

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9187 of 1996 (O&M)
Date of Decision: August 10, 2017

T.S. Grewal

... Petitioner

Versus

The Presiding Officer, Labour Court, Ludhiana and another

... Respondents

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

Present: Mr. K.L. Arora, Advocate,
for the petitioner.

Mr. Deepak Sabherwal, Advocate,
for respondent No.2.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has questioned the order dated 27.08.1991 (Annexure P/7) and award dated 15.11.1995 (Annexure P/8) passed by the Labour Court, Ludhiana.

2. Petitioner is stated to have been appointed as Assistant on 08.09.1971 with the respondent-management. He has earned promotion to the post of Assistant Accountant on 24.06.1978. On 01.12.1978 employees resorted for strike. Thus, there was a dispute between the petitioner and other employees with the respondent-management. In the course of strike period, petitioner and others employees alleged to have abused the management and its superior staff. Arising out of abusing management and its staff, respondent-management have resorted for initiation of enquiry against the petitioner and others. Enquiry was concluded in imposing the penalty of dismissal from service on 29.11.1979. Thereafter, petitioner has

raised an industrial dispute before the Labour Court. The Labour Court passed order on the preliminary issue relating to whether enquiry has been held appropriately or in accordance with law and so also whether the punishment awarded to the petitioner is in accordance with law, so also Section 11-A of the Industrial Disputes Act has been taken into consideration and held that petitioner has not made out a case. Thus, award was passed in favour of management. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that reason for initiation of enquiry against the petitioner and other employees are that petitioner and other employees for their rightful demand resorted for strike which was not liked by the respondent-management. Therefore, in the guise of punishing the petitioner and other employees, respondent-management have resorted for initiation of enquiry and imposed penalty of dismissal from service. It was further submitted that the respondent-management have withdrawn initiation of enquiry against similarly situated employees and further some of them have been reinstated while petitioner has been scapegoated. It was further submitted that before passing order of dismissal, petitioner has not been given opportunity like issuance of show cause notice and obtaining reply. Thus, there is violation of principle of natural justice. It was further contended that Inquiring Officer has believed the prosecution witnesses version and turned down the evidence adduced on behalf of the defence witnesses. The Inquiring Officer proceeded to accept the version of the prosecution witnesses without assigning any reason and so also for discarding the evidence of the defence witnesses. The Labour Court failed to appreciate that there is lacuna in the enquiry to the extent of non-availability of corroborative evidence with reference to the alleged charge

against the petitioner. Even Section 11-A of the Industrial Disputes Act has not been dealt appropriately. Since the alleged allegation is that petitioner has abused the management and its superior staff for which dismissal from service would be too harsh and major penalty.

4. Per contra, learned counsel for respondent no.2-management resisted the petitioner's contentions. It was argued that question of animosity between the petitioner and respondent – management do not arise. It is a fact that petitioner had abused the management and its staff while the petitioner and other employees were on strike. The allegation was supported by the management's witnesses who have adduced the evidence before the Inquiring Officer. Thus, there is no lacuna in the disciplinary proceedings as well as finding recorded by the Inquiring Officer, disciplinary authority and Labour Court.

5. Heard learned counsel for the parties.

6. It is evident on record that petitioner and other employees have resorted to strike for their rightful demand. The same was not liked by the respondent-management. Therefore, they have resorted for initiation of enquiry against the petitioner and others. The respondent – management have discriminated while dropping the charges and reinstating such of those employees who were similarly situated persons like the petitioner. The Inquiring Officer has not assigned any reason as to why management's witnesses version are acceptable and evidence adduced on behalf of defence witnesses are to be discarded. Moreover, before imposing the penalty of dismissal from service, respondent-management have not issued a show cause notice and so also copy of enquiry report was not made available to the petitioner. Perusal of dismissal order, it is evident that disciplinary

authority has relied on the reply to the charge memo and not the issuance of show cause notice and obtaining reply from the petitioner on the Inquiring Officer's report. These facts and circumstances read with legal procedure have not been appreciated by the Labour Court in its order, therefore, order of dismissal and consequential Labour Court's award are liable to be set aside. Accordingly, set aside. In view of prolong proceedings and the fact that petitioner is aged about 72 years, question of remanding the matter at this juncture may not be fair. Petitioner is entitled to all consequential benefits. The respondent-management is hereby directed to calculate monetary benefits from the date of dismissal till the petitioner attains the age of superannuation and retired from service as if he was in service and disburse the monetary benefits to the petitioner within a period of four months from today. If monetary benefits are not released within the stipulated period, in that event, petitioner is also entitled simple interest @ 6% per annum from the date of this order.

7. Instant writ petition stands allowed.

August 10, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No