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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8714-2013

Date of Decision : August 07 , 2018

Jagraj Singh

.... Petitioner.

Versus

The presiding Officer, Labour Court,
Bathinda, and others

... Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Deepak Aggarwal, Advocate
for the petitioner.

Ms. Bhavna Gupta, Deputy Advocate General, Punjab,
for respondents No. 2 and 3.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/ 227 of the Constitution of India is for issuance of a writ of certiorari to set aside the award dated 16.01.2013 (Annexure P/5) passed by Labour Court, Bathinda, and for issuance of direction to respondent No.2 management to reinstate the petitioner with all consequential benefits.

2. Facts as detailed in the writ petition; that the petitioner was appointed as Radio and T.V. Instructor at I.T.I. Mansa, on 10.12.1991. Subsequently, a complaint was made by one Harbans Singh on the allegations that the petitioner had furnished fake experience certificates along with his application for appointment. Preliminary enquiry was got done and a show cause notice dated 27.03.1993 was issued to the

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petitioner, to which he responded and subsequently, on 14.07.1993 the services of the petitioner were terminated.

3. The petitioner challenged the said termination order before this Court by filing Civil Writ Petition No.6332 of 2000 which was allowed vide order dated 22.01.2001 (Annexure P1) and directions were issued by this Court to hold regular enquiry in the matter. In compliance with the order Annexure P1, regular enquiry was conducted.

4. As per the petitioner, in the year 1990, the petitioner had applied for the post of Radio and TV Instructor and at that time he annexed six experience certificates which were allegedly found to be bogus. As per the petitioner, his appointment was not made on the basis of alleged bogus certificates. However, in the year 1991, the Department had again advertised certain posts of Radio and TV Instructors against which the petitioner had applied and attached one experience certificate on the basis of which he was given appointment. Thereafter, the petitioner completed his probation period in the year 1993. The complaint made by Harbans Singh is on incorrect facts. No application was produced by respondent No.2, which was allegedly moved by the petitioner at the time of his appointment. As per the petitioner, he was not given appointment on the basis of any bogus experience certificates, rather his appointment was made in the year 1991 on the basis of an application for appointment made by the petitioner and the award dated 16.01.2003 (Annexure P5) has been passed without considering all these facts and the same is liable to be set aside.

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5. At the time of arguments, learned counsel for the petitioner raised arguments, as per his contention taken in the writ petition.

6. In reply, respondent-management has come with the plea that the petitioner was appointed as RTI and he joined the Department on 10.12.1991. A complaint was made against the petitioner that he had furnished bogus experience certificates. The said fact was denied by the petitioner in his reply. As per order passed by this Court in CWP No.6332-2000, regular enquiry was conducted against the petitioner and on the basis of report of Enquiry Officer, the allegations leveled against the petitioner were proved and his services were terminated.

7. Learned State counsel submitted that the posts were advertised in the year 1991 and the experience certificate furnished by the petitioner was considered, which was later on found to be bogus. Regular enquiry was conducted, wherein due opportunity was given to the petitioner. The petitioner has not completed the probation period. There is an affidavit of the State, on the point, that there is no report indicating that there was some recruitment in the year 1991, rather the name of the petitioner was sponsored by the Employment Exchange, Mukatsar (Fridkot) and this fact was admitted by the petitioner in CWP-18536-1998. The said admission on the part of the petitioner itself establishes that no advertisement was issued in the year 1991 as is the case of the petitioner.

8. 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 appointed as Radio and T.V. Instructor and his

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appointment was made pursuant to his name having been sponsored by the Employment Exchange. As per directions issued by this Court in CWP-6332-2000, regular enquiry was conducted on the point of allegations of furnishing bogus certificate and charges were proved against the petitioner by the Enquiry Officer that he was appointed on the basis of bogus experience certificate. The petitioner herein had duly associated in the enquiry proceedings. The petitioner has simply taken the plea that he had applied in the year 1991 and at that time, no such bogus certificate was produced, which has been established to be factually incorrect on the basis of departmental enquiry, where the petitioner was associated and he was given due opportunity to lead his evidence.

9. Law on the point is settled that in such like cases, where the competent authority passes order of punishment on the basis of departmental proceedings including regular enquiry, the scope of interference by the Courts is to a limited extent especially when the domestic enquiry has been conducted and due opportunity has been given to the delinquent official. Certainly, the Court can look into the points whether the enquiry was conducted in fair manner and principles of natural justice were followed, but in the given set of facts, there are no grounds to return the finding that there was violation of principles of natural justice or that no opportunity was given to the petitioner. Courts are not supposed to perform the duties of appellate authority to scan the evidence, but the role of the Courts is limited to the extent that the Court is to see whether domestic enquiry was conducted in a fair manner and due opportunity was

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given to the delinquent official. Such a view was taken by Hon`ble Supreme Court in **Union of India and others V. P. Gunasekaran, 2015**

(2) SCC 610, where the Hon`ble Apex Court observed as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :-

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

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- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

10. In **State of Andhra Pradesh and Ors. v. S. Sree Rama Rao** AIR 1963 SC 1723, the Hon`ble Apex Court observed as under:-

“7. The High Court is not constituted in a proceeding Under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not

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the function of the High Court in a petition for a writ Under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ Under Article 226 of the Constitution.”

11 In light of above judgments from Hon`ble Apex Court and the facts of the present case, learned Tribunal has rightly decided the reference against the petitioner-workman. There are no grounds to interfere in the award passed by the Tribunal.

12 . In view of the above, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 07, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes