

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.12480 of 2011 (O&M)
Date of decision: 30.03.2015**

Institute of Hotel Management

... Petitioner

Vs.

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. G.S.Hooda, Advocate
for the petitioner.

Mr. Arvinder Singh, Advocate
for respondent No.2.

AMIT RAWAL J.

Management had approached this Court by challenging the Award passed by the Labour Court, whereby, the workman has been reinstated with 50% back wages from the date of demand notice.

Respondent No.2 was appointed as Chowkidar by the petitioner. Thereafter, he was charge sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, vide office memo No.FCI/585 dated 05.07.2011, on the following allegations:-

1. *That he is habitual of remaining absent from duties,*

without information/permission. He was issued a letter No.492 dated 22.06.2001 vide that he was asked to explain his position within 24 hours from the receipt of letter that why he should not be dismissed from services, which he failed to reply.

2. That he reported to duties at 4 am against stipulated reporting time 12 night for 02.07.2001, further he fiddled the slot by over-writing 12 night, over original entry 4 am. By the above reprehensible conduct he has rendered himself liable for disciplinary action under rules.”

Thereafter, on receipt of reply dated 20.07.2001 (Annexure P-2) to the charge sheet, Sh. Raj Kumar Sharma, Advocate was appointed as an Enquiry Officer to hold departmental enquiry into the charges levelled against respondent No.2 and the enquiry officer submitted his report on 6.10.2001 (Annexure P-3) proving all the charges against respondent No.2. Thereafter, he was served with show cause notice for removal from service, vide memo No.851 dated 02.11.2001 (Annexure P-4), but respondent No.2 failed to give any reply. After detailed consideration of the matter, respondent No.2 was removed from the service w.e.f. 06.12.2001 (Annexure P-5).

Mr. G.S.Hooda, learned counsel appearing on behalf of the petitioner-Management contends that the Labour Court has committed illegality and perversity in ordering reinstatement along

with 50% back wages. The Labour Court while ordering reinstatement along with 50% back wages from the date of demand notice did not appreciate the following points:-

- 1. Adequate opportunity had been given to the delinquent official-workman by the enquiry officer.*
- 2. Absenteeism of respondent No.2, had been proved through the testimony of MW2-Sumit Malhotra, much less, documents Ex.M1 to Ex.M25 which were produced during the enquiry and in this regard Ex. M1 and Ex.M2 had been proved.*
- 3. Workman had not appeared personally to depose in favour of the reference on the plea that he was bed ridden with paralysis and was unable to move and no request from respondent No.2 with regard to recording to his statement through the Local Commissioner, had been made.*

He further submitted that the Labour Court decided the case on the preliminary issue of enquiry by noticing that adequate opportunity was not given but no request was made to the Management.

Mr. Arvinder Singh, learned counsel appearing on behalf of the respondent No.2-workman submitted that enquiry officer was none else but was an advocate who was enquiry officer in a number of other cases. In other words, enquiry officer has appeared as representative of the Management, which is evident from the memo

of presence recorded by the Labour Court. He further submitted that eye witness Shyam Raj did not utter a single word with regard to fiddling with the attendance register, therefore, charge No.2 had not been proved by the Management. He further submitted that even the show cause notice clearly shows application of pre-determined mind of the Management. Workman had previously submitted reply to the show cause notice dated 20.07.2001, vide Annexures R-4 and R-5 and this fact had been admitted by the witness, MW-2. He further submitted that respondent No.2-workman had been appointed by the Member, Food Crafts Society, Chandigarh, vide letter dated 25.02.1992, who is I.A.S. cadre Officer, whereas, workman had been removed from service by the Principal, Food Craft Institute, Faridabad, who was not appointing authority and in order to establish the same, the appointment letter as well as removal letter have been annexed at Annexure R-2 (Colly). He further submitted that order of appointment of enquiry officer as well as order of removal also contain element of *mens rea* inasmuch as that subsequent period of absence has also been noticed by the enquiry officer, as well as, by the Principal, while allegedly removing workman and thus, prayed that order of the Labour Court, is just, fair and legal and required to be upheld. Further, it has been submitted that workman has crossed the age of retirement w.e.f. 30.06.2011 and therefore, the petitioner be directed to give retirement benefits to the delinquent workman and prayed for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book.

During the pendency of the writ petition after noticing the contention of learned counsel for the parties to the lis, this Court on 24.02.2014, passed the following order:-

“Counsel for the petitioner prays for some time to seek instructions as to whether the matter can be resolved by offering compensation to respondent No.2, for his over 9 years of service to the petitioner-Institute.

It is also a matter of record that the workman is, now, paralyzed and cannot be reinstated in job and therefore, it would be proper if the matter could be resolved since 50% back wages has also been awarded vide the impugned award.

Adjourned to 22.03.2014.”

During the hearing of the aforementioned writ petition, this Court had asked learned counsel for the Management, as to whether Management would be in a position to resolve the matter by offering compensation to respondent No.2, for his over 9 years of service to the petitioner-Institute, but the learned counsel for the petitioner-Management submitted that he received instructions not to offer any compensation but to contest the Award.

