

CWP No. 5844 of 2012

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

**CWP No. 5844 of 2012
Date of Decision : 14.07.2016.**

Ajit Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

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

- 1) *Whether Reporters of the 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. Sajjan Singh, Advocate for the petitioner.

Mr. Keshav Gupta, A.A.G., Haryana.

Mr. Sudhir Mittal, Advocate for respondent No. 3.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner has questioned the order dated 13.05.2011 (Annexure P-1) passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat.

Brief facts of the case are that petitioner joined service of respondent No. 3-Industry on 01.09.1988 as a tool and die maker. On 25.08.1998 the petitioner was transferred to a sister concerned unit at Rasoi. Petitioner failed to obey the order of transfer and not joined to the

transfer post and place. On the allegations of disobeying the order of transfer as well as for remaining absent, he was subjected to disciplinary proceeding by issuing charge-sheet on 23.10.1998. The petitioner did not cooperate in the process of enquiry proceedings. He appeared only on two days i.e. on 12.12.1998 and 23.12.1998. Thereafter despite notice, newspaper, publication and telegram, he did not appear and cooperate in the enquiry. Thus, respondent No. 3 was compelled to hold an ex-parte enquiry against the petitioner. In the ex-parte enquiry, charges were held to be proved. Consequently, second show cause notice was issued and thereafter order of dismissal from service was passed on 07.06.1999. Feeling aggrieved by the order of dismissal from service, petitioner approached Labour Court.

The Labour Court after considering the Inquiry Officer's report and version of respondent No. 3, upheld the order of dismissal. Thus, the petitioner is before this Court.

Learned counsel for the petitioner submitted that it is true that he had been transferred from Sonapat to Rasoi. He had obeyed the order of transfer but he was refused to join at Unit at Rasoi, which was shut down, therefore, he could not report. In other words, with an ulterior motive of respondent No. 3, the petitioner had been transferred from Sonapat to Rasoi. So far as non-cooperation in the enquiry proceeding is concerned, nothing has been stated. Only contention of the petitioner is that he has rendered 10 years of service with respondent No. 3-Industry. For not obeying the order of transfer and remaining absent is not a grave misconduct so as to order

dismissal from service. Therefore, order of dismissal be modified to some other penalty.

Per-contra, learned counsel for respondent No. 3, vehemently, contended that disobedience of the employee in not reporting for duty and remaining unauthorised absent is a serious misconduct. Due to his absence, work in the Rasoi Unit had suffered. He being an employee should have maintained discipline towards respondent No. 3-Industry. Ample opportunities have been given to the petitioner in each and every stage like for not reporting to duty. Two registered letters have been sent to the petitioner asking him to report for duty. Registered letters have been refused by the petitioner. Consequently, proceedings have been initiated. Even in disciplinary proceeding, he remained absent. Thus, ex-parte enquiry was held and his services have been dispensed with by imposing penalty of dismissal from service. The Labour Court has examined the matter in detail while upholding the order of dismissal. Therefore, no interference would arise in the matter.

Heard learned counsel for the parties.

Perusal of the records, it is revealed that conduct of the petitioner w.e.f. 25.08.1998, the date on which he was transferred from Sonapat to Rasoi till dismissal from service on 07.06.1999, he failed to respect the orders of respondent No. 3 not only against letters communicated him to report back to duty so also not cooperating in enquiry, thus, there is no infirmity in the enquiry proceedings. Learned counsel for the petitioner has not pointed out any legal infirmity as well as error

committed in the disciplinary proceedings or by the Labour Court. Only contention is that penalty is too harsh. Penalty is not harsh for remaining unauthorised absent for a period of about two months, not disobeying the order of transfer and remaining ex-parte in the disciplinary proceedings. The Management have complied procedure like issuing notices from time to time and for not attending enquiry. Newspaper notice was also issued. Petitioner is not entitled for any sympathy from this Court on the score that he has worked for a decade and penalty is excessive.

The learned counsel for respondent No. 3 relied on Supreme Court decision which is referred in ***Davalsab Husainsab Mulla Vs. North West Karnataka Road Transport Corporation***, (2013) 10 SCC 185 in which it is held as follows :-

“12. As far as the discretionary power of the Labour Court under Section 11-A of the Act is concerned, the exercise of such power will always have to be made judicially and judiciously. Under the said provision, wide powers have been vested with the Labour Court to set-aside the punishment of discharge or dismissal and in its place award any lesser punishment. Therefore, high amount of care and caution should be exercised by the Labour Court while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal. Such exercise of discretion will have to depend upon the facts and circumstances of each case. Before exercising the said discretion, the Labour Court has to necessarily reach a finding that the order of discharge or dismissal was not justified. A reading of Section 11-A of the Act makes it clear that before reaching the said conclusion, the Labour Court should express its satisfaction for holding so. It

has to be remembered that the question of exercise of the said discretion will depend upon the conclusion as regards the proof of misconduct as held proved by the management and only if it finds that the discharge or dismissal was not justified. Therefore, the satisfaction to be arrived at by the Labour Court while exercising its discretionary jurisdiction under Section 11-A of the Act must be based on sound reasoning and cannot be arrived at in a casual fashion, inasmuch as, on the one hand the interference with the capital punishment imposed on the workman would deprive him and his family members of the source of livelihood, while on the other hand the employer having provided the opportunity of employment to the workman concerned would be equally entitled to be ensured that the employee concerned maintains utmost discipline in the establishment and duly complies with the rules and regulations applicable to the establishment. In that sense, since the relationship as between both is reciprocal in equal proportion, when the employer had chosen to exercise its power of discharge and dismissal for stated reasons and proven misconduct, the interference with such order of punishment cannot be made in a casual manner or for any flimsy reasons.”

The petitioner's conduct read with above decision, the petitioner has not made out a case.

Accordingly, petition stands dismissed.

July 14, 2016.
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(P.B. BAJANTHRI)
JUDGE