

(2016) 05 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CWP No. 6408 of 2010

Managing Director, M/s Nipso Polyfabriks Ltd.

APPELLANT

Vs

Deewakar Singh

RESPONDENT

Date of Decision : 27-05-2016

Acts Referred:

Citation : (2016) 3 LLN 117

Hon'ble Judges : Sandeep Sharma, J.

Bench : Single Bench

Advocate : Mr. Rakesh Thakur, Advocate, for the Appellant; Mr. Kunal Verma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Sharma, J. (Oral) - Present petition is preferred by the petitioner-Company namely Nipso Polyfabriks Limited being aggrieved and dissatisfied with the award dated 16.6.2010, passed by Presiding Judge, H.P. Industrial Tribunal-Cum-Labour Court, Dharamshala (in short "Tribunal"), whereby learned Tribunal set-aside and quashed the termination of the respondent and ordered for re-engagement of the respondent forthwith along with 50% back wages with continuity in service and seniority from the date of his termination i.e. 1.4.1999.

2. Perusal of the pleadings available on record suggests that respondent was appointed as helper with the petitioner-Company on 20.6.1996. Record further reveals that respondent failed to join his duty on 29.5.1999 on account of illness, however, an application dated 29.5.1999, enclosing therewith medical certificate was sent to the petitioner by post, which has been allegedly received by the petitioner in the month of June, 1999. As per petitioner, he was ill since 20.1.1999 and was under treatment in ESI Dispensary, Mehatpur, however, on 6.2.1999, he was referred to District Hospital, Una. Doctors of District Hospital, Una advised him rest for 30 days. Since he was seriously ill, he kept on taking his treatment from District Hospital w.e.f. 27.2.1999 and intimation with regard to the same was sent to the petitioner-management by registered post from time

to time. The fact remains that due to his ailment, he could not attend his job till 29th May, 1999 and he reported at the factory along with fitness certificate issued on 26.5.1999, however, he was not allowed to join back by the present petitioner.

3. It also emerges from the record that the present petitioner-management had sent a letter dated 15.6.1999, with reference to letter dated 29.5.1999 sent by the petitioner directing him to appear before District Hospital Una to obtain fitness certificate and submit the same within 10 days. As per the own admission of the respondent, intimation of his sickness was received by the present petitioner on 27.2.1999. As per the stand of the present petitioner, respondent never reported back for duty and, as such, he himself abandoned the job. Since respondent failed to report duty in terms of the instructions vide letter dated 15.6.1999, his services were disengaged w.e.f. 1.4.1999.

4. Feeling aggrieved with the alleged termination of services by the petitioner, respondent raised demand notice under Section 2-A of the Industrial Disputes Act, 1947 before the appropriate Government on 7.9.1999 and appropriate Government vide order dated 6.2.2002 sent the following reference to Presiding Judge, Labour Court-cum-Industrial Tribunal, Shimla for proper adjudication:

"Whether the action of the Managing Director Nipso Polyfabriks Ltd. Industrial Area, Mehatpur, District Una, H.P not to allow Sh Deewakar Singh S/o Sh. Bhagwat Singh workman to resume duty w.e.f. 29.5.1999 after ailment in spite of Medical Fitness Certificate is legal and justified? If not, what back-wages, seniority service benefits and relief the concerned workman is entitled to?"

5. The learned Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Dharamshala after appreciating the material available on record passed the impugned award dated 16.6.2010, quashing and setting aside therein the alleged termination of the respondent. Vide award, present petitioner was directed to re-engage the respondent forthwith along with 50% back wages with continuity in service and seniority from the date of his termination i.e. 1.4.1999.

6. Feeling aggrieved and dissatisfied with the aforesaid award passed by learned Tribunal, petitioner filed the present petition praying therein for quashment of the award passed by the learned Tribunal.

7. Mr. Rakesh Thakur, learned counsel appearing on behalf of the petitioner-Company vehemently argued that the impugned award passed by learned Tribunal is not based upon the proper appreciation of the evidence available on record, rather perusal of the same suggest that same has been passed in very slip shod manner without appreciating the law as well as all norms of Industrial Act, 1947. During his argument, he specifically referred to the reference made by the appropriate government, wherein Tribunal was asked to decide specifically "Whether the action of the Managing Director Nipso Polyfabriks Ltd. not to allow Sh. Deewakar Singh son of Sh. Bhagwat Singh workman to resume duty w.e.f. 29.5.1999 in spite of medical fitness certificate is legal and justified, but perusal

