

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

CWP-8793-2013

Date of Decision: 18.01.2018

Umed Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Mr. S.K. Garg Narwana, Sr. Advocate with
Ms. Neha Dewan, Advocate for the petitioner.

Mr. Rohit Arya, A.A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for the following relief:

“i) a writ in the nature of certiorari quashing the order dated 06.01.2012 (Annexure P-8) passed by Addl. District & Sessions Judge, Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, whereby reference made by Special Secretary, Government of Haryana was decided against the petitioner and further for quashing the order dated 12.10.2001 (Annexure P-4) passed by respondent No.2 whereby the services of the petitioner, who was working as Conductor with the respondents, have been terminated, and further quashing the order dated 26.09.2002 (Annexure P-6) whereby appeal was dismissed and finally quashing the order dated 29.04.2005 (Annexure P-7) whereby the Memorial submitted by the petitioner has been rejected by the competent authority, being illegal, arbitrary, unconstitutional, unjustified, in violation of the principles of natural justice and the Service Rules governing the service of the petitioner, as also against the settled principles of law.

For issuance of writ of mandamus directing the respondents to take the petitioner back in service with all consequential relief of continuity of service and full back wages.”

2. Petitioner was appointed as a conductor in the respondent-Corporation. While he was working on 29.11.2000 in Bus No.421 on Dehradun-Bhiwani route, petitioner's bus was intercepted and Checking squad checked the tickets. After due verification by the Checking Squad, they found that petitioner had embezzled a sum of Rs.900/-. On this allegation, petitioner was subjected to disciplinary proceedings including suspending his service. Inquiry was concluded in imposing penalty of recovery of Rs.10,000/- and stoppage of five annual increments with cumulative effect and restricting the suspension period to the subsistence allowance and further order of reinstatement on 27.6.2001 by the disciplinary authority-General Manager, Bhiwani. The Transport Commissioner-Head of the Department while invoking Rule 14(1) of Haryana Civil Services (Punishment and Appeals) Rules 1987 (for short "1987 Rules") issued a show cause notice on 23.08.2001 relating to enhancement of penalty having regard to the fact that grievous charge was proved against the petitioner. Petitioner had submitted his reply to the notice. Thereafter, Transport commissioner passed order of dismissal on 12.10.2001 (Annexure P-4). Petitioner raised an industrial dispute in which he has suffered an order. Hence, the present petition.

3. Learned senior counsel for the petitioner submitted that in the disciplinary proceedings, inquiry officer has not adhered 1987 Rules for the purpose of holding inquiry. The same has been recorded by the Labour Court in para-7 and 8 to the extent of examination of witnesses. Even the Labour Court has proceeded to hold that procedure was not in accordance with law. It was further submitted that Transport Commissioner had bias against the petitioner as he had taken extraneous material while imposing

the penalty of dismissal. Even to that extent, there is violation of Rule 14(1) of the 1987 Rules. Government or Head of the department were required to invoke Rule 14(1) of the 1987 Rules with reference to case in which subordinate authority passed an order under Rule 9 or inflicted any of the penalty in respect of Rule 4. Whereas, Transport Commissioner relied on past events like penalty imposed on the petitioner. Thus, it is contrary to sub Rule 1 of Rule 14 of 1987 Rules. The Labour Court failed to appreciate that there is violation of procedure on the score that no prejudice has caused to the petitioner. It was further submitted that rules and procedures are mandatory in nature and cannot be deviated. Such deviation causes violation of principles of natural justice to the person who was subjected to disciplinary proceedings. Therefore, the orders of the Transport Commissioner and the Labour Court are liable to be set aside.

4. Per contra, learned counsel for the respondents while resisting the claim of the petitioner specifically pointed out that Transport Commissioner has taken the petitioner's past record only to the extent of recording such events. The same cannot be said to be in violation of Rule 14 (1) of 1987 Rules. Transport Commissioner is not biased with reference to the past record. In order to strengthen the order of dismissal, he has noticed past events. Thus, the petitioner has not made out a case so as to interfere with the order of the Transport Commissioner as well as award passed by the Labour Court.

5. Heard learned counsel for the parties.

6. No doubt it is true that petitioner has committed very serious misconduct. However, imposition of major penalty or any penalty for that matter, competent authority was required to invoke Rules 1987.

Undisputedly, inquiry officer has not complied various rules under 1987 Rules. It is evident from the award passed by the Labour Court dated 06.01.2012 in-particularly para 7 and 8, Transport Commissioner was required to comply sub rule 1 of Rule 14 of 1987 Rules. The said provision specifically mandate Government or Head of the Department may call for the records and examined of any case in which subordinate authority passed any order under Rule 9 inflicting penalties in Rule 9 or no order has been passed or penalty inflicted etc. Whereas issuance of show cause notice on 23.08.2001, Transport Commissioner has taken note of extraneous material like 10 fraud cases in which stoppage of 16 annual increments with cumulative effect and in 13 cases stoppage of 19 annual increments with cumulative effect. Further after receipt of the petitioner's reply to the show cause notice while imposing penalty of dismissal from service. The Transport Commissioner has already taken note of past punishments imposed on the petitioner like stoppage of 36 annual increments in 23 fraud cases while issuing notice to the petitioner. It was also recorded that "Because of conductors like Shri Umed Singh the Bhiwani depot incurs loss of about 70-90 lacs per month". These are all the past events and extraneous materials has been taken into consideration for the purpose of imposing the penalty of dismissal from service which is contrary to Rule 14 (1) of 1987 Rules for the reasons that the said Rules do not provide for consideration of past records so as to enhance the penalty. Thus, Transport Commissioner was prejudiced and he was bias to impose major penalty of dismissal from service. The said issue has not been appreciated by the Labour Court. Supreme Court in the case of *Nicholas Piramal India Limited* v. *Hari Singh*; 2015 LLR 561 read with Constitutional Bench's decision reported in

AIR 1964 SC 506; State of Mysore v. K. Manche Gowda held that authority who takes a decision to impose penalty with reference to any particular allegation, it is not permitted to take past events unless and until relevant provision provides for it. Para 30 of the said judgment reads as under:

“30. Further, in State of Mysore v. K. Manche Gowda, this Court has held thus:

“8. ... It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the enquiry officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject-matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same.”

8. Accordingly, order of the Transport Commissioner as well as award passed by the Labour Court are set aside. Matter is remanded to the Transport Commissioner to take a decision afresh if Rules 1987 provides to

impose penalty as on this day. If Rules, 1987 is not applicable to the petitioner as on today having regard to his status that if he had been in service, he would have retired from service. In the event, petitioner would be entitled to consequential benefits. Benefits be calculated and disburse within a period of 4 months from today.

Petition stands allowed accordingly.

18.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**