

**235 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.11616 of 2014
Date of Decision: 25.07.2016**

Kulwant Singh

..... Petitioner

Versus

Industrial Tribunal, Patiala and others

.... Respondents

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

Present: Mr. Barjesh Kumar Sharma, Advocate
for the petitioner.

Mr. H. S. Ghuman, Advocate
for respondents No.2 and 3.

P. B. BAJANTHRI J. (ORAL)

In the present petition, petitioner has challenged the award dated 11.02.2013 (Annexure P-5). The petitioner was appointed as driver on 02.01.1978 and worked with the respondent-Corporation. In the year 1998, from the month of August 1998 to December 1998, he remained unauthorisedly absent for few days on each and every month. It is stated that the petitioner had submitted a leave application but the same has not been taken into consideration. On the allegation of absence from service, petitioner was subjected to disciplinary proceedings, which was initiated in the year 1999 and concluded by imposing the penalty of dismissal/termination from service on 14.05.2001. Consequently, demand notice was served on 14.12.2001. On failure of conciliation proceedings, the dispute was referred to labour Court-cum-Industrial Tribunal, Patiala under Section 2-A and Section 10(I) C of Industrial Disputes Act, 1947 vide endorsement dated 11.10.2002. Labour Court framed the following issues:

1. Whether the departmental enquiry conducted against the workman by the respondent is fair and proper? OPR
2. If issue No.1 is not proved, whether the workman was guilty of major misconduct? OPR
3. Whether termination of services of the workman is justified and in order? OPM
4. Whether the workman is entitled to get any benefit from the respondent? OPP
5. Relief.

Before the Labour Court, the petitioner has admitted his absence. The Labour Court was given finding that ample opportunity given to the petitioner. Despite sufficient opportunities given at the time of framing of charge as well as in the inquiry, he has failed to prove his absence.

Thus, the Labour Court upheld the order of termination of the petitioner. Thus, the present petition has been presented.

Learned counsel for the petitioner submitted that the petitioner had submitted his leave application for remaining absent but the same has not been taken note of the respondent-Corporation. At the time of inquiry so also by the labour Court, since the petitioner served during the period of 1978-1998 for nearly 20 years, there were no allegations of absence except for few days in the month of August 1998 to December 1998. Thereafter, he was prompt in attending the duties till the date of termination.

In view of these facts and circumstances, learned counsel for the petitioner submitted that penalty of dismissal from service is too harsh having regard to the service rendered by the petitioner, which is more than two decades. Learned counsel for the respondent submitted that the petitioner has not furnished his reply to the charge sheet for remaining absent. Consequently, the absence has been proved in the disciplinary proceedings. There is no infirmity whatsoever in the disciplinary proceedings so also in the award passed by the Industrial Tribunal, Patiala. Therefore, having regard to the conduct of absent during the period from August 1998 to December 1998, dismissal/termination is in order. Question of reducing the penalty in the case of remaining absent of an employee may not be fair.

Heard learned counsel for the parties.

The petitioner joined service on 02.01.1978, there is no allegations of absence or whatsoever prior to August 1998 and from January 1999 onwards, only during the period from August 1998 to December 1998 for few days like 02-03 days, he remained absent. Therefore, the penalty of dismissal/termination would be too harsh having regard to the service rendered by the petitioner from 1978.

In view of these facts and circumstances, the respondent-corporation is directed to re-consider the penalty of dismissal and impose other than the penalty of removal from service. Respondent may consider to impose penalty of compulsory retirement. Such

penalty would be effective from 13.05.2001. The petitioner is not entitled for back wages, however, he is entitled for notional benefits like increments and re-fixation of pay etc.

The labour Court, Industrial Tribunal award dated 11.02.2013 is set aside. The respondents are directed to take a decision within a period of three months from today, thereafter, for the purpose of granting consequential benefits. The same shall be paid within three months from the date of taking decision in respect of penalty.

Petition stands allowed in part.

(P. B. BAJANTHRI)
JUDGE

July 25, 2016

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