



CWP-29013-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-29013-2024
Date of decision: 07.11.2024

UNION-PUNJAB MEDICAL REPRESENTATIVE ASSOCIATION
....PETITIONER

Vs.

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL , LUDHIANA AND
OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Kamaldeep S. Sidhu, Advocate
for the petitioner.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 29.07.2024 whereby Labour Court has answered the reference against it.
2. The Labour Court has rejected claim of the petitioner on the ground that reference has been made with respect to service condition of Vishal Sharma who is still working with the Management and has not been terminated. In his cross-examination, he has admitted that he was appointed on the post of Territory Business Manager (Cardiac Care). He has also admitted that he is getting salary against the said post along with incentives/TA/DA. He is getting all the benefits which are necessary for discharging duties as Territory Business Manager. He failed to produce any document showing that he has raised any objection, during his service tenure, regarding his duty hours being more than eight hours. Dispute between wife of Vishal Sharma and management has



already been settled. He was never served charge-sheet and no enquiry was initiated or pending against him.

3. Mr. Kamaldeep S. Sidhu, Advocate submits that 5 questions were referred to Labour Court which considered only one question which was with respect to Vishal Sharma. The Labour Court did not treat reference of all the employees and from the perusal of questions referred, it is evident that demand notice was served with respect to grievance of all the employees.

4. From the perusal of impugned award, it comes out that following questions were referred to Labour Court:-

- “1. Whether demands raised by the union through demand notice dated 16.09.2017 against the respondents are justified and the workman is entitled to get the appointment letter on Form 'A' as per Rule 22(1) of Section 4 of Sales Promotion Act?*
- 2. Whether the respondents provide the benefit of leave to their workmen as per Sales Promotion Act? If yes, what benefit the workman is entitled to?*
- 3. Whether the respondents provide the certified copy of standing orders to their workmen? If not, then what kind of action should be taken against them?*
- 4. Whether the respondents have fixed the time of eight hours as working hours of employees which includes work time, lunch, tea break and clerical work of their employees and whether the workmen get the overtime amount in lieu of overtime work done by them? If not, what kind of action should be taken against the respondents and what kind of benefit the workman are entitled to?*
- 5. Whether the respondents are pressurizing and threatening Vishal Sharma for his illegal termination due to filing of case against the management by his wife for termination of her services? If yes, what kind of benefit the workman is entitled to?”*



5. Mr. Kamaldeep S. Sidhu, Advocate is correct while claiming that questions No. 1 to 4 pertain to all the workmen and it cannot be concluded that all the questions related to only Vishal Sharma who was one of the workmen. However, it needs to be examined that none of the office bearers of the Union appeared before the Labour Court and deposed on behalf of the Union. It was only Vishal Sharma who appeared and deposed. The grievance of Vishal Sharma was with respect to working hours. The Labour Court with respect to his grievance has recorded categorical findings which are reproduced as below:-

“16) The main concern of Vishal Sharma is that he is being pressurized and harassed by the management and to avoid said annoyance and strain, he filed the litigation through the union. First of all, I am of the considered opinion that as per the Industrial Disputes Act, 1947, there is no provision for the litigation of harassment, when an employee is still working with an employer. If for the sake of arguments it is admitted that Vishal Sharma is being harassed by the management, then remedy available with Vishal Sharma is only to approach the police department or the civil court. Hence, I am of the considered opinion that Vishal Sharma is having no locus standi to file the present case. Even, this Tribunal is having no jurisdiction to entertain and decide the matter of Vishal Sharma....”

18) Further, in his cross examination, Vishal Sharma was fair enough to concede that he was issued the appointment letter Ex.W1 by the management, wherein, terms and conditions of his services are mentioned. He also categorically admitted in his cross examination that he is appointed on the designation of Territory Business Manager (Cardiac Care) and the same falls under the cadre of management and this fact is also mentioned in his appointment letter also. During his cross examination, Vishal Sharma also admitted that he is getting the salary of Rs.44628/- against the post of TBM alongwith incentives/TA/DA from the



respondents till now. The claimant has also conceded unequivocally in his cross examination that he is also availing the benefits of EPF, Gratuity scheme and several types of leave benefits being Territory Business Manager with the management. When Mr. Vishal Sharma himself admitted in his cross examination that he was appointed on the post of TBM and terms and conditions of his service were also mentioned in his appointment letter, which was given to him at the time of his appointment and he is enjoying the benefit of different types of leave while discharging his duties as TBM as per his admission in his cross examination, his demands to issue an appointment letter on Form 'A' and provide him the benefit of leave under Section 4 of SPE Act, do not carry any weight and deserves to be denied.

19) Moreover, Vishal Sharma categorically admitted in his cross examination that he cannot produce any document showing that he ever raised any objection during his service tenure till date regarding his duty hours of more than eight hours since his joining with the respondents.

20) Further, it is also pointed out that Vishal Sharma unambiguously conceded in his cross examination that the case of his wife has already been settled with the management in a sum of Rs.12,00,000/-. He also unequivocally admitted in his cross examination that he has never been issued any charge sheet by the respondents and no enquiry was initiated or pending against him till today since the time of his joining. When Mrs. Yasmin Kushurian wife of Vishal Sharma has already settled her dispute with the management in a sum of Rs.1200000/- amicably and withdrew her reference case being fully satisfied and Vishal Sharma was never charge sheeted in any charge by the management and no enquiry was initiated or pending against him, then question of threatening or pressurizing to Vishal Sharma by the management, does not arise at all.

21) As such, in the light of my discussion above and ratio of the authorities, it is held that this reference is not sustainable in the



eyes of law and the same deserves to be dismissed on the above said terms. Accordingly, finding on issues No.1 to 8 are returned in favour of the management and against the workmen union.”

6. The Workers Union, though, made reference but did not seem to be interested to pursue the matter. The Union was required to put forth its stand before the Labour Court. In the absence of witnesses of Union and examination of only Vishal Sharma, the Labour Court was left with no option other than to adjudicate grievance of Vishal Sharma. There is no infirmity in the impugned order *qua* Vishal Sharma.

7. The Labour Court has not adverted to the issues raised by Union except issue of Vishal Sharma. Thus, petitioner-union is at liberty to avail remedies as permissible by law with respect to their grievances. The disposal of instant petition would not preclude them from availing remedies with respect to their grievances especially their rights arising out of The Sales Promotion Employees (Conditions of Service) Act, 1976.

8. Disposed of.

07.11.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No