

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 23390 of 2013
Date of decision : March 25th , 2015

Balbir Singh

..... Petitioner

Versus

Presiding Officer and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:-

Mr. P. K. Bansal, Advocate
for the petitioner.

Mr. L. S. Virk, Additional
Advocate General, Punjab.

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

Amit Rawal, J.

The petitioner has approached this Court for quashing of the award dated 2.4.2013 (Annexure P-13) and the order dated 24.1.2003 (Annexure P-12) passed by the Industrial Tribunal, Bathinda whereby the petitioner had been dismissed from service and for a writ in the nature of mandamus for an appropriate direction to the respondents to grant invalid retirement to the petitioner on medical grounds from the date when petitioner moved an application for invalid retirement. It has been stated that in the year 1996 the petitioner met with an accident and prior to that time he was employed as bus conductor with the respondents against a regular vacancy and was drawing a salary of ₹5500/- per month.

On account of the accident his right leg was

shortened and therefore was not able to move to and fro in the whole bus time and again for discharge of his duties of bus conductor, much less it was physically impossible for the petitioner to perform duty of bus conductor. The petitioner is stated to have moved an application on 1.6.1998 (Annexure P-1) whereby he sought retirement on medical grounds. The Chief Manager, Punjab Roadways vide letter dated 3.7.1998 (Annexure P-2) wrote to the Civil Surgeon that a medical test of the petitioner be conducted with regard to the fitness of the petitioner. In the said letter the Chief Manager acknowledged the fact that the petitioner was on medical leave due to his illness. For the sake of brevity the contents of the letter (Annexure P-2) are extracted hereunder:-

“Sh. Balbir Singh is posted as conductor No.428 in this Depot and is on leave due to illness. Employee has requested to this office that due to accident his right leg was broken due to which he wants to take invalid retirement on medical grounds.

Kindly report be sent after conducting the medical of this employee to show whether conductor is fit for job or not.”

Sd/-(seal)

General Manager

Punjab Roadways, Ferozepur

Endst.No.10884/ECC dated 3.7.1998

Copy of above is sent to Sh. Balbir Singh, Conductor No.428, Pothimala road, Near Ice Factory, Guru Harsahai, Distt. Ferozepur and is instructed that he shall appear in above mentioned office for his medical.”

The Civil Surgeon vide letter dated 13.4.1999

informed the General Manager Punjab Roadways, Ferozepur that the powers to conduct a medical test in respect of Class III employees is with the Director, Health Services, Punjab, Chandigarh and accordingly were directed to contact the Director.

The Chief Manager, Punjab Roadways vide letter dated 25.5.1999 (Annexure P-4) wrote a letter to the Director, Health Services Medical Board, Punjab, Chandigarh to conduct the medical test so that he can be granted invalid pension on medical grounds. The Director, Health and Family Welfare Department, Punjab vide letter dated 18.7.1999 informed the petitioner to get his medical test conducted by appearing before the office of Civil Surgeon, Faridkot on 6.8.1999 or on 20.8.1999 at 9.00 A.M. It was also directed to bring the entire medical record.

It is pertinent to mention here that on one hand the petitioner was directed to appear before the Director, Health Services Medical Board, Punjab, Chandigarh whereas on the other hand on 13.7.1999 the Chief Manager, Punjab Roadways issued a charge sheet to the petitioner on the ground of willful absence. The charge sheet (details of allegations) (Annexure P-7) is reproduced hereunder:-

“On the basis of various letters written by Sh. Balbir Singh Conductor No.428, his leave was sanctioned from 1.11.1998 to 24.1.1996, 25.1.1996 to 27.3.1997.

Sh. Balbir Singh, Conductor No.428 has requested for voluntary retirement on 1.6.1998. He was directed to appear before Civil Surgeon, Ferozepur vide letter No.10883 ECC dated

3.7.1998, No.20405/30.1.1998, 3098/5/3/1999 and 6693/10.4.1999 but he did not appear and neither he reported before this Officer and nor he joined the duty.

In this way Sh. Balbir Singh, conductor No.428 has made himself liable for punishment under Punjab Civil Services(Punishment and Appeal) rules, 1970 by remaining wilfully absence from 1.4.1998.”

The petitioner was called upon to submit a reply in regard to the charge sheet along with the detail of allegations. The Civil Surgeon, Faridkot vide letter dated 9.5.2000 (Annexure P-8) collectively wrote a letter to the General Manager, Punjab Roadways, Ferozepur intimating him that after the conduction of medical examination upon Balbir Singh the Conductor was found unfit for the job of the Conductor and also enclosed the copy of medical certificate in Form No. 23.

Despite the fact that the Civil Surgeon opined that the petitioner was not found fit for job of Conductor a show cause notice dated 25.5.2000 was served upon the petitioner for willful absence on 1.4.1998 on the basis of the report of the Enquiry Officer. The petitioner submitted a reply dated 29.5.2000 (Annexure P-10) to the aforementioned show cause notice by giving detail fact that he had been directed to appear before the Medical Board, Faridkot and after appearance declared to be medically unfit, therefore, he did not remain willfully absent but was on leave and requested that the proposed penalty in the show cause notice be dropped. The General Manager, Punjab Roadways, Ferozepur vide letter dated 5.12.2000

intimated the Director, State Transport, Punjab, Chandigarh-respondent No.2 that the allegations against the Conductor who was charge sheeted were not proved. Yet along with the show cause notice a dissenting note was sent to him which was duly replied by the petitioner and requested the Director to take action. The copy of the medical report/certificate received by the Civil Surgeon collectively vide Annexure P-8 on 9.5.2000 were not enclosed which fact is evident from the Annexures. For the sake of brevity the letter dated 5.12.2000 (Annexure P-11) is extracted hereunder:-

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In reference to letter No. CA5/1/Misc./12547-67 dated 4.10.2000 of your office.

