

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: April 19, 2024

Sr. No.	Case No.	Case Title		Reference No. before Labour Court
		Petitioner(s)	Respondent(s)	
01	CWP-2541-2015 (O&M)	1) Director M/s ISS Facility Services India Pvt. Ltd. 2) Managemet M/s ISS Facility Services India Pvt. Ltd.	1. Subhash Chander 2. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon	88 of 2012
02	CWP-2542-2015 (O&M)	1) Director M/s ISS Facility Services India Pvt. Ltd. 2) Managemet M/s ISS Facility Services India Pvt. Ltd.	1. Satish Kumar 2. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon	83 of 2012
03	CWP-2543-2015 (O&M)	1) Director M/s ISS Facility Services India Pvt. Ltd. 2) Managemet M/s ISS Facility Services India Pvt. Ltd.	1. Naresh Sharma 2. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon	89 of 2012
04	CWP-2544-2015(O &M)	1) Director M/s ISS Facility Services India Pvt. Ltd. 2) Managemet M/s ISS Facility Services India Pvt. Ltd.	1. Sunil Kumar 2. Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon	90 of 2012

CWP-2541-2015(O&M) & connected petitions

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CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

ARGUED BY:

**For Director M/s : Mr. Sumer Singh Brar, in all 04 Writ
ISS Facility Advocate Petitions
Services India
Pvt. Ltd.**

**2) Managemet
M/s ISS Facility
Services India
Pvt. Ltd.**

**For respondent : Mr. Sukhdev Singh in all 04 writ
No. 1 - Workman Advocate petitions**

SANJAY VASHISTH, J.

1. This common judgement shall dispose of aforementioned 04 writ petitions because common questions of law and similar facts are involved, in this bunch of petitions.

2. Petitioners- **Director - M/s ISS Facility Services India Pvt. Ltd. and Management - M/s ISS Facility Services India Pvt. Ltd.** (being management), have filed the present writ petitions by challenging the award dated 10.10.2014 (Annexure P-1) (in all the four writ petitions) passed by Industrial Tribunal-cum Labour Court-II, Gurugram, whereby references as mentioned above have been answered in favour of respondent No.1-workman(s) (in all the four writ petitions).

3. For the reason that the facts of these petitions are identical, to avoid repetition and for the sake of brevity, the facts as pleaded in CWP No. 2541 of 2015, are being referred in subsequent paras of this judgement, by

treating the same as a lead case.

4. While holding that the termination of the workman was in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act of 1947'), learned Tribunal held that workman is entitled for reinstatement in service with its continuity and full back wages from the date of his termination till his reinstatement in service alongwith all consequential benefits.

5. Pleaded facts of the workman are that he was appointed with the Management on 20.04.2010 as Gen. Operator and was recruited in the Office at Gurgaon. Thereafter, Management sent workman to M/s Asian paints Ltd., IMT, Rohtak. On 30.04.2011, workman was called at Gurgaon office by Manager and was directed to discharge his duties at Gurgaon. However, on 01.05.2011 when the workman went to join the duty, Management refused to allow him to perform his duties. While doing so, neither notice was issued nor charge sheet was framed. Further, no compensation amount was paid. Thus, he was removed from the service in violation of Section 25-F of the Act of 1947, because required period of 240 working days in one preceding calender year from the date of termination had been fulfilled by him. He claimed his monthly salary as Rs.10,000/- at the time of termination from service.

6. On the other hand, in the written statement, a plea was taken that the workman was appointed for a limited period and his services were not required after completion of the work at site. It was further pleaded that after completion of work with M/s Asian Paints Ltd. (Gurgaon), workman

never reported to the company or at the office at IMT, Rohtak. Management relied upon the resignation dated 12.05.2011 and pleaded that one letter was written by workman on 24.05.2011 stating therein that amount received by him towards full and final settlement of the account was short. Thus, as per Management, it was the case of voluntary resignation and he even accepted the settlement amount. However, later on, to bargain with the Management regarding the amount received by him, he claimed the amount to be short.

7. While dealing with the defence taken by the Management, learned Tribunal examined the record and found that no substantive evidence has been led by the Management to substantiate its pleadings. The plea of resignation has been outrightly rejected.

For the sake of convenience, findings recorded by learned Tribunal in paragraph Nos.11, 12, 13 and 14 are reproduced herebelow:

“11. In our case, the management is relying upon Ex.P-2 appointment letter and is contending two contradictory things. First that the appointment of the workman was on term basis (for specified period). If we look at the language of appointment letter then it is revealed that the workman was appointed as DG Operator with the Management company but was given posting at Asian Paints, Gurgaon. Clause-I of the appointment letter further shows that he was kept on probation for a specified period of six months. If the appointment of the workman was for specified period then there was no necessity for management to keep him on probation with a clause that on satisfactory completion of probation period, he shall be automatically confirmed in the services of the company. In fact services of workman were confirmed in the company vide letter Ex.P-4. This shows that the workman was kept in the services by the management and placing of reliance on Clause VI of Ex.P-2 is misnomer. Ex.P-4, Clause VII further shows that the workman was the

employee of respondent company and on completion of their contractor at the site, he was to report back in their office. Thus, the arguments of learned Authorized Representative for the management that the workman was kept on term basis fails to impress me.

