

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 17246 of 2012
Date of decision : July 28, 2015

Satyawan

..... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Panipat and another**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Puneet Gupta, Advocate
for respondent No.2.

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

Amit Rawal, J (oral).

The challenge in the present petition is to the award dated 25.01.2012 (Annexure P-12) whereby the Labour Court declined the reference by rendering findings on issue No.1 against the workman. In other words, issue No.2 was treated as preliminary and it was found vide order dated 8.6.2011 Annexure R-2/2 that the enquiry conducted by the enquiry officer viz-a-viz the charges levelled against the workman have been duly proved. Similarly it has been found that the Management did not resort to unfair labour practice, therefore, it was not a case of termination but a case of absenteeism.

Mr. Ramesh Goyat, learned counsel appearing on

behalf of the petitioner submits that the petitioner had joined Management on 10.3.1995 as unskilled labourer and his services were terminated on 25.11.2002, accordingly demand notice dated 17.12.2002 was served. However, during the pendency of conciliation proceedings a settlement dated 6.1.2003 (Annexure P-1) under Section 12 (3) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act') was arrived at. As per the terms and conditions of the settlement the petitioner was taken back into service and it was held that there was no previous dispute and that the petitioner would not be entitled to back wages, much less he was granted benefit of continuity of service.

He further submits that as per settlement the petitioner was directed to report on duty on 7.1.2003 and he reported for duty on 7.1.2003 but thereafter, in the month of March, he was not allowed to join duty and in this regard, submitted one application dated 3.3.2003 to the Labour-cum-Conciliation Officer. He further submitted that the award dated 25.1.2012 also contains the element of decision on issue No.2, therefore is a complete award, therefore the petitioner even if, has not challenged finding rendered on preliminary issue No.2 vide order dated 8.6.2011 (Annexure R-2/2), the petitioner cannot be thrown out on this point. He further submits that the enquiry officer also appeared in the witness box and in cross examination shown ignorance about arrival of the settlement, though the same was handed over during the enquiry and exhibited as Ex. W-4, therefore, the enquiry proceedings are vitiated in law.

He further submits that the Management has indulged into unfair labour practice by serving charge sheet dated 1.4.2003 whereby the charges of absence have also been included which could not be included in view of the fact that punishment of dismissal is dis-proportionate to the charges and therefore the Labour Court ought to have invoked the jurisdiction under Section 11-A of the Act and therefore the award of the Labour Court is not sustainable and suffers from illegality and perversity and the same is liable to be set aside.

Mr. Puneet Gupta, learned counsel appearing on behalf of the Management has raised a multi fold arguments which are summarized hereinbelow:-

1. That the writ petition is not maintainable as the petitioner has not challenged the order dated 8.6.2011 (Annexure R-2/2), therefore the issue No.2 viz-a-viz holding of enquiry had been answered against the workman.
2. The workman has accepted in the cross examination that he was given full opportunity to join enquiry, much less cross examine the witnesses and the workman has not examined any witness except his own bald statement.
3. Since the order dated 8.6.2011 has not been challenged, therefore the Labour Court could not have invoked the jurisdiction under Section 11-A of the Act.
4. He further submits that the scope of interference under Article 226 of the Constitution of India is limited and does not fall within the realm of judicial review while exercising jurisdiction under Article

226 of the Constitution.

In view of the aforementioned submissions he has relied on the judgments in **K.V.S. Ram Vs. Bangalore Metropolitan Transport Corpn. 2015 (2) SCT 81, M. P. Electricity Board Vs. Jagdish Chandra Sharma (2005) 3 SCC 401 and V. Ramana Vs. A. P. SRTC and others (2005) 7 SCC 338** to contend that the Court should be wary while interfering with the quantum of punishment imposed by the punishing authority and it can only interfered/reviewed in case it is found violative of Article 14 of the Constitution of India.

Since the charges have been duly proved, therefore the punishment of dismissal is not disproportionate to the charge sheet and thus, the award of the Labour Court is perfectly legal and justified and is not liable to be interfered with.

