
(2010) 04 P&H CK 0300
In the Punjab And Haryana At Chandigarh

Executive Engineer, Dam Construction and Spillway
Concreting Division RSD

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 P&H CK 0300

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Judgement

Augustine George Masih, J.—The prayer in the present writ petition is for setting aside of the Award dated 15.07.2009 (Annexure-P-5), passed by the Labour Court, Gurdaspur, vide which the reference had been answered in favour of the respondent/Workman, holding him entitled to reinstatement in service without back wages. The petitioner/Management had been given liberty to pass fresh appropriate orders after following the procedure laid down in law as well as Certified Standing Orders of Ranjit Sagar Dam Project, Shahpurkandi in respect of workcharged staff. It has further been stated in the Award that in case fresh action is to be taken by respondent (petitioner herein), then process in this regard be initiated from three months from the date of passing of the Award.

2. Counsel for the petitioner contends that the learned Labour Court had proceeded to decide the reference primarily on the ground that the entire period of absence of the Workman had been regularised by the Management and thus there being no absence period earlier to the date, when he joined the service, i.e., 18.09.1999. She further contends that, although, liberty had been granted to the petitioner/Management to initiate proceedings against the respondent/Workman according to the Certified Standing Orders, but in the light of the findings given by the Labour Court, the said initiation of proceedings would be of no use. Her further contention is that the respondent/Workman was, for his earlier absence period, issued a registered notice as per the Certified Standing Orders applicable to the respondent/Workman to explain his conduct with regard

to his absence from duty in the year, 1998, but the same had not been taken into consideration by the Labour Court. She on this basis contends that the Award deserves to be set aside.

3. On the other hand, counsel for respondent/Workman submits that it is an admitted position that after the alleged absence from duty by the Workman, he was allowed to rejoin the duty on 18.09.1999 and he worked for 20 days with the petitioner/Management till 08.10.1999. He contends that the respondent/Workman was not given an opportunity to explain his conduct with regard to absence from duty and Order of his termination had been passed without complying with the provisions, as mandated under the Certified Standing Orders. After rejoining of the respondent/Workman and his absents from 08.10.1999 onwards, no notice had been served upon him for explaining his conduct and the reason for his absence from duty and, thus, the provisions as contained under the Certified Standing Orders, applicable to respondent/Workman stands violated. The findings recorded by the Labour Court are thus fully justified and does not call for any interference by this Court.

4. I have heard counsel for the parties and have gone through the records of the case.

5. It is not in dispute that off and on, the respondent/Workman had been absents from duty. The details of his absence had been specifically mentioned in para-3 of the Award. It is also not in dispute that the findings, which had been recorded by the Labour Court in respect of regularisation of his absence period, the same in toto cannot be accepted. However, in the light of the fact that after his absence from duty and his rejoining duty on 18.09.1999 thereafter when he worked for 20 days, i.e., till 08.10.1999, no fresh registered notice was sent to the respondent/Workman for explaining his conduct of absence from duty. It is a positive case of the petitioner/Management that for five long years, the respondent/Workman had not reported for duty. As mandated in Clause 19.12 (Annexure-P-4) of Certified Standing Orders, a registered notice was required to be sent to the respondent/Workman, which notice had not been sent to him and, therefore, the provisions as contained under the Certified Standing Orders were not complied with. In this view of the matter, the findings as recorded by the Labour Court with regard to the non compliance of the provisions of the Certified Standing Orders, cannot be faulted with. It would not be out of way to mention here that the respondent/Workman had been ordered to be reinstated in service without back wages and liberty had been granted to the petitioner/Management to pass fresh appropriate orders after following the procedure laid down in law and as per the Certified Standing Orders of Ranjit Sagar Dam Project, Shahpurkandi, in respect of workcharged staff. The Award does not preclude the petitioner/Management from initiating action for complying with the Certified Standing Order as applicable to the respondent/Workman as he is admittedly a workcharged employee. However, in the light of the fact that the petitioner/Management has decided to challenge the Award before this Court, the period

which was granted by the Labour Court, Gurdaspur, to initiate action against the respondent/Workman deserves to be extended. Accordingly, the said period is extended by two months from toady.

6. The present writ petition is disposed of with above observations.