



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218)

CWP No. 16793 of 2018 (O&M)

Date of Decision : 21.05.2025

M/s Transport Corporation of India

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurugram,
Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Maninder Arora, Advocate with
Mr. Harmeet Singh, Advocate for the petitioner.

Mr. Ashwani Bakshi, Advocate for respondent No. 2.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the Award dated 27.04.2018 (Annexure P-1) by which the respondent No. 2-workman has been directed to be reinstated in service with full back wages and continuity of service.

2. Learned counsel appearing on behalf of the petitioner argues that present one is not a case of termination of services rather, the respondent No. 2-workman had himself abandoned the job, whereas the same has been treated to be termination of service and the grant of benefit of reinstatement and full back wages by the Labour Court vide order impugned is unjustified.

3. Learned counsel for the petitioner further argues that from March, 2010 onward, the respondent No. 2-workman absented himself and did not perform the duties assigned to him despite the fact that the notices qua his absence were issued, copy of which has been exhibited as Ex. RW1/6



stating therein that the leave application he applied for has already been cancelled and he should join.

4. Learned counsel for the petitioner further argues that despite rejection of the said, the respondent No. 2-workman never joined in and, therefore, the same had to be treated as abandonment of job, but the respondent No. 2-workman initiated a claim under the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') in the year 2012 by filing a claim petition.

5. Learned counsel for the petitioner argues that even if it is assumed for the sake of argument that the respondent No. 2-workman was to be reinstated in service but the grant of benefit of full back wages, was not at all correct as the respondent No. 2-workman failed to perform the duties despite a letter from the petitioner to join back so as to perform the duties and, therefore, the employer cannot be burdened with the liability of giving full back wages when concededly the respondent No. 2-workman failed to perform the duties assigned to him and that too due to his own action.

6. Learned counsel appearing on behalf of respondent No. 2-workman submits that respondent No. 2-workman went on leave and thereafter, he suffered from breathlessness, due to which, he kept on filing the application for further extension of leave. Learned counsel submits that though, it is being alleged that the respondent No. 2-workman was directed to join the duties after cancelling his leave but no such letter was received by the workman hence, once the benefits admissible to the employee under the provisions of 1947 Act has been denied, the Labour Court came to the safeguard of the workman so as to grant him reinstatement with continuity in



service along with full back wages and, therefore, impugned Award dated 27.04.2018 (Annexure P-1) may kindly be upheld.

7. Learned counsel for the petitioner submits that during the pendency of the present petition, the Award was implemented qua the grant of reinstatement in service and though, the respondent No. 2-workman was reinstated but thereafter, he again absented himself from performing the duties after which his services were again terminated on 27.10.2022 hence, only the question regarding the grant of back wages remains to be decided.

8. I have heard learned counsel for the parties and have gone through the record with their able assistance.

9. The benefit of back wages can only be granted in case, the workman is prevented from discharging the duties and during the said period the workman was not gainfully employed. In the present case, it is a conceded position that after March, 2010, the respondent No. 2-workman never performed the duties and was claiming that he was not well so as to perform the duties. Once, the respondent No. 2-workman never performed the duties and that too on the ground that he was not well, the grant of benefit of full back wages by putting the employer into the financial distress, is not correct. The employer can only be directed to pay the wages in case any of his action is found to be incorrect which led to non-performance of the duties by the employee concerned.

10. In the facts and circumstances of the present case, when there is no evidence on record to show that the respondent No. 2-workman was prevented in any manner by the employer to perform the duties and rather, the respondent No. 2-workman himself is stating that due to illness he could



not perform the duties, the grant of benefit of full back wages in the facts and circumstances of the present case is not correct.

11. Further, nothing has come on record which could show that during the period the respondent No. 2-workman did not perform the duties he was not gainfully employed. Rather, it has already come on record that for a period of two years, the respondent No. 2-workman had worked with another firm, namely, Asian Paints Limited. Once, the respondent No. 2-workman was working with another Firm, the grant of full back wages without considering the said aspect, has to be treated as a perverse finding which is not based upon the evidence brought on record.

12. Keeping in view the totality of the circumstances, as the reinstatement of the respondent No. 2-workman with continuity had already been complied with, qua the grant of back wages by the Labour Court vide the impugned Award dated 27.04.2018 (Annexure P-1) is set-aside being perverse to the facts and circumstances of the present case.

13. Petition is allowed in above terms.

14. However, no observation is being made qua subsequent termination of the services of respondent No. 2-workman. Respondent No. 2-workman will be free to avail appropriate remedy in case, he is aggrieved in any manner qua the termination of the service on 27.10.2022.

15. Pending miscellaneous application, if any, also stands disposed of.

May 21, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No