



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

CWP-14678-2025

Date of Decision : 21-05-2025

**MS DURGA TRADING CO.-110, VILLAGE FAIDA, NIZAMPUR,
U.T., CHANDIGARH THROUGH ITS AUTHORISED PROPRIETOR**

.....Petitioner

VERSUS

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM LABOUR
COURT UT CHANDIGARH AND ANOTHER**

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pragun Jasuja, Advocate and
 Mr. Parul Mittal, Advocates for the petitioner.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the award dated 12.10.2023, copy of which has been appended as Annexure P-7 by which, the respondent No.2-Workman had been reinstated in service with continuity and 50% of the backwages.

2. Learned counsel appearing on behalf of the petitioner-Corporation submits that though it is a conceded position that the respondent No.2-Workman had worked for more than 20 years with the petitioner but he was in the bad habit of being in an inebriated State even while being on duty and present is a case where the respondent No.2-Workman himself had left the job rather than being wrongly terminated from his service hence, the finding by the Tribunal that the services of the respondent No.2-Workman were terminated in violations of the provisions of the Industrial Disputes Act, 1947, is incorrect.

3. Learned counsel for the petitioner submits that the present one is a case of abandonment of job, which fact has not been appreciated by the Tribunal, while passing the impugned order.

4. I have heard learned counsel for the petitioner and have gone through the records of the present case with his able assistance.

5. It is a conceded position that the respondent No.2-Workman had worked for 20 years with the petitioner-Corporation.

6. It is also conceded in the proceeding initiated before the Tribunal that the allegations alleged against the respondent No.2-Workman was that he used to remain in an inebriated state even while being on duty and on a particular date when he came while being in such state, he was asked to leave the job.

7. Once, an allegation has been alleged against the Workman, the burden of proof is upon the employer to prove the said allegations before terminating the services of Workman. Concededly, no such action was taken by the petitioner-Corporation.

8. Further, the petitioner-Corporation has stated that the respondent No.2-Workman had himself abandoned the job. It has already come on record that the respondent No.2-Workman while working with the petitioner, was availing free accommodation which accommodation, he continued to avail even after a period of one year of the date of his alleged abandonment of job.

9. Once, the employee was residing in an accommodation, free of cost, that too with the knowledge of the employer and nothing has come on record which could show that the respondent No.2-Workman was asked by petitioner-Corporation to join the duty or to perform the duties, which fact

clearly proves that that it is a case of termination of services and that too in violation of principles of natural justice as well as provisions of Industrial Disputes Act, 1947.

10. The another argument which has been raised by the petitioner-Corporation is that the respondent No.2-Workman had joined another Institution hence, it can be clearly said that after leaving the job with the petitioner, the respondent No.2-Workman was working elsewhere, which makes his ineligible for benefit of grant of backwages.

11. It may be noticed that the said fact has been dealt with by the Tribunal and the owner of the M/s Singla Agency appeared in the proceeding before Tribunal and stated that the respondent No.2-Workman was never appointed at any given point of time and no such appointment order in his favour was ever given but submitted that as and when, there was a need of work, he was given the duty to perform.

12. Merely that occasionally the respondent No.2-Workman was working somewhere does not mean that he was gainfully employed. The respondent No.2-Workman has to survive and occasional working on a particular day on a lumpsum amount will not amount to be gainfully employed or even employed somewhere. The said assertion of the petitioner has rightly been dealt by the Tribunal while passing the impugned award dated 12.10.2023 (Annexure P-7).

13. Keeping in view the fact that there was no appointment order issued by M/s Singla Agency in favour of the respondent No.2-Workman, it cannot be held that the respondent No.2-Workman was employed elsewhere during the period after termination from his service so as to deny the respondent No.2-Workman of the benefit of backwages.

14. Keeping in view the totality of the circumstances, the impugned award dated 12.10.2023 (Annexure P-7) passed by the Labour Court is in accordance with the fact and the evidence which have come on record and as the learned counsel for the petitioner has failed to point out any perversity in the same, the said impugned award is upheld.

15. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

16. Present petition stands dismissed in limine.

21-05-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO