

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20048 of 2013 (O&M)

Date of Decision:-28.07.2017.

Jagdish Chand

.....Petitioner

Versus

The Palwal Cooperative Sugar Mills Limited and another

.....Respondents

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

Present: Mr. O.P. Sharda, Advocate for the petitioner.

Mr. R.N. Lohan, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has assailed the award passed by the Labour Court dated 29.08.2012 and 05.09.2012 (Annexure P-9 and P-10) and order dated 02.09.2000 (Annexure P-7).

Petitioner was working as a Peon with the respondent-Mills in the Accounts Branch. On 30.8.1999, there was a heated argument between the petitioner and one Shri A.K. Sachdeva, Accounts Officer in respect of obeying directions of the Accounts Officer. It was alleged by Shri A.K. Sachdeva, Accounts Officer that petitioner had disobeyed the directions given to him in respect of delivering Dak in the mills. In the scuffle, petitioner is stated to have slapped Shri A.K. Sachdeva, Accounts Officer. Arising out of these factual aspects, Shri A.K. Sachdeva gave a complaint to the Managing Director on 30.8.1999. Petitioner was charge-sheeted on the allegations that he failed to obey the direction and slapping on the face of

Shri A.K. Sachdeva. The petitioner submitted his reply to the charge memo

on 04.10.1999. He has not denied disobeying the directions of Shri A.K. Sachdeva, Accounts Officer to the extent of delivering *Dak* in the mills but he denied the alleged charge of slapping Shri A.K. Sachdeva, Accounts Officer. Insofar as disobeying the order of Shri A.K. Sachdeva, Accounts Officer, he has sought apology from the Managing Director. The Managing Director, dissatisfied with the petitioner's reply proceeded to hold an inquiry by appointing an Inquiry Officer. Inquiry Officer held that the charges stand proved. Based on the Inquiry Officer's report dated 08.08.2000, show cause notice was issued on the same day. Thereafter, proceeded to impose the penalty of termination from service on 02.09.2000. Consequently, industrial dispute was raised before the Labour Court. Labour Court passed award vide Annexure P-9 and P-10 respectively. Thus, the present petition.

Learned counsel for the petitioner submitted that the allegation relating to slapping Shri A.K. Sachdeva, Accounts Officer was not proved. Petitioner has admitted in respect of disobedience of direction of delivering *Dak* in the mills. The Inquiry Officer has not appreciated the evidence adduced in the inquiry. That apart, there is no discussion of evidence adduced by the 3 witnesses who adduced the evidence in the inquiry. Further order of termination is also not a speaking order. After taking note of dates and events, the Managing Director proceeded to pass the order of termination. Even evidence has not been discussed by the disciplinary authority – Managing Director while imposing the penalty. Labour Court also failed to appreciate the evidence adduced in the inquiry. Merely referring the documents relating to inquiry proceedings and further citing number of decisions which are not relevant to the present case. Facts of the case has not been appreciated by the Labour Court. Without appreciating

the facts of the case number of decisions have been taken into consideration only in respect of abusing superiors and threatening etc. so also in order to interfere with the quantum of punishment. Therefore, termination order as well as Labour Court award is liable to be set aside.

Per contra, learned counsel for respondent No.1 resisted the claim of the petitioner by contending that ample opportunity has been granted to the petitioner before the Inquiry Officer so also before the Labour Court. The Inquiry Officer had examined 3 witnesses in respect of complaint dated 30.8.1999 submitted by Shri A.K. Sachdeva, Accounts Officer. Having regard to the seriousness of the allegations made against the petitioner and which were proved in the inquiry, question of interference with the Labour Court award does not arise. Therefore, writ petition is liable to be rejected.

Heard learned counsel for the parties.

Crux of the matter is whether inquiry has been held in fairness or not. In this regard, it is necessary to reproduce Inquiry Officer's report. Inquiry Officer's report reads as under:-

“Jagdish Vs Palwal Sugar Mills, Palwal.

Subject :Inquiry Report :

I was appointed as the Inquiry Office vide letter No.4377 dated 19.11.1999 to enquire into the charges leveled against Sh. Jagdish Chand, Peon vide charge sheet No.2649 dated 15.9.1999.

