**(2007) 4 PLR 373**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

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| Hoshiarpur National Transporters (P) Ltd. and Another | | APPELLANT |
| | Vs | |
| Presiding Officer, Labour Court and Another | | RESPONDENT |

**Date of Decision:** Oct. 30, 2006

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Evidence Act, 1872 - Section 106

**Citation:** (2007) 4 PLR 373

**Hon'ble Judges:** J.S. Narang, J; Arvind Kumar, J

**Bench:** Division Bench

**Final Decision:** Allowed

**Judgement**

Arvind Kumar, J.
The prayer is this petition filed under Articles 226/227 of the Constitution of India is for quashing of award dated 12.8.2004, impugned before us.

2. It is the case of the petitioner that respondent No. 2-workman was appointed by the petitioner Company as Adda Conductor, on daily wages for a short period. His work was to issue tickets to passengers. According to the petitioner, workman was in habit of committing embezzlement and fraud by issuing used tickets to the passengers, which he admitted in presence of staff members. Following the said episode, the workman submitted a resignation to the Company on 5.6.1999, which was accepted. However, after the acceptance of his resignation, the workman raised an industrial dispute on the ground that he worked with the petitioner Company from 21.8.1996 till his services were illegally terminated on 6.6.1999, without holding any enquiry or without affording any

opportunity of being heard. The claim of the workman was resisted by the Company by filing the written statement. Their stand was the services of workman were never terminated rather the same were in consequence with his resignation letter dated 5.6.1999. While filing replication/rejoinder to the written statement, it was averred by the workman that the alleged resignation is forged and fabricated.

3. The Labour Court, after analysing the evidence adduced before it by both the parties concluded that the alleged resignation is not voluntarily and genuine and in fact the petitioner Company had dismissed the workman. Holding that the services of the workman were terminated illegally, the Labour Court, vide the impugned award dated 12.8.2004 set aside the same and ordered re-instatement of workman with full back wages, continuity of service and other service benefits within one month from the date of award.

4. Feeling dissatisfied with the same, the petitioner Company has preferred the instant petition.

5. Upon notice of the petition, respondent-workman filed his written statement, thereby controverting all the averments made in the petition. Reiterating the stand taken by him before the Labour Court and justifying its award, impugned in the instant petition, dismissal of the petition has been sought.

6. We have heard the learned Counsel for the parties.

7. The sheet-anchor of the case of the petitioner-company was the resignation, Exhibit MW-1/27 (Annexure P-2 in this writ petition). A bare perusal of the impugned award shows that the Labour Court has returned a finding that the writings, Exhibits MW-1/19 and MW-1/20 show that the company dismissed him from service for dishonesty allegedly for reissuing tickets which were caught and produced on the file and in this situation, there was no occasion for submission of voluntary resignation by the respondent-workman without there being any evidence of acceptance of resignation, holding that either it as obtained by force or coercion. In backdrop of this finding, learned Counsel for the petitioner-company has confined his argument with regard to grant of full back-wages to the respondent-workman. Learned Counsel for the petitioner-company has argued that he has vaguely stated that he remained unemployed without there being cogent evidence and as such, he is not entitled to back-wages. The contention is tenable. It is now settled proposition having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto that instead of employer, the plea is required to be raised by the workman that he was not gainfully employed during termination period. In other words, the initial burden is on the workman to show that he was not gainfully employed. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. Emphasis is from a judgment of the Hon''ble Supreme Court in Kendriya Vidalaya Sangathan and Anr. v. S.C. Sharma 2005 (1) S.C.T. 569(SC). Even otherwise, payment of back-wages is a discretionary power

which has to be exercised keeping in view the facts and circumstances of each case and neither strait jacket formula can be evolved nor a rule of universal application can be adopted. However, in the instant case, respondent-workman has not placed on record any material that he was not gainfully employed during this long interregnum. Therefore, considering these aspects, it would not be a sound exercise of discretion to saddle the petitioner-company with the liability of payment of back-wages.

8. In view of the discussion above, the writ petition is allowed to the extent that back-wages to respondent-workman shall stand disallowed. The impugned award stands modified accordingly. No costs.