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

I would delve to decide first the preliminary objection viz-a-viz not challenging the order dated 8.6.2011 (Annexure R-2/2). Sub Section 3 of Section 11 of Chapter IV of the Act, describes the procedure, powers and duties of Authorities while dealing with the dispute raised between the parties to the *lis*, in essence the Labour Court, would have power vested in it, of a Civil Court under the Code of Civil Procedure for the purpose of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses and in respect of such

matters as may be prescribed. Sub Section 4 of Section 11 provides that the Conciliation officers have the same powers as are vested in a civil court under the Code of Civil Procedure. While exercising such powers, it treated issue No.2 as preliminary issue by invoking the provisions of Order 14 Rule 2 CPC. Rule 2 of Order 14 enjoins an obligation upon the Court to pronounce the judgment on all issues not withstanding the fact that the case can be disposed of on a preliminary issue.

Since the Labour Court has rendered a finding on issue No.2 independently vide order dated 8.6.2011 (Annexure R-2/2) but the fact remains that on perusal of the final award dated 25.1.2012 (Annexure P-12) it has been clearly mentioned that a finding on issue No.1 has already been rendered. The operative part of the finding viz-a-viz preliminary issue are extracted hereinbelow:-

“It is worthwhile to mention here that as discussed earlier, issue no.2, regarding the fairness and propriety of the domestic enquiry had been ordered to be treated as preliminary issue and both the parties led their evidence oral as well as documentary in support of their respective contentions.

Vide order dated 8.6.11 issue no.2 was decided holding that there is sufficient and cogent evidence, as led by the respondent-management on the record that domestic enquiry, as conducted against the workman, was fair and proper whereas the workman has not been able to lead any cogent and sufficient evidence on the file to prove that the domestic enquiry, as conducted against him, was not fair and proper. Thus the enquiry so conducted

was held as fair and proper.”

In view of what has been observe above, the objection raised by the Management is hereby rejected. Now coming to the merits of the matter with regard to the alleged termination, it would be apt to extract the terms and conditions of settlement and charge sheet:-

“ Terms and conditions of Agreement

- 1. Both the parties have agreed that the management shall take back the workman on duty, but no back wages shall be given for no work period.*
- 2. Both the parties have agreed that the services of the workman shall considered continue and he will join duty on 7.1.2003.*
- 3. Both the parties have agreed that now no dispute shall remain left between the parties.*

Charge sheet

*Satyawan son of Sh. Chander Bhan,
Village Badoli (Sonepat)*

You are hereby charge sheet for the following allegations:-

That you are habitual of remaining absent from the duty without information or prior approval. Due to that not only indiscipline has been caused rather production of the factory is also adversely affected. Remaining absent from duty by you is amounts to grave misconduct. As per record you have remained absent without prior information or approval on the following days:-

<i>Jan-2002</i>	<i>Dated:</i>	<i>2,12,13 and 29</i>
<i>Feb</i>		<i>5,10,27</i>
<i>March</i>		<i>2,5,6</i>

<i>April</i>	<i>18,27</i>
<i>June</i>	<i>9</i>
<i>July</i>	<i>4,6,21</i>
<i>August</i>	<i>16,18,28</i>
<i>September</i>	<i>7,26</i>
<i>October</i>	<i>--</i>
<i>November</i>	<i>12,18,25,26,27,28,29,30</i>
<i>December</i>	<i>1 to 31 December</i>
<i>Jan-2003</i>	<i>1 to 6, 11,18,23</i>
<i>Feb</i>	<i>12,18</i>
<i>March</i>	<i>3</i>

You were served by oral as well as written warning letter so many time for remaining absent, but of no effect. You remained continuously habitual of remaining absent.

You are hereby served notice to show cause as to why disciplinary action should not be taken against you. Your explanation should be reached to the management within a period of three days after receipt of this letter otherwise it shall be treated that you have nothing to say and further proceedings shall be taken accordingly.”

