

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CIVIL WRIT PETITION NO.3546 of 2015

DATE OF DECISION: FEBRUARY 27, 2015

Rajender Girwar

.....Petitioner

Versus

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

.....Respondents

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

**Present:** Mr.Sandeep Singal, Advocate for the petitioner.

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***TEJINDER SINGH DHINDSA, J.***

The instant writ petition is directed against the award dated 5.12.2013, Annexure P17, passed by the Industrial Tribunal-cum-Labour Court, Rohtak whereby the reference has been answered against the workman/present petitioner and he has not been held entitled to any relief. Challenge has also been raised to the order dated 3.10.2012, Annexure P16, in terms of which the Labour Court treated Issue No.1-A as a preliminary issue and has held the enquiry conducted against the workman as fair and proper.

2. Learned counsel appearing for the workman would submit that the workman was, initially, appointed as Helper on 1.1.1991 by respondent No.2 – Management on daily wage basis, but thereafter his services were confirmed w.e.f. 1.1.1992. It is

further submitted that the work and conduct of the petitioner had remained satisfactory. A charge sheet dated 3.5.1997 had been served upon the workman and which led to an enquiry report dated 2.1.1998 in which findings were returned against the workman. It is contended that even though a show cause notice had been issued proposing the penalty of reduction in pay scale and counting of period of suspension as leave without pay, yet with a clear motive to victimize the workman, he was transferred from Rohtak Unit to Ahmedabad Unit vide order dated 6.2.1998. Such transfer order is contended to be punitive in nature. It is also the argument raised by the learned counsel that the enquiry report dated 2.1.1998 would itself not be tenable in the eyes of law as the findings of the Enquiry Officer were not based upon the material evidence available on record and the Enquiry Officer did not provide full and fair opportunity of leading defence evidence to the petitioner-workman. On such count, learned counsel submits that the order dated 3.10.2012, Annexure P16, passed by the trial Court whereby Issue No.1-A has been decided in favour of the Management, cannot sustain.

3. It is also the submission made by the learned counsel that the workman upon having been transferred to Ahmedabad vide order dated 6.2.1998 came in knowledge from his fellow workers that no work of Helper is available at the Ahmedabad Unit since it was only a dispatching Unit and, accordingly, he repeatedly visited the Office of the Management at Rohtak to join duty, but ultimately was informed that his services have been terminated w.e.f. 23.9.1998 but without any formal order having

been communicated in such regard. It is argued that the Labour Court while passing the impugned award has gravely erred in overlooking the aspect that termination of the services of the petitioner w.e.f. 23.9.1998 was in clear violation of the provisions of the Industrial Disputes Act. A submission as regards quantum of punishment has also been raised and it has been contended that the punishment of dismissal was highly disproportionate to the allegations levelled against the workman against the backdrop of the charge sheet dated 3.5.1997 as also of having not joined duties at the Ahmedabad Unit.

4. Having heard learned counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that no basis for interference is made out and the instant writ petition deserves dismissal.

5. The Labour Court while deciding preliminary Issue No.1-A in the impugned order dated 3.10.2012, Annexure P16, and holding the enquiry conducted against the workman to be fair and proper has held in the following terms:

*“A perusal of the enquiry report shows that the list of witnesses and documents have been supplied to the workman. He was also allowed to inspect the relevant record. The workman also submitted reply to the charge sheet and the same was not found satisfactory and the enquiry officer was appointed. The Enquiry Officer is an independent person and he has nothing to do with the respondent/management or the workman. The Enquiry Officer has recorded the*

*statements of the witnesses who were produced by the management. The workman in his cross examination admitted that he had not gone to Ahmedabad where he was transferred. Therefore, I have no hesitation to conclude that the enquiry has been conducted in a fair and proper manner. Therefore, I decide this issue against the workman and in favour of the respondent/management."*

6. Such finding of fact based on evidence adduced on record would not be open to interference by this Court in exercise of its supervisory jurisdiction under Article 226/227 of the Constitution of India.

7. Concededly, based on the findings recorded against the workman by the Enquiry Officer, a show cause notice had been served upon him proposing the penalty of reduction in pay scale. However, vide order dated 6.2.1998 at Annexure P5, a lenient view was taken and a warning was issued. That apart, vide order dated 6.2.1998 itself, he was directed to report at the office of the Management situated at Ahmedabad and joining time till 13.2.1998 was granted. Such transfer order has never been assailed by the petitioner-workman in any proceedings.

