

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

CWP No.20735 of 2019

Date of Decision : 16.09.2019

Municipal Council, Nawashahar

....Petitioner

v/s

Vijay Kumar and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. R.K.S. Brar, Advocate for the petitioner.

B.S. Walia, J.

[1] Prayer in the petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing award Annexure P/4 dated 08.02.2019, passed by the Presiding Officer, Industrial Tribunal, Jalandhar (hereinafter referred to as the Tribunal).

[2] Learned Counsel contended that respondent No.1 (hereinafter referred to as '*the workman*') was appointed as fireman on contract basis for 6 months vide order dated 12.11.2003 and his services were extended from time to time with breaks, with last extension being from 31.05.2010 till 30.11.2010 but his services were terminated on 05.11.2010 on account of complaints and that termination would not amount to retrenchment in view of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Consequentially, the workman was not entitled to any relief but the Tribunal wrongly allowed reinstatement with 50 % back wages without taking the aforesaid aspect of the matter into account.

[3] Stand of the workman on the other hand was of his services having been terminated in violation of the mandatory provisions of the Act, besides his not being able to find employment after his termination.

[4] I have considered the submissions of learned counsel and perused the paper book.

[5] Admittedly, the workman was continued in service from 12.11.2003 to 30.11.2010 against post of fireman which was of a regular nature with notional breaks of one-two days at time of each renewal with the last renewal being from 31.05.2010 to 30.11.2010. In the circumstances, workman completed 240 days in 12 months preceding termination of his service. Continuation of the workman from the year 2003 till 2010 on contractual basis with notional breaks of one or two days on every renewal amounts to an unfair labour practice and was rightly so held by the Tribunal. Services of the workman were terminated on 05.11.2010, by way of punishment on the basis of complaints allegedly in accordance with the terms and conditions of contract without conducting any enquiry and by contending that termination did not amount to retrenchment in view of Section 2 (oo) of the Act. Once, the workman had completed 240 days, in the 12 months preceding termination from service, then in that eventuality, workman's services could not have been terminated except after conducting an enquiry and complying with the mandatory provisions of the Act. However, nothing of the sort was done, instead, services of the workman were terminated on 05.11.2010 on the basis of complaints allegedly of the year 2008. It is very intriguing that if there was complaint against the workman in the year 2008, then why his services were renewed in the year 2009-2010. All other complaints i.e. Ex. M2 to M5 pertain to the year 2010 but nothing has been

ever asked to submit reply to the complaints. Management also did not examine any person who made the complaints against the workman. MW-2, witness examined by the management joined service after termination of services of the workman and pleaded ignorance about supply of copies of complaints to the workman as also as to whether the workman had submitted his explanation in respect thereto.

[6] Section 2 (oo) & (bb) of the Industrial Disputes Act is reproduced as under:-

“(oo) ¹ " retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) ² termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill- health;]”

[7] A perusal of Section 2 (oo) reveals that retrenchment means termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment by way of disciplinary action but does not include termination of service of the workman, as a result of non renewal of the contract of employment between the employer and the workman

concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein etc.

[8] Admittedly, services of the workman were terminated on 05.11.2010, on the basis of complaints, without calling for explanation from the workman or for that matter, conducting an enquiry. Termination of services on account of misconduct could not have been resorted to without conducting an enquiry or complying with the mandatory provisions of the Act.

[9] Hon'ble, Division Bench of this Court in case titled as '**Sita Ram versus The Presiding Officer, Labour Corut, Patiala**' held that termination of services of the workman on account of misconduct could not have been done without holding an enquiry or complying with the provisions of the Act. Hon'ble Division Bench referred to the decision of Hon'ble the Supreme Court in '**Jai Shanker versus State**, AIR 1966 Supreme Court 492, a case pertaining to over stay of leave in which it was held that termination without conducting an enquiry or giving opportunity to show cause was illegal, despite the fact that service regulations provided that a workman who absented without permission at the end of his leave would be considered to have sacrificed his appointment. Relevant extract of the decision of '**Sita Ram's** case (*supra*) is reproduced as under:-

“(c). Absence from duty can at the most be held to mean to be a misconduct. The termination of services on the ground of misconduct could not be resorted to without holding an enquiry or complying with the provisions of the Act.

4. *In Jai Shankar v. State, AIR 1966 Supreme Court 492 the Supreme Court held that the removal of a workman from service for over-staying his leave without holding enquiry or giving an opportunity to show-cause was illegal despite the fact that service regulations provided that any*

individual who absented himself without permission after the end of his leave would be considered to have sacrificed his appointment. Discharge from service of an incumbent by way of punishment amounted to removal from service.

5. This Court also in ***Management of Modella Woolen Ltd. v. Presiding Officer, Labour Court, 1993(3) SCT 431 (P&H) : 1993(3) R.S.J. 464***, held that the termination of services on the ground of absence from duty constitutes termination by misconduct which was not permissible unless proper enquiry was held according to the principles of ***natural justice***. ”

[10] In the instant case, termination of services of the respondent-workman was admittedly by way of punishment for alleged misconduct in view of complaints. However, termination from service was not after compliance with the principles of natural justice and conduct of an enquiry to prove the charges of misconduct. Mere receipt of complaint, without calling for explanation or holding an enquiry to prove the charges alleged against the workman, could not have resulted in an order of termination. In the circumstances, the award passed by the Tribunal, holding termination of service of the workman to be illegal and unsustainable does not warrant interference. Accordingly, finding no merit in the writ petition, the same is ***dismissed***.

(B.S. Walia)
Judge

September 16, 2019

‘Rajneesh’

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No