for his chronic disease. This conduct of the management is not that ungraceful warranting to create a situation, to force it to re-employ the workman. In the year 2012, the workman was about 53 years of age. Thus, keeping in mind totality of the facts and circumstances, this Court would like to modify the award while granting one time lump-sum compensation to the workman, **instead of reinstatement with continuity of service and 25% backwages.**

13. At this stage, learned counsel for respondent No. 2 – workman has also produced photocopy of the order dated 25.09.2018, passed by the Tribunal in Application No. 17 of 2017, dated 11.12.2017, which was filed by the workman under Section 33-C(2) of the 1947 Act. Order dated 25.09.2018 is taken on record. Registry to tag the same at an appropriate place of the paper book. As per the calculation and computation, respondent No. 2 – workman claimed the following dues, to be paid by the petitioner-management:-

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1.	Wages due for the months from October 2012 to December 2012 (3 months) on Rs. 7250/- per month @ 25% as per award dated 07.11.2016.	Rs. 5438/-
2.	Wages due for the months from January 2013 to December 2013 (12 months) on Rs. 7750/- per month 25% as per award dated 07.11.2016	Rs. 23250/-
3.	Wages due for the months from January 2014 to December 2014 (12 months) on Rs. 8250/- per month 25% as per award dated 07.11.2016	Rs. 24750/-
4.	Wages due for the months from January 2015 to December 2015 (12 months) on Rs. 8750/- per month 25% as per award dated 07.11.2016	Rs. 26250/-
5.	Wages due for the months from January 2016 to December 2016 (12 months) on Rs. 9250/- per month 25% as per award dated 07.11.2016	Rs. 27750/-
6.	Wages due for the months from January 2017 to June 2017 (6 months) on Rs. 9750/- per month	Rs. 58500/-
7.	Bonue due year 2011-12	Rs. 7250/-
8.	Bonus due year 2012-13	Rs. 1813/-
9.	Bonus due year 2013-14	Rs. 1938/-
10.	Bonus due year 2014-15	Rs. 2063/-
11.	Bonus due year 2015-16	Rs. 2188/-
12.	Leave due 30 days	Rs. 9750/-
	Total amount	Rs. 1,90,940/-

Vide the order dated 25.09.2018, while passing an *ex parte* order, the workman has been held to be entitled to recover an amount of Rs.1,90,940/- from the petitioner-management, payable within a period of three months, failing which he was entitled to recover the said amount alongwith interest @ 9% per annum from the date of filing of the said application till realization of the amount.

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14. Taking note of the fact that already there is an executable order dated 25.09.2018, though *ex parte*, for recovery of an amount of Rs.1,90,940/- alongwith interest @ 9% per annum, in addition this Court deems it appropriate to hold respondent No. 2 – workman entitled for the lump-sum amount of compensation as Rs.3,30,000/-. This amount has been assessed by modifying/replacing the order of reinstatement with continuity of past service and back wages etc.

The lump-sum amount of compensation i.e. Rs.3,30,000/- shall be paid by the petitioner-management within a period of three months i.e. on or before 31.07.2024, failing which respondent No. 2 – workman will also be entitled to recover interest @ 6% per annum w.e.f. 01.08.2024 till the date of realization.

With the above modification in the impugned award dated 07.11.2016, passed by the Tribunal, present writ petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

May 01, 2024
Pkapoor

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