

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-27207-2013 [O&M]

Date of Decision : July 18, 2018

Narender Kumar Sharma

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Rohtak and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sandeep Singal, Advocate
for the petitioner.

Mr. Rohit Arya, AAG, Haryana
for respondent-State.

Mr. P.K.Mutneja, Advocate,
for respondents No. 4 to 6.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/ 227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing impugned award dated 3.7.2013 (Annexure P/13) passed by respondent the Industrial Tribunal-cum-Labour Court, Rohtak (for short, "the Tribunal") whereby the reference made at the instance of petitioner-workman was answered against him.

2. The petitioner was appointed as a Clerk vide appointment letter dated 05.12.1997 (Annexure P-1) and he was placed under probation

...

for a period of one year, which was to be extended upto three years. The petitioner worked up to 01.08.1999 and he was not allowed to resume his duties w.e.f. 02.08.1999 though he had completed 240 days in each Calendar year. The petitioner challenged the said termination before the Tribunal to be illegal, null and void and against the principle of natural justice and in contravention of Section 25 (f) of the Industrial Dispute Act (for short, '**the Act**').

3. The management came with the plea that the petitioner was on probation period and he failed to perform his duties satisfactorily so his services were terminated by the competent authority. The petitioner was repeatedly advised to improve his work and conduct and an opportunity was given by extending his probation period, but to no effect. He was conveyed vide letter dated 01.08.1999 (Annexure P-3) that his services were dispensed with being no longer required and his dues were sent by cheque by Registered Post.

4. On this reference, the Tribunal on the basis of material and evidence available on the file returned the finding that no legal right of the petitioner-workman had been infringed and as such, he was not entitled to any relief. The reference was accordingly decided in favour of the management and against the workman.

5. Being aggrieved by passing of the said award Annexure P-13, the petitioner has filed the present writ petition.

6. Learned counsel for the petitioner contended that there is no dispute to the fact that the petitioner was appointed on 05.12.1997 and his services were terminated on 01.08.1999 without issuance of any notice or

...

holding an inquiry. Even no permission, as required under Rule 8 of the Haryana Aided School (Security of Service) Rules, 1974 was taken. More so, the order is termination is not passed by the competent authority.

7. Learned counsel for the petitioner also contended that the work of the petitioner was satisfactory during his employment and the learned Tribunal completely ignored all these facts.

8. Learned counsel for the respondent-management took the plea that the petitioner was put on probation for a period of one year and thereafter, his probation period was extended and during the probation period, the work and conduct of the petitioner was found to be not satisfactory. The case of the petitioner is covered under Section 8 (3)(b) Haryana Aided School (Security of Service) Act, 1971, which provides that in case the work and conduct of an employee is not found to be satisfactorily his services could be terminated during probation. Relevant Section is extracted below:-

“8. Probation.

Xx xx xx xx

3. On the completion of the period of probation of a person, the appointing authority may:-

a). xx xx xx xx

(b) if his work or conduct has, in its opinion, been not satisfactory-

(i) dispense with his services, if appointed by direct recruitment, or if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment permit; or

(ii) extend his period of probation and thereafter pass such order, as it could have passed on the expiry of the first period

...

of probation;

Provided that the total period of probation, including extension if any, shall not exceed three years.”

9. Learned counsel for the respondent placed reliance on the decision of Hon'ble Apex Court in **Abhujit Gupta vs. S.N.B. National Centre, Basic Sciences & others, 2006 AIR (SC) 3471**, wherein it was held as under:-

“As pointed out in this judgment, expressions like “want of application”, “lack of potential” and “found not dependable” when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.”

10. Reliance was also placed on the judgment of Hon'ble Apex Court **State of Uttar Pradesh and another vs. Kaushal Kishore Shukla, (1991) 1 (SCC) 691**, and the Hon'ble Apex Court observed as under:-

“A temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service of the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary government servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences.”

...

11. 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 petitioner was discharging his duties and was placed under probation and during the probation period, his work was not found to be satisfactory and his services were dispensed with. It has come by way of evidence before the Tribunal as per statement of S.K.Wadhwa (MW-1) that during his employment of 20 months, the petitioner prepared 45 cheques out of which 7 cheques were cancelled because of mistake committed in the entries in the cheques by the workman. Even the entries made in the records were not appropriate. There were repeated cuttings/overwriting in the books of accounts because of his lack of interest in doing office work. He was advised and warned on different dates, but to no effect. It was a case of discharge simpliciter from the employment vide letter dated 1.8.1999.

12. As regard to the order having been passed by the Management, MW-2, Tara Chand, Superintendent working in the office of District Education Officer (D.E.O.) deposed that no appointment or termination letter was ever given to the workman by the D.E.O. and the Management had appointed him and on 1.8.1999, the services of the workman were terminated by the same management. He further deposed that permission for appointment and termination was to be sought from the D.E.O and permission for appointment of the workman was given by the D.E.O., Bhiwani. However, it is the case of the Management that the prior approval of D.E.O. was not mandatory and as such, the same was not obtained before passing of the order dated 1.8.1999 and the said order is

...

legal.

13. Taking into consideration the material and evidence available on the file, the Tribunal had rightly recorded the findings thereby pronouncing the impugned award against the workman and in favour of the Management. There are absolutely no grounds to interfere with the impugned award especially in view of the fact that the petitioner-workman was on probation and his work was not found satisfactory during probation period and he was discharged from service during probation period by the Management.

14. In view of the above, the present writ petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 18, 2018.
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes