

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

CWP No.25294 of 2013

Date of Decision:28.09.2017

Hardev Singh

... Petitioner

Vs.

Presiding Officer and others

... Respondents

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

Present : Mr. D.K. Kaushal, Advocate for the petitioner.

Mr. Anil Sharma, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the validity of the award passed by the Labour Court dated 5.8.2013.

Petitioner joined service as driver on 12.9.1980. On 31.10.2000, he was charge-sheeted for remaining absent from 24.9.2000. Petitioner submitted his reply to the charge-sheet in which he has admitted the charge. Consequently, show cause notice was issued on 16.11.2000 in view of the admission proposed penalty of termination of service was order for which petitioner has submitted his reply on 27.11.2000. He was given personal hearing on 3.1.2001. In the meanwhile, petitioner had requested for reporting back to duty on 20.10.2000. The respondents have accepted his duty report on 7.11.2000. Further petitioner worked upto 31.1.2001. Thereafter, he remained absent. In this backdrop, respondents imposed the penalty of termination on 14.2.2001. Petitioner raised industrial dispute. Labour Court proceeded to pass award against the petitioner. Hence, the present petition.

Learned counsel for the petitioner submitted that petitioner has rendered 21 years of service with the respondents. Therefore, imposition of

termination would be too harsh since the petitioner is not involved in any embezzlement of respondents' corporation money so as to impose major penalty of termination. It was further submitted that once the petitioner has been taken back to duty on 7.11.2000. Therefore, further action on charge-sheet is impermissible. It was further submitted that Labour Court failed to appreciate modification of penalty order with reference to Section 11-A of the ID Act. Thus, Labour Court has erred in passing award against the petitioner.

Per contra, learned counsel for the respondents submitted that when the petitioner was in service, he was subjected to disciplinary proceedings on number of occasions wherein he was imposed one or other penalty for remaining absent. In other words, petitioner is a habitual absentee. Therefore, no interference is called for in respect of order of termination so also award passed by the Labour Court. Learned counsel for the respondents in support of his contention relied on a decision passed by the Supreme Court in **Chairman & MD V.S.P. & others v. Goparaju Sri Prabhakara Hari Babu**; 2008(2) S.C.T. 426 wherein habitual absent has been taken note of and in para 17 under what circumstances, Court can interfere with the quantum of punishment has been made clear. In view of these factual aspect, petitioner has not made out a case.

Heard learned counsel for the parties.

Undisputed facts are that petitioner joined service as a Driver on 12.9.1980. His services were terminated on 14.2.2001. While he was in service, he was subjected to disciplinary proceedings for remaining absent which was concluded in imposing one or the other penalties. Even on 31.10.2000, he was charge-sheeted for remaining absent from 24.9.2000 for

which petitioner has fairly admitted in his reply on 7.11.2000. Thus, the respondents proceeded to impose the penalty of termination on 14.2.2001. Respondents are relying on the past conduct as well as imposition of penalty before the Labour Court. Whereas those events relating to past misconduct were not part and parcel of the charge-sheet so as to rely on those events. Decision of the Supreme Court cited supra, no doubt certain principles have been laid down under what circumstances, Court can interfere in respect of quantum of punishment by the Superior Courts. Principles laid down in the decision of the Supreme Court are distinguishable with the present case having regard to the fact that petitioner remained absent on 24.9.2000 and 7.11.2000 which he has admitted. Petitioner has rendered 21 years of service. Therefore, in order to get rid of petitioner's service, respondents have resorted to impose the penalty of termination while taking into account the past misconduct. Therefore, taking into account the past misconduct which is the extraneous material is not part and parcel of the charge-sheet. Constitution Bench of Supreme Court in the case of **The State of Mysore v. K. Manche Gowda**; AIR 1964 SC 506 held that extraneous material cannot be taken into account while imposing penalty. Para-7 of the said judgment reads as under:

“7. Under Article 311 (2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: the decision of this Court in the State of Assam v. Bimal Kumar Pandit, Civil Appeal No.832 of 1962

D/-12.2.1963: (AIR 1963 SC 1612). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that, what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his

explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of “presumptive knowledge” or that of “purposeless enquiry”, as their acceptance will be subversive of the principle of “reasonable opportunity”. We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.”

In view of these facts and circumstances, order of termination dated 14.2.2011 (Annexure P-2) as well as award passed by the Labour Court dated 5.8.2013 (Annexure P-1) are set aside. Matter is remanded to the disciplinary authority to pass a fresh order with reference to the fact that petitioner has rendered 21 years of service and impose penalty other than the dismissal/termination/removal within a period of three months from the date of receipt of a certified copy of this order and extend consequential benefits.

Petition stands allowed accordingly.

28.09.2017

rajeev

(P.B. Bajanthri)

Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No