

CWP No.27209 of 2015

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In the High Court of Punjab and Haryana at Chandigarh.

CWP No.27209 of 2015

Date of Decision:28.01.2016

Dalbara Singh

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal, Patiala and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Raj Kaushik, Advocate,
for the petitioner.

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 the award dated 03.03.2015 (Annexure P-11).

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

Case of the petitioner, in brief, was that he had joined as a Peon on 01.12.1992 with the Bhawanigarh Block Rural Cooperative House Building Society Limited,

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Bhwanigarh vide resolution dated 01.12.1992. Petitioner was designated as a Clerk vide resolution dated 07.01.1997. Petitioner worked with Bhawanigarh Block Rural Cooperative House Building Society upto 31.12.1999 and was then transferred to respondent-society. Petitioner joined with the respondent-society on 01.01.2000 and worked upto 31.05.2006. Petitioner was suspended on 21.03.2006 and charge-sheet was issued to him on 27.03.2006. Petitioner submitted his reply to the said charge-sheet on 25.05.2006. Petitioner was dismissed from service on 01.06.2006. The resolution whereby petitioner was dismissed from service was passed without issuing any show cause notice or affording any personal hearing to him.

Respondent-society in its written statement averred that petitioner had been suspended on 21.03.2006 on the allegations of misconduct. Charge-sheet was issued to the petitioner on 27.03.2006 and petitioner submitted his reply to the same. The allegations levelled against the petitioner stood proved in an inquiry conducted by HOUSEFED, Punjab. Petitioner was dismissed from service vide resolution dated 01.06.2006.

On the pleadings of the parties, following issues were framed by the trial Court:-

“1. Whether the services of the workman

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were terminated illegally by the respondents? OPW

2. If issue No.1 is proved, whether the workman is entitled to consequential relief as claimed in the statement of claim? OPW

3. Whether the reference is not maintainable as per preliminary objections taken by the respondent in its written statement? OPM

4. Relief.”

Parties led their evidence in support of their respective pleas.

Industrial Tribunal vide its award dated 03.03.2015 declined the reference sought by the petitioner. Hence, the present petition by the petitioner.

Learned Tribunal while declining reference sought by the petitioner has considered that petitioner in his cross-examination admitted that he had earlier been dismissed from service by the society and he was reinstated vide resolution Exhibit R-1. As per Exhibit R-1, petitioner was directed to deposit security with the society and it was further ordered that he shall not effect cash recovery on behalf of the Society in future. Petitioner was reinstated vide resolution dated 19.03.2004 by issuing him a warning. Since, the petitioner had failed to deposit the security, the society passed another resolution Exhibit R-2 dated 06.08.2005 directing the

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petitioner to deposit the security. Petitioner admitted that till the date of dismissal he had not deposited the security with the respondent-society. The learned Tribunal, thus, rightly held that the petitioner had failed to abide by the conditions mentioned in resolution Exhibit R-1.

It was further noticed by the Tribunal that during his cross examination petitioner admitted that vide Exhibit R-3 he had deposited ₹40,000/- in the account of the society. As per copy of cash book Exhibit R-4, ₹40,000/- was received as security from non-member and entry was made in the cash book on 02.01.2002. The said amount was deposited in the Bank vide Bank slip Exhibit R-3 on 01.01.2002, whereas there was cutting at Mark A on Exhibit R-3 and 01.01.2002 was made as 02.01.2002. Thus, the amount of ₹40,000/- was received as security from members earlier by the petitioner and was deposited in the Bank on 01.01.2002, whereas petitioner made an entry in the cash book that the amount had been deposited in the Bank on 02.01.2002. There was entry in the cash book Exhibit R-5 dated 06.02.2002 that amount of ₹40,000/- was returned as security to Dalbara Singh who executed receipt Exhibit R-6 in this regard.

Thus, the petitioner had misappropriated security of non-members of the society by withdrawing the same. It has been further noticed by the learned Tribunal that the

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petitioner in his cross-examination admitted that Exhibit M-7 was signed by him. As per the said document ₹17,000/- were received by the petitioner from Bawa Singh on 22.07.2004 but the said amount was not deposited in the account of the society and, thus, had been misappropriated by the petitioner. Petitioner further admitted in his cross-examination that after his dismissal a settlement was arrived with Baghel Singh with the intervention of Surjit Singh M.L.A. Dirba. The said settlement was proved on record by the management as Exhibit R-8. In the said settlement petitioner had admitted that he had used remarks against the caste of Baghel Singh and had felt sorry for the same and had sought forgiveness.

It has been further noticed by the learned Tribunal that during his cross-examination, petitioner admitted that he had filled cheque No.190287 dated 04.01.2006 in the sum of ₹67,040/- but the same had not been signed by the Secretary and due to this reason it could not be encashed. The said cheque was prepared by the petitioner in his own name.

Thus, learned Tribunal on the basis of the cross examination of the petitioner rightly came to the conclusion that the petitioner was indulging misappropriation of the funds of the society. In fact, petitioner had also failed to deposit security in terms of the settlement/resolution Exhibit R-1 and had received cash from the society, although, vide

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Exhibit R-1 it was directed that petitioner shall not receive cash on behalf of the society.

In the facts and circumstances of the present case, the learned Industrial Tribunal rightly came to the conclusion that the petitioner was not entitled for any relief.

No ground warranting interference by this court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed

January 28, 2016
kapil

(SABINA)
JUDGE