

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4629 of 1994

Date of Decision:- 30.5.2016.

Ramesh Kumar

.....Petitioner

Versus

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

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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?

Present: Mr. S.S. Dalal, Advocate for the petitioner.

Mr. P.K. Mutneja, Advocate for respondent No.2.

P.B. BAJANTHRI, J.

1.) In the instant writ petition, the petitioner-workman has questioned the validity of the award passed by the Labour Court dated 30.9.1993 vide Annexure P-8.

2.) The petitioner is stated to have been appointed as a Production Clerk with the second respondent-Industry. He was put on probation for a period of six months from the date of joining service and his services were confirmed on 5.3.1988 w.e.f. 26.2.1988. His services were discharged simpliciter on 26.6.1989. Aggrieved by the order of discharge, matter was referred to Industrial

Tribunal-cum-Labour Court, Rohtak. Labour Court passed award on 30.9.1993 against the petitioner. While confirming the order of discharge, it was further observed that petitioner might have been gainfully employed elsewhere. He is not entitled for any relief.

3.) Learned counsel for the petitioner submitted that petitioner was on probation and his services have been confirmed. Therefore, question of discharge simpliciter may not arise in the absence of holding necessary departmental inquiry with reference to the alleged misconduct stated by the respondent-industry before the Labour Court as well as before this Court. It was submitted that inquiry was initiated only on appointing Inquiry Officer. Without completion of inquiry proceedings, petitioner's services have been discharged simpliciter. Question of discharging petitioner may not arise for the reasons that he is a confirmed employee. These facts and materials have not been taken into consideration by the Labour Court. Therefore, the award dated 30.9.1993 of the Industrial Tribunal Labour Court is liable to be set aside.

4.) Per contra, learned counsel for the second respondent submitted that before the Labour Court, all necessary materials have been produced along with the written statement. The allegations of misconduct committed by the petitioner have been made available before the Labour Court by producing Annexure R-1 to R-8. Each and every document reveals petitioner's attitude while discharging duties of the post of Production Clerk. There is total negligence on

the part of the petitioner in discharging the duties of the post thereby monetary loss has caused to the respondent-industry. Hence, respondent-industry have resorted discharging the petitioner on 26.6.1989. The Labour Court rightly held that petitioner is not entitled for reinstatement having regard to his conduct while discharging the duties of the post in question. Learned counsel for the second respondent relied on two decisions of the Supreme Court contending that no inquiry is necessary if the Labour Court has given finding with reference to the conduct of an employee which are as under:-

(i) Kamal Kishore Lakshman Vs. Management of M/s PAN American World Airways Inc. and others (1987) 1 SCC 146.

(ii) Divisional Controller, Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao (2012) 1 SCC 442.

Learned counsel for the petitioner also relied on decisions of the Supreme Court *(i) Telecom District Manager and others Vs. Keshab Deb 2008 (4) SCT 32* and *(ii) State of Haryana through Executive Engineer, PWD, Public Health Division No.2, Sonipat Vs. Ishwar Singh and another 2008 (3) SCT 788*. These two decisions are relating to grant of compensation.

5.) Heard learned counsel for the parties.

6.) The crux of the matter is whether a confirmed employee can be discharged from service or not. In the present case, the

petitioner was appointed as a Production Clerk on 26.5.1987 on probation for a period of six months. His services were confirmed w.e.f. 26.2.1988 on 5.3.1988. In view of the facts and circumstances, question of discharging the petitioner may not arise. In other words, a confirmed employee cannot be discharged from service. He/she could be only terminated or dismissed from service after holding due inquiry. On this short ground the award of the Labour Court is liable to be set aside. Learned counsel for the second respondent relied upon two decisions of the Supreme Court contending that no inquiry is necessary if the Labour Court has given finding. In the present case, the Labour Court has only referred to the conduct of the petitioner with reference to the written statement along with the documents produced by the respondent-industry. The petitioner has not been given opportunity to meet the allegations before the Labour Court. In the absence of giving opportunity, neither the respondent-industry nor Labour Court can give finding on the misconduct committed by the petitioner. It is true that there are serious allegations against the petitioner and number of show cause notices and warnings have been issued. However, the nature of allegations that there is a negligence in his duty whereby the respondent industry has put into loss by monetary wise etc. When there is a serious nature of allegations mandatory requirement is to hold an inquiry. The Supreme Court time and again held that even if a temporary employee is to be dismissed, a reasonable opportunity

should be given at least by issuing show cause notice and holding a preliminary inquiry and finding should be given. In the present case, the Labour Court has erred in holding that the allegations are true based on the written statement and documents made available by the respondent Industry. The award of Labour Court dated 30.9.1993 (Annexure P-8) is set aside.

7.) Matter relates to discharge of the petitioner dated 26.6.1989. Therefore question of reinstatement with continuity of service and back wages may not be correct. It is appropriate to award only compensation. The second respondent industry is directed to pay compensation of a sum of ₹ 3,00,000/- to the petitioner.

8.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

May 30, 2016.

sandeep sethi