

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 7143 of 2012
Date of Decision: 29.1.2016.**

Joginder Singh

.....Petitioner

Versus

Presiding Officer Industrial Tribunal-cum-
Labour Court, Ludhiana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harnek Singh, Advocate
for the petitioner.

Mr. Harsh Aggarwal, Advocate
for respondents No. 2 to 4.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the award dated 13.10.2010 (Annexure P-1).

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. The dispute raised by the petitioner was referred for adjudication by the appropriate Government to Industrial Tribunal-cum-Labour Court, Ludhiana.

Case of the petitioner, in brief, was that he had worked with the respondent-corporation as a Driver for 21 years. Petitioner was suffering from Maxillary Sinusitis and Vertigo and remained under treatment from 28.2.2002 to 26.3.2002. Petitioner reported for duty on 27.3.2002 and again fell ill on 21.4.2002. Petitioner again remained under treatment from 22.4.2002 to

9.8.2002. Petitioner had informed the respondent-management in this regard but despite the said fact, his services were illegally terminated vide order dated 9.8.2002. Appeal filed by the petitioner against the order of his termination was dismissed by the Appellate Authority vide order dated 30.4.2003.

Respondents, in their written statement, averred that the petitioner had remained absent from duty without information and his services were terminated after holding departmental enquiry as per rules. Appeal filed by the petitioner was dismissed being time barred.

From the pleadings of the parties, following preliminary issue was framed by the Industrial Tribunal-cum-Labour Court:-

“1. Whether a fair and proper enquiry was not conducted?”

The said issue was decided in favour of the petitioner vide order dated 4.12.2008 and thereafter following issue was framed by the Industrial Tribunal-cum-Labour Court:-

“1. Whether the order of termination of services of the workman is justified and in order?”

The learned Industrial Tribunal-cum-Labour Court vide impugned award dated 13.10.2010 (Annexure P-1) held that the punishment order was unjustified and it was set aside. The punishment of termination was modified to compulsory retirement with effect from the date of the absence of the petitioner i.e. 28.2.2002. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the petitioner had worked with the respondents-management for 21 years and his services had been illegally terminated. Petitioner

could not attend his duty due to his illness. The Industrial Tribunal-cum-Labour Court should have ordered the reinstatement of the petitioner with all consequential benefits.

Learned counsel for respondents No. 2 to 4, on the other hand, has opposed the petition and has submitted that the award passed by the Industrial Tribunal-cum-Labour Court was liable to be upheld.

In the present case, the Industrial Tribunal-cum-Labour Court after appreciating the evidence led by the parties on record held that the petitioner had duly informed the management, though, belatedly on 27.3.2002 vide Exhibit W-13 qua his illness by submitting written applications accompanied by medical certificate. Petitioner could not attend his duties on account of his illness. The Industrial Tribunal-cum-Labour Court further held that the petitioner was not diligent enough in pursuing the matter regarding grant of medical leave. Hence, it was held that the petitioner had remained absent from duty with effect from 28.2.2002 to 26.3.2002. The Industrial Tribunal-cum-Labour Court while exercising powers under Section 11-A of the Industrial Disputes Act, 1947 ('Act' for short) held that the punishment of termination of services awarded to the petitioner in the facts and circumstances of the present case, was unjustified and the same was modified to compulsory retirement. Learned Industrial Tribunal-cum-Labour Court in the facts and circumstances of the present case had rightly exercised the jurisdiction under Section 11-A of the Act. Petitioner had worked with the respondents-management for a number of years and absented on account of his illness. Thus, the petitioner could not join his duty on account of

his illness but it was important for the petitioner to have sought medical leave. Petitioner had failed to send medical leave on account of his illness. Keeping in view the fact that the petitioner had put in a number of years of service with the respondents-management, the learned Industrial Tribunal-cum-Labour Court rightly held that the punishment awarded to the petitioner was liable to be modified and ordered that the petitioner be compulsory retired. Since the petitioner had remained absent from duty, it would not be just and expedient to interfere with the award passed by the Industrial Tribunal-cum-Labour Court. The view taken by the Industrial Tribunal-cum-Labour Court is fair and just.

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 29, 2016
Gurpreet