

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

CWP No. 872 of 1999 (O&M)

Date of Decision: 10.10.2018

The Sirsa Central Coop. Bank Ltd., Sirsa

...Petitioner

Vs.

The Labour Court-cum-Industrial Tribunal, Hissar and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajay Jain, Advocate
for the petitioner.

None for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. The proceedings before the Labour Court were adjudicated in two stages. In the first stage, the preliminary objection was decided whether the enquiry was fair and proper. This interim award went in favour of the workman for the many reasons stated in the order that the enquiry held was neither fair nor proper. The Labour Court found in its order dated 12.05.1988 that the reading of the deposition of Ashok Kumar Midha appearing as Management Witness No. 1 in his cross-examination admits that neither list of witnesses nor list of documents was supplied to the workman with respect to the allegations of misconduct levelled in the charge-sheet dated 05.12.1991. The charge was of overstaying beyond the period of sanctioned earned leave for constructing residential house. There was also the testimony of Baldev Singh MW-2, in his cross-examination where he admits that no witness

was examined by the Department in the enquiry to substantiate the charge against the Workman and he also admitted that during enquiry, workman was under suspension and he was not given subsistence allowance. The Enquiry officer had himself examined the department's Presenting Officer and also the workman regarding the charges and only on that basis, he had submitted his report against the workman holding that charges were proven. Both of them were not allowed to cross-examine each other. The employee was also not given an opportunity to lead evidence in his defence. The conclusion was clear that no valid enquiry was conducted by giving reasonable opportunity of being heard on the defence pleas to establish his innocence. It is well-settled that a defective enquiry is no enquiry in the eyes of law. On this reason alone the enquiry has to be ignored. Having reached the conclusion that enquiry conducted was neither fair nor proper, the Labour Court proceeded to the second stage to answer the reference on merits.

2. Learned Labour Court noticed the endorsement in the order Ex. N-15 dated 11.04.1991 (and this is an important aspect) directing the Branch Manager to ensure the delivery of letter of rejection of leave applied for to the official under intimation to the Head Quarters, but, there was nothing to show that this order was complied with or the delinquent official was informed of the rejection of his application for extension of leave requiring him to join duty immediately. There was also nothing on record to show that the Branch Manager ever sent

intimation to the Head Quarters regarding compliance. Learned Labour Court drew necessary inference in favour of the workman and against the management and on a due consideration of the matter I have every reason to accept the findings of fact. The Labour Court was right in concluding that it cannot be said that there was any intentional and willful absence on the workman's part of disobeying the order of the superior officer which was also an allegation in the charge-sheet.

3. The Labour Court concluded by summing up the gist of the case that at the most it was a case of overstaying after the expiry of period of sanctioned leave. The petitioner was sanctioned earned leave from 31.02.1991 to 31.03.1991 by the Managing Director, an authority higher than the Manager. Therefore, an application for extension of leave, especially when it was recommended by the Branch Manager, should have been forwarded by the Manager with his own comments, if any, to the Managing Director for his consideration being the competent authority instead of himself rejecting it without any reason or basis. Even, if it was to be rejected, it should have been rejected without undue delay by 11.04.1991. It has been found as a fact that respondent failed to prove that workman Pawan Kumar was ever duly informed regarding the rejection of his application for extension of earned leave, so it followed that there was no willful absence or disobeying the order of his superior, on his part. Both the charges of misconduct have remained unproved and I have also no cogent reason to disagree with

this finding of fact. Findings of fact recorded on the basis of evidence are not to be called in question in writ proceedings as a writ petition is not an appeal against the award of a Tribunal.

4. It may be noticed that the petitioner was dismissed from service and that was the case before the Labour Court in challenge to the dismissal order that it was preceded by a defective enquiry. The learned Labour Court having reached the conclusion that the charges of misconduct have remained unsubstantiated to a predominant extent had the wisdom in paragraph 8 to record that the petitioner was duty bound to join duty w.e.f 01.04.1991 and he could not have assumed that his application for extension of leave would be sanctioned, and, therefore, there was misconduct in overstaying after the expiry of the period of sanctioned leave. The Labour Court also took notice of the fact that the reason for grant of earned leave beyond sanctioned leave was for construction of a house and if by that time constructions were not completed and he required extension, then he should have come to the office in person and should then have proceeded on extension only after getting it sanctioned.

5. Having reached these two proper conclusions, the Labour Court exercised its discretion and Section 11-A of the Industrial Disputes Act, 1947 to award lesser punishment while setting aside the order of extreme punishment of dismissal ordered reinstatement with continuity and back-wages and all other consequential service benefits

and instead imposed major punishment of stoppage of one annual increment with cumulative effect by its award dated 21.08.1998. I could not think of more appropriate exercise of jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 by the learned Labour Court handed down in a reasonable and balanced manner awarding the appropriate measure of punishment which was within its jurisdiction. Dismissal from service was too harsh a measure which no person of ordinary intelligence would have chosen and for this reason, I find no legal infirmity either in the order passed on the preliminary issue or in the main award warranting interference and would dismiss the petition. For reaching this conclusion, I find it unnecessary to hear the respondent workman, when he remained unrepresented at the hearing today. Copy of this order be sent by the office to the workman and to the Labour Court, Hisar for its record.

(RAJIV NARAIN RAINA)
JUDGE

10.10.2018

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Whether speaking/reasoned : *Yes*
Whether reportable : *No*