

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 17738 of 2011 (O&M)

Date of Decision: 26.02.2015.

Bharat Sanchar Nigam Ltd.

--Petitioner

Versus

Sh. Ram Phal Suhag & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Madan Mohan, Advocate for the petitioner.

Mr. Gagandeep, Advocate for respondent no.1.

TEJINDER SINGH DHINDSA.J

Bharat Sanchar Nigam Ltd. has filed the instant writ petition impugning the award dated 21.7.2009 (Annexure P-2), passed by the Industrial Tribunal-cum-Labour Court-I, Chandigarh to the extent the respondent-workman has been held entitled to wages for the period 24.9.1992 till date of his removal i.e. 30.9.1994.

Brief facts emanating from the pleadings on record are that the respondent-workman was appointed as Telephone Operator in the year 1979 and was posted in Charkhi Dadri, District Bhiwani, Haryana when he absented from duty w.e.f. 8.2.1987. The employer chose to initiate a regular departmental inquiry against the workman on the charge of unauthorized absence from duty and upon findings having been recorded by the Inquiry Officer against the workman, the departmental proceedings culminated in the imposition of major penalty of removal from service vide order dated 30.9.1994.

Upon an industrial dispute having been raised and reference having been made by the appropriate govt. the award dated 21.7.2009 has

been passed by the Labour Court, whereby removal from service of the workman has been upheld. Directions, however, have been issued to the petitioner-Nigam i.e. the employer to pay to the workman wages for the period 24.9.1992 till the date of passing of the order of removal from service i.e. 30.9.1994.

Learned counsel for the parties have been heard at length.

There is no dispute as regards the fact that vide notification dated 12.5.1998 the following dispute was referred to the Labour Court for adjudication:-

“Whether the action of the Management of Department of Telecommunication, Rohtak in passing orders dated 30.9.1994 for removal from service against Sh. Ram Phal Suhag, Telephone Operator is just and legal? If not, what relief the workman is entitled for?”

Perusal of the award dated 21.7.2009 would also reveal that the following issues had been framed by the Labour Court during the course of proceedings:-

“1. Whether there has been a violation of any rules of principle of natural justice by the enquiry officer while conducting the inquiry, and by disciplinary authority while awarding punishment?

2. Whether enquiry officer has rightly appreciated and evaluated the evidence adduced by the parties during the inquiry proceedings before submitting the inquiry report?”

The Labour Court has recorded a finding of fact that a fair and proper inquiry was conducted by the management in regard to the charge of unauthorized absence from duty. Labour Court has also held that the workman had not adduced any evidence to justify his absence from duty for a period of more than 5 years. Accordingly, it has been recorded that the

penalty of removal from service has been rightfully imposed upon the workman after conduct of a regular inquiry which was in consonance with the principles of natural justice.

However, having recorded such findings, the Labour Court has then proceeded further to direct payment of wages to the workman for the period 24.9.1992 till the date of removal from service i.e. 30.9.1994 ostensibly on the basis that an application dated 24.9.1992 had been moved by the workman to report back on duty.

This Court is of the considered view that such directions issued by the Labour Court as regards payment of salary for the period 24.9.1992 to 30.9.1994 cannot sustain. Such view is being taken for the following reasons:-

The terms of reference before the Labour Court were categorical and were in relation to examining the validity of an order of removal dated 30.9.1994. Clearly, it was only in the eventuality of finding the order of removal from service dated 30.9.1994 to be bad in law that it was open for the Labour Court to proceed any further and to look into the question of granting adequate relief to the workman. Concededly, the order of removal from service dated 30.9.1994 has been found to be valid and tenable in law by the Labour Court. Under such circumstances, there was no occasion for the Labour Court to have proceeded further and to have directed payment of wages for the period in question. This Court would have no hesitation in observing that the Labour Court to the extent of directing payment of wages for the period 24.9.1992 to 30.9.1994 has exceeded its brief.

That apart, the Labour Court while issuing such directions as regards payment of wages for the period 24.9.1992 to 30.9.1994 has

proceeded oblivious of the observations made by the Inquiry Officer in the inquiry report dated 26.9.1994 and placed on record at Annexure P-3, wherein it was noticed that in the application dated 24.9.1992 which the workman had submitted for joining back on duty, he had himself stated that he had been refused by the official concerned to take him back on duty on 14.8.1992, whereas his own medical certificate upon which reliance had been placed upon was up to 30.9.1992.

There is yet another aspect of the matter. The conditions of service of the respondent-workman would be governed by the Central Civil Services (Leave) Rules, 1972 and Rule 12 thereof governs the maximum amount of leave and reads as follows:-

“Unless the President, in view of the exceptional circumstances of the case otherwise determines, no govt. servant shall be granted leave of any kind for a continuous period exceeding 5 years.”

The Labour Court itself has recorded a finding as regards a proper and fair inquiry having been conducted and the workman having not adduced any evidence to justify his absence from duty for a period in excess of 5 years. Under such circumstances and in the light of the bar envisaged under Rule 12 of 1972 Rules there was no occasion for the Labour Court to have directed payment of wages for the period 24.9.1992 to 30.9.1994.

The impugned directions of the Labour Court can also not be justified with the aid of Section 11-A of the Industrial Disputes Act. The discretion vested with the Labour Court under Section 11-A of the Act would have come into play only if the order of removal dated 30.9.1994 had been found to be bad in law. The finding recorded is in relation to such order of removal from service in respect of the workman-respondent to be

perfectly valid and after conduct of a regular inquiry in accordance with law. As such, the relief of payment of wages for the period in question could not have been granted in favour of the respondent-workman even by exercise of discretion under Section 11-A of the Act.

For the reasons recorded above, the present petition is allowed. The directions issued in the award dated 21.7.2009 (Annexure P-2) as regards payment of wages to the respondent-workman for the period 24.9.1992 to 30.9.1994 are set aside.

Petition is allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

February 26, 2015.
lucky

Whether to be referred to Reporter? Yes.