

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

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**CWP-7991-2000 (O&M)
Date of decision:15.03.2018**

Chandigarh Transport Undertaking

... Petitioner

Versus

The Presiding Officer and others

....Respondents

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

Present: Mr.Gaurav Mohunta, Advocate with
Mr. Sudhir Kashyap, Advocate for the petitioner.

None for the respondents.

P.B. BAJANTHRI, J. (ORAL)

Matter called twice, despite giving sufficient time on earlier occasion there is no representation on behalf of the respondents.

2. Heard the learned counsel for the petitioner.

3. In the present writ petition, petitioner has challenged award passed by the Labour court dated 17.09.1999 (Annexure P7). Respondent was a Driver with the petitioner. Being a Driver he has misused his position while taking the bus which is not allotted to him whereby he has caused accident and killed a cyclist. Arising out of these factual aspects parallel proceedings were launched against respondent No.3. In the criminal proceedings he has been acquitted. In the disciplinary proceedings, charges levelled against respondent No.3 were proved whereby petitioner was penalized by reducing his time scale for the period of five years and his suspension period was also limited to the grant of subsistence allowance.

4. Feeling aggrieved by the imposition of penalty, respondent No.3 raised industrial dispute before the labour court. Respondent restricted his arguments to the extent of substituting the penalty while contending that imposed penalty is on higher side. Labour court modified the penalty to the extent of withholding of 2 increments without cumulative effect and respondent No.3 is not entitled to any arrears on account of modification in the punishment awarded to him. Petitioner being aggrieved by the award passed by the labour court presented this petition.

5. Learned counsel for the petitioner submitted that having regard to the conduct of respondent No.3 that even though he was not allotted a particular bus, he has taken away bus and met with an accident which resulted in killing a cyclist. Therefore, imposing penalty is commensurate with the conduct of respondent No.3. Learned counsel for the petitioner further submitted that labour court has not assigned any reason as to why penalty could be modified under Section 11-A of the Industrial Disputes Act, 1947. In support of his contention he relied on decision reported in 2012 (1) LLJ 263 titled as ***Voltas Ltd. Versus Additional Industrial Tribunal-cum-Additional Labour court, Presiding Officer, Hyderabad*** to the extent that reasoning must be assigned while modifying the penalty under Section 11-A of the I.D.Act.

6. The petitioner is pointing out the conduct of the respondent that he has taken away the bus which is not allotted to him. At the same time, no action has been taken against the custodian of the bus which was driven by respondent No.3 which resulted in accident of a cyclist. In other words, there is negligence on the part of the custodian of the bus like Manager of the Depot or authorized officer. Respondent No.3 had valid driving licence.

Therefore, driving the bus of the petitioner may not be mis-conduct. Mis-conduct or negligence would be to the extent of using bus which is not allotted to him. Respondent No.3 was acquitted in the criminal case. Therefore, the petitioner should have taken a lenient view while imposing penalty of reducing time scale for a period of five years would be too harsh having regard to the negligence on the part of respondent No.3 only to the extent of using the bus which is not allotted to him. No doubt labour court has not assigned any reason as to why the penalty has been modified. At the same time one has to peruse the dates and events of alleged incident which relates back to 1987 and penalty imposed is in the year 1994. Thereafter, modification of the penalty is of the year 1999. That too modification is with rider to the extent that respondent No.3 is not entitled to any arrears on account of the modification of the punishment awarded. Infact withholding of two increment without cumulative effect would be given effect from the date of award i.e. 17.09.1999. Further respondent No.3 would be losing monetary benefits pursuant to the punishment imposed in the year 1994 to 1999 i.e. almost for a period of five years. There will not be a much difference in view of the rider while modifying the penalty order. Learned counsel for the petitioner relied on ***Voltas Ltd's*** case (supra) would be distinguishable having regard to the modified order is with a rider that shows that there is reasoning behind modifying the order of penalty. In other words, respondent No.3 would be losing monetary benefit from 1994 to 1999 with reference to penalty imposed namely reduced time scale for a period of five years and his suspension period be also limited to the grant of subsistence allowance. Moreover, labour court has not interfered in respect of regulating the suspension period. Therefore, petitioner has not made out a

case.

7. Accordingly, CWP stands dismissed.

15.03.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No