12. *No evidence has been led by the management on the file, but still if the theory of resigning from the services propounded by the management is believed which was the second point of his arguments then it weakens the stand of the management. From Annexure-A resignation letter, it is revealed that the signatures of the workman are appended on it in the middle of paper does not fit in its configuration. This shows that the signatures of the workman were taken enmass on papers and the resignation letter was got typed on it later on. Had it been not, so then signatures of workman shown have been affixed at proper place. Moreover, ne reasons have been mentioned in the resignation letter, if it can not be called so, why the workman is resigning from the services and if no reasons are mentioned then the court can presume that such resignation obtained by the management is forcible, for which, he has relied upon M/s Atlas Cycle (Haryana) Ltd. Versus Kitab Singh, 2013 (2) SCT 160.*

13. *Taking forcible resignation or resignation under undue influence, fraud, misrepresentation, threat or coercion would fall under the definition of termination, for which, Tata Robins Fraser Company Ltd. Versus The Presiding Officer, Labour Court, Jamshedpur etc., 1990 LLR 10 can be referred to. Moreover, the resignation should have been accepted within the reasonable time, but in this case the resignation is shown to be submitted on 12.5.2011 and everything including acceptance, payment is shown on the same very date and this raises doubt about the theory of resignation. Reference to citation Devashola Estate versus Backlam etc., 1993 LLR 313 can be made. Moreover, the acceptance of resignation should be in writing and mere oral acceptance of resignation is not sufficient and for my views reference to citation K.Sudha Nagarai versus The Chief Manager, Andhra Bank etc., 1996 LLR 847 can be made. Therefore, even if it is believed to be a case of resignation then also it does not satisfy the parameters of the law in view of the citation referred above.*

14. The third contention of the management that the workman has accepted his full and final dues can also not be accepted. Firstly because there is no evidence led by the management on this point and secondly from the so-called letters Annexure B & C, nothing can be deduced that the same were towards full and final settlement of the amount. Annexure E payment voucher shows the purpose of paying of amount, but these were not filled in by workman and the management has not proved this document before the court as to in whose writing this document was. Therefore, the present can not be said to be a case where the workman has received his full and final dues and has left the job of his own accord. No supporting evidence of the management witness is there on the file. Therefore, the version of the management can not be believed and for the reason, benefit of citation of Nand Lal (supra) can not be availed by the management. Since, the management has failed to show that the appointment of workman was for specified period/terms, therefore, no benefit of citation Uma Devi(supra) can accrue to the management.”

8. Even during the course of hearing before this Court, counsel representing the Management referred to the resignation letter dated 12.05.2011 (Annexure P-5), where, in the middle of the page, workman is shown to have signed in English in capital letters as “**SUBHASH CHANDER**”. When the Court wanted to compare the said signatures with the signatures affixed on the application (Annexure P-7) allegedly submitted by the workman to the Management apprising it of receiving lesser amount towards the settlement, the said signatures were in “Hindi”.

Not only this, Court is surprised to note that the alleged resignation is dated 12.05.2011 and demand notice is dated 27.06.2011 (Annexure P-9).

9. On the other hand, Management has relied upon the receiving

of payment by the workman towards final settlement on 09.05.2011 (Annexure P-6). On 24.05.2011 i.e. after 15 days, the Management is apprised by the workman of shortage of Rs.800/- in the cheque amount. Few days thereafter on 09.06.2011, the said deficit amount of Rs.800/- is shown to be received by the workman (Annexure P-8).

This Court is surprised with the chain of events & if the stand taken by the Management is to be believed, then on 09.05.2011, once the amount for settlement had been received by the workman, there was no reason for submitting resignation on 12.05.2011. Moreover, the amount which fell short could have been reflected/mentioned in document of resignation letter. Once, resignation has been submitted within 12 days thereafter, there cannot be any reason to point out the deficit amount of Rs.800/- and even if the deficit of the amount is believed to be true, after receiving the same on 09.06.2011, there could not be any special reason for the workman to issue demand notice dated 27.06.2011 i.e. just after 17/18 days.

10. Further to substantiate the stand taken by the Management regarding the events having taken place from 09.5.2011 to 09.06.2011, no substantive evidence has been led by it. Even in the documents prepared i.e.,

(a) Resignation letter dated 12.05.2011 (Annexure P-5);

(b) Payment reference dated 09.05.2011(Annexure P-6);

(c) Notice of shortage of Rs.800/- dated 24.05.2011 (Annexure P-7); and

(d)Receiving of the balance amount which fell short dated 09.06.2011(Annexure P-8);

no where, reference of anyone associated with the Management exists, rather everywhere signatures of only workman appears. It shows that the Management infact has done padding of evidence by preparing documents for raising a designed defence, for defeating the rights of the workman.

11. Therefore, looking at the conduct of the Management and there being no evidence led by it for substantiating the pleadings raised by it, this Court does not find any reason to interfere with the findings recorded by learned Tribunal. Therefore, the termination is held to be illegal in violation of Section 25-F of the Act of 1947.

Moreover, taking into consideration that the full back wages have been awarded by the Tribunal for the period respondent No.1-workman remained out of service i.e. 01.05.2011 (date of termination) till 10.10.2014 (passing of the award) which are to be counted at the rate of his last drawn salary i.e Rs.10,000/- per month, he would be entitled to the total amount of around Rs.4,10,000/- (Rupees Four lakh ten thousand only) towards back wages.

12. Therefore, Management is directed either to implement the impugned award in all respects or alternatively, pay a lump sum amount of compensation of Rs.5,00,000/-(Rupees Five Lacs), to each of the workman in all the four writ petitions and said amount would include the benefit granted by learned Labour Court towards the back wages also.

13. In case, Management opts the alternate option to pay lump sum compensation of Rs.5,00,000 (five lacs only), the same shall be paid by the

Management to respondent No.1-Workman in all the writ petitions within a period of three months from the date of this order i.e. on or before 19.07.2024. It is further clarified that in case, the said payment is not made within the stipulated time, the same shall be paid alongwith interest @ 6% per annum applicable from 19.07.2024 onwards.

With the aforementioned terms, all the four writ petitions are disposed of.

(SANJAY VASHISTH)
JUDGE

April 19, 2024
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Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No