
(2013) 05 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 939 of 2013 (O and M)

M/s. O.K. Play India Ltd.

APPELLANT

Vs

Raj Kumar and Another

RESPONDENT

Date of Decision : 20-05-2013

Acts Referred:

Citation : (2014) 140 FLR 859 : (2014) LLR 31

Hon'ble Judges : Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Akshay Bhan, for the Appellant;

Judgement

Rakesh Kumar Jain, J.—By way of this order, we shall dispose of a batch of 6 appeals bearing LPA Nos. 939 to 944 of 2013 as the same are interconnected. However, the facts are extracted from LPA No. 939 of 2013. In that case, respondent-workman was appointed on 25.9.1990 as a Helper in the Roto Department of the appellant-Company at the starting salary of Rs. 800 per month. Later on, the name of the appellant-company was changed to M/s. O.K. Play India Limited, while the respondent-workman was in its employment, who was not further permitted to perform his duty w.e.f. 18.6.1997. The management took the stand of abandonment of service by the respondent-workman to escape from the rigor of Section 25F of the industrial Disputes Act, 1947 [hereinafter referred to as the "Act"]. On raising the industrial dispute, the conciliation proceedings were initiated but a failure report was submitted by the Conciliation Officer in which he recorded that the services of the respondent-workman were dispensed with on 18.6.1997. On the issue of abandonment of service, the learned Labour Court recorded the following findings:--

10. Though it is contended on behalf of respondent by relying upon the ratio of law laid down in case of Punjab and Sind Bank and Others Vs. Sakattar Singh, and Chhedi Lal Singh Vs. Presiding Officer, Labour Court and Another, that the workman abandoned the job and remained absent for a number of days and did not resume duties despite sending notices Ex. MW-1/1 and MW-1/2 but he was a

regular employee. So, in such a situation, it cannot be presumed that the workman abandoned the job and was not interested to resume duties. In case of Chief Engineer, P.W.D., Patiala and others v. Presiding Officer, Labour Court, Patiala and others, 2010 LLR 287 and Raja Ram v. M/s. Genon India Pvt. Ltd., 184, Udyog Vihar, Gurgaon and another, CWP No. 3277 of 2002 and decided on 11.11.2009, it was by the Hon'ble Punjab and Haryana High Court that the plea of abandonment cannot be accepted and in the absence of any enquiry, the order of terminating the services without following the mandate of Section 25F of the I.D. Act will be bad in law. No law to the contrary has been shown or cited at the bar. Since the workman was a regular employee of respondent with his services, it was mandatory for the later to issue show cause notice and held a domestic enquiry against him. But since the same was not done, so, the order vide which the services of workman were dispensed with is held to be wrong and illegal and the same is hereby ordered to be set aside.

2. However, the respondent-workman was not ordered to be reinstated only on the ground that though he had rendered 7 years of service before it was dispensed with on 18.6.1997 and raised a demand notice on 7.8.1997, but before the reference could be answered, a period of 12 1/2 years have, expired. In these circumstances, instead of reinstatement with full back-wages, the respondent-workman was paid an amount of Rs. 45,000 as lump sum compensation. It was also observed that although the respondent-workman has shown that he remained unemployed during the period of his termination, which has not been rebutted by the appellant, yet it was ordered that in case the appellant decides to reinstate the respondent-workman, then he would be entitled to back-wages to the extent of 30% of his last drawn salary.

3. The learned Single Judge agreed with the finding of the Labour Court on the issue of termination of service but could not concur with the view of the Labour Court where it had only, awarded Rs. 45,000 towards lump sum compensation because the learned Single Judge found that the delay in deciding the case was not caused by the respondent-workman who had immediately raised the demand notice in the year 1997 when his services were terminated. Keeping in view this fact, the respondent-workman was directed to be reinstated into employment on the position he last held with all consequential benefits including full back-wages and continuity of service.

4. Learned counsel for the appellant has argued that the learned Courts below have proceeded on the assumption that the services of the respondent-workman were dispensed with on 18.6.1997, whereas he had himself abandoned the job, as a result of which the appellant had written three letters to him i.e. on 21.6.1997, 1.7.1997 and 11.7.1997 intimating that in case he would not rejoin his services, the same would be dispensed with on the presumption of abandonment. He further submitted that even if the respondent-workman had made the alleged complaints dated 24.6.1997 (Ex. WW-1/1) and dated 30.6.1997 (Ex. WW-1/2) that his services were terminated because there was a

lock out in the factory, the said fact is factually incorrect.

5. In this regard, we had asked the appellant on 13.5.2013 to place on record copy of Ex. WW-1/2 and also file an affidavit stating as to how much production was made in the factory by the appellant for the period between 19.6.1997 to 30.6.1997, but neither any such affidavit has been filed nor the copy of Ex. WW-1/2 has been placed on record.

6. Be that as it may, we are in agreement with the finding recorded by the Courts below that the respondent-workman was a regular employee of the appellant and in case he was willfully absent, a show cause notice should have been given and a domestic enquiry should have been held instead of terminating his services by issuing a letter. Accordingly, after the absence of the respondent-workman on 18.6.1997, he was asked to join the duties on 27.6.1997 but according to the respondent-workman, he sent a letter along with other co-workers on 24.6.1997 which is on record as Ex. WW-1/1 and again on 30.6.1997 which is on record-as Ex. WW-1/2. Thus, holding that the respondent workman had not abandoned the service but his services were terminated, the rigor of Section 25F of the Act would come into play, as a result of which the teamed Single Judge has rightly passed the order of his reinstatement with full back-wages and continuity of service. In view of the aforesaid discussion and the facts and circumstances, we do not find any merit in these appeals and hence, the same are hereby dismissed.