

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 9940 of 2013 (O&M)

Date of Decision: August 08, 2017

Harkishan

... Petitioner

Versus

Presiding Officer, Labour Court-II, Faridabad and another

... Respondents

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

Present: Mr. Shiv Kumar, Advocate,
for the petitioner.

Mr. Mohak Bhadana, Advocate,
for respondent No.2.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has assailed the order dated 25.01.2011 (Annexure P/15) and award passed by the Labour Court dated 19.12.2012 (Annexure P/16).

2. Petitioner joined service in the respondent-management as a Milling-man on 18.10.1980. While he was working as such, he was placed under suspension on 30.09.2003 on certain allegations that he has caused his co-employee to be unconscious while running the milling machine (taking out the air pressure pipe from the die). In this regard, respondent-management proceeded to initiate charge memo. In the charge memo, respondent has also included the past misconduct of the petitioner as part

and parcel of the charge memo. The petitioner has not been supplied with the documents which are listed / cited in support of charge memo despite insisting for furnishing documents. Thereafter, petitioner submitted his reply denying the charges. The respondent was not satisfied with the petitioner's reply proceeded to hold an inquiry. The petitioner participated in the inquiry, however, at the relevant point of time of adducing evidence, petitioner remained ex-parte. Consequently, Inquiring Officer proceeded to hold ex-parte inquiry holding that the charges levelled against the petitioner were got proved. Based on the Inquiring Officer's report, respondent issued a show cause notice along with Inquiring Officer's report. After receipt of petitioner's reply proceeded to impose the penalty of dismissal from service. Thus, the petitioner has raised an industrial dispute before the Labour Court. The Labour Court proceeded to pass an award while upholding the inquiry report and order of dismissal. Thus, the present writ petition.

3. Learned counsel for the petitioner submitted that there were number of lacunas in the disciplinary proceedings in not furnishing documents along with charge memo, thereby he has been denied making effective reply to the charge memo and the very object of issuance of show cause notice and seeking explanation from the petitioner is being defeated. Thus, the Labour Court has erred in holding that enquiry proceedings initiated against the petitioner are in accordance with procedure.

4. Per contra, learned counsel for respondent no.2 – management submitted that no prejudice has caused to the petitioner in not furnishing the documents along with charge memo. There is material evidence that during enquiry proceedings, the Inquiring Officer has sought for inspection of the cited documents. The same has not been availed by the petitioner.

Therefore, question of furnishing documents along with charge memo do not arise.

5. Having regard to the fact that certain errors were found to the extent that there were no corroborative evidence in respect of the allegation that petitioner has taken out the plaster from Air Pressure (pipe die) and inserted the pipe in Mr. Chandra Bhan, co-employee, body which has caused Chandra Bhan unconscious. In the absence of corroborative evidence, the Inquiring Officer proceeded to hold the above charge levelled against the petitioner got proved. In view of these lacunas in the inquiry, it is a case for remand to the Inquiring Officer from the defective stage.

6. At this juncture, learned counsel for respondent no.2 – management cited judgment of this Court passed in the case ***Uttam Kumar vs. The Presiding Officer and another, CWP No. 14356 of 2013, decided on 20.07.2017*** and submitted that instead of remanding the matter for holding an inquiry from the defective stage, respondent no.2 is ready to pay compensation to the petitioner. Having regard to the length of service of the petitioner from 18.10.1980 and the fact that petitioner's service were terminated from 31.01.2004.

7. In view of the above facts and circumstances and the fact that petitioner had rendered service from 18.10.1980 to 31.01.2004, respondent no.2 is directed to pay compensation of Rs.12,00,000/- to the petitioner within a period of six months from today. Failing which petitioner is entitled for simple interest @ 6% per annum from the date of this order. The above compensation is in final settlement between the petitioner and respondent-management. The Provident Fund is not included in the above final settlement. The petitioner is permitted to make necessary application

for claiming Provident Fund which is due to him.

8. Disposed of accordingly.

August 08, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No