of the award dated 16.6.2010 suggests that learned Tribunal exceeded its jurisdiction, wherein it instead of answering the aforesaid question it held that the termination of the respondent was bad and further ordered for re-engagement with 50% back wages . As per Mr. Thakur, learned Tribunal was only to answer the reference sent to it by the appropriate Government but in the present case learned Tribunal exceeded its jurisdiction while quashing the termination as well as ordering of his re-engagement with 50% back wages. Mr. Thakur, forcibly contended that the learned Tribunal below miserably failed to take note of the fact that respondent No.1 himself abandoned the job and never came to resume duties after 29.5.1999, when he was asked by the petitioner-management to come with fitness certificate, if any, issued by the District Hospital, Una. It is contended on behalf of the petitioner that the learned Tribunal below has gravely erred in ordering for the re-engagement along with 50% back wages with continuity in service from the date of termination w.e.f. 1.4.1999 because admittedly during this period respondent did not work at all with the petitioner-company and moreover no evidence whatsoever was put on record to suggest that during this period he was not gainfully employed with some other organisation or department. Mr. Thakur, further contended that the Tribunal below ignored the material fact that the respondent was offered to join his duties during conciliation but respondent never joined and, as such, he himself abandoned the job. In the aforesaid background, Mr. Thakur, learned counsel prayed that the impugned award passed by the learned Tribunal below deserves to be quashed and set-aside being totally contrary to the law as well as facts on the record.

8. Mr. Kunal Verma, learned counsel representing the respondent supported the impugned award passed by learned Tribunal. He forcibly contended that no interference of this Court, whatsoever, is warranted in the present facts and circumstances of the case, where bare perusal of the impugned award passed by the learned Tribunal itself suggest that petitioner never allowed the respondent to join duty on 29.5.1999, when he had reported for duties and had furnished fitness certificate issued by the competent authority in that regard. During his arguments, he invited the attention of the Court to the documents available on record to suggest that it stands proved on record beyond reasonable doubt that during the period i.e. 20.1.1999 respondent was ill and under treatment in District Hospital, Una. Since respondent was advised to take rest for 30 days, he could not join duties during that period, however, fact remains that immediately after the recovery he along with fitness certificate furnished joining report, which was not accepted by the petitioner-management and, as such, there is no illegality and infirmity in the impugned award passed by the learned Tribunal below. He forcibly contended that once it is proved on record that the petitioner-company purposely not accepted the joining report of the respondent on 29.5.1999, he has been rightly held entitled for 50% back wages from 1.4.1999 i.e. date when he was allegedly terminated from the service. Lastly, he prayed that the impugned award passed by the learned Tribunal below may be upheld.

9. I have heard the learned counsel for the parties and have carefully gone through the record.

10. After perusing the material available on record, there is no dispute that the respondent had been working with the management since the year, 1997 and it is also not disputed that the present petitioner had received an application on dated 29.5.1999 along with one photostat copy of medical certificate, which was sent by the respondent by post. Though, it is stated by the petitioner that the aforesaid information/application was received by them in the first week of June, meaning thereby that the respondent had actually sent one application on dated 29.5.1999 intimating therein with regard to his illness. As per own admission of the petitioner, respondent never reported for duty after 29th May, 1999, meaning thereby that from 20.1.199 till 29.5.1999, respondent had been not coming regularly for his duties in the petitioner company. Respondent fell ill on 20.1.1999 and remained under treatment from ESI Dispensary Mehatpur, where the factory situated. Thereafter on 6.2.1999, respondent was further referred to District Hospital, Una, where he was advised to take rest for 30 days. It appears that from 20.1.1999 till 29.5.1999 respondent remained absent from the job on account of his illness. But document available on record reveals that the respondent informed the petitioner-management with regard to his illness and accordingly after getting recovered from his illness he submitted his joining report on 29.5.1999, which fact stands duly admitted by the petitioner. Though, the petitioner have stated that after receiving the aforesaid joining report on 29th May, 1999 vide letter dated 15.6.1999, respondent was further advised to appear before Chief Medical Officer, Una to obtain fitness certificate and submit the same within 10 days. But it stands proved on record that the letter dated 15th June, 1999 was never served upon the respondent because same was received back by the petitioner-management with the remarks that the "addressee does not reside at the given address", meaning thereby that the intimation dated 15.6.1999, whereby respondent was advised to appear before the Chief Medical Officer and obtain fitness certificate, was never received by the respondent.

11. However, case set up by the respondent is that he had reported for his duties on 29th May, 1999 along with fitness certificate but he was not allowed to join his duties by the management. Even, he while appearing as witness before the learned Tribunal reiterated that he was not allowed to join on 26.5.1999 and placed on record prescription slip Ex.PW1/A, discharge slip Ex.PW1/B and application Ex.PW1/C sent by him to the Manager for leave, bare perusal of aforesaid exhibits suggest that due to serious illness respondent was admitted at Zonal Hospital, Una. It also emerges from the record that on 27.2.1999, he was taken to his native place in UP and he remained under treatment from 27.2.1999 to 25.5.1999 since fitness certificate Ex.PW1/E was issued to him on 26.5.1999. He immediately on 29.5.1999 reported for duties at Mehatpur, however, joining report was not taken by the petitioner-company. Present petitioner also placed on record extract of attendance register pertaining to respondent for the months

of March, 1999 and April, 1999 vide Ex.RX2 and EX.RX3. Perusal whereof suggest that the respondent Deewakar Singh was on medical leave till 29th March, 1999. On 30th and 31st March, 1999, he was marked absent. Thereafter, in the attendance register pertaining to April, 1999, he had been shown on leave services w.e.f. 1.4.1999.

