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

CWP-10629-2012

Date of Decision : Sept. 18, 2018

Sucha Singh through his LRs

....Petitioner(s).

Versus

The Presiding Officer Labour Court, Gurdaspur
and others

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Arun Abrol Advocate
for the petitioner(s).

Ms. Bhavna Gupta, DAG, Punjab
for respondents No.1 and 2.

SHEKHER DHAWAN, J.

Petitioners who are legal representatives of Sucha Singh (deceased) have filed this petition for quashing of award dated 16.03.2009 (Annexure P3) passed by learned Labour Court, Gurdaspur, whereby reference has been decided against the workmen.

2 Facts relevant for the purpose of decision of this writ petition; Sucha Singh (since deceased) (hereinafter referred to as, '**the workman**') was appointed as a conductor on 01.01.1975 and his services were terminated on 18.08.2003. Charge sheet was issued to him on serious allegations and regular enquiry was conducted, wherein workman was duly

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associated and he was given due opportunity to defend his case. Thereafter, his services were terminated. The petitioner challenged the termination order by way of industrial dispute and the reference was made to learned Labour Court.

3. Learned Labour Court after considering the material and evidence on file, decided the reference against the workman. Learned Labour Court also considered the matter regarding award of alternative punishment as required under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as, '**the Act**') but did not consider the matter to invoke the jurisdiction of the Tribunal under Section 11A of the Act. Learned counsel for the workmen contended that learned Labour Court has completely ignored the material and evidence available on the file. Even the Enquiry Officer had not conducted a fair enquiry because he had not examined the passengers who were allegedly traveling in the bus without holding valid tickets. While awarding the punishment by the punishing authority has not considered that the workman had already put in more than 28 years of service and even some alternative punishment could be awarded thereby protecting to retrial benefits.

4. While arguing on this point, learned counsel for the respondent contended that learned Industrial Tribunal has already considered all these facts while awarding the punishment. He was given due opportunities to defend his case during the enquiry proceedings and he had actually led the evidence.

5. As regard to examination of passengers before the Enquiry Officer, the workman had not cited any list of passengers who were

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required to be examined and learned Industrial Tribunal has rightly decided the reference. The present writ petition is without any merit and the same be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the facts are not disputed to the extent that Sucha Singh (since deceased) had already put in 28 years of service while working as conductor but at the same time he was issued charge sheet with serious allegations to which the workman duly responded and thereafter, regular enquiry was conducted wherein the workman was given sufficient opportunities to defend his case and actually the workman had defended his case and led evidence as well. There is no question of examining any passenger by the Enquiry Officer as no such list of witnesses or name was given by the workman. If, at all the petitioner was to examine any person who was traveling in the bus and was allowed to have been traveling without tickets, but he was having some valid ticket, the workman should have summoned and examined such a passenger as his defence witness but that has not been done. The inference from the same can be one and only one that the petitioner has simply taken this plea subsequently to challenge the enquiry proceedings which may not be a valid ground. Thereafter, the petitioner was issued show cause notice and personal hearing was granted to him and the termination order was passed on the basis of complete departmental proceedings.

7. Learned counsel for the petitioners also raised a plea that similarly placed colleagues of the workman were dealt with differently and

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they were awarded lighter punishment. Law on the point is settled that in such like cases of disciplinary proceedings, the role of the Courts is restricted because it is for the employer to decide the issue and the Court is to see that the employee/workman has been given due opportunity to defend his case and proper enquiry has been conducted. As there is no illegality in the enquiry proceedings and the charges levelled against the workman stood proved during the enquiry proceedings, the punishment awarded to the workman calls for no interference.

8. In **Tata Oil Mills Co. Ltd. v. Workmen and Anr., 1964 (2) SCR 125**, the Hon`ble Apex Court observed that an Industrial Tribunal has jurisdiction to examine the substance of the matter and decide whether the termination is in fact discharge simpliciter or it amounts to dismissal which has put on the cloak of discharge simpliciter. It was further observed that the test always has to be whether the act of the employer is bona fide or whether it is a mala fide and colourable exercise of the powers conferred by the terms of contract or by the standing orders. However, in some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an interference may legitimately and reasonably be drawn that in terminating services, the employer was not acting bona fide and the test always has to be whether the act of the employer is bona fide or not. The same test has been reiterated in **Tata Engineering & Locomotive Company Ltd. Vs. S.C. Prasad, (1969) 2 LLJ 799** ; **L. Michael Ltd. v. Johnson Pumps Ltd., AIR 1975 SC 661**; and **Gujarat Steel Tubes v. Gujarat Steel Tubes Mazdoor Sangh (1980) 1 LLJ 137 (SC)**.

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9. Applying the same principle of law to the present set of facts, it is crystal clear that the general trend of judicial decisions is to minimize the interference when the punishment is not harsh and definitely for charges that are leveled against the respondent and in the instant matter, punishment is absolutely not shocking to the conscience of the Court. There is nothing available on the file that the respondents were biased or not acted bona fide while initiating disciplinary proceedings against the workman.

10. As regard to the quantum of punishment in this case, on appraisal of facts, learned Labour Court was seized of the fact that earlier one increment of the workman was stopped permanently. The workman also remained under suspension and he was awarded punishment on different dates, but despite that he had not shown any improvement in his conduct and the Management decided that dead-wood should not be allowed to continue. It is for the Management to take the decision in such like cases and if the Court comes to the conclusion that departmental proceedings were conducted as per law and the punishment was awarded accordingly, the role of the Court is restricted only as observed by Hon`ble Apex Court in **Tata Oil Mills Co.'s case (supra)**.

11. In the present case, learned Labour Court has already considered the matter regarding awarding of alternate sentence in this case, but on the facts, did not consider the matter to be of such a nature and rightly denied the same. Before this Court also, the petitioners have not been able to make out a case that the punishment awarded to the workman in this case was unreasonable or was not justified or in the

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alternative, some lessor punishment could have been awarded.

12 In view of the above, there is no merit in the present writ
petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

September 18, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes