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

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Decided on : 20.03.2024

M/s Boss Gears Ltd., Gurugram

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rajeev Kawatra, Advocate
for the petitioner(s).

Mr. Praveen Chander Goyal, Addl. AG, Haryana.

Mr. Amandeep Rana, Advocate
for respondent No.4.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – M/s Boss Gears Ltd., Sikandarpur Bada, Gurugram (being Management), has filed the present writ petition, for quashing of the award dated 04.08.2017 (Annexure P-3), passed by respondent No.3 – learned Industrial Tribunal-cum-Labour Court-II, Gurugram (in short, ‘learned Tribunal’), whereby, Reference No.1143 of 2003, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, ‘ID Act’), has been answered in favour of respondent No.4 – Suresh Kumar (workman).

2. Facts pleaded in the demand notice as well as in the claim statement of the workman, are that he was appointed on 01.11.1998, as ‘Mali’ by the Management without giving any document in that regard. At the time of his termination i.e. 24.04.2003, workman was drawing the salary of Rs.3300/- p.m. On raising industrial dispute, same was settled under Section 12(3) of the ID Act, before the Labour Court-cum-Conciliation

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Officer, Circle-II, Gurugram on 29.05.2003. Resultantly, on 30.05.2003, workman was taken back on duty by the Management, but again on 03.06.2003, his services were terminated by the respondent – Management, without payment of any retrenchment compensation and notice pay, which is in contravention of the provision of law i.e. Section 25-F of the ID Act.

Immediately thereafter, again on 04.06.2003, workman moved a complaint before the Labour-cum-Conciliation Officer, Circle-II, Gurugram, but to no result.

3. In the written statement filed by the Management, a preliminary objection is taken that at the first instance, without making any demand from the Management, dispute could not be referred to the learned Tribunal under Section 10(1)(C) of the ID Act. Broadly, pleaded that the demand notice submitted before the Conciliation Officer is no demand notice in the eyes of law, unless, same is submitted to the Management at the first instance. It is further pleaded that workman is gainfully employed and that it was he, who himself absented from duty w.e.f. 24.04.2003, and workman was even asked to join the duties vide letter dated 30.04.2003 and 02.05.2003, but to no avail.

4. In pursuance to the demand notice, Management had appeared before the Labour-cum-Conciliation Officer on 29.05.2003, where, the settlement was arrived under Section 12(3) of the ID Act, between the Management and the workman. Resultantly, workman was taken back in service and for joining duties, he reported on 30.05.2003 to join his duties. But again, workman stopped reporting on duty w.e.f. 03.06.2003. Thus, it was pleaded that it is a case of abandonment, and not termination and even no demand was raised before the Management at the first instance.

5. During the course of proceedings, another stand was taken by the Management beyond the pleadings that on 28.07.2003, the workman had resigned (Ex.R2), and post acceptance of his resignation, his accounts were also cleared on 29.07.2003, and an amount of Rs.19,249/- was paid to him, as full and final settlement.

6. Mr. Rajeev Kawatra, counsel for the petitioner – Management, argues that the impugned award is not sustainable in the eyes of law, because the reference in itself is bad, as no demand was ever raised by the workman before the Management, at the first instance. He also submits that the workman absented himself w.e.f. 03.06.2003 and subsequently, submitted his resignation on 28.07.2003, and thereafter, accounts were cleared on 29.07.2003 as full and final settlement.

7. After considering the documents and the evidences available on record, learned Tribunal observed that for proving of the absenteeism, neither any absenteeism letter or show cause notice was issued or any kind of inquiry was conducted. It was further observed that there is no material available on record that ever at any point of time, service was ever offered to the workman by the Management.

8. The argument that no demand was ever raised before the Management at the first instance, and therefore, reference is bad under the law, does not appear to be a genuine submission. In fact, the very purpose of conciliation proceedings, in view of the first demand notice, was defeated intentionally by the management, by reinstating the workman back in service, only to shunt him out from its office after few days. Against the said termination, a complaint had been addressed by the workman to the Labour-cum-Conciliation Officer. Therefore, the demand notice was already before

the office of Labour Commissioner and a valid reference thereafter was forwarded by the Government to the Tribunal for judicial adjudication of the industrial dispute. Relevant findings recorded in paragraph Nos. 11, 13, 14 & 15 in the impugned award, are reproduced here-under:-

*“11. Consequently, the stand of management remains to the extent that the workman started to remain absent from duty w.e.f. 3.6.2003. It is well settled law that if the management take stand of abandonment then the onus of burden to prove the same fact also lies upon the management, failing which, adverse inference shall be drawn. On the point reference is made of cases titled as **O.K. Play India Ltd. Vs. Rai Kumar and other. 2016 LLR 669, Guru Nanak Public School Versus Arjun, 2013 13) FLR 673 M.C.D. Versus Niankar Singh etc. 2013 LLR 562.** The management has not proved any absenteeism letter issued by them to the workman or show cause notice. It is also not their case that against the alleged absenteeism of the workman, they had ever conducted any domestic enquiry. On account of said lapse, mere oral contention is not enough to say that the workman himself stopped coming on duty or that it a case of abandonment of services. On the other hand, the workman has proved his complaint Ex.WW1/4 dated 4.6,2003, which he had moved before the Labour-Cum-Conciliation Officer, thereby informed that on 3.6.2003, his services have been again terminated by the management and he again sought the intervention of competent authority so that may join his duty. Later, on 16.6.2003, he also raised demand notice upon the management, thereby, seeking reinstatement in services with continuity of service with full back I wages. In the present circumstance, it is apparent that constant efforts remained on the part of workman to join his duty and earlier also, he had raised demand notice Ex. WW1/2, whereby, he was made to join his duty with the intervention of Labour authority w.e.f. 30.5.2003. Hence, it cannot be said that the workman was not a willing worker or that he himself started to remain absent from the duty.*

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Had it to be so there was no necessity on his part to make the moves time and again. As such, it is not a case of absenteeism from the duty; rather it is a case of termination of services.

