

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13587 of 2018
Date of decision: 28.05.2018

Harvinder Singh

...Petitioner

Versus

Pepsu Road Transport Corporation Patiala and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms.Sukhmani Patwalia, Advocate for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of mandamus for seeking a direction to the respondents to reinstate him in service in pursuance of the award of the Industrial Tribunal, Patiala and to pay him all the arrears of pay and allowances. He has prayed for a direction to regularise his service w.e.f. 11.3.2011 in terms of the directions issued by this Court in CWP No.8240 of 2008 decided on 22.3.2010 because services of the similarly situated persons have been regularised in pursuance of the direction of this Court issued in COCP No.1675 of 2010 decided on 4.3.2011. The petitioner has also prayed for the issuance of a writ in the nature of certiorari for quashing the order dated 7.9.2017 (Annexure P-3) passed by respondent No.2 by which service of the petitioner has been terminated and the order dated 20.11.2017 passed by respondent No.2

whereby appeal of the petitioner has been rejected.

In short, the petitioner was appointed as a conductor in Pepsu Road Transport Corporation (for short 'the Corporation) on contract basis. His services was terminated without holding an enquiry on 1.7.2009. Appeal filed against the order of termination was dismissed on 6.10.2009 by the Appellate Authority. The petitioner, thereafter, raised an industrial dispute by serving a demand notice in terms of the Industrial Disputes Act, 1947. The dispute raised by the petitioner was referred for adjudication to the Industrial Tribunal, Patiala by the competent Authority on 17.9.2010. The Industrial Tribunal Patiala decided the reference in favour of the petitioner vide its award dated 31.3.2014 directing his reinstatement with continuity of service but without back wages. The said order dated 31.3.2014 was challenged by the employer i.e. the Corporation by way of CWP No.25409 of 2014. The writ petition was disposed of on 21.4.2016. The operating part of the order is as under:

“Admittedly, no enquiry was held against respondent No.2 Harvinder Singh before his termination. The allegation is relating to embezzlement of money. In the absence of enquiry and finding, termination of Harvinder Singh is illegal and arbitrary. Therefore, no interference is called for by this court in respect of the order dated 31.3.2014. However, the petition is disposed of with the observation that the petitioner shall be reinstated forthwith reserving liberty to the petitioner to hold an enquiry in accordance with law.”

From the aforesaid order, it is clear that the order of termination against the petitioner was set aside only because of the reason that there was no enquiry held against him but the liberty was given to the Corporation to hold an enquiry in accordance with law. The Corporation in terms of the order dated 21.4.2016 issued charge-sheet to the petitioner for the purpose

of holding an enquiry against him on the same allegations of embezzlement on 21.6.2016 and he was reinstated into service in August 2016. It is submitted that the reinstatement of the petitioner came into effect because petitioner had filed COCP No.2798 of 2016 for implementing the order dated 21.4.2016 passed by this Court. During the pendency of the said COCP, the petitioner was reinstated into service and it was ordered that in case there is any arrears then that would be released to the petitioner.

Be that as it may, the enquiry against the petitioner was ultimately held in which he was held guilty and after serving a show cause notice about the penalty imposed, the impugned order was passed on 7.9.2017 by the competent Authority terminating the petitioner from service with immediate effect. Against the order of termination of the service, the petitioner filed the appeal which was also dismissed by the Appellate Authority on 20.11.2017.

In the background of the aforesaid facts and circumstances, prayers mentioned by me in the beginning of this order have been made by the petitioner. It is made clear that writ of mandamus cannot be issued in favour of the petitioner until and unless the order of termination passed on 7.9.2017 and upheld in appeal on 20.11.2017 are set aside. The reason is that because the earlier order of termination came to an end with the order dated 21.4.2016 passed by this Court while dealing with the writ petition filed by the Corporation against the order of Labour Court in which this Court was of the view that said termination was patently illegal because it was ordered sans enquiry, therefore, in the fitness of things, this Court had directed that though the petitioner may be reinstated but the Corporation

may hold an enquiry in accordance with law. As already mentioned above that the Corporation had held the enquiry in accordance with law and still found the petitioner guilty to the charges on the basis of which earlier his service was terminated without enquiry.

Learned Counsel for the petitioner has failed to point out any error in the order of termination and order of the Appellate Authority but be that as it may, the petitioner has still the remedy of raising an industrial dispute against the order of termination and order passed by the Appellate Authority as has been done in the past. Therefore, in the presence of the alternative remedy provided under the Industrial Disputes Act, 1947 with the petitioner being workman, the present petition having been filed under Article 226 of the Constitution of India, is not maintainable and the same is hereby dismissed only on this score.

May 28, 2018
Meenu

(Rakesh Kumar Jain)
Judge

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