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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20886-2017

Date of Decision : October 03 , 2018

Divisional Manager, Chandigarh Transport Undertaking-
cum-Director, Transport UT

.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal-and-Labour Court,
Chandigarh and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sanjiv Ghai, Advocate
 and Mr. Ankit Midha, Advocate,
 for the petitioner.

 Mr. G.S.Bal, Senior Advocate,
 with Ms. Loveinder Kaur, Advocate,
 for respondent No.2.

SHEKHER DHAWAN, J.

Petitioner-Management has challenged the award dated 06.10.2016 (Annexure P/1) passed by Industrial Tribunal-cum-Labour Court (for short, "learned Tribunal") whereby, reference was decided by learned Tribunal in favour of the workman and order dated 30.06.2011 vide which two increments of the workman were stopped with cumulative effect, was set-aside.

2. Facts relevant for the purpose of decision of this writ petition; that the respondent-workman was facing departmental proceedings on the

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basis of charge sheet and departmental enquiry was conducted against him. The Enquiry Officer held the charges against the workman to be proved and thereafter the competent authority passed the order dated 30.06.2011 and the workman raised the industrial dispute. However, learned Tribunal, after considering the matter in its entirety, decided the reference in favour of the workman on the ground that the Enquiry Officer had gone wrong while placing reliance upon photocopies of some documents which were very essential for the decision of the matter in controversy itself.

3. On this point, learned counsel for the petitioner-Management contended that the original documents were lost and for that purpose, FIR was got registered and whatever material was available with the Management, the same was produced before the Enquiry Officer. Apart from that, the enquiry proceedings were on the basis of statement of members of the Inspecting team and the Enquiry Officer had returned the findings. Thereafter there was no ground for the learned Tribunal to take a different view as the scope for interference in such like disciplinary matters is restricted one.

4. Learned counsel for the petitioner further contended that as per the judgment of Hon`ble Apex Court in **Workmen of Balmadies Estate Vs. Management, Balmadies Estate & Others, (2008) 4 SCC 517**, wherein Hon`ble Apex Court observed that in a domestic enquiry, all the materials which are legally probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility and even

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the learned Tribunal had discussed the said judgment in its award, but had taken a just contrary view to that while discarding the photocopies of the documents and recording findings against the report of Enquiry Officer, which was based upon the statement of members of Inspecting Team. As such, the impugned award is liable to be set-aside.

5. While arguing on this point, learned counsel for respondent No.2/workman contended that the present case is squarely covered as per the judgment of this Court in **CWP-22282-2015, Chandigarh Administration & anr. Vs. The Presiding Officer, Labour Court, U.T. Chandigarh & anr., decided on 16.10.2015** and in that case also, this Court declined to interfere in the findings recorded by learned Tribunal and to substitute the view and findings were recorded that learned Tribunal had rightly discarded the photocopies of the documents. The matter was then before Hon`ble Division Bench in **LPA-73-2016, Chandigarh Administration & anr. Vs. The Presiding Officer, Labour Court, U.T. Chandigarh & anr., decided on 20.12.2016**, and the Hon`ble Division Bench while agreeing with the findings recorded by learned Single Judge, dismissed the appeal. As such, the present writ petition deserves dismissal.

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 most of the facts, especially relevant facts, are not disputed in this case that respondent-workman was involved in disciplinary proceedings, which were initiated against him on the basis of charge sheet and regular

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enquiry was conducted. During the course of enquiry, reliance was placed upon photostat copies of the documents by Enquiry Officer apart from oral evidence as contention has been raised by learned counsel for the petitioner that original documents had gone missing and matter was reported to the police vide FIR, there was nothing wrong that the Enquiry Officer relied upon the photostat copies of the documents. As per view taken by Hon`ble Apex Court in **Workmen of Balmadies Estate's case (supra)**, the scope of domestic enquiry and procedure to be followed in domestic enquiry was discussed, but at the same time in the said judgment, it was clearly mentioned that principles of fairness are to be applied primarily. Rights of respondent-workman were involved in this case and in all reasonableness, the Enquiry Officer was required to consider the material which was substantial in nature and there was nothing wrong when the learned Tribunal had taken the view that there was no reason for the Enquiry Officer to give his report on the basis of such a document.

7. The Co-ordinate Bench of this Court, while deciding CWP-22282-15, observed as under:-

7. I may have gone into this question with all seriousness but find that this is not a fit case to substitute the opinion of the Labour Court by another possible view since this Court does not sit in appeal over the work of the labour court when it exercises supervisory jurisdiction provided by Articles 226 & 227 of the Constitution while examining work of the Labour Court or a Tribunal in making an award. I would rather go by lack of direct evidence and the explanation of the Conductor that the money he was carrying was his. This was not improbable. A conductor could as any person can, carry personal money in his pocket for his own

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use. This is a matter of accountability. It is well settled that suspicion howsoever grave is not a substitute of proof. Applying the principle of preponderance of probabilities that appears from paper book placed before this Court no certainty to excuse the award. A view taken by the Labour Court was a possible one and if he did not rely on the secondary evidence then it committed nothing wrong when the photocopies were themselves were only parts of the whole file, the remaining cannot be left to the imagination, nor can it be said that the left out part would not contain exculpatory evidence and facts in favour of the conductor. This lack of availability of the original file complete in all respects casts doubt on the view taken by the disciplinary authority in imposing major punishment withholding of 4 increments with cumulative effect and the appellate authority reducing it to 3 increments with cumulative effect. It is not safe to hang a man on photocopies.

8. Even assuming that secondary evidence was of legal value even then the Labour Court remained within its jurisdiction to exercise its power under Section 11A and reduce the punishment to a lesser degree or to completely obliterate it to zero. Be that as it may, I would not readily accept the argument of Mr. Doabia on secondary evidence however attractive it may seem urging that interference is called for in the impugned award when such secondary evidence should not have been ruled out of consideration completely.”

8. Though, learned counsel for the petitioner has taken the plea that facts of the present case are distinguishable from the facts of **Chandigarh Administration & anr.'s case (supra)**, on the ground that in that case, the Conductor could carry personal money in the pocket as well, but the main controversy involved in this case was – Whether the Enquiry Officer was justified and was following the principles of natural justice and

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fair-play while placing reliance upon the secondary evidence only and whether it was justified for this Court to set-aside its view in writ jurisdiction with the view taken by learned Tribunal while deciding the reference and refrain from interference while invoking writ jurisdiction. The same findings were upheld by Hon`ble Division Bench of this Court in LPA and the controversy involved in the present case is squarely covered as per the decision of Hon`ble Co-ordinate Bench in **CWP-22282-2015, Chandigarh Administration & anr. Vs. The Presiding Officer, Labour Court, U.T. Chandigarh & anr., decided on 16.10.2015** and Hon`ble Division Bench of this Court in **LPA-73-2016, Chandigarh Administration & anr. Vs. The Presiding Officer, Labour Court, U.T. Chandigarh & anr., decided on 20.12.2016.**

9. In view of the above, present writ petition is covered as per judgment of Hon`ble Division Bench and there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 03, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes