

CWP-27166-2015

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

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**CWP-27166-2015
Decided on: January 29, 2024**

M/s PCI Limited (Engg. Division), Gurgaon

...Petitioner

Versus

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

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rajiv Sharma, Advocate,
for the petitioner.

Mr. H.N. Sahu, Advocate,
for respondent No. 2.

SANJAY VASHISTH, J.

1. Petitioner-management, namely, M/s PCI Limited (Engg. Division), Gurgaon, has filed the present writ petition, by challenging award dated 01.09.2015 (Annexure P-35)[wrongly typed as '09.01.2015' in the head-note and prayer clause of the writ petition], passed by the learned Industrial Tribunal-cum-Labour Court, Gurgaon-II (hereafter referred to as, 'the Tribunal'), whereby Reference No. 158 of 2004, has been answered in favour of respondent No. 2 – Ramadhar Rajput (hereafter referred to as, 'the Workman').

2. Learned Tribunal has decided the question that termination of the workman w.e.f. 28.09.2001, is illegal and, therefore, he is entitled for his reinstatement with continuity in service and full back wages, from the date of his termination i.e. 28.09.2001 (wrongly typed as '28.9.2011' in the last

para of the impugned award, at page 127 of the paper book).

3. It is also noticed that prior to that, Issue No. 1 was also decided by the Tribunal in favour of the workman by holding that domestic inquiry has been conducted without affording adequate opportunity to defend himself (workman), by the person of his choice. On that basis, the inquiry conducted by the petitioner-management had already been held to be not fair and proper.

4. While challenging the final award dated 01.09.2015, on the date of issuance of notice of motion order, i.e. on 14.01.2016, petitioner-management withdrew its claim regarding reinstatement of respondent No. 2-workman, and prayed for considering the writ petition only qua the issue of grant of full back wages to the workman. In fact, stand of the petitioner-management is that for the said relief (back wages), workman is not entitled because, he was gainfully employed during the period in question.

Taking note of the said contention, this Court, vide its order dated 14.01.2016, stayed recovery of back wages in pursuance to the impugned award (Annexure P-35). Order dated 14.01.20216, reads as under:-

“Present:- Mr. Rajiv Sharma, Advocate for the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is ready to reinstate respondent No. 2 in service in pursuance to the impugned award, however, respondent No. 2 could not be allowed the relief of backwages as he was gainfully employed during the period in question.

Notice of motion for 22.04.2016.

Recovery of backwages in pursuance to the award (Annexure P-35) shall remain stayed till then.”

5. In support of the contention addressed before this Court about more than 8 years back, learned counsel for the petitioner-management refers to the photographs, appended with the present petition as Annexure P-36), and submits that, in fact, respondent No. 2-workman is running a *Kiryana shop* (general store) and, thus, he would not be entitled for any amount of the back wages, from the date of his alleged termination i.e. 28.09.2001 to the date of impugned award dated 01.09.2015. In support of said photographs (Annexure P-36), learned counsel refers to the contention raised in paragraph No. 10 of the writ petition, which is reproduced herebelow:-

“10. That the Ld. Tribunal vide order dated 01.09.2015 allowed the reference in favour of workman respondent No. 2 and ordered for re-instatement of the workman with full backwages. The copy of the award is annexed herewith as Annexure P/35. It may be mentioned here that the workman, respondent No. 2 is running a general store/shop from his residence in Shanker Colony near village Choma, Tehsil and Distt. Gurgaon. The photographs of the respondent No. 2 in his shop is annexed herewith as Annexure P/36. As such the Tribunal erred in ordering his re-instatement with full back wages.”

6. On the other hand, learned counsel for respondent No. 2-workman submits that there is no substance in the contention addressed by the petitioner-management, as nothing has been narrated in the pleadings in paragraph No. 10. Neither there is any evidence that any such shop is existing in the residential house of the workman nor there is any documentary evidence in support of said contention. Never any attempt was made by the petitioner-management to take any such plea or to lead any evidence, at the time of proceedings before the Tribunal.

Learned counsel for respondent No. 2-workman further submits that respondent No. 2-workman in his written statement, has specifically controverted the stand taken in paragraph No. 10 of the writ petition, by pleading as under:-

*“10. That in reply to para No. 10 of the writ petition it is submitted that the Ld. Tribunal vide order dated 1.09.2015 rightly allowed the reference in favor of workman and ordered for reinstatement of workman with full back wages. **Rest of the para is wrong and denied.***

7. Having heard rival contentions raised by learned counsel for the parties, this Court also expresses its inability to confirm the contention of the petitioner-management merely on the basis of photographs (Annexure P-36), appended with the writ petition, especially in the absence of any substantial and trustworthy evidence available on record. Therefore, only on the basis of contention addressed before this Court, it cannot be said that respondent No. 2-workman is running a shop and that too from his residential house.

8. Moreover, learned counsel for respondent No. 2-workman submits that after filing of the writ petition by the petitioner-management, workman was taken back in service and after crossing the age of superannuation, he has already retired from the service of the petitioner-management in the year 2020. Although, learned counsel appearing on behalf of the petitioner-management submits that he is not in a position to confirm the fact, as submitted on behalf of the workman before this Court.

9. Taking note of the facts and circumstances of the present case, this Court is of the view that stand of respondent No. 2-workman that he was not earning anything throughout the period of about 15 years, i.e. from the

date of his termination to the date of impugned award, cannot be believed on the face of it. Therefore, instead of granting full back wages, said amount can be asked to be paid as a one time consolidated/lump-sum amount, towards all the claims regarding back wages.

In support of such an observation, I am also supported with the views of their Lordships of Hon'ble Apex Court, recorded in para No. 16 of the judgement rendered in the case of U.P. State Brassware Corporation Limited and another v. Udai Narain Pandey, AIR 2006 SC 586 : Law Finder Doc ID #93498, and the same reads as under:-

“16. Before advertng to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.”

After discussing this aspect with learned counsel representing both the sides, this Court finds that to meet the ends of justice, instead of paying complete back wages of 15 years, it would be appropriate to award lumpsum amount of Rs.5,00,000/-, to be paid to respondent No. 2-workman, by the petitioner-management within twelve weeks from today, failing which the lumpsum amount of Rs.5,00,000/- shall carry interest at the rate of 6%

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per annum, to be calculated from the date of passing of the award dated 01.09.2015 (Annexure P-35), till its realization. Ordered accordingly.

10. With the above modification in the award dated 01.09.2015 (Annexure P-35), this writ petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

January 29, 2024
P Kapoor

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