

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

CWP No.15724 of 1996

Date of Decision:09.11.2017

Anand Sharma

... Petitioner

Vs.

The Presiding Officer and another

... Respondents

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

Present : Mr. Subhash Ahuja, Advocate for the petitioner.

Mrs. Tarun Jain Sinha, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

Petitioner has challenged the award passed by the Labour Court dated 22.9.1995 and 27.2.1996 (Annexures P-5 and P-6).

Petitioner-workman joined services as a Compounder in the year 1978. While working as such on certain serious allegations, petitioner was subjected to disciplinary inquiry and it was concluded in imposing the penalty of termination of his services on 26.12.1989. Thus, petitioner raised industrial dispute. Labour Court proceeded to decide the reference in three stages namely (i) whether respondent-hospital is an industry or not? (ii) whether inquiry held against the petitioner is in order or not? (iii) whether termination of the petitioner is in accordance with law or not? On 6.6.1995, Labour Court gave finding in award (Part-I) that respondent-hospital is an industry. On 22.09.1995, Labour Court held that initiation of inquiry as well as inquiry is held to be vitiated. Further on 27.2.1996, Labour Court proceeded to hold enquiry and pass award to the extent that petitioner was entitled to 60% of back wages during the period from 26.12.1989 till passing of the award. Hence, the present petition.

Learned counsel for the petitioner-workman submitted that once the charge-sheet has been held to be vitiated by award dated 22.09.1995 and the fact that respondent-hospital have accepted the award dated 22.9.1995, question of holding inquiry by the Labour Court on the vitiated charge is impermissible. Therefore, consequential proceedings held by the Labour Court dated 27.02.1996 is liable to be set aside. In support of this contention, learned counsel for the petitioner relied on a decision of the Supreme Court in the case of Secretary, Min. of Defence and others v. Prabhash Chandera Mirdha; 2013 (1) RSJ 378 (see: para-17).

Per contra, learned counsel for respondent No.2 while resisting the claim of the petitioner, it was argued that there were serious charges levelled against the petitioner-workman. Therefore, rightly Labour Court proceeded to hold an inquiry. Hence, no interference is called for. It was further submitted that once the Labour Court proceeded to uphold the order of termination, question of extending the benefit of 60% back wages for the period from 26.12.1989 the date on which petitioner's services were terminated till passing of the award (Part-III) dated 27.2.1996 is impermissible.

Heard learned counsel for the parties.

Crux of the matter is that once the Labour Court proceeded to hold that charges levelled against the petitioner were without authority of law, labour Court can proceed to hold inquiry? In other words, incompetent authority has initiated proceedings by framing charges, question of holding inquiry by the Labour Court on the very same charges i.e. vitiated charges. The charge-sheet framed by the respondent-hospital is not existing in the eye of law as on the date on which Labour Court held charges are vitiated

vide award (Part-II). In others words, it is non-est action. Against non-est action, Labour Court cannot proceed to hold inquiry and upheld the order of termination as is done in the present case by the Labour Court. It was also noticed that in Part-II of the award, specific finding has been given by the Labour Court which reads as under:

“12. It was also argued by Shri N.K. Jain, A.R of the workman that the President alone was not competent either to serve charge sheet or to pass termination order and in this connection, my attention was drawn to rule 23 of the Rules and Regulations of Sewak Sabha Charitable Trust Hisar, whereby it was incorporated that governing body shall be the appointing authority and through rule 24, the governing body could entrust the duty to the manager, but as there was no evidence whatsoever, to prove the said entrustment, the issuance of charge-sheet and subsequent proceedings stood vitiated. As the management has failed to prove that the governing body had delegated the powers to the manager by producing resolution of the trust. I agree with the argument of Shri N.K. Jain, A.R. of the workman that this charge-sheet was not served by the competent authority and subsequent proceedings, thus, stood vitiated. ”

In view of the above finding given by the Labour Court and the fact that respondent-hospital have not challenged the validity of the Award (Part-II) dated 22.9.1995, it has attained finality. At the best, respondent-Hospital could have filed a petition seeking liberty to frame fresh charges against the petitioner since the same has not been done by the respondent-hospital for all these years from 1995 to this day. Therefore, question of framing of fresh charges and holding afresh inquiry do not arise.

In view of the above facts and circumstances, award dated 27.2.1996 (Part-III) (Annexure P-6) is set aside. Consequently, petitioner is

entitled to all service benefits from the date of termination till the date of his retirement. The same shall be calculated and disbursed to the petitioner within a period of four months from today.

Accordingly, petition stands allowed.

09.11.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No