

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.18985 of 2014

DATE OF DECISION: JANUARY 29, 2015

Shri Mahabir Singh

.....Petitioner

Versus

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

.....Respondents

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

Present: Mr.Vivek Gupta, Advocate for
Mr.GS Hooda, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant writ petition is directed against the award dated 3.6.2013 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat whereby, while answering the reference against the petitioner-workman, the action of the respondent-Authorities in having terminated his services has been upheld.

2. Plead case of the petitioner is that he was appointed as Conductor with the Haryana Roadways on 13.7.1981. On 16.7.2001, he was charge-sheeted on the allegation that he had remained absent from duty without due authorization. Reply to the charge sheet submitted by the petitioner having been found unsatisfactory, Enquiry Officer was appointed. Based upon the enquiry findings returned by the Enquiry Officer, a show cause

notice dated 19.12.2001 was served upon him contemplating the imposition of major penalty of termination. The petitioner is stated to have submitted a reply to the show cause notice. Thereafter, a final/second show cause notice dated 17.12.2003 was served upon him and vide order dated 22.7.2005, the services of the petitioner were terminated. Even statutory appeal preferred by the petitioner against the order of termination was rejected vide order dated 10.7.2006. The petitioner thereafter having raised an industrial dispute, the reference stands declined by virtue of the impugned award dated 3.6.2013 at Annexure P8.

3. Learned counsel appearing for the petitioner-workman would argue that the Labour Court has erred in overlooking a vital aspect as regards the petitioner having not been supplied with a copy of the enquiry report and as such having been denied the opportunity to rebut and file objections against the findings returned by the Enquiry Officer. It is contended that there has been a violation of the principles of natural justice and grave prejudice has thereby been caused to the workman. Further contention raised is that even though in the initial show cause notice, the only charge that was weighing in the mind of the Punishing Authority, was as regards absence from duty, whereas the final termination order dated 22.7.2005 has been passed by even taking into account additional material viz. previous instances and allegations of embezzlement. Such course of action, as per learned counsel, was not permissible. As regards absence from duty, learned counsel would submit that the workman had been undergoing treatment at PGI Rohtak and the

Management had set up a false plea with regard to verification of documents of the treatment that the petitioner had undergone at Hindu Rao Hospital at Delhi and the same having been found false. It is argued that the Labour Court has passed the impugned award while accepting such stand of the Management and without appreciating the relevant evidence adduced on record. An argument on quantum of punishment has also been raised by asserting that imposition of major penalty of termination of service against a backdrop of satisfactory service of almost 20 years would be wholly disproportionate.

4. Learned counsel for the petitioner has been heard at length and the pleadings on record have been perused.

5. Perusal of the impugned award revealed that the following issues were framed by the Labour Court based on the pleadings of the parties:

- 1. Whether the termination of services of Mahavir Singh is illegal and invalid. If not so, to which relief, the workman is entitled? OPW*
- 2. Whether the enquiry, as conducted against the workman is unfair and improper? OPW*
- 3. Relief*

6. It has gone uncontroverted that Issue No.2 was treated as a preliminary issue and vide order dated 18.9.2012, the Labour Court had returned a finding as regards the domestic enquiry conducted against the petitioner-workman to be fair and proper and in consonance with the principles of natural justice. Even during the course of hearing of the present petition, learned counsel has not been able to point out any material irregularity that may have occurred during the course of enquiry proceedings.

As such, the finding returned by the Labour Court on Issue No.2 would not call for any interference and this Court would proceed on the premise that the departmental enquiry conducted against the petitioner-workman did not suffer from any infirmity.

7. The specific article of charge upon which departmental proceedings were initiated against the petitioner was that he had remained absent from work continuously w.e.f. 28.3.2001 without any information and due authorization. The finding returned by the Enquiry Officer is with regard to the petitioner-workman having remained wilfully absent from 28.3.2001 to 3.9.2001. A show cause notice dated 19.12.2001 was duly served upon the petitioner contemplating the imposition of penalty of termination. The petitioner duly submitted a reply to the same. Thereafter, even a final/second show cause notice dated 17.12.2003 was served upon him and by virtue of which, he was put on notice that the medical certificates submitted by him as regards treatment undertaken at Hindu Rao Hospital had been verified and found false. In such second show cause notice, even his past service record of having been involved in a series of embezzlement cases found a mention. The petitioner, concededly, even submitted a reply to such second show cause notice.

8. Even though an argument has been raised before the writ Court that copy of the enquiry report was not furnished to the workman but such stand can only be termed as an afterthought. The reply submitted by the petitioner to the first show cause notice stands appended and placed on record at Annexure P4. In such reply, the workman had not taken any objection as regards

report of the Enquiry Officer having not been supplied. Even during the course of hearing of the instant writ petition i.e. on 16.12.2014, the argument raised by the learned counsel that an enquiry report having not been furnished and an objection having been taken in such regard in a reply to the second show cause notice was duly noticed and time was granted to the learned counsel to place on record such reply and the matter was adjourned to today i.e. 29.1.2015. In spite of an opportunity having been availed, no such reply has been placed on record to substantiate the assertion made by the learned counsel with regard to enquiry report having not been supplied along with the initial show cause notice dated 19.12.2001. The contention in such regard raised by learned counsel is, thus, found to be totally unsubstantiated and is rejected.

9. Even though in the instant writ petition, a stand has been taken as regards the petitioner having never undergone treatment at Hindu Rao Hospital, yet such assertion is contrary to the pleadings. Placed and appended on record at Annexure P4 is the reply submitted by the petitioner/workman himself. The contents thereof have not been disputed. In such reply at Annexure P4, the workman has himself stated that he has got himself treated at Hindu Rao Hospital at Delhi because of certain injuries on his Abdomen. Such assertion had been got verified by the Management and it was found that the petitioner never underwent treatment at the Hospital in Delhi. The justification sought to be put forth on behalf of the workman towards his prolonged absence from duty clearly comes under a cloud.

10. The contention raised by the learned counsel that while passing the final order of termination, the Punishing Authority has taken into account extraneous material is also without merit. In the final/second show cause notice dated 17.12.2003 at Annexure P5 and which was duly served upon the workman, apart from agreeing with the findings recorded by the Enquiry Officer with regard to unauthorized absence for the period 28.3.2001 to 3.9.2001, the details of the cases in which the petitioner had been involved as regards embezzlement had also been adverted to. The workman had duly submitted his reply to such second/final show cause notice. There was no denial to such instances of his involvement in cases of embezzlement. It was certainly open to the employer to have considered the entire service record of the petitioner and the final order of termination has been passed only upon the workman having been confronted in relation thereto.

11. The submission as regards quantum of punishment is also found to be without merit. It is only upon culmination of a regular domestic enquiry that findings have been recorded of the petitioner being absent from duty over a prolonged period of time i.e. from 28.3.2001 to 3.9.2001. It is by now well settled that the Courts would intervene on the issue of quantum of punishment only if the penalty imposed is totally illogical or suffers from procedural impropriety or is found shocking to the conscience of the Court. In the facts of the present case, this Court does not find any infirmity insofar as the Labour Court having declined to exercise its discretion under Section 11-A of the Industrial Disputes Act, 1947 so as to award a lesser penalty.

12. For the reasons recorded above, no merit is found in the instant petition. The impugned award of the Labour Court dated 3.6.2013 is upheld. Writ petition is dismissed.

JANUARY 29, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to the Reporter? (Yes/No)