

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

CWP No.8874 OF 2013 (O&M)

Date of Decision:12.11.2018

The Patiala District Cooperative Milk Producers Union Limited, Milk Plant, Sirhind Road, Village Hasanour, District Patiala through its General Manager, Sh. G.P.Sharma

...Petitioner

Versus

The Ld. Presiding Officer, Industrial Tribunal, Patiala and another

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr.Rahul Sharma-I, Advocate for the petitioner

Mr.Amarjit Singh Sandhu, Advocate &  
Mr.Ravi K.Mattoo, Advocate for respondent no.2

**RAJIV NARAIN RAINA, J. (Oral)**

1. I have heard learned counsel for the parties and perused the paper-book.

2. After holding the enquiry fair and proper, the Presiding Officer, Industrial Tribunal, Patiala has invoked its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) to convert the dismissal with an award of reinstatement, but without back-wages. The Tribunal has found the severity of punishment disproportionate to the charge of absence from duty. A few necessary facts may be noticed.

3. The private respondent was appointed as Dairy Labour-cum-Cleaner in the petitioning Cooperative Milk Producers Union on 12<sup>th</sup>

October, 1992. Her services were regularised on 24<sup>th</sup> August, 1996. In the month of July, 1998, the respondent's daughter went missing never to return home. Many years later, she was declared civilly dead by a decree dated 10<sup>th</sup> April, 2015 passed by the Court of Civil Judge (Jr.Divn.), Patiala. The previous record of service from 1992 to April, 1998 was regular with marginal leave of absences, maximum of which was 41 days in 1997. However, her absences after May, 1998 till August, 2001 were 192 in 1998, 263 in 1999, 177 in 2000 and 187 in 2001. The respondent does not dispute this position on record, but goes on to explain in her pleadings and deposition before the Tribunal that she wrote letters to the Milk Union requesting leave from time to time which were not granted inasmuch as no orders on them were conveyed to her. She says that her absence was neither willful nor deliberate, but was occasioned by her relentless search to trace the whereabouts of her daughter.

4. Learned counsel for respondent No.2 submits that his client had two daughters and her husband died years ago before the daughter left home. She got an appointment in October, 1992 on compassionate grounds in place of her late husband. In that year, she took two days leave and from 1993 to 1997, she took 18, 39, 28, 25 and 41 days leave respectively. The period of absence prior to 1998 does not show any erratic behaviour in discharging duties regularly. However, the picture changed after her daughter vanished to those who would know her. The learned Tribunal read the evidence and accepted the position obtaining from her missing daughter as a mitigating circumstance and a plausible defence to the charge-sheet.

5. Exercising powers under Section 11-A of the Act, the learned

termination of service was too harsh a punishment inflicted on the worker. Even if the respondent had admitted to the charges made against her, this only meant that she did not dispute the factum of periods of absence from work, but it was not that she did not have sufficient cause for the absence or an explanation for those periods. The learned Tribunal observed, in the interest of justice, that the reason for absence was believable. In moulding the relief the learned Tribunal while awarding reinstatement ordered that her absence be treated as period of leave without pay. It was in this perspective the learned Tribunal considered the of misconduct leading to the dismissal as disproportionate to the gravamen of the charge charge.

6. I find no legal infirmity in this line of thinking and it would thus not be necessary for me to go into the question of the quality and substance of the enquiry proceedings and the statement made admitting the charge in writing on the dictates of the Enquiry Officer. This is also not necessary to to reach the conclusions made in the impugned award. The explanation put forth by respondent No.2 is accepted on humanitarian grounds. For these reasons, I do not find this a fit case to interfere in exercise of jurisdiction under Article 226 of the Constitution.

7. In view of the above, the writ petition is dismissed. The impugned award is maintained. The order dated 29<sup>th</sup> April, 2013 staying the operation of the award is vacated. Respondent No.2 is directed to be taken back in service.

8. Payments made to respondent No.2 under Section 17-B of the Act shall remain hers as irrevocable legal entitlements to last drawn wages paid to her during the pendency of the petition since the operation of the impugned award of the learned Tribunal was stayed by this Court.

However, in case anything remains due on this account, the same be disbursed to her without delay.

12.11.2018  
MFK

(RAJIV NARAIN RAINA)  
JUDGE

*Whether speaking/reasoned*

*Yes*

*Whether Reportable*

*No*