

CWP-13229-1999 (O&M)

Date of Decision : 15-01-2025

**MANAGING DIRECTOR, HARYANA SEEDS DEVELOPMENT
CORPORATION LTD. AND ANR.**

.....Petitioner(s)

VERSUS

THE PRESIDING OFFICER , LABOUR COURT, HISAR AND ANR.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Piyush Bansal, Advocate
for the petitioners.

Mr. Deepak Vashisht, Advocate
For respondent No.2.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the grievance of the petitioners is qua the award of the Labour Court-cum-Industrial Tribunal, Hisar dated 25.02.1999, copy of which has been appended as Annexure P-7 by which, the respondent-employee has been directed to be reinstated with the full backwages from the date of demand notice i.e. 06.06.1995 onwards.

2. Certain facts may be noticed for the appreciation of the issue in hand.

3. The employment of the respondent-workmen with the petitioner is not in dispute.

4. As per the petitioner-Corporation, the respondent-Nirbhay Singh was working as a labourer with the petitioner-Corporation on daily

wage basis and on 06.08.1992, while he was going back after completing his duty hours, he was caught by the officers of the petitioner-Corporation carrying a bag containing stolen gram seeds.

5. A plea raised by the respondent-Nirbhay Singh was that the said bag was given to him by another employee hence, he was only carrying the same and did not participated in stealing the said goods along with the others.

6. As per the facts on record, the petitioners-Corporation conducted an inquiry into the allegations along with office bearer of the Union and in the inquiry, the guilt was accepted by the respondent-Nirbhay Singh with the plea that the said mistake will not be repeated again. Keeping in view the said fact, no action was taken but the respondent-employee stopped attending the duties. After a period of more than 3 years, a demand notice was served by the petitioners on 06.06.1995 alleging the termination of his services. The matter was referred to the Labour Court-cum-Industrial Tribunal, Hisar under the Section-10 of the Industrial Disputes Act, 1947 (for short 1947 Act).

7. During the pendency of the reference, the admission of guilt on behalf of the respondent-employee was proved but the Labour Court-cum-Industrial Tribunal, Hisar had held that as no order of termination was passed, the respondent-employee should be treated as retrenched from the date, the guilt was proved so as to make him entitled of certain benefits under the 1947 Act and as Section 25F of the 1947 Act has not been complied with, the termination of the services of the respondent employee at the hands of the petitioner-Corporation, is contrary to the provisions of the 1947 Act and the reinstatement of the respondent-workmen was directed

along with full backwages from the date of demand notice. The said award of the Labour Court-cum-Industrial Tribunal, Hisar dated 25.02.1999 is under challenge in the present petition.

8. Learned counsel appearing on behalf of the petitioner-Corporation argues that once, the allegations of misconduct were proved against the respondent employee and he on his own stopped coming to the office and only raised the dispute after a period of 3 years of abandoning the job, the said fact has not been correctly appreciated by the Industrial Tribunal, Hisar so as to treat the respondent-employee as a retrenched employee making him entitled for the benefits under the 1947 Act and grant him reinstatement along with full backwages.

9. Learned counsel appearing on behalf of the respondent-employee submits that though, the bag containing the stolen material was recovered from him but the same was not his intention though, he concedes that as per the enquiry conducted, the employees admitted the guilt with the further assurance not to repeat the same.

10. Learned counsel appearing on behalf of the respondent-employee submits that the respondent-employee never abandoned his job rather, it was a case of termination of his services hence, even though the Industrial Tribunal has treated the case of the respondent-employee as that of a retrenched employee, the same needs no interference and the present petition filed by the petitioner may kindly be disposed of.

11. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

12. The question which arise in the present petition is whether, the respondent-employee is to be treated as a retrenched employee as held by

the Tribunal keeping in view the facts and the evidence which have come on record. The petitioner-Corporation is claiming that the respondent employee had abandoned his job and the same was done because of being proved guilty of the allegations of the theft.

13. The said argument has not been controverted by the learned counsel for the respondent-employee especially when, the alleged date of termination is August, 1992 and the demand notice is in June, 1995. An employee whose services have been terminated with the clear intent that he is no longer to attend the duties, if aggrieved will start the process of redressal of his grievance immediately. He/she will not wait for a period of 3 years to raise the claim against the said termination.

14. Learned counsel for the respondent-employee has contended that immediately after the alleged termination on 15th August, 1992, a representation was given raising the said issue hence, the petitioner never waited for a period of three years though, the demand notice was concededly served on 06.06.1995. Hence, it cannot be said that there is a delay in raising the claim so as to invite the presumption of abandonment of job.

15. In this regard, it may be noticed that an employee who was so vigilant to file a representation within a period of 7 days, will not wait for another period of 3 years to serve the demand notice in case, he intended to perform the duties but was being prevented from doing so. Nothing has come on record as to what prevented the petitioners to file a demand notice immediately, when according to the respondent-employee, he was not been allowed to join the duties on the pretext of termination of his services.

16. These questions have gone unanswered and have also not been taken into account by the Tribunal while giving the finding in favour of the

respondent-employee and that too by bringing on another reason of retrenchment, which is neither the case of the petitioners nor the case of the respondents.

17. The Tribunal has failed to appreciate the said facts while passing the impugned award dated 25.02.1999. Further, the Tribunal is holding that the case of the petitioners is covered under “**retrenchment**” Section-2(oo) of the Industrial Disputes Act, 1947.

18. It may be noticed that the petitioner-Corporation is claiming that the respondent-employee abandoned the job and the respondent-employee is claiming termination of his services whereas the Tribunal is giving a finding that the same is the case of retrenchment. Not even a single document or a plea has been given in support of the finding that the services of the respondent-employee were retrenched. In the absence of any such material on record to give the finding that the services of the petitioners were retrenched, the same cannot be approved/accepted.

19. It is not even the case of the respondent-employee himself that his services were retrenched as he was claiming relief against termination which was pleaded before the Court. Once, a particular stand has been taken by the respondent-employee, the jurisdiction of the Tribunal was to adjudicate the said claim and not to give a finding beyond the pleadings and contrary to the evidence which has come on record.

20. Further, keeping in view the facts and circumstances of the present case, especially when the allegation against the respondent-employee is of theft was conceded before the authorities concerned, it can be safely presumed that the respondent-employee could have abandoned the job out of guilt. This reasons is supported by the act on the part of the respondent-

employee that he never raised any grievance for a period of 3 years after the alleged termination or the incident of theft, after which, it is a conceded position that the respondent-employee never worked with the petitioner-Institution hence, rejecting the plea raised before the authorities concerned so as to give another finding which is not even pleaded by the respondent-employee, cannot be accepted so as to sustain the impugned award dated 25.02.1999 and is accordingly set aside.

21. Keeping in view of above, the present petition is allowed.
22. Pending application, if any, also stands disposed of.

15-01-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO