

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 21519 of 2014 (O&M)
Date of Decision: February 07, 2018

Karamjit Singh

... Petitioner

Versus

Punjab Urban Planning & Development Authority, Mohali and others

... Respondents

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

Present: Mr. Ashok Bhardwaj, Advocate,
for the petitioner.

Mr. R.S. Khosla, Sr. Advocate with
Ms. Ishrat Phulka, Advocate,
for respondents no.1 and 2.

P.B. Bajanthri, J. (Oral)

1. In the instant petition, petitioner has challenged the award passed by Labour Court dated 15.10.2013 (Annexure P/7).

2. Petitioner is stated to have been appointed as a Chowkidar on daily wage basis on 01.12.1995. The respondents have evolved scheme of regularization in respect of daily wagers. Pursuant to the scheme, amongst others petitioner's name was considered for the purpose of regularization. Accordingly, his services were regularized on 26.12.2001. Later on, respondents have noticed that regularization of petitioner was not in accordance with policy since some of the persons approached this Court and obtained an order that irregularities have been committed by respondents insofar as regularization of petitioner and others. While implementing orders of this Court, respondents have initiated disciplinary proceedings

against officials who have recommended petitioner's name for regularization and they have been punished in the departmental enquiry vide Exh. M-15. Consequently, action has been taken by respondents to terminate petitioner's services on 22.05.2003 to the extent that he had obtained order of regularization in collusion with officials of respondents. Feeling aggrieved by order of termination dated 22.05.2003, petitioner approached this Court by filing CWP No. 8354 of 2003 and obtained interim order on 27.05.2003. During pendency of said writ petition, matter was relegated to the Labour Court on 23.10.2003. Thereafter, necessary proceedings have been drawn for the purpose of deciding reference No. 420 of 2004. The Labour Court proceeded to hold that there is no illegality in the order of termination dated 22.05.2003. Hence, the present petition.

3. Learned counsel for the petitioner pointed out that before order of termination dated 22.05.2003, no charge-sheet and no enquiry has been held. The said issues were not disputed by the respondents. On the other hand, it was submitted that show cause notice was issued and explanation has been obtained from the petitioner. It was also submitted that once services of the petitioner were regularized on 26.12.2001, he is permanent employee w.e.f. 26.12.2001. Consequently, any action of termination should be in accordance with Punjab Urban Planning & Development Authority Employees (Punishment and Appeal) Regulations, 1997 (hereinafter referred to as "Regulations"), namely, initiation of enquiry etc. for the purpose of dismissal or termination. To that extent, official respondents as well as Labour Court has erred in not appreciating.

4. Per contra, learned counsel for respondents no.1 and 2 while resisting the petitioner's claim submitted that before order of termination,

petitioner has been given notice and obtained his explanation and oral enquiry was held. Thereafter, order of termination has been passed after hearing the petitioner. Disciplinary action has been taken against other officials like Executive Engineers and others. In their enquiry, they were punished while holding enquiry vide Exh. M-15. In view of these facts and circumstances, holding of disciplinary proceedings like framing charge-sheet and domestic enquiry is not attracted. Therefore, Labour Court has not erred in rejecting petitioner's reference.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether petitioner is a permanent employee as on the date of termination i.e. 22.05.2003 or not and disciplinary action under Regulations could be dispensed or not?

7. Rightly or wrongly petitioner's services have been regularized on 26.12.2001 amongst others under the scheme evolved by respondents. Thus, permanent status is given to petitioner w.e.f. 26.12.2001. Against permanent employee before terminating or dismissing from service under the Regulations, charge-sheet and followed by enquiry is required to be conducted. It was undisputed that no charge-sheet has been filed. When permanent employee is subjected to certain misdeeds and misconducts, in that event, disciplinary enquiry is required to be held by framing charge-sheet and consequential proceedings. In the absence of framing of charge-sheet irrespective of seriousness of charges, respondents' action in terminating the services of petitioner by merely issuing show cause notice and obtaining explanation and providing oral hearing do not suffice in view of the Regulations. Therefore, Labour Court has erred in rejecting the petitioner's reference. Accordingly, order of termination dated 22.05.2003

and award passed by Labour Court dated 15.10.2013 are set aside. Moreover, order of regularization dated 26.12.2001 has not been modified/cancelled even to this day. Reserving liberty to respondents to take necessary action under the Regulations.

8. Since, petitioner's service have been terminated on 22.05.2003, order of termination dated 22.05.2003 and award passed by Labour Court have been set aside on technical ground, therefore, petitioner is deemed to be under suspension w.e.f. 22.05.2003 the date on which petitioner's services terminated till passing of a final order in view of decision of Supreme Court in the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar**, reported in (1993) 4 SCC 727. Para nos. 29 and 30 reads as under:-

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory

rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the

report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely

while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

Respondents are hereby directed to calculate and disburse subsistence allowance from 22.05.2003 to this day within a period of three months from today and continued to pay till initiation of enquiry and its conclusion.

9. With above observations, petition stands allowed.

February 07, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No