
(2016) 03 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17804 of 2014

Pathankot Vehicleades Private Limited	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal, Gurdaspur and another	RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) LabLR 461 : (2016) 3 PLR 141

Hon'ble Judges : Sabina, J.

Bench : Single Bench

Advocate : Deepak Girotra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J. - Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari challenging the award dated 10.4.2014 (Annexure P-5).

2. Respondent No. 2 had raised an industrial dispute by serving a demand notice Annexure P-1 challenging her termination. The appropriate Government referred the dispute to the Industrial Tribunal, Gurdaspur for adjudication.

3. Case of respondent No. 2, in brief, was that she was working with the petitioner management as a Sweeper with effect from 11.10.2001. Services of respondent No. 2 had been terminated on 9.9.2007 without issuing any show cause notice and charge sheet. Services of respondent No. 2 had been terminated in violation of mandatory provisions of Industrial Disputes Act, 1947.

4. Case of the petitioner management as per the written 1 of 5 statement Annexure P-3 was that services of respondent No. 2 had never been terminated. Rather, respondent No. 2 had herself stopped reporting for duty with effect from 9.9.2007 and had not even collected her salary for the month of August, 2007 which was payable in September 2007.

5. On the pleadings of the parties, following issues were framed by the Industrial Tribunal:-

"1. Whether termination of services of workman is illegal and unjustified as alleged? If so, to what benefits the workman is entitled?

2. Relief."

6. Parties led their evidence in support of their respective pleas.

7. Industrial Tribunal vide its award dated 10.4.2014 answered the reference in favour of respondent No. 2 and directed that respondent No. 2 be reinstated in service with continuity of service with full back-wages.

8. Learned counsel for the petitioner has submitted that the Industrial Tribunal had erred in ordering the reinstatement of respondent No. 2 as the petitioner management had lost faith in respondent No. 2. In fact, respondent No. 2 was caught stealing cardboard boxes and a warning was issued in this regard to her. Respondent No. 2 was also charge sheeted in this regard. Respondent No. 2 had herself left the job. In support of his arguments, learned counsel has placed reliance on "Tapash Kumar Paul v. BSNL and another, 2014(3) S.C.T. 106", wherein it was held as under:-

"It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.

9. Learned counsel for respondent No. 2, on the other hand, has opposed the petition and has submitted that in the written statement filed by the petitioner management, it was only pleaded that respondent No. 2 had herself left the job. In fact, it was not the case of the petitioner management in the written statement that the management had lost faith in respondent No. 2.

10. Admittedly, respondent No. 2 was appointed as a Sweeper with the petitioner management with effect from 11.10.2001. Case of respondent No. 2 was that her services had been illegally terminated on 9.9.2007 whereas case of the petitioner management, as per written statement (Annexure P-3), was that respondent No. 2 had herself left the job. Respondent No. 2 had served the demand notice dated 9.10.2007 (Annexure P-1) immediately after her alleged termination. Since the demand notice had been served by respondent No. 2 immediately after her termination, the plea taken by the petitioner management

that respondent No. 2 had herself left the job, was rightly disbelieved by the Industrial Tribunal. Rather, it has been noticed by the Tribunal that on earlier occasion also, services of respondent No. 2 were terminated on 8.9.2006 and she had moved an application before the Labour Inspector Grade-II, Pathankot on 8.9.2006. In terms of order passed by Labour Inspector Grade-II, respondent No. 2 was reinstated in service. Hence, there was no occasion for respondent No. 2 to have herself left the job. The argument raised by the learned counsel for the petitioner that respondent No. 2 was caught stealing cardboard boxes on 10.1.2007 by the Security Guard, was not pleaded in the written statement (Annexure P-3). Moreover, the said incident had taken place in January 2007 and respondent No. 2 was allowed to resume her duty. Apparently, at that stage, the petitioner management had not lost confidence in respondent No. 2 and had allowed her to join duty. In these circumstances, the argument raised by learned counsel for the petitioner that the Industrial Tribunal had erred in ordering the reinstatement of respondent No. 2 as the management had lost faith in her, is liable to be rejected.

11. Respondent No. 2 had worked with the petitioner management for about six years. The plea taken by the petitioner management in the written statement was not established on record. In these circumstances, the Industrial Tribunal had rightly ordered the reinstatement of respondent No. 2 with continuity of service with full back-wages. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as in the present case, the relief granted by the Industrial Tribunal was justified and it is not a case where instead of reinstatement, the workman was liable to be compensated by awarding her compensation.

12. In these circumstances, no ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India is made out.

13. Dismissed.