

Form No: HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

W.P. No. 25073-2014

Sh. Shahbaz Akhtar Vs. Factory Manager etc.

Sr. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.03.2018, Kh. Omer Masood, advocate for the petitioner.
Mr. Rafey Altaf, advocate for the respondent.

Through this constitutional petition, the petitioner has challenged the judgment dated 30.06.2014 passed by respondent No.2/Punjab Labour Appellate Tribunal, Lahore whereby the appeal filed by the respondent No.1 was partly allowed and the order passed by the Punjab Labour Court No.II, Lahore dated 04.06.2012 reinstating the petitioner was modified to the extent that for wrongful dismissal from service, the petitioner was awarded maximum compensation under section 46(5) of the Industrial Relations Ordinance, 2002 equivalent to 30 months' basic pay (last drawn) and house rent to be paid within one month, if admissible, in lieu of his reinstatement in service.

2. Brief facts giving rise to the filing of this constitutional petition are that the petitioner had joined the respondent No.1's factory on 23.06.1999 as a contractual employee, confirmed on 29.08.2000 and continued to work there to the entire satisfaction of his employer without giving any opportunity of complaint in respect of his conduct or performance of duties. However, on 23.04.2004 he was issued a show cause notice on the allegation that he extended an unauthorized stay to an employee, namely, Abdul Rauf in the factory beyond duty hours and had shown his presence as on overtime. He replied while denying the said allegation whereafter an inquiry was conducted by one Nasir Bukhari in which he was found guilty and, therefore, was dismissed from service on 08.06.2004. He issued a

grievance notice on 05.07.2004 and filed grievance petition on 17.08.2004 before the Labour Court No.2, Lahore which was replied by the respondent No.1. On 04.06.2012 the grievance petition was accepted on the basis of evidence produced by the parties and the wrongful dismissal from service of the petitioner was set-aside and the petitioner was reinstated in service with all back benefits. The respondent No.1 preferred an appeal before respondent No.2 which was partly allowed and the petitioner was granted maximum compensation, under section 45(6) of Industrial Relations Ordinance, 2002 instead of reinstatement, hence this petition.

3. Learned counsel for the petitioner submits that the learned Punjab Labour Appellate Tribunal/respondent No.2 has accepted all the contentions of the petitioner, therefore, it should have upheld the judgment of the Labour Court/respondent No.3. Adds that said Abdul Rauf was reinstated in service by the Supreme Court vide order dated 07.03.2013, therefore, prays for setting-aside the impugned order.

4. Conversely, learned counsel for the respondent submits that it is the discretion of the Punjab Labour Appellate Tribunal/respondent No.2 either to reinstate the petitioner in service as an employee after when his dismissal was found wrong or to grant compensation in order to ensure a smooth factory environment. Adds that in such facts and circumstances, the reinstatement in service is not the natural consequence.

5. Arguments heard. Record perused.

6. After hearing the learned counsel for the parties and perusing the file, it is straightaway observed that both courts below have consistently held that the petitioner was wrongly dismissed by respondent No.1. It is also not denied by the respondent No.1 that the allegation of giving unauthorized stay to another employee namely, Abdul Rauf was also taken up by the Supreme Court of Pakistan in the Civil Appeal No.1471-L/2012 and 1503-L/2012 filed by him in which the order of the Labour Court for his reinstatement

was upheld by withholding promotion for one year and 50% back benefits. It is not the allegation against the petitioner that he and Abdul Rauf indulged into any activity which was prejudicial to the peace and harmony within the industry concern. Extracts from para 2 of the order are reproduced as under:-

“After hearing the learned counsel for the parties and going through the record with their assistance we have observed that the allegation levelled against Abdul Rauf petitioner regarding his overstay in Packages Ltd. For a few hours after performance of his duties was not accompanied by any further allegation that during those few hours of overstay he had indulged in any activity which was prejudicial to the interests of the industrial concern or its business. We have been informed that Abdul Rauf petitioner has served Packages Ltd. For a period stretching over many years and so far no formal proceedings against him have been initiated for any other misconduct.”

7. In the present case the scope of section 46(5) of IRO, 2002 is to be seen in the light of the judgments by Superior Court of our jurisdiction. Section 46(5) of IRO, 2002 therefore is reproduced for ready reference as under:-

“(5) The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service.”

