

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.03.2019****CWP No.22365 of 2011 (O&M)**

Gulshan Kumar

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal -cum- Labour Court, UT,
Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Manoj Chahal, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to the award dated 24.03.2011 passed by the Presiding Officer, Industrial Tribunal –cum- Labour Court, UT, Chandigarh declining the reference.

2. Notice of motion was issued on 10.01.2012. Reply was filed to contest the case. However, no replication has been filed to the written statement refuting the averments made therein. When this matter came up for hearing on 09.02.2015, following order was passed:

“The petitioner was a contractual employee who was alleged to be pilfering diesel and selling it to someone outside. A preliminary enquiry was held in this regard and the statement of the petitioner also recorded where he confessed to his guilt.

Learned counsel for the petitioner strenuously disputes this fact and states that the petitioner was never examined and he never confessed his guilt. A specific averment has been recorded by the Tribunal in this regard and it has also been stated that an opportunity to cross-examine the witness was given to the petitioner which he did not avail of.

The Court would have ordinarily accepted the finding recorded by the Tribunal unless something contrary is shown, but since the petitioner insisted that such findings are absolutely wrong and his statement was never recorded, the Court would be inclined to summon the record of the Enquiry Officer, but would also burden the petitioner with exemplary costs, in case such an averment as is sought to be projected, is found to be incorrect to the record.

Confronted with the situation, learned counsel for the petitioner prays for some time to seek instructions in the matter.

List for further proceedings on 10.8.2015.”

3. The record of the Industrial Tribunal –cum- Labour Court, UT, Chandigarh summoned by this Court has been received and perused.

4. The relevant facts of the case are that the petitioner was appointed on 15.06.1999 as Driver on contract basis for 89 days. His services were extended on contract basis from time to time till the date of termination i.e. 17.12.2002. He had by then served for 3 ½ years. The cause of termination was on the ground that he was caught red handed by the Works Manager and Traffic Manager stealing and selling 20 liters of Diesel drawn from the bus to the owner of a private *Dhaba* on the Chandigarh-Shimla route on 28.09.2002. Since the petitioner was not a regular government servant, the Haryana Civil Services Rules did not apply to him. A preliminary inquiry was conducted by the Store Purchase Officer, wherein charges were proven. He was held guilty. After being satisfied with the

findings recorded in the inquiry, the workman was served with notice of termination of contract by the competent authority. His reply was considered and he was heard personally, but he failed to submit any cogent proof in his defence of his innocence. To make it tough for himself the workman admitted his guilt in writing tendering apology. While checking the bus in which he was a Driver, the Works Manager and the Traffic Manager had detected during surprise checking eleven bottles of diesel in a sack kept under the front seat. A servant of the private *Dhaba* on Shimla route admitted in writing that he was employed in the *Dhaba* for the last one month and the workman regularly used to sell diesel to the *Dhaba* owner. These facts were also confirmed from the Conductor of the bus. The workman also confessed to the guilt during the course of inquiry. Ultimately, the contract of service was terminated in public interest.

5. The report of the preliminary inquiry proceedings bears out that workman made a statement that it was his first mistake. It should be treated as final and last. He prayed for exoneration. The workman did not cross-examine the witnesses who deposed against him. The Inquiry officer came to the conclusion that the allegations against the workman were proved in the course of inquiry. There was no necessity for issuing any charge-sheet after admission of guilt by the workman. No regular charge-sheet was required or to conduct full-fledged departmental inquiry proceedings, so long as action was taken in accordance with law, procedure and principles of natural justice in the case of contractual service.

6. The Tribunal observed that the workman failed to show that Inquiry Officer and the departmental witnesses who deposed against him

were inimical towards him. The manner in which the theft was committed by siphoning diesel was pilferage from the bus to be sold outside to make money on the sly has been duly explained by the Works Manager. The Tribunal read the evidence of the Works Manager and found no reason to disbelieve the contents of the inquiry report. The workman was afforded opportunity to cross-examine the material witnesses against him. Even if the record of the inquiry was not available, there is no reason to disbelieve the findings recorded by the Inquiry Officer, the Tribunal thought. Non-examination of Raj Kumar, servant at *Kamal Dhaba*, does not adversely affect the value of the inquiry report. Nothing has been pointed out from the Labour Court record to reveal any fundamental flaw in the preliminary inquiry proceedings on the substance of the charge.

7. Ms. Shruti Goyal has drawn the attention of this Court to para.7 of the claim petition in which it is averred by the workman that “*the alleged confession is under threat and inducement and hence the same cannot be made basis of termination of services of the workman*”. Confession is tacitly admitted and the weak defence is that it was under threat and inducement. No material to suggest and prove this fact pleaded has been placed on the file of the preliminary inquiry or in this petition regarding threat and inducement or that the confession was made under duress. The entire conspectus of facts would not suggest any threat or inducement and the story coined is an afterthought to wriggle out of the admission. The workman was granted reasonable opportunity to cross-examine the complainant Ravinder Pathak and other witnesses, but he chose not to cross-examine them.

8. That apart, Mr. Manoj Chahal has argued that the termination order dated 17.12.2002 is stigmatic in nature and, therefore, deserves to be set aside. I find absence of such a plea in the writ petition or in the law points formulated in para.9. There is also total absence of such a plea in the claim statement filed by the workman before the Labour Court. Accordingly, none of this can be raised for the first time in writ proceedings. It is not for this Court to take a different view on the evidence and arrive at a different conclusion. There is no illegality, perversity or irregularity in the findings recorded by the Industrial Tribunal -cum- Labour Court, which may warrant any interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution.

9. Consequently, the present petition being found devoid of merit fails and is hereby dismissed.

07.03.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>