The Labour Court after noticing the aforementioned facts regarding allegation of the charge sheet and reply of the

Management, as well as of the workman, particularly of MW1-Raj Kumar Sharma, found that charge sheet dated 05.07.2001 (Ex.M1) was vague and ambiguous, as the date of absence is conspicuously absent. Further, charge of fiddling, causing overwriting, have not been noticed by the enquiry officer and even on the statement of other co-worker (watchman) of the Institute, then held the enquiry was beyond charge. It also noticed that dismissal order was not passed by the appointing authority, thus, enquiry conducted was not just, fair and proper. The Labour Court noticed the contention of the workman that, enquiry officer, had not taken into consideration the findings on the previous charge sheet vide which the workman was exonerated. The photocopy of the appointment letter Ex.MW1 has been proved on record as and the factum of the receipt had also been admitted by MW2-Sumit Malhotra. For the sake of brevity, the statement of MW2-Sumit Malhotra, is extracted herein below:-

*“MW-2 witness of Sh. Sumit Malhotra office
Superintendent Food Craft Institute, Faridabad.*

*As witness we after conducted enquiry show cause
notice Ex.-In MW/1 tendered application dated
20.11.2011 for extension of time Ex. At MW2/2 after
that time extended by the office Ex. - MW2/3 after
that no reply received. Dismissal order Ex.MW2/4.*

XXX by Arvinder Singh AR for Sh. Sucha Singh

application of Sucha Singh not entered in the register by me. We do not do such thing. Admitted acknowledged application. Suggestion this is wrong to say that application given by Sucha Singh were not entered.”

From the perusal of the aforementioned statement, it is evident that workman was appointed by the Member, Food Crafts Society, Chandigarh and had been removed from service by the Principal, Food Craft Institute, Faridabad. It is settled law that a person can be removed by the appointing authority only and not by any other officer. The enquiry officer had also represented the Management in proceedings before the Tribunal, which shows that there was an element of biasness of the enquiry officer against the workman. Management ought to have availed services of other representative to represent them before the Industrial Tribunal.

From the perusal of dismissal order, it is evident that it is not proved that there was fiddling of the attendance register, though it has been mentioned that workman had reported for duty at 4 a.m., therefore, charge No.2 had not been proved. The Management has also failed to prove charge No.1 as the Management did not examine any other co-worker of the Institute. Rather the case of the workman was that he was working 16 hours daily and been demanding appropriate wages, which has specifically been averred in affidavit.

During the pendency of the proceedings before the Tribunal, workman had suffered a paralytic attack and is bed ridden. Since, he is unable to move, he examined his wife, doctor and other witnesses in this regard. This Court after noticing the aforementioned facts, arrived at conclusion that the enquiry officer did not proceed in accordance with law, charges framed were also vague and even removal of the workman was not done by the appointing authority.

The order of removal reads thus:-

“Sh. Sucha Singh, Chowkidar, while working in Food Craft Institute, Faridabad was served with a charge sheet under Rule 7 of Haryana Civil Services (P&A) Rules, 1987 vide this office memo no.FCI/585 dated 05.07.2001 with the following charges:-

i) That he is habitual of remaining absent from duties. He was issued a letter No.492 dt.22.06.2001 vide that he was asked to explain his position within 24 hours from the receipt of letter that why he should not be dismissed from service, which he failed to reply.

ii) That he reported to duties at 4 am against stipulated reporting time 12 night for 02.07.2001. Further he fiddled the slot by overwriting 12 night, over original entry 4 a.m.

Sh. Sucha Singh, Chowkidar submitted his reply to the charge sheet vide his application dated 20.07.2001. His

reply was not found satisfactory. Accordingly, Sh. Raj Kumar Sharma, Advocate, 39 Nissan Hut, NH IV, Faridabad was appointed as Enquiry Officer vide this office order dated 30.07.2001 issued vide endst No. FCI/626-29 dated 30.07.2001 to hold a departmental enquiry in to the chages levelled against him. The Enquiry Officer had submitted his report dated 06.10.2001. I have gone through the contents of the charge sheet and the contents of the enquiry report. The Enquiry Officer has given due opportunities to the charges official to explain his position with regard to the charges levelled against him, but the charges official has not been able to produce any document/other evidence in his defence. The Enquiry Officer has clearly established charges against Sh. Sucha Singh, Chowkidar.

Sh. Sucha Singh, Chowkidar was served with show cause notice for removal from service vide memo No.851 dated 02.11.2001. He was given an opportunity to give representation, which he may like to make showing show cause notice. He had submitted application dated 20.11.2001, wherein he had requested that he will submit his representation by 26.11.2001 because his advocate is not available, which was duly granted to him. But he failed to give any representation by 26.11.2001.

He has not improved his working and even after issuing charge sheet he remained absent from duty for 30 different days (05.07.2001 to 05.12.2001) in an unauthorized manner.

The above conduct of Sh. Sucha Singh, Chowkidar proved that he is a habitual absentee which was a matter to be viewed with all its seriousness. I have gone through the charge sheet, the enquiry report and all the relevant documents. The charges have been clearly and fully proved against him. The nature of charges and misconducts committed by him is very serious. There is no possibility of any improvement in the conduct of the delinquent employee, which is established from the fact that he chose to remain absent for 30 different days even after getting charge sheet in respect of unauthorized absence.

After detailed consideration of the matter, I am of the opinion that ends of Justice will be met, if proposed punishment of removal from service is confirmed on Sh. Such Singh, Chowkidar, I order accordingly.”

From the perusal of the removal order, it is evident that Principal has also taken into consideration the conduct of the petitioner with regard to the alleged absence from duty of different days i.e. 05.07.2001 to 05.12.2001. The said fact cannot be noticed

by the Punishing Authority as the workman was not issued or put to charge sheet in this regard.

Since the workman has become paralytic, it would not be apt to order reinstatement and as well as keeping in view his nine years of service rendered by treating him into service with 50% back wages as compensation. I deem it appropriate to grant a consolidated amount of compensation to the workman to the extent of 75% of the back wages by treating him to be in continuous service.

In view of what has been observed above, the Award of the Labour Court is modified to the aforesaid extent and the writ petition is accordingly, disposed of.

(AMIT RAWAL)
JUDGE

March 30, 2015
savita