

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 19053 of 2014
Date of Decision: 19.1.2016.

Jagdish Chander

.....Petitioner

Versus

Executive Engineer, Public Health and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Chauhan, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Addl. A.G. Haryana.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing of impugned order dated 17.11.2006 (Annexure P-1/A) and award dated 5.3.2013 (Annexure P-1).

Petitioner had raised an industrial dispute challenging his termination by serving a demand notice. The said dispute was referred for adjudication by the appropriate Government to Industrial Tribunal-cum-Labour Court, Rohtak. Learned Industrial Tribunal-cum-Labour Court declined the reference of the petitioner vide award dated 5.3.2013 (Annexure P-1). Hence, the present petition by the workman-petitioner.

Case of the petitioner, in brief, was that he had joined the services of the respondent management as Truck Cleaner on 22.9.1981 and his services were terminated on 9.12.1999 in

contravention with the provisions of Section 25-F of the Industrial Disputes Act, 1947 ('Act' for short).

Respondent management in its written statement admitted that the petitioner was working as a Truck Cleaner with them and in the year 1997 and he had absented from duty with effect from 1.8.1997 without getting his leave sanctioned. Numerous letters were written to the petitioner by the Sub Divisional Engineer asking him to join his duties but the petitioner failed to resume his duties. Charge sheet was issued to the petitioner and Enquiry Officer was appointed to enquire into the matter but the petitioner had failed to join the enquiry proceedings. Consequently, services of the petitioner were terminated.

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

- “1. Whether a fair and proper enquiry was held by the management ?*
- 2. As per terms of reference?*
- 3. Relief.”*

Parties led their evidence in support of their respective pleas.

Learned counsel for the petitioner has submitted that petitioner had not been able to join his duty as he was suffering from depression. The notice issued by the respondent-management had not been issued at the correct address of the petitioner.

Learned counsel for the respondents-management, on the other hand, has opposed the petition and has submitted that petitioner had remained absent for more than 2½ years. Services of the petitioner had been terminated after holding enquiry.

Petitioner had failed to join the enquiry proceedings. Notices were issued to the petitioner asking him to join the enquiry proceedings.

In the present case, case of the petitioner was that his services had been illegally terminated without compliance of provisions of Section 25-F of the Act. However, the case of the respondents-management was that the petitioner had remained absent from duty with effect from 1.8.1997 till the date of his termination i.e. 9.12.1999. It was further the case of the respondents-management that charge sheet was issued to the petitioner on the allegation that he was absent from duty. Notices were issued to the petitioner but he had failed to join the enquiry proceedings. Notice was also published in the newspaper asking the petitioner to join the enquiry proceedings but he failed to appear before the Enquiry Officer.

Thus, in the present case, the management had been successful in establishing that the services of the petitioner were terminated as he had remained absent from duty from 1.8.1997 to 9.12.1999. In the *ex parte* enquiry proceedings, the charge of absence levelled against the petitioner stood proved and consequently, services of the petitioner were terminated.

The Labour Court has the power to interfere in the quantum of punishment while exercising jurisdiction under Section 11-A of the Act. The case of the petitioner was that he could not join his duty as he had been suffering from depression. In order to establish the said fact, petitioner examined WW-2 V.P.Mahila who deposed that the petitioner had for the first time taken treatment from him on 23.7.1999. The said witness deposed that the petitioner was suffering from a treatable disorder which could be

treated within 20 days to two months and thereafter the medicine was liable to be continued for about six months even after recovery. The statement of the said witness is Annexure P-6. So far as witness WW-2 is concerned, he fails to advance the case of the petitioner as the petitioner had approached the said doctor in July 1999 whereas he had absented from duty with effect from 1.8.1997.

Petitioner also examined WW-3 Dr. S.K. Bhaskar. The statement of the said witness is Annexure P-7. The said witness deposed that he was doing private practice at Hisar. Petitioner had remained under his treatment from 31.7.1997 to 20.2.1998 as he was suffering from severe back pain because of hurt and depression. In his cross-examination, he deposed that the petitioner was not admitted in his hospital. He had not brought any entry register maintained by him regarding patients who visited him for treatment. Therefore, the statement of WW-3 Dr. S.K.Bhaskar also fails to advance the case of the petitioner as the said witness had not brought relevant record to corroborate his oral version.

Keeping in view the fact that the petitioner had remained absent for a long period, the learned Tribunal/Labour Court rightly came to the conclusion that it was not a fit case for exercising jurisdiction under Section 11-A of the Act. Thus, in the facts and circumstances of the present case, the termination of services of the petitioner was rightly upheld by the Tribunal/Labour Court .

No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India is made

out.

Dismissed.

(SABINA)
JUDGE

January 19, 2016
Gurpreet