On perusal of the settlement it is discernible that there was no previous dispute yet while issuing charge sheet the Management had taken into consideration the previous charge of Management which could not have been taken viz-a-viz allegation of remaining absent after the settlement. It has been mentioned in the charge sheet that the petitioner remained absent whereas he was directed to join duty on 7.1.2003, therefore that charges could not have been taken into consideration by excluding the period w.e.f. 1.1.2003 to 6.1.2003. The petitioner has remained absent for 3 days

in the month of January, 2 days in the month of February and 1 day in the month of March. Thus, he remained absent for 6 days, though the petitioner has submitted a letter dated 3.3.2003 (Annexure P-2) to the Factory Manager for allowing him to report for duty and copy of the same was sent to the Labour-cum-Conciliation Officer. Since no action was taken, accordingly the petitioner was placed under suspension on 4.3.2003. Such an act on the part of the Management is unfair labour practice. It has been held in catena of judgments where the workman has been taken back on duty after settlement thereafter his services have been terminated by taking up one excuse or other, the order of dismissal viz-a-viz charges of absence, in my view, is totally disproportionate. The Labour Court was enjoined upon an obligation to embark on a path of statutory provisions envisaged under Section 11-A of the Act.

There is no dispute to the ratio decidendi culled out in the judgment cited by Mr. Puneet Gupta, learned counsel for the respondent, but the fact remains that pith and substance of the ratio decidendi culled out leaves an irresistible conclusion that until and unless the charges proved against the workman are grave, there could not be any interference. Since the workman has been taken back on duty after settlement and the workman has tried to explain the absence of few days, which did not found merit with the enquiry officer, the Management could not have imposed a severe punishment of dismissal. The enquiry officer, to a specific question, in the cross examination remained oblivious with regard to the agreement dated 6.1.2003 arrived at under Section 12 (3) of the Act.

The relevant portion of the cross examination reads thus:-

“Stated that I am submitted affidavit Ex.MW 1/A in my evidence, which is signed by me and is duly certified. I also tendered documents Ex. MW 1/1 to Ex. MW 1/5, which may be read into my evidence. XXXXXXXXXSh. Baldev Mandal, AR for the workman.

It is correct that Satyawar was working in M/s Swadesh Udyog as permanent labourer since 10.3.1995. It is correct that the management has suspended his service on 4th March 2003. It is incorrect that the applicant has not received suspension allowances. I do not know that two months arrears of subsistence allowance of the applicant are pending. I do not know that an agreement dated 6.1.2003 under Section 12(3) of the Act was executed before Labour-cum-Conciliation Officer. The management has suspended the applicant on the grounds of absence from duty. It is correct that the applicant has not given any intimation or obtained any approval while absenting from duty. It is correct that the charge was only of 'absent from duty' and not of any kind of theft or negligence. It is wrong that I am deposing falsely. It is incorrect to say that charges against the applicant were not proved.”

Whereas on the contrary, it has been noticed by the enquiry officer that the workman has produced settlement Ex.W-4. Paragraph 4 of the enquiry reads thus:-

“The workman has produced document Ex.W-4 in which it was agreed that the workman will come on duty from 7.1.2003 but even thereafter on 11,18 and 23 January 2003 and on February 12 and 18 and 3rd March he remained absent from work. The

proof of which is attendance register. The workman has given no prior intimation to the management regarding the above absentism. “

From the perusal of the aforementioned facts, it leads to a conclusion that the enquiry was not conducted in a fair and transparent manner, rather, the enquiry officer exceeded the jurisdiction in proving the charges against the workman.

In view of what has been observed above, the finding of the Labour Court rendered on issue No.1 viz-a-viz alleged termination is hereby set aside. The workman is entitled to reinstatement with continuity of service. As regards the plea of back wages, since the workman raised demand notice after 8 days of his termination, therefore, the workman is also entitled to 50% back wages as the workman must have done something for ekeing out his livelihood.

In view of what has been observed above, the award of the Labour Court is set aside. The petitioner is entitled to reinstatement along with continuity of service and 50% back wages.

Accordingly, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

July 28, 2015
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