

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6479 of 1994

Date of Decision: 09.12.2015

Bhagwan Sarup

... Petitioner

Versus

The Presiding Officer, Labour Court,
U.T. Chandigarh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. N.K. Nagar, Advocate,
for the petitioner.

Mr. Gaurav Goel, AAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. At the outset, Mr. Gaurav Goel, AAG, Haryana points out that against the impugned award dated November 06, 1992 passed by the Presiding Officer, Labour Court, UT, Chandigarh the writ petition filed by the Haryana Roadways bearing CWP No.14731 of 1993 has been dismissed by the learned Single Judge of this Court on December 03, 2014. In the wake of the rejection the workman was reinstated to service by virtue of no stay granted during the pendency of the aforesaid petition.

2. In the present writ petition, the petitioner has challenged the award on the ground that it deprives the petitioner of back wages and continuity of service and treats him as a fresh appointee from the date he submits his joining report after publication of the award. The award is

criticized as erroneous exercise of jurisdiction under section 11-A of the Industrial Disputes Act, 1947 (“the Act”). The Labour Court exercised its jurisdiction under section 11-A of the Act and deemed it a fit case where the punishment awarded by the management can be substituted by a lesser punishment. When the Labour Court came to the conclusion that dismissal was excessive and disproportionate to the gravamen of the misconduct the selection of punishment became the prerogative of the Labour Court substituting the choice of the disciplinary authority from the range of statutory punishments available for infliction. There is no gainsaying that the power of the Labour Court to substitute punishment is inherent when the punishment selected is found excessive or disproportionate.

3. The only question thus which arises in this petition for consideration is whether the Labour Court has exercised its jurisdiction properly depriving the petitioner of continuity of service resulting perhaps unwittingly of loss of 17 years of prior service. The claimant was appointed as a Conductor in 1972. He was dismissed after inquiry on September 05, 1989 and the award has been passed on November 06, 1992. Indisputably, the petitioner was reinstated to service following the award of the Labour Court and continued to serve till he superannuated from service. The other deleterious fallout of the impugned award is that the petitioner has been deprived of pension altogether and has suffered irrevocably reduction pension by deducting 17 years and odd from his period of service reckonable towards service pension.

4. Mr. Goel informs the Court that in all probability the petitioner retired sometime in the year 1999 [subject to confirmation from the service

record] which supports the inference that the petitioner is not in receipt of pension. The petitioner who is present in Court affirms the fact.

5. The Labour Court obviously did not visualize all this. Nor was such deprivation present in its mind when it passed the award, the harshness of which is revealed today at the hearing.

6. Therefore, in order to do substantial justice and to strike a judicious balance, this Court should restore the past deprivation by ordering amending of the award by modifying it and substituting the punishment of dismissal from service to the lesser punishment of depriving the petitioner of back wages from September 05, 1989 to November 06, 1992 since the date of reinstatement is a purely fortuitous circumstance being an artificial date which has no nexus to the punishment. The actual date of joining was sometime in the year 1994 and the petitioner cannot be deprived of his rights from November 06, 1992 till date of joining for which he will be entitled to full wages with the setting aside of the punishment order which has served its purpose and has become non-est. This is mostly for the reason that the award stands implemented by the department long years ago.

7. In order to restore the right to pension to the petitioner which is a right to property protected by Article 300-A of the Constitution of India the petitioner must get continuity of service from the date when he was illegally dismissed from service on September 05, 1989. I would say illegal, because of the award of the Labour Court declaring it as much. The only question which now remains for consideration is as to whether the matter should be remanded to the Labour Court for choosing some other modified lesser punishment other than the one awarded which is found excessive and

disproportionate to the cause. Ordinarily, this Court may have remitted the case for re-consideration by the Labour Court in exercise of original jurisdiction under section 11-A of the Act but looking to the distance of time elapsed it may not be a fair thing to do which would only prolong the agony in remand proceedings and, therefore, this Court takes upon itself the burden of dispensing equitable and substantial justice by reducing the punishment of dismissal and substituting it by award of major punishment of withholding two increments with cumulative effect. This would I think serve the ends of justice in a wholesome way and possibly avoid a miscarriage of it given that the petitioner was taken back and thereafter nothing adverse is against him as none has been brought on record.

8. Nevertheless, I should not fail to notice that on the merits of the case, the learned counsel for the petitioner has vehemently argued that his client was grievously prejudiced at the stage of the inquiry proceedings when one of the two witnesses, namely, Ramesh Chander, produced by the management as its witness appeared in the witness box before the labour court and made a statement by way of examination-in-chief that the petitioner was not granted a fair opportunity to cross-examine the witness as he was on duty on the relevant day fixed for evidence of Ramesh Chander pending cross-examination testifying that when the petitioner came back from duty afterward to know of the events of the day i.e. on March 29, 1989 he was informed that Ramesh Chander, Inspector had appeared and had left the venue of the inquiry discharged by the inquiry officer for the day. No further opportunity was afforded to the petitioner to enable him to cross-examine the material witness to prove his innocence.

9. The protest of the petitioner in writing to this effect was not considered and thus one of the two witnesses who was a member of the checking party when the bus was intercepted for checking was not allowed to be cross-examined to turn the examination-in-chief into legal evidence. The charge of misconduct was laid when 15 passengers were found travelling without tickets from Meham to Hisar. It is not necessary to go into the charge-sheet or in the inquiry proceedings in any further detail in view of the award passed by the Labour Court striking down the punishment order as not justified. There is a difference between the legality of an adverse action taken and its justification.

10. On the other hand in rebuttal, it is the contention of Mr. Goel that Tirlok Singh who was part of the checking team deposed against the petitioner and the charge is capable of being proven of the testimony of the single witness even if we discard the incomplete testimony of Inspector Ramesh Chander.

11. I would not say that there is no merit in Mr. Goel's contention but since the case is being examined from the standpoint of quantum of punishment then this argument recedes into the background and will have no major role to play in the matter of grant of relief.

12. As a result of the above discussion, there is sufficient merit in this petition and it deserves to be allowed. The impugned award dated November 06, 1992 is set aside in all respects except that it ordered reinstatement to service which part is affirmed. The petitioner will be deemed to have been in service since 1972 by the fiction of the law up extending continuously till November 06, 1992. The service will be treated

as continuous for purposes of pension and pensionary benefits. The direction of the court *a quo* to the effect that the petitioner will be deemed to be a fresh appointee is quashed on certiorari being found excessive and disproportionate to the cause and a overreach by the Labour Court in exercise of its jurisdiction under section 11-A of the Act. The punishment of dismissal will stand substituted to major punishment of stoppage of two annual grade increments with cumulative effect.

13. As a result, a mandamus is issued to the respondent-State to treat the petitioner in service since 1972 and the Department would re-fix the pay and emoluments of the petitioner on the date of of retirement in accordance with this order and as per rules. By excluding payment of back wages from September 05, 1989 to November 06, 1992 the period will be treated as part of punishment in addition to the one imposed by this Court and would remain a part and parcel of lesser punishment presently imposed.

14. Let the re-fixation exercise of pay, pension and pensionary benefits and resulting arrears be carried out and completed within two months from the date of receipt of a certified copy of this order. The monetary benefits be paid accordingly without delay.

(RAJIV NARAIN RAINA)
JUDGE

09.12.2015
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