
(1988) 01 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2599 of 1979

M/s Murari Woollen Mills (P) Ltd.

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Citation : (1988) 01 P&H CK 0094

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : V. Ramsarup, for the Appellant; M.S. Bedi, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The Petitioner has impugned the award dated 27.4.1979 Annexure P. 5 made by the Presiding Officer, Labour Court, Ludhiana, Respondent No. 2. Respondent No. 3 was a workman employed with the Petitioner. He allegedly absented himself from duty with effect from 6.2.1975 and as such his services were terminated by resorting to Standing Order 11 Clause G, Annexure P. 6. Respondent No 3 disputed termination of his services and contended that the action of the Petitioner is illegal A reference of the dispute was made to Respondent No. 2. Respondent No. 3 filed a statement of claim dated 28.8.1975 Annexure P. 2. The Petitioner filed its written statement dated 4.11.1975 Annexure P 3. After settlement of the issues arising out of the claim and the defence and receiving the evidence of the parties, Respondent No. 2 reached at a finding that the termination of services of Respondent No. 3 was not justified. He was, therefore, held entitled to reinstatement with continuity of service. Since Respondent No. 3 had admitted that he remained employed with M/s Sharmila Spinning Mills from 1.5.1976 to 9.6.1976 at the rate of Rs. 210/- per month, the salary which was more than what he was drawing in the employment of the Petitioner, and further admitted that during the period he remained out of service he was earning Rs. 80/- to 90/- per month as a casual labourer. Respondent No. 2 vide its award directed that Respondent No. 3 shall

be entitled to back-wages at the rate of Rs. 90/- per month being almost half of what he was drawing last in the employment of the Petitioner. It was clarified that he was entitled to this amount from the date of his termination, i. e. 6.2.1975, till the date of his reinstatement excluding the period when he remained employed with M/s Sharmila Spinning Mills.

2. The Petitioner has challenged the award Annexure P. 5 mainly on two grounds- firstly, that in view of the Standing Order Annexure P. 6 the Petitioner was within its rights to terminate the services of Respondent No 3 due to his absence for a continuous period of 8 days, and the order of Respondent No. 2 that the termination of services of Respondent No 3 is illegal, is not at all warranted by the circumstances as also by the said Standing Order Secondly, it has been contended that Respondent No. 3 has got better employment and was not at all keen to rejoin the service of the Petitioner. Therefore the order of his reinstatement ought not to have been passed and there was no occasion for allowing him backwages.

3. I have heard the learned Counsel for the parties. In my view, the order of Respondent No. 2 vide award Annexure P. 5 that the termination of services of Respondent No. 3 because his continuous absence for a particular period is not justified is correct and unexceptionable. Absence from duty is misconduct, and termination of services on this account is by way of punishment and visits civil consequences. Therefore, it is the duty of the employer to take disciplinary proceedings against the workman for this alleged misconduct. At least the rules of natural justice have to be complied with before an order of termination of services is passed. In support of this view, I place reliance on *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, . The learned Counsel for the Petitioner no doubt has placed reliance on a Division Bench judgment of this Court in *M/s Escorts Limited, Faridabad v. Industrial Tribunal, Haryana, Faridabad*, and Ors. 1983 Lab. L. C. 223. I, however, find that *L. Robert D. Souza's* case (supra) was not considered in this judgment. The same is, therefore, per incuriam.

4. It is, however, to be noticed that the Petitioner filed C. M. No. 2383 of 1986 in this Court claiming that Respondent No. 3 after making the statement before the Labour Court on 18.1.1978. joined the service of M/s C. L. Jain Woollen Mills on 9.3.1978. This application was supported by an affidavit, and a certificate issued by the aforesaid present employers of Respondent No. 3 was also filed. A prayer was made for placing this certificate on the record and requiring Respondent No. 3 to admit or deny the same. Notice of this application was given to the learned Counsel for Respondent No. 3 by S. S. Sodhi, J. vide order dated 22.8.1986 for 29.8.1986. On 1.9.1986 this application was further adjourned for filing reply to it by the counsel for Respondent No. 3 and for arguments. The application was ultimately allowed on 15.9.1986. Neither Respondent No. 3 nor his counsel admitted or denied this certificate. The certificate shows that Respondent No. 3 is a worker of M/s C. L. Jain Woollen Mills, Ludhiana, with effect from 9.3.1978 and

is drawing salary of Rs. 475/- per month. Rule 3-A of Order XXII, Code of Civil Procedure, laysdown that the Court, at any stage of the proceedings before it, may call upon any party to admit any document. Rule 2-A ibid further provides that where a party is called upon to admit a document but it does not specifically admit or deny, such a document shall be deemed to be admitted, except as against a person under disability. In the circumstances, the certificate aforesaid is deemed to have been admitted by Respondent No. 3. He is in the employment on better terms and wages with another employer and it appears that he is not keen to rejoin the service of the Petitioner. It is also to be noticed that in spite of the specific provisions of Section 17-B of the Industrial Disputes Act. 1947, he did not make any application to this Court for directing the Petitioner to pay him the wages last drawn during the pendency of the writ petition. This amply shows that he is gainfully employed as evidenced by the aforesaid certificate.

5. In the circumstances, I partly allow this writ petition and modify the award made by Respondent No. 2 in that the Petitioner shall get backwages at the rate of Rs. 90/- per month from 6.2.1975 to 8.3.1971 except for the period he was in the employment of M/s Sharmila Spinning Mills as noticed in the aforesaid award. However, because of his employment with M/s C. L. Jain Woollen Mills, Ludhiana, he is not entitled to reinstatement. There shall however, be no order as to costs.