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13. *During the course of arguments, learned Authorized Representative for the management contended that the present alleged industrial dispute is not maintainable because the workman mechanically submitted his demand notice before the Conciliation Officer without raising any demand on the management. Therefore, filing of demand notice before the Conciliation Officer without first raising a demand on the management is patently illegal based upon settled law in the case of Sindhu Resettlement Tribunal of Gujarat and others, 1968 AIR (SC) 529.*

14. *On the other hand, learned Authorized Representative for the workman contended that the workman regained constant victim at the hands of management. Earlier also his services were terminated on 24.4.2003 wrongly and illegally thus, he raised demand notice dated 25.4.2003 Ex. WW1/2. Pursuant to that, the matter was settled before the Conciliation Officer and Ex. WW1/3 is copy of settlement u/s 12 (3) of the Act. Accordingly, on 36.5.2003, the workman joined his services, but the management revengefully again terminated his services on 3.6.2003. In the continuation, workman again raised present demand notice on 16.6.2003. Earlier to the same, he moved complaint Ex.WW1/4 before the competent authority on 4.6.2003. Accordingly, the matter could not be said new to the management. Moreover, the demand notice was raised upon the management only and copies of same were also sent to the Labour authorities. Since the management did not pay any heed to the claim of workman, thus, the competent authority intervened but the matter could not be sorted out. Thus, the present industrial dispute has been referred to the court for adjudication. I am convinced with the same contentions of learned Authorized Representative for the workman. At same, while going through the Sindhu Resettlement case. It is found*

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that the facts and circumstance of that case is different from the present case. In that case, the petitioners confined their demands to the management of retrenchment compensation only and did not make any demand for reinstatement. However, the preference was made by the Govt. regarding reinstatement as well. Hence, it was held that only reference that the Government could have made had to be related to payment of retrenchment compensation which was the only subject matter of dispute between the parties. Since in the present case, the work Man by raising his demand notice has raised industrial dispute regarding the termination of his services and on the point only, the reference has been sent to the court for adjudication, therefore, the ratio of Sindhu Resettlement's case is not applicable here. Consequently, the reference is found maintainable in its present form. And present issue is decided against the management and in favour of workman.

ISSUE NO.3:

15. The onus of burden to prove this issue was upon the management. However, no evidence has been, led by them on the point that the workman is gainfully employed, whereas, there is run-impeached testimony of workman that he is jobless since the time of termination of his services. Moreover, during the course of arguments, this issue was not claimed or pressed by learned Authorized Representative for the management. Hence, this issue is decided against the management.”

9. While dealing with the observation in regard to the entitlement of the workman, to his reinstatement in service w.e.f. 03.06.2003, along with continuity in service with 50% back wages, this Court has noticed one aspect that admittedly, he is out of service from the office of the petitioner – Management w.e.f. 03.06.2003. This way, by now, a period of more than 20 years has lapsed. Therefore, maintaining the award in its entirety, forcing the Management which also is a business establishment, direction to

reinstate the workman in service after such a long time, would also not be justified.

10. Relying upon the ratio of judgment passed by the Division Bench of this Court (Punjab and Haryana High Court) in *LPA No.1334 of 2009*, titled as, *“Deputy General Manager (Telecom), Bharat Sanchar Nigam Limited, Sangrur vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another”* decided on *30.01.2014*, and this Court earlier in time in *CWP-10925-2023*, titled as *BCH Electric Limited vs Presiding Officer, Labour Court-II, Faridabad and another* decided on *20.02.2024*, I am of the view that a 20 years old dispute between the parties should be settled, by modifying the relief clause of the award, by directing Management to pay one time full and final lump-sum amount of compensation, to the workman.

11. For the sake of convenience, relevant paragraph No.17 of the impugned award, under the relief clause, is reproduced as under:-

“Relief (Issue No.5)

17. Consequent to issue-wise findings, it is hereby held that the workman is entitled to reinstatement in services with continuity in service with 50% back wages from the date of the termination i.e. 3.6.2003 till his reinstatement in job along with consequential benefits and, hence, this is answered in favour of the workman.”

12. By noticing the fact that respondent No.4 – workman had worked in the office of the petitioner – Management from 01.11.1998 to 02.06.2003 only, i.e. about 4 years and 6 months, and the dispute being more than two decades old, this Court deems it appropriate to direct the petitioner – Management to pay a lump-sum amount of Rs.3.00 lakhs as compensation

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to respondent No.4 – workman, within a period of three months from today i.e. on or before 20.06.2024, failing which, the petitioner – Management would be liable to pay the lump-sum amount of compensation of Rs.3.00 lakhs along with interest @ 6% per annum, from 21.06.2024 onwards.

In view of above, the award dated 04.08.2017 (P-3) is modified to above extent and present writ petition is partly allowed.

Writ petition stands **disposed of**, in the above terms.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

March 20, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~