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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16851 of 2015
Date of decision: March 03, 2016

Dalbara Singh

.......Petitioner

Versus

The Presiding Officer and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Lalit Pathak, Advocate
for the petitioner.

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SABINA, J

Petitioner has filed this petition challenging the award dated 02.09.2013 (Annexure P-4).

Petitioner had raised an Industrial dispute by serving a demand notice challenging his termination. The said dispute raised by the petitioner was referred for adjudication to the Industrial Tribunal, Patiala by the appropriate Government.

The case of the petitioner, in brief, was that he had served the respondent-Society as a Secretary for 16 years and his services had been illegally terminated on 25.02.2000 without complying with the mandatory provisions of Industrial Disputes Act, 1947 ('Act' for short). It was further the case of the petitioner that no inquiry had been held against him before terminated his services.

The case of the respondent-Society, in brief, was that the petitioner was working as a Secretary, but he used to remain absent from duty. It was the duty of the petitioner to effect recovery from the members on behalf of the Society and deposit the same in the account of the Society. However, petitioner had failed to deposit the recovered amount in the account of the society. As such, the Society had suffered huge loss. Show-cause notice dated 04.11.1998 was issued to the petitioner to explain his position, but he did not submit any reply to the said notice. The audit wing while preparing the balance-sheet for the year 1997-1998, detected that the petitioner was having ₹96,750.10 paisa as cash in hand on 31.03.1998 and had not deposited the same in the account of the Society. Petitioner was directed to deposit the said amount in the account of the Society, but he failed to do so and was placed under suspension on 28.05.1999. Charge-sheet dated 06.01.2000 was served on the petitioner, but he failed to submit any reply to the same. In a meeting held by the Society on 25.02.2000, petitioner was placed under suspension and it was decided that his services be terminated. As per the audit note for the year 1998-1999, the petitioner had embezzled funds of the Society to the tune of ₹5,54,772.75 paisa.

On the pleadings of the parties, following issues were framed by the Industrial Tribunal:-

"1. Whether the reference is maintainable inspite of the preliminary objections taken in the written statement?OPW

2. Whether the termination of services of the workman is legal and justified?OPW

3. Whether the workman is entitled to get any relief from the respondents?OPW

3A. Whether the reference was not made by the competent authority? If so, its effect. OPM

4. Relief."

Parties led their evidence in support of their respective pleas.

The Industrial Tribunal vide its award dated 02.09.2013 declined the reference sought by the petitioner. Hence, the present petition by the petitioner-workman.

Learned counsel for the petitioner has submitted that on 24.03.2003, settlement was arrived between the parties after issuance of demand notice dated 26.11.2002 by the petitioner. The Society had decided to reinstate the petitioner and as per the resolution Annexure P-2, Society had observed that no amount was due against the petitioner. However, the said resolution was set aside by the Deputy Registrar, Cooperative Society on technical grounds that the resolution had been passed without issuance of agenda. Annexure P-3 is the order passed by the Assistant Registrar, Cooperative Society, whereby, the arbitration proceedings initiated by the Society against the petitioner were dismissed-in-default. Petitioner was liable to be reinstated in service as nothing was due against him. The Industrial Tribunal has not given any finding qua the settlement arrived between the petitioner and Society or the resolutions Annexure P-2, Annexure P-5 and Annexure P-6. No criminal case was registered against the petitioner qua the alleged embezzlement.

In the present case, admittedly, petitioner was working as a Secretary with the respondent-Society. The case of the petitioner was that his services had been terminated without holding any inquiry and in violation of the mandatory provisions of the Act. The case of the respondent-Society, on the other hand, was that the petitioner had embezzled the funds of the Society and due to this reason, his services had been terminated. It was further the case of the respondent-Society that, although, in terms of the settlement, resolution Annexure P-2 had been passed but the same had been set aside by the Deputy Registrar, Cooperative Society.

It has been noticed by the Tribunal that show-cause notice Exhibit M2 was issued to the petitioner and charge-sheet was issued to the petitioner vide resolution Exhibit W5. As per audit report Exhibit M5, at the end of the financial year on 31.03.1998, petitioner had cash in hand to the tune of ₹96,750.10 paisa. The cash in hand was deposited by the petitioner in the account of the Society vide Exhibit M3 and Exhibit M4 on 14.06.1999 and 21.06.1999 respectively. The remaining amount of ₹11,750/- was deposited by the petitioner in the account of the Society on 19.01.2000. It has further been noticed by the Tribunal that as per Exhibit M7, petitioner had effected recovery to the tune of ₹4,42,566/- from the members of the Society, but had failed to deposit the said amount in the account of the Society. The said amount was ultimately deposited by the petitioner vide Exhibit W17 to Exhibit W20. It has further been noticed by the Tribunal that at the time of physical inspection during audit of the Society, petitioner had accepted that there was shortage of fertilizer vide Exhibit M11. Petitioner had received ₹57,762/- from member Bant Singh and had issued receipt Exhibit M12 and deposited the said amount on 31.05.2000. Petitioner was dismissed from service vide Exhibit W6 on account of misappropriation of the funds of the Society. It has further been noticed by the Tribunal that on account of recovery liable to be effected from the petitioner, his land was attached and was later released vide Exhibit M19/Exhibit W12. On 09.04.2003, resolution Annexure P-5 was passed by the Society permitting the petitioner to join his duty on account of his reinstatement in terms of the settlement dated 24.03.2003 effected between the parties under Section 18 (1) of the Act. However, the said resolution was set aside by the Deputy Registrar, Cooperative Society vide order Exhibit M20.

It has further been noticed by the Tribunal that the petitioner had admitted in his cross-examination that he had received the charge-sheet and filed his reply. During his cross-examination, petitioner admitted that he had deposited ₹50,000/- in the account of the Society on 17.04.2001 vide Exhibit W21. Thus, the said amount was deposited by the petitioner much after his termination and due to this reason, the land of the petitioner which had been attached was released on 19.10.2001.

In view of the above facts, the Labour Court rightly came to the conclusion that the charge of embezzlement levelled against the petitioner was correct. The services of the petitioner had thus, been terminated as he had embezzled the funds of the Society. Apparently, the amount was later deposited by the petitioner but the fact remains that on account of embezzlement of the funds of the Society, the Society had lost confidence in the petitioner and he could not be retained in service. Although, learned counsel for the petitioner has placed great reliance on the settlement arrived between the parties on 24.03.2003, but the resolution Annexure P-5 accepting the said settlement and allowing the petitioner to join his duty was set aside by the competent authority.

In the facts and circumstances of the present case, no ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

(SABINA)
JUDGE

March 03, 2016
mahavir