The allegations against Sh. Balbir Singh, conductor No.428 was wilful absence from 1.4.1998. Employee was chargesheeted. Information of which is being sent along with the prescribed proforma. As per inquiry officer allegations were not proved and along with show cause notice, dissenting note was sent to him, to which he replied. Two photostate copies of report of inquiry officer and photocopies of show cause notice and dissenting note and its reply are being sent to you. For taking further action in this case this officer may kindly be informed.”

The Director, State Transport, Punjab, Chandigarh-respondent No.2 vide impugned order dated 24.1.2003 found that the employee without permission from any competent authority was continuously absent from 1.4.1998 and keeping in view the

seriousness of the case and as well as that it would not be in public interest to keep such employee in service, terminated the services of the petitioner and declined to grant any salary or allowance from 1.4.1998.

The petitioner sought a reference under Section 10 (1)(c) of the Industrial Disputes Act, 1947 which was referred by Additional Labour Commissioner to the Labour Court on 2.7.2004 for adjudication of the industrial dispute, "Whether termination of services of workman Balbir Singh is justified and in order? If not so, to what relief he is entitled?."

The Labour Court on the basis of the evidence brought on record without referring to the medical record and as well as to the contention of the petitioner seeking reinstatement with continuity of service and back wages dismissed the reference by holding that the department followed proper procedure before passing the termination order dated 24.1.2003.

Mr. P. K. Bansal, learned counsel appearing on behalf of the petitioner in support of his contentions submitted that the General Manager, Punjab Roadways, Ferozepur did not send medical record to the Director, State Transport, Punjab, Chandigarh-respondent No.2 which fact is evident from the enclosures contained in the letter Annexure P-1 extracted (supra). He further submitted that the petitioner himself submitted a report to the General Manager, Punjab Roadways, Ferozepur before submitting reply to the show cause notice, but the fact, that remains material, is that the documents were not sent to the Punishing Authority i.e. Director,

State Transport, Punjab, Chandigarh-respondent No.2, therefore the Director could not apply his mind effectively. He further submitted that as per the enquiry report the charges were not proved against the petitioner but a dissenting note was given in the show cause notice. He further submitted that the Labour Court has committed illegality by wrongly observing that on some days the petitioner was directed to appear before the Civil Surgeon, Ferozepur without noticing the fact that Civil Surgeon was not competent to conduct the medical test of the petitioner because he was Class III employee and only Medical Board constituted by the Director was competent to conduct the medical examination and this fact is evident from the letter dated 30.4.1999 (Annexure P-3) written by the Civil Surgeon, Ferozepur to General Manager, Punjab Roadways, Ferozepur. Therefore, the finding rendered by the Industrial Tribunal is not only perverse but erroneous and absurd.

Mr. L. S. Virk, Additional Advocate General, Punjab submitted that the award dated 22.4.2013 (Annexure P-13) has rightly been passed by the Industrial Tribunal as the petitioner remained absent from 1.4.1998 and after appointment of the enquiry officer a notice was sent to the petitioner to appear before the enquiry officer and the statement was recorded on 11.10.1999. Though, the enquiry report was in favour of the petitioner but the Punishing Authority did not agree with the enquiry report and accordingly issued a show cause notice on 25.5.2000 (Annexure P-9). Even an opportunity of personal hearing, before terminating the services of the petitioner, was given.

I have heard learned counsel for the parties, appraised the impugned award, perused the paper book and am of the view that there is a substance and force in the statement of the learned counsel for the petitioner. The order of termination dated 24.1.2003 ex facie suffers from lack of application of mind and this fact is evident from the contents of the letter dated 5.12.2000 (Annexure P-11) whereby the petitioner has been found unfit to perform the duty of Conductor. The fact that the letter of Civil Surgeon, Ferozepur had informed the General Manager, Punjab Roadways with regard to the medical examination of the petitioner and it would be apt to reproduce contents of letter dated 9.5.2000 (Annexure P-8).

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Regarding above mentioned subject, for continuity in government job Sh. Balbir Singh-conductor appeared before standing medical board, Faridkot on 5.5.2000 for his medical test regarding fitness or unfitness.

After medical examination Sh. Balbir Singh Conductor was found unfit for job of conductor.”

The respondent authorities without waiting for the report of the Medical Board, in utter haste served a charge sheet upon the petitioner on 13.7.1999. This aspect has not been noticed by the Labour Court. The Labour Court also remained oblivious of the report of the Enquiry Officer whereby the charges leveled against

the petitioner were also not proved and it was found that the petitioner was unfit to perform the job of conductor. Not only this, even the impugned order dated 24.1.2003 whereby the petitioner's services were terminated and as well as the impugned award suffers from lack of application of mind, much less any reasoning qua the plea raised by the petitioner, that he had been on leave and was thus not willfully absent. The factum of the petitioner being on leave is evident from the letter dated 3.7.1998 (Annexure P-2) extracted (supra).

On perusal of the letter written by the General, Manager, Punjab Roadways, Ferozepur it leaves no manner of doubt in the mind of the Court that orders of both the authorities i.e. Punishing Authority and Labour Court are vitiated in law, much less fallacious whereas the petitioner was on leave due to illness, thus, services of the petitioner could not have been terminated on account of charge of willful absence.

In view of what has been observed above, the award of the Labour Court is set aside. The petitioner will be treated to be on leave and shall be entitled to consequential benefits i.e. invalid retirement etc.

Accordingly, the writ petition is allowed.

March 25th, 2015
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(AMIT RAWAL)
JUDGE