

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

CWP-25258-2013

Date of Decision: 16.08.2018.

**Post Graduate Institute of Medical Education and Research,
Chandigarh**

....Petitioner.

Versus

**The Presiding Officer, Central Industrial Tribunal-Cum-Labour Court,
U.T. Chandigarh and another**

...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

Mr. A.S. Gulati, Advocate
for respondent No.2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/ 227 of the Constitution of India is challenge to the Award dated 19.06.2013 (Annexure P5) whereby, setting aside the order of termination dated 12.04.1987 (Annexure P4), respondent No.2-workman was ordered to be reinstated.

Facts relevant for the purpose of decision of the present writ petition; that respondent No.2-workman was appointed on 11.01.1995 and his services were terminated on 12.04.1997 taking into consideration the fact that respondent No.2 was arrested in case bearing FIR No.135 dated

31.12.1996, under Sections 147, 149, 323, 452 and 380 of the Indian Penal Code and he was detained in custody from 31.12.1996 to 03.01.1997 for three days that was beyond 84 hours. As per service Rules, the respondent-workman was required to intimate about his custody in a criminal case to his employer, which he failed to do so. The respondent-workman was asked to face preliminary enquiry in this regard, wherein he had admitted on 21.01.1997 that, in fact, he remained in custody from 31.12.1996 to 03.01.1997, but he had not intimated the employer. On the basis of said preliminary enquiry, the management passed the order of termination of respondent No.2-workman.

Respondent No.2-workman raised industrial dispute and the reference was made to the learned Industrial Tribunal and the Tribunal pronounced the award in favour of the workman, thereby directing the present petitioner to take respondent No.2-workman back in service on the ground that respondent-workman was awarded major punishment without following the due procedure i.e. without issuance of any charge sheet and holding of regular enquiry.

The facts are not disputed to the extent that no procedure was adopted to complete the disciplinary proceedings as required for major punishment but the order of major punishment was passed.

Learned counsel for the petitioner contended that respondent No.2-workman had worked for short period of about two years and two months and he has not served the management for more than 20 years, so it is not possible to take him back in the service.

While arguing on this point, learned counsel representing the

respondent-workman contended that respondent No.2-workman was a victim at the hands of the petitioner-management right from the day one. He had admitted his lapse regarding not informing the management about his illegal detention of more than 48 hours. Moreso, he has been acquitted after trial in the said criminal case and the major punishment has been awarded without following the due procedure, so there is no reason not to implement the award pronounced by the learned Tribunal and the writ petition be dismissed being without any merit.

Having considered the above facts into consideration and establishing the fact that the respondent-workman worked for a period of two years and two months and he is out of job for a period of over 20 years and he has not served the management during the said period, though due procedure was not adopted for passing the termination order dated 08.04.1997 but the conduct of the respondent-workman is also not good because he had committed act of not informing the management about his detention of more than 48 hours and moreso, he had admitted his lapse during preliminary enquiry proceedings, the appointment of respondent-workman was also on daily wages, as per view taken by a Division Bench of this Court in **Sunil Kumar Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur and others, LPA No. 2078 of 2014**, decided on 19.11.2015, the best scope in such like cases would be to pass an order for compensation to the workman rather than ordering reinstatement. As respondent-workman served the management for about two years and two months, in all probabilities the respondent-workman would be entitled to a lump sum of compensation of Rs.1,00,000/-. The said payment shall be

made by the petitioner-management to the respondent-workman within a period of two months from today, failing which the respondent-workman shall also be entitled to receive interest @ 9% per annum on the said amount.

The present writ petition stands disposed of in above terms.

(SHEKHER DHAWAN)
JUDGE

16.08.2018.

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No