I called both the parties in my office on 21.7.2000, 2.8.2000 and 7.8.2000 alongwith proof and documents, if any. On behalf of the management, Presenting Officer, Shri D.C. Sharma, Shri Mohammad Saleem, Establishment Clerk, Shri Tek Chand, (Assistant Accountant), Shri Devi Lal, Daftri, Accounts Branch,

Shri B.K. Jaiswal (as witnesses of Management) came present for the enquiry.

Shri Jagdish Chand came present in the enquiry and presented his version of the incident. On behalf of the management, all the three witnesses confirmed the complaint dated 30.8.1999, made by Shri A.K. Sachdeva. Shri Jagdish Chand presented his side of the incident but did not present any witness or documents in his support. From my side, both the parties were given full opportunity to present their case. After going through the documents, I found that Shri Jagdish Chand Peon had confirmed the incident mentioned in his letter dated 17.9.1999 written by him to the Managing Director. He also apologized for the incident.

Hence after going through the documents and the facts mentioned above, I have come to the conclusion that Shri Jagdish Chand Peon violated the instructions given to him by his seniors, refused to carry out the work and misbehaved with him and also slapped him. As such all the charges leveled against Shri Jagdish Chand Peon vide Charge Sheet bearing No.2649 dated 15.9.1999 stand proved.

Submitted please.

Sd/- R.S. Rath

8.8.2000

*Purchase Officer-cum-Inquiry
Officer.*

Managing Director.

I agree with the findings of the enquiry officer. Issue show cause notice for dismissal from service.

Sd/-

M Singh

09.08.2000

OS

*Show cause notice for dismissal is placed
below for signatures*

Sd/-

O.S.

MD.

I have signed, please serve.

Sd/-

M Singh.

09.08.2000”

The disciplinary authority proceeded to impose penalty of termination from service based on the aforesaid inquiry report dated 08.08.2000. Perusal of para 3 of the Inquiry Officer's report, it is evident that there is no discussion of evidence adduced by the 3 witnesses in support of the complaint dated 30.8.1999. What has been held by the Inquiry Officer is only to the extent that “*all the 3 witnesses confirmed the complaint dated 30.8.1999 made by Shri A.K. Sachdeva*” This is only a conclusion which is not support by evidenced adduced by the 3 witnesses to support the complaint. So also the alleged charge relating to disobeying the order of Shri A.K.Sachdeva, Accounts Officer as well as slapping charge. In other words, Inquiry Officer's report is not at all an inquiry report so as to impose the major penalty. The respondents are taking away the livelihood of the petitioner by dismissing him from service. In this situation, it was bounden duty of the disciplinary authority to comply the procedures in respect of disciplinary proceedings. Reading of the Inquiry Officer's report and so also the order of termination, nowhere there is a discussion in respect of charge of slapping to Shri A.K. Sachdeva, Accounts Officer. In the absence of corroborative evidence and its discussion, drawing an inference

same time, Labour Court failed to appreciate the aforesaid lacunae committed by the Inquiry officer as well as disciplinary authority to the extent that proving of charge of slapping Shri A.K. Sachdeva by adducing corroborative evidence, it was bounden duty of the Inquiry Officer to discuss the evidence of the witnesses. Even the same has not been taken into consideration by the Labour Court. In view of these facts and circumstances, Annexure P-7 dated 02.09.2000-order of termination is set aside. Consequently, awards dated 29.08.2012 and 05.09.2012 (Annexure P-9 and P-10) respectively passed by the Labour Court are set aside. Reserving liberty to the respondents to commence inquiry afresh from the stage of receipt of petitioner's reply to the charge memo. The respondents are hereby directed to complete the inquiry proceeding within a period of 3 months from the date of receipt of certified copy of this order. During the intervening period i.e. from the date of termination till completion of Inquiry proceedings, petitioner be held as under suspension in view of the Hon'ble Supreme Court decision passed in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar 1993 (4) SCC 727.** The respondents are hereby directed to pay subsistence allowance from the date of termination till passing final order in the disciplinary proceedings. Subsistence allowance from the date of termination till date be paid to the petitioner within a period of 3 months from today.

Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

July 28, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.