

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

CWP No.6986 of 2013

Date of Decision:14.09.2017

The Civil Veterinary Hospital and others

... Petitioners

Vs.

Mohinder Singh and another

... Respondents

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

Present : Mr. B.S. Sewak, Addl. A.G. Punjab.

Mr. M.S. Dua, Advocate for respondent No.1.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 6.8.2012 (Annexure P-1).

Respondent No.1 was appointed as Pharmacist in the Animal Husbandry Department, Punjab. While working as such, he remained absent from 24.6.2000 to 6.9.2001. For remaining absent, petitioner-department initiated disciplinary proceedings under Punjab Civil Services (Punishment and Appeals) Rules 1970 (for short "1970 Rules"). Respondent No.1 was charge-sheeted. Till passing of order of termination, respondent No.1 has not co-operated in the disciplinary proceedings like filing reply to the charges; by participating in the inquiry so also furnishing his reply to second show cause notice on receipt of the inquiry officer's report as is evident from the records. Thus, he raised industrial dispute relating to order of termination. Labour Court proceeded to pass award in favour of the petitioner while modifying the order of termination to that of stoppage of three annual increments with cumulative effect and further directed the petitioner-department to reinstate respondent No.1. Feeling aggrieved by the award passed by the Labour Court, the present writ petition is filed.

Learned counsel for the petitioner submitted that respondent No.1 being Pharmacist remained absent. He was working in the essential service department. His absence has affected the department. Thus, for unauthorized absence from 24.6.2000 to 6.9.2001, he was subjected to disciplinary proceeding in which he has not participated. Ultimately, it was concluded in imposing the penalty of termination on 10.7.2003. Under Rule 14 of the 1970 Rules, respondent No.1 had remedy of appeal before the appellate authority-Government. Without exhausting the remedy of appeal, petitioner has approached wrong forum namely Labour Court by raising a industrial dispute. Thus, Labour Court has no jurisdiction to entertain grievance of respondent No.1 relating to order of termination dated 10.7.2003. Further it was submitted that absence of respondent No.1 is for a longer period, therefore, question of condoning the absence and imposing penalty other than dismissal is not correct as held by the Supreme Court in number of cases.

Per contra, learned counsel for respondent No.1 submitted that respondent No.1 was facing very severe domestic problem at home to the extent that he was implicated in a murder case. Therefore, he was not in a position to attend the work during the period from 24.6.2000 to 6.9.2001. Therefore, he had no intention to remain absent. Labour Court framed issue No.2 in respect of whether respondent-department is an 'Industry' or not? Issue no.2 has been answered. The issue is not contested at the time of argument. Accordingly, it was decided in favour of respondent No.1. In view of these facts and circumstances, there is no infirmity in the award passed by the Labour Court, Hence, writ petition is liable to be dismissed.

Heard learned counsel for the parties.

Question for consideration in the present petition is whether Labour Court can entertain grievance of a Government Servant like respondent No.1 or not?

Perusal of applicability clause of 1970 Rules, it is crystal clear that if any employee of the State Government is alleged to have committed misconduct or misdeed would be subjected to disciplinary proceeding under the aforesaid Rules. Therefore, respondent No.1 was bound by the Rules. Faced with these factual aspect, remedy against the order of termination dated 10.7.2003 was to file an appeal under Rule 14 of the 1970 Rules. Therefore, entertaining dispute by Labour Court by framing issue whether respondent-department is an industry and merely not contesting that issue, Labour Court cannot usurp the jurisdiction relating to Government employees' service conditions, since 1970 Rules is framed under Article 309 of the Constitution.

In view of the above discussion, Labour Court has no jurisdiction to decide respondent No.1's service condition. Accordingly, award passed by the Labour Court dated 6.8.2012 (Annexure P-1) is set aside.

Petition stands allowed accordingly.

14.09.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No