12. It is ample clear from the evidence led on record by the present petitioner that between March, 1999 to April, 1999 respondent namely Deewakar Singh was on medical leave till 29th March, 1999, meaning thereby that the petitioner-management was fully aware with regard to illness of respondent and this entry in the attendance register further corroborates the statement of the respondent, wherein he stated that the management was informed with regard to his illness. Further statement of the petitioner corroborates the entry in the register with regard to medical leave because respondent categorically stated before the learned Tribunal that he had sent prior information to the petitioner-department praying therein for sick leave, which was granted to him. Aforesaid assertion made by respondent stands duly proved from the attendance register tendered in evidence by the petitioner-department.

13. Furthermore, the stand taken by the petitioner-department that the respondent himself abandoned the job does not appear to be correct on the face of it. Perusal of the evidence, as has been discussed above, clearly suggest that the respondent was on medical leave till 29th March, 1999 and thereafter w.e.f. 1.4.1999 respondent has been shown to have left the services. However, the fact remains that on 26th May, 1999 respondent reported for duty, which fact stands duly admitted by the present petitioner by sending communication dated 15th June, 1999, whereby petitioner asked respondent to appear before the Chief Medical Officer and obtain fitness certificate, meaning thereby that on 15th June, 1999 respondent was on the rolls of the petitioner management. If the respondent had left job on 1st April, 1999, there was no occasion, whatsoever, for the petitioner-management to send communication dated 15th June, 1999 advising him to appear before CMO, Una and procure fitness certificate. It clearly suggest that till 15th June, 1999, as per own admission of the petitioner ? management, respondent was on their rolls. Hence, stand taken by the petitioner-management that the respondent on his own left the job on 1.4.1999 could not be accepted at all.

14. The fact with regard to non-delivery of the communication dated 15th June, 1999 also stands admitted by the petitioner-department, wherein it is received back with the remarks that the "addressee is not available on the address" meaning thereby that the notice sent by the petitioner-department advising the respondent to join duty was never received by him, rather respondent remained under impression that his prayer to join duties stands already rejected on 26th May, 1999, when admittedly he was not allowed to join duties after recovery from his illness.

15. In view of the detailed discussion herein above, this Court has no hesitation

to conclude that the findings returned by the learned Tribunal below "that the respondent himself had not abandoned the job, rather his services terminated w.e.f.1.4.1999 as were shown in the attendance register tendered in evidence by the petitioner before the learned Tribunal, is totally correct based upon the material evidence available on record. Once it stands proved on record that immediately after recovering from his illness on 26th May, 1999 respondent had made him available for resuming his duty, which was not allowed by the petitioner-department, learned Tribunal rightly held the respondent entitled for 50% back wages with continuity in service and seniority from the date of his termination i.e. 1.4.1999.

16. Mr. Thakur, learned counsel for the petitioner contended that respondent was not entitled to 50% back wages for the period because admittedly during this period he never worked. But aforementioned contention made on behalf of the petitioner deserves to be rejected solely for the reason that it stands proved on the record beyond reasonable doubt that the respondent was not allowed to join his duties by the petitioner-management on 26.5.1999 and it can be safely inferred that the respondent was prevented by the petitioner-management from performing his duties, which otherwise he was ready and willing to perform during that period. Moreover, learned Tribunal has only granted him 50% back wages and, as such, any prayer of such petitioner to set aside this award cannot be accepted in the facts and circumstances of the case. Another contention which was raised by Mr. Rakesh Thakur, that the learned Tribunal exceeded its jurisdiction by directing the petitioner-management to re-engage the respondent with 50% back wages is concerned also deserves outright rejection because once learned Tribunal after answering the reference came to the conclusion that the action of the petitioner-company in not allowing the respondent to resume duty w.e.f.29.5.199 after ailment is bad and de hors rules, natural consequences was to order for re-engagement of the respondent w.e.f from the date of termination i.e. 1.4.1999; otherwise also section 11-A of Industrial Dispute Act empowers Industrial Tribunal to award consequential relief, if any. Section 11-A reproduced as under:-

" Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its awards, set aside the order of discharge of dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge of dismissal as the circumstances of the case may require."

"Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter".

17. Consequently, in view of the aforesaid discussion, this Court sees no reason to interfere with the impugned award passed by the learned Tribunal which is based upon the correct appreciation of the evidence available on record.

18. Accordingly, the present petition is dismissed, so also pending application(s), if any.