

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

CWP-3875-2015

Date of decision: January 18, 2016

RISHI KUMAR

.....Petitioner

Versus

PRESIDING OFFICER AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

**Present: MR. J.P.Jangu, Advocate
for the petitioner.**

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari seeking quashing of the Award dated 1.9.2014 (Annexure P4).

Petitioner had raised an industrial dispute by serving a demand notice challenging his termination from services with effect from 11.9.2007. The appropriate Government referred the dispute for adjudication to the Industrial Tribunal-cum-Labour Court-I, Gurgaon.

The case of the petitioner, in brief, was that he had joined the respondent Company as a "worker" with effect from 3.2.2001. On 11.9.2007, petitioner could not attend his duty due to illness.

Petitioner had taken treatment from a local doctor and he informed

the respondent-management on telephone regarding his illness and had sought two days sick leave. After availing the leave, when the petitioner reported for duty, he was not allowed to join his duty. Earlier petitioner had availed leave but the said period was considered by the respondent-Management as absence from duty and departmental inquiry was held against the petitioner. However, after considering the submissions made by the petitioner, he was allowed to join duty and was ordered to be kept under observation for one year. Petitioner had sincerely performed his duty. Thereafter, petitioner had availed two days sick leave and had informed the respondent-Management in this regard but they had wrongly treated the said period as absence from duty.

Respondents No. 2 and 3, in their written statement, averred that the petitioner was working as Casual Operator with them with effect from 3.2.2001. Petitioner was a habitual absentee. Petitioner was charge-sheeted on 5.5.2007 and a regular departmental inquiry was held against him. Petitioner admitted his guilt before the Inquiry Officer and he requested for a last opportunity to allow him to improve his behaviour. As requested by the petitioner, punishment of dismissal from services was kept in abeyance and petitioner was kept under observation for one year. However, in September, 2007, petitioner had absented from duty for three days. In these circumstances, as per the agreed terms of settlement dated 20.6.2007, services of the petitioner were terminated on 12.9.2007.

On the pleadings of the parties, following issues were

framed by the Industrial Tribunal-cum-Labour Court:-

“1.Whether the services of the workman were dispensed with wrongly and in an illegal manner and he is entitled to reinstatement with back wages?OPW

1-A.Whether a fair and proper enquiry was not conducted by the respondent?OPW

2.Whether the reference is not maintainable in the present form?OPM

3.Relief.”

Parties led their evidence in support of their respective pleas.

Vide impugned award dated 1.9.2014, reference sought by the petitioner was dismissed. Hence, the present petition by the petitioner.

I have heard the learned for the petitioner and have gone through the record available on the file carefully.

In the present case, admittedly, departmental inquiry was held against the petitioner on the charge that he had remained absent from duty for 114 days. Petitioner submitted his reply to the charge-sheet and he duly participated in the inquiry proceedings. Inquiry Officer held vide its report that the charges levelled against the petitioner were proved. Thereafter, petitioner tendered his apology and requested that the punishment imposed upon him be kept in abeyance for 12 months and had undertaken that if he remained absent for more than two days then respondent-Management would be at liberty to award any punishment to him.

Thereafter, petitioner did not attend his duties on 9.9.2007, 10.9.2007 and 11.9.2007. The case of the petitioner is that he had fallen ill and due to this reason, he could not join his duty on 9.9.2007. Although, the petitioner has placed on record before the Labour Court his medical certificate Exhibit PW-1/B but the same was not duly proved by the petitioner as the doctor who had prepared the said certificate was not examined by the petitioner.

Since the petitioner had violated the terms of undertaking given by him vide settlement, Exhibit M-8, learned Labour Court rightly held that the services of the petitioner had been rightly terminated.

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 18,2016

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