8. Pleadings on record would further reveal that the petitioner-workman having not joined at Ahmedabad, a charge sheet dated 11.3.1988 was issued and the following articles of charge were formulated:

*"1. That it is informed to you that vide letter dated 6.2.1998, you were transferred, but you while*

*understanding the necessity of work, did not join the duty on the place of work.*

2. *That according to the letter dated 6.2.1998, it was directed to you to join the duty till 13.2.1998 at the place of transfer, but till today you neither join the duty on the transferred place and nor the explanation has been given. From this, it is clear that you intentionally with the intention to disobeying the orders did not join the duty.*

3. *That on the posting place by not joining the duty it is clear that you did not want to join the duty. Under this letter it is stated to you that why you are acting this type of act and after sending the letter why you are refusing to accept the letter.*

4. *That your earlier record is also unsatisfactory and after that also you are acting this type of acts."*

9. As would be apparent from the document appended on record at Annexure P11, communication dated 20.7.1998 was sent to the workman by registered AD post fixing the date of enquiry proceedings as 8.8.1998. Such communication/letter was received back by the Enquiry Officer with the remarks of the postal department regarding "refusal". It is under such circumstances that *exparte* proceedings were held and which finally led to the passing of the order dated 23.9.1998 imposing penalty of termination.

10. Even while upholding such action of the Management, the Labour Court in the impugned award dated 5.12.2013 has

reasoned as follows:

*“.....In the present case it is explicit that the petitioner/workman was charge sheeted on the allegation that he was directed to report for the work at Ahmedabad, but he did not report for the work at that place. The Enquiry was conducted and it has already been held even by the court that it was held to fairly and legally and due opportunities were afforded to the applicant in conducting the enquiry. There is nothing on the file to prove that transfer order was passed by the respondent/management malafidely just to harass the petitioner/workman, whereas the truth in this regard oozed out in its glaring form when the petitioner/workman while appearing as WW-3 on 28.5.2013 has admitted during his cross examination that he has nothing to prove that when he visited Ahmedabad, on which date he was not allowed to join his duties. He also admitted that he has proof to the effect that when he proceed to Ahmedabad and how he reached there. He has also admitted that he never appeared before any authority at Ahmedabad or ever reported to any authority at Ahmedabad, stating that he is present in compliance of his transfer order but no work is available as per his post (suitability). He has also admitted that he has not given his joining report at Ahmedabad and also went on admitting that he does not know anyone at Ahmedabad. This fact is further*

*established from the statement of petitioner/workman dated 31.5.2011 wherein he categorically admitted that he never went to the place of transfer. All these admitted facts goes to establish that the petitioner/workman disobeyed the orders of the respondent/management thereby compelling the respondent/management to pass an order of dismissal on 23.9.1998 on the basis of such misconduct.....”*

11. It is on valid and cogent reasons that the impugned award has been passed by the Labour Court.

12. There is yet another aspect of the matter. In the demand notice dated 30.1.2001 issued by the workman under Section 2-A of the Industrial Disputes Act at Annexure P6, in the claim statement before the Labour Court at Annexure P7 as also in the replication filed on behalf of the workman to the reply filed by the Management before the Labour Court, the categoric stand taken was that in pursuance to the transfer order, the workman had reported at the transferred place i.e. at Ahmedabad and was told by the workers of Ahmedabad that there is no producing Unit of the Management and, accordingly, the workman had returned back and informed the Management in such regard at Rohtak.

13. However, in the instant writ petition, which is supported by an affidavit of the petitioner-workman, it has been averred to the contrary and in the following terms:

*“.....Be that as it may, in pursuance to the aforesaid transfer order dated 06.02.1998, the petitioner visited the office of respondent management at Rohtak and*

*requested that he may be provided travelling allowances so that he could go to Ahmedabad. However, no travelling allowances were provided to the workman and therefore he could not go to Ahmedabad to join his duty.....”*

14. The pleadings on record furnished by the petitioner himself demonstrate the falsity of his stand. As such, there would be no occasion for this Court to even entertain a plea as regards the punishment having been awarded to be disproportionate to the allegations levelled.

15. Even otherwise, the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. It has been held in a catena of judgments that the power of the judicial review is not directed against the decision but is confined to the decision making process.

16. In the totality of circumstances, no basis for interference is made out.

17. The writ petition is dismissed.

( TEJINDER SINGH DHINDSA )  
JUDGE

FEBRUARY 27, 2015  
SRM

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