

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.958 of 2015

Date of decision: 06.07.2015

Institute of Hotel Management, Faridabad

....Appellant

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr.Gaurav Singh Hooda, Advocate for the appellant.

RAMENDRA JAIN,J.

The appellant Institute of Hotel Management, Faridabad ('Institute' – for short) being unsuccessful before the learned Single Judge, has assailed the judgment dated 30.3.2015 rendered in CWP No.12480 of 2011.

Respondent No.2 - workman was appointed as Watchman/ Chowkidar by the appellant - Institute. During his service, he was served with a charge sheet on 5.7.2001 (Annexure P-1) under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on two counts, i.e. (i) he was habitual of remaining absent from duties without any prior information/ permission. He was issued letter No.492 dated 22.6.2001 vide which he was asked to explain his position within 24 hours from the receipt of the letter and as to why he should not be dismissed from his service, which he failed to reply and (ii) he reported for duty at 4.00 a.m., against the stipulated reporting time of 12 at night on 2.7.2001 and, further he fiddled with the time slot by overwriting 12 night over original entry of 4.00 a.m.

The reply (Annexure P-2) filed by the workman on 20.7.2001 was found dissatisfactory by the appellant - Institute. Consequently, Shri Raj Kumar Sharma, Advocate was appointed as an Enquiry Officer to conduct the domestic enquiry against respondent No.2 - workman. After conducting a comprehensive enquiry, a report dated 6.10.2001 (Annexure P-3) was submitted proving both the charges against the workman. A show cause notice dated 2.11.2001 (Annexure P-4) was served upon him mentioning that the Principal of the appellant - Institute was provisionally of the opinion that penalty of removal from service should be imposed upon him. An opportunity was given to the respondent No.2 - workman to file a representation, if any, within fifteen days of the receipt of the communication. The respondent No.2 - workman, however, filed no reply to the show cause notice (Annexure P-4). The Principal of the appellant - Institute after consideration of the matter was of the opinion that ends of justice would be met if the proposed punishment of removal from service was confirmed. It was ordered accordingly vide order dated 6.12.2001 (Annexure P-5).

The said order of removal from service of respondent No.2 was challenged by him before the Industrial Tribunal-cum-Labour Court-I, Faridabad ('Labour Court' – for short) (respondent No.1). On appreciation of evidence by the learned Labour Court passed an award dated 25.1.2011 (Annexure P-6) in favour of the workman. The learned Labour Court held that the domestic enquiry conducted by the appellant – Institute was not fair and proper. The order of termination was held to be illegal. The reference was answered in favour of the workman and against the appellant - Institute. The workman was held to be entitled to be reinstated in service along with 50% back wages from the date of demand notice.

The said award dated 25.1.2011 (Annexure P-6) was challenged by the appellant - Institute before this Court by way of CWP No.12480 of 2011. The

learned Single Judge vide impugned order dated 30.3.2015 disposed of the said writ petition with the modification of the award dated 25.1.2011. It was observed that since the workman had become paralytic, it would not be apt to order reinstatement, besides, keeping in view nine years service rendered by him and treating him in service with 50% back wages and compensation, it was deemed appropriate to grant to him a consolidated amount to the extent of 75 % of the back wages by treating him to be in continuous service. The award of the learned Labour Court was modified to the aforesaid extent and the writ petition was dismissed.

Now the appellant - Institute has challenged the judgment dated 30.3.2015 passed by the learned Single Judge.

Learned counsel for the appellant - Institute submitted that the learned Single Judge did not appraise the evidence in a correct perspective, inasmuch as the enquiry was conducted strictly in consonance with the provisions of law. Learned counsel further submitted that all the charges were duly proved against the workman. Instead of accepting the claim of the Institute, the learned Single Judge has wrongly and illegally dismissed its writ petition.

We have given our thoughtful consideration to the contentions raised by the learned counsel for the appellant.

The learned Single Judge, after perusing the dismissal order, observed that "it is evident that it was not proved that there was fiddling of the attendance register, though it was mentioned that the workman had reported for duty at 4.00 a.m., therefore, charge No.2 had not been proved. The management had also failed to prove charge No.1 as it did not examine any other co-worker of the Institute, rather the specific case of the workman was that he was working 16 hours daily and was demanding appropriate wages. The Labour Court observed that charge of fiddling was not dealt with by the Enquiry Officer. Even the Enquiry Officer did not take into consideration the findings of

previous charge sheet, whereby the workman was exonerated and, hence, the enquiry was not conducted in a fair manner.”

The learned Labour Court also noticed that the charge sheet served upon the workman was vague and ambiguous as the date of absence is conspicuously absent.

The above findings of learned Labour Court and learned Single Judge are based on facts. No material whatsoever has been shown to dislodge the findings reached at by the learned Single Judge and the learned Labour Court except for repeating the contentions that have already been considered and with which we find no basis to differ. We also noticed that the learned Single Judge, considered that the workman was a paralytic patient, observed that it would not be in the fitness of things to reinstate him in service. However, keeping in view his continuous service of nine years, it was ordered that he be granted a consolidated amount of compensation to the extent of 75% of the back wages, which does not in any manner seem to be disproportionate or on the higher side.

In view of the aforesaid discussion, we find no merit in the contentions raised by learned counsel for the appellant.

Accordingly, the present appeal being devoid of any merit is dismissed.

(RAMENDRA JAIN)
JUDGE

July 06, 2015
Kd/amit

(S.S.SARON)
JUDGE

Note: Whether to be referred to the reporter: Yes/No