The learned Labour Appellate Tribunal vide impugned judgment has held that a reinstatement should not be thrust when the employee was litigating for three years or when such reinstatement would had to a law and order situation promoting a hostile atmosphere with the real prospect of conflict with the employer.

8. In **“Balochistan Engineering Works Ltd. Vs. Abdul Hameed and others”** reported as **2007 SCMR 1160**, it was held that where an alternate prayer to the re-instatement, compensation is sought, then with consent compensation can be awarded without back benefits. In **“Messrs Ashraf Sugar Mills Ltd. Through General Manager VS. Manzoor Ahmed”** reported as **2006 SCMR 1751**, it was held that where reinstatement is not considered proper, compensation can be awarded. It was discussed therein that in case titled **“Utility Stores Corporation of Pakistan Limited V. Punjab Labour Appellate Tribunal and others”** reported as **PLD 1987 SC 447**, the words “just” and “proper” under section 25(5) would mean

right, fair or suitable and according to law and that the word “proper” means accurate i.e. adequate application of substantive provision of the Statute. Para 4 is reproduced as under:-

“However, subsection (6) of the Ordinance, further enables a Labour Court to award compensation, “in lieu of reinstatement” of the worker in service where his termination is held to be wrongful. This is an alternate power which can be invoked in a particular case where the reinstatement of a worker is not considered to be proper. The mere fact that a Labour Court is also vested with power to award compensation does not take away its authority of reinstatement of a worker. The only restriction placed on the Labour Court is that it cannot award compensation in addition to the reinstatement of a worker.”

The possibility of enacting a law and order situation following reinstatement may be an easy excuse justifying compensation in lieu of reinstatement. However, such possible strained relationship may provide a new cause of action to proceed against such an employee. Even otherwise, the record must reflect that the employee has been levelling ridiculous, outrageous, arrogant allegations against the employer adding to confrontment, haughtiness against the management, therefore, the reinstatement would amount to kicking them from behind and humiliate, disgrace and embarrassment, eventually enhancing the degree of disharmony and conflict against the object of law, as held in case titled **“Ghulam Rasool Tahir VS. IVTH Singh Labour Court, Karachi through Presiding Officer and another”** reported as 2007 PLC 83. Such situation was discussed in case titled **“Khayal Muhammad Vs. Messrs Lucky Textile Mills through Managing Director/Occupier”** reported as 2007 PLC 423 and it was held that reinstatement would be undesirable. Para 7 is reproduced as under:-

“7. The bare perusal of the contents of letter of termination reveals that it contained the allegation that performance of the appellant was not up to the mark for considerable period of time. It was further alleged that appellant has failed to discharge his duty properly. Contents of termination letter sufficiently show that the appellant was terminated on account of unsatisfactory service and his inability to discharge his duty properly. Besides the respondents have produced in evidence an application bearing the signatures of the applicant addressed to the Admin. Manager containing allegation of quarrel between the workers to which the reference has also been made in the cross-examination of the appellant worker. This reveals displeasure of respondent management.”

9. However, in the present case the allegation against the petitioner is only that he allowed Abdul Rauf overtime stay. His case is that he was permitted/directed by Mian Hanif, the shift incharge to

do so. This important witness was neither produced by the petitioner nor by the respondent. Keeping in view all the circumstances, the concurrent findings were given to the extent that termination was found unlawful. There is no iota of allegation that either the petitioner misbehaved or threatened the management or tried to disturb the working environment of the factory. To the understanding of this court, under the scheme of Labour Laws, the employee has been granted certain rights which need to be protected and if such employee is dragged into litigation, he cannot be said to have contributed in the strained relationship between the employer and the employee.

10. For what has been discussed above, this writ petition is **allowed** and the impugned judgment is set-aside to the extent of the payment of compensation which is converted into reinstatement in lieu thereof as required in case titled **“Khalid Mehmood Vs. State Life Insurance Corporation of Pakistan and others”** 2018 SCMR 376 & case titled “Inspector General of Police, Punjab Vs. Tariq Mahmood” reported as 2015 SCMR 77 with back benefits, with no order as to cost.

(ALI BAQAR NAJAFI)
JUDGE

*A.Qadoos**

Approved for reporting.

Judge.