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CM-1601-CWP-2019 in/&
CWP-10131-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-1601-CWP-2019 in/&
CWP-10131-2004

Date of Decision: 17th July, 2019

Punjab State Electricity Board & others

...Petitioners

Versus

Presiding Officer, Labour Court, Ludhiana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.L. Sharma, Advocate, for the petitioners.

Mr. J.S. Maanipur, Advocate, for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

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Prayer in this application is for disposal of the main writ petition, which stands admitted, in the light of the judgment of this Court in Kulwant Singh Ex. Driver No.136 Vs State of Punjab & others 2012 (3) SCT 587.

With the consent of the counsel for the parties, main writ petition is taken on board for consideration.

Application stands disposed of.

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Challenge in this writ petition is to the award dated 18.12.2003 (Annexure P-4) passed by the Presiding Officer, Labour

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Court, Ludhiana, whereby, on a dispute raised by respondent No.2 – workman, reference was made by the Government of Punjab under Section 10 (1) of the Industrial Disputes Act, 1947. The order of dismissal of respondent No.2 – workman which was issued merely on the basis of conviction of two years in a criminal case under Section 306 of the Indian Penal Code by the learned Additional Sessions Judge, Ludhiana, on 21.07.1986, appeal against which has also been dismissed by this Court on 17.12.1993, has been set aside on the ground that respondent No.2 – workman has not been given an opportunity of being heard leading to the setting aside of the termination order dated 15.07.1997 (Annexure P-3), departmental appeal against which preferred by him was dismissed on 15.06.1998. After setting aside of the order of termination, respondent No.2 – workman was directed to be reinstated in service but without back-wages. Period for which, respondent No.2 – workman remained in police/judicial custody in the criminal case was ordered to be not counted in service for the purpose of continuing the service or retiral benefits, if any. However, for the remaining period, respondent No.2 – workman was held entitled to count the same towards continuity of service and retiral benefits. Liberty was granted to the petitioner – Department to pass a fresh order under rules and regulations. This award passed by the Labour Court has been challenged in the present writ petition.

2. It is the contention of the learned counsel for the petitioners

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that the award passed by the Labour Court, Ludhiana, dated 18.12.2003 (Annexure P-4) is not sustainable in the light of the judgment passed by the Hon'ble Supreme Court in Trikha Ram Vs. V.K. Seth & another AIR 1985 Supreme Court 285, no personal hearing is required to be given to an employee or show cause notice issued when an employee has been convicted for a criminal offence. He, thus, contends that the order of termination dated 15.07.1997 (Annexure P-3) passed by the Superintending Engineer (Operation Circle), Khanna, is in accordance with law and therefore, deserves to be upheld and the impugned award dated 18.12.2003 (Annexure P-4) passed by the Presiding Officer, Labour Court, Ludhiana, set aside.

3. On the other hand, learned counsel for respondent No.2 – workman did not dispute the proposition of law as laid down by the Hon'ble Supreme Court in *Trikha Ram's* case (supra), however, he stated that as per the judgment of the Hon'ble Supreme Court in Union of India Vs. Tulsi Ram Patel, 1985 (2) SLR 576, no personal hearing is required to be given, however, the Punishing Authority has to consider the conviction order to come to a conclusion that the conduct of the employee involved in the commission of offence is of such a nature which would warrant dismissal of service. Referring to the order of termination dated 15.07.1997 (Annexure P-3), he contends that the said aspect has not been dealt with by the Competent Authority and the Competent Authority while dismissing respondent No.2 – workman,

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merely on the basis of conviction, proceeded to pass the order of dismissal, which cannot sustain as it is contrary to the judgment passed by the Division Bench of this Court in **Hari Ram Vs. Dakshin Haryana Bijli Vitran Nigam Ltd.** 2006 (2) SCT 112 and **Kaur Singh & another Vs. Punjab State Electricity Board & others** 2007 (4) SCT 426, which has been relied upon by the Single Bench of this Court in **Kulwant Singh Ex. Driver No.136 Vs State of Punjab & others** 2012 (3) SCT 587. He, on the basis of these judgments, contends that the award passed by the Labour Court, Ludhiana, may be not sustainable on the ground of non-giving of notice to respondent no.2 – workman but since the termination order itself is not sustainable in law, this Court may not exercise its extraordinary jurisdiction in the present case. Assertion has also been made that the liberty which has been granted to the petitioners to pass a fresh order may not be available to them in the light of the fact that respondent No.2 – workman has already superannuated. He further asserts that respondent No.2 – workman has not been reinstated but has been granted the benefit of Section 17-B.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case as well as the impugned award.

5. As is apparent, the award which has been passed by the Labour Court, Ludhiana, dated 18.12.2003 (Annexure P-4), which is based upon the principles of non-issuance of notice to the terminated

employee may not be sustainable in the light of the judgment passed by the Hon'ble Supreme Court in *Trikha Ram's* case (supra), however, perusal of the order of termination dated 15.07.1997 (Annexure P-3) would indicate that the Punishing Authority has not proceeded to take into consideration the conduct of the workman, which led to his conviction. Nothing has been referred to as far as the judgment passed by the learned Additional Sessions Judge, Ludhiana, to come to a conclusion that there has been an application of mind for forming an opinion that his conduct was such which would render him dis-worthy for service and that it involved moral turpitude. The settled proposition of law leaves no manner of doubt especially Constitutional Bench judgment of the Hon'ble Supreme Court in *Tulsi Ram Patel's* case (supra) as well as the Division Bench judgment of this Court in *Hari Ram's* case (supra) that the judgment of the Criminal Court was required to be properly read and consider by the Competent Authority prior to passing of the order of dismissal after due application of mind leading to the conclusion that the conduct of the employee was such which would amount to moral turpitude rendering him unworthy for retention in service and no other punishment would be suitable to be inflicted upon him. For the absence of such consideration, the order of termination dated 15.07.1997 (Annexure P-3) cannot sustain.

6. In view of the above, this Court refrains to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India,

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which is discretionary in nature, especially when it is found that the order of termination is not sustainable in law. The award, therefore, passed by the Presiding Officer, Labour Court, Ludhiana, dated 18.12.2003 (Annexure P-4) is hereby upheld holding the order of termination dated 15.07.1997 (Annexure P-3) to be illegal. Respondent No.2 – workman is entitled to the benefits as conferred on him by virtue of the award dated 18.12.2003 (Annexure P-4).

7. The writ petition stands dismissed.

17th July, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes