

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

CWP No.10073 of 2014 (O&M)

Date of Decision:21.1.2019

Joginder Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr.H.S.Saggu, Advocate for the petitioner

Mrs. Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. By way of this petition, the award passed by the Presiding Officer, Labour Court, Rohtak on 9.1.2014 is assailed. The Labour Court has declined relief altogether. The facts relevant for judicial review of the impugned award proceed as follows:-

2. The petitioner was appointed as Driver on contract basis by the General Manager, Haryana Roadways, Rohtak on 1.2.1995. The job was on consolidated salary. The period of service was from 1.2.1995 to 31.1.1997. It was specifically mentioned in the appointment letter that his services shall automatically stand terminated after the expiry of period mentioned in the order/contract of service. The contract was renewed periodically for short terms between 1.2.1997 to 22.1.1998 on the same terms and conditions. The total period of service is about three years. During the period of service, the workman remained wilfully and unauthorisedly absent from 11.6.1995 to 13.6.1995, 5.5.1996, 18.8.1996 to 20.8.1996, 25.8.1996 to 4.9.1996, 17.9.1996 to 12.11.1996, 23.11.1996 to 28.1.1997 and from 15.4.1997 to

without intimation and didn't come back. He was charge-sheeted for his willful absence from duty without leave. He did not submit reply to the charge-sheet. A reminder was sent on 18.11.1996 through registered post, but he did not furnish reply. An enquiry officer was appointed to hold the enquiry who issued summons to the workman by his letters dated 3.2.1997, 27.5.1997, 19.11.1997 and 20.2.1998, but he still did not appear before the enquiry officer. Later on, he submitted an application for leave dated 10.4.1998 praying for ex-facto grant of leave w.e.f. 25.8.1995 to 4.9.1996. A show cause notice dated 2.7.1998 was issued to the workman, but he did not turn up. He was also informed through publication in a newspaper to join his duties. Ultimately, the services of the petitioner were terminated after holding fair and proper enquiry into the misconduct. An appeal was filed against the order of termination dated 26.9.1998 which was rejected on 9.2.1999. Even the second appeal filed by the petitioner was rejected on 29.1.2004.

3. The rival parties led their evidence before the Labour Court. The Labour Court found that there was nothing on record to explain the reason of absence from duties without intimation. Hence, in these circumstances, there is intentional, deliberate and wilful absence from duty for the period mentioned above, and that too without any prior intimation or leave. The Labour Court read the evidence against the petitioner and held that there is absolutely nothing on record of the file to disbelieve the evidence led by the Management. As far as the plea of enquiry is concerned, the Labour Court on appreciating the evidence found the version of the workman true that the services were terminated on 9.2.1990 without holding any fair and proper enquiry against the petitioner, but keeping in view the conduct of the petitioner not only once, but on several occasions when the petitioner

employee in any organization can be allowed to remain absent for a long time and that too without intimation. He was given ample opportunity to resume his duties. Despite that, he did not come forward. In this way, the misconduct committed by him cannot be treated lightly.

4. There appears to be a contradiction between paragraphs 12 and 13 of the award. In paragraph 12, the Labour Court agrees that termination was without holding proper and fair enquiry, but in paragraph 13 when it came to question of grant of relief, the Labour Court has held that the Management has legally, validly and justifiably terminated the services of the workman in pursuance of the domestic enquiry conducted in a perfectly unbiased, fair and proper manner in which the petitioner was afforded due and reasonable opportunity of hearing and to defend his case. He was even asked to return to duties through publication in newspapers at the expense of the State. I would reconcile this seeming contradiction. There are charge-sheets in which show-cause notices were issued to him but he failed to respond to them. Then he could have no legitimate grievance because he was not a regular government employee. He was a driver on contract basis, and therefore, the Management was not obligated to hold a regular enquiry. At best, the enquiry conducted can be held to be a fact finding or preliminary enquiry. So long as, fair and reasonable opportunities were given to the petitioner to explain his period of absence which are quite a lot, I would not deem it fit to interfere with the impugned award in its conclusion that the petitioner is not entitled to any relief whatsoever. At this distance of time i.e. after 20 years, relief of reinstatement has lost its relevance and the only relief which could be contemplated was compensation in lieu of reinstatement. I would not find here a case of compensation made out in the face of

service in public transport where absence of a driver can have a devastating effect on plying of buses.

5. In view of the above, I find no merit in this petition which is accordingly dismissed.

21.1.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No