

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

CWP No.29539 of 2017
Date of Decision: 05.08.2019

Sikander Singh

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Ludhiana & Ors.Respondent

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

Present: Mr. Sunny Singla, Advocate for the petitioner.

Mr. Ashok Kr. Singla, Sr. DAG, Punjab.

B.S.WALIA, J

1. Prayer in the writ petition is for quashing of award Annexure P/3 dated 22.07.2016, passed by the Industrial Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal') with a further prayer for modification of award dated 22.07.2016, by ordering the compulsory retirement of the petitioner instead of termination and for release of pensionary benefits by counting the length of service rendered by the petitioner.

2. Brief facts of the case leading to the filing of the present writ petition are that as per statement of claim filed by the petitioner before the Industrial Tribunal, Ludhiana, it was contended that the workman was appointed as Conductor in Punjab Road, Jagraon on 06.11.1970. However, the petitioner was issued charge sheet on 27.03.1995. It was claimed that the charge sheet was issued by an Officer, who was not competent to do so besides the charge sheet was

not served upon the petitioner. The charge sheet resulted in passing of order of termination dated 08.12.1995, which was also claimed to be illegal, null and void on the ground that the same had been passed by an Officer who was not competent to do so; no opportunity of hearing had been given during the course of inquiry; copy of the inquiry report was not supplied to the petitioner before passing of final order.

3. In reply, the respondents took up the stand that the reference suffered from unexplained delay and laches and that full opportunity had been afforded to the petitioner as required under the rules; that the petitioner had remained absent from duty w.e.f. 06.08.1995 without any application for leave having been sent to the office, thereby had abandoned services. Charge sheet dated 27.03.1995 was issued to the petitioner by the competent authority but the same was received undelivered with the remarks of the postal authorities that the addressee had gone to a foreign country. Thereafter, an Inquiry Officer was appointed and he conducted inquiry and found the petitioner guilty of charges leveled against him. Show Cause Notice dated 02.11.1995 was published in various newspapers on 17.11.1995 and full opportunity as required under the rules, was given to the petitioner before passing of final order. It was further stated that the management had followed the procedure as per rules before passing of order dated 08.12.1995.

4. On pleadings of the parties, following issues were framed:-

- 1) Whether the reference suffers from delay and laches?
OPM

2) Whether the workman was afforded full opportunity?

OPM

3) Whether termination of services of the workman is illegal and unjustified? If so, to what relief the workman is entitled to? OPW

4) Relief.

5. On the basis of the pleadings and evidence, the Tribunal came to the conclusion that admittedly the petitioner was appointed as Conductor on 06.11.1970 but had absented from duty without any intimation on 06.08.1994. Thereafter, the management had issued him a notice as also telegram asking him to attend duty but the notice sent through registered post was received back with the report that he had gone abroad. The petitioner did not join duty, thereupon, the management served charge sheet dated 27.03.1995 on the allegation that he was unauthorizedly absent from duty and had not joined duty despite issuance of telegram and registered letter dated 09.03.1995. However, the charge sheet sent to the petitioner through registered post was also received back undelivered with the remarks that he had gone abroad. Thereafter, the charge sheet was served upon the petitioner through publication in newspaper. However, the petitioner did not file any reply to the charge sheet. Thereafter, MW2, Lal Singh, General Manager, Punjab Roadways, Jagraon, appointed MW3, H.K. Sood, AC (F&A), as Inquiry Officer, vide order dated 19.07.1995. The Inquiry Officer again sent notice to the petitioner through registered post asking him to join the inquiry proceedings. However, the notice was received back with the same report that he had gone abroad. Thereafter, the inquiry Officer issued notice to the petitioner through

publication in newspaper dated 04.09.1995 and 05.09.1995 but still the petitioner did not join the inquiry proceedings and was proceeded ex parte. The inquiry officer recorded the statement of witnesses namely Inderjit Singh, Assistant Cashier and Jagtar Singh, Senior Assistant in ex parte proceedings and submitted the report dated 31.10.1995, holding the petitioner guilty of the charges framed against him. Upon receipt of inquiry report, MW2, Lal Singh, General Manager, issued show cause notice dated 17.11.1995, to the petitioner along with a copy of the inquiry report. However, the same could not be served upon the petitioner as he had gone abroad. Thereafter, show cause notice was published in newspapers dated 17.11.1995. However, the petitioner did not file any reply to the show cause notice, thereupon, the General Manager, passed order imposing punishment of termination of service of the petitioner vide order dated 08.12.1995.

6. However, the petitioner apart from having absented from duty without submitting any application or leaving any forwarding address and having gone abroad took no steps to inform the management of his having gone abroad but after eleven years from the date of termination of service served a demand notice upon the management. The Tribunal concluded that on perusal of inquiry report Ex.M/1, it was evident that the notice/telegram, charge sheet, notice was sent by the Inquiry Officer as well as show cause notice etc. was sent to the petitioner on his available address and that the petitioner while appearing as WW-1 had admitted the said to be the correct residential address, apart from admitting that he had remained absent from duty w.e.f. 06.08.1994. He further took up the stand that he was

unable to attend duty on account of kidney problem but had not submitted any application for leave nor had brought on record any evidence proving his plea that he was suffering from kidney problem. The petitioner also did not deny that registered notice/telegram, charge sheet and show cause notice etc. were issued to him or that the same were served through publication in newspapers. The petitioner also did not deny the allegation of the management that he had gone abroad nor denied that he had permanently settled abroad. The Tribunal considered the plea of the petitioner mainly of termination order having been passed by MW-2 Lal Singh being incompetent to issue charge sheet or to pass termination order. However, the petitioner in his cross-examination admitted that MW-2 Lal Singh used to sit in the office of the General Manager, Punjab Road, Jagraon and used to sign and exercise the powers of General Manager, Punjab Road, Jagraon. He further stated that Lal Singh had no power to terminate the service of employees. The Tribunal referred to the copy of order dated 24.12.1993, Ex.M/2, issued by the Government of Punjab, Department of Transport, whereby Lal Singh, Officiating General Manager, Punjab Roadways, Nawan Shehar was transferred and posted as Officiating General Manager, Punjab Roadways, Jagraon and held that on the basis of order Ex.M/2, it was evident that MW-2 Lal Singh was officiating General Manager of Punjab Road, Jagraon and that it had not been disputed that General Manager, Punjab Roadways, Jagraon was the punishing authority of the petitioner and that nothing had been brought on the record to show that an Officiating General Manager was not competent to serve charge sheet or to pass punishment order.

Therefore, the plea of the petitioner that MW-2, Lal Singh, was not competent to serve charge sheet and to pass the order of punishment was not tenable.

7. The Tribunal also considered the plea of the reference being hit by the principle of delay and laches but rejected the same by holding that a reference could not be defeated merely on ground of delay and laches and observed that the delay in raising the industrial dispute went to show that the petitioner absented from duty knowingly and intentionally which fact was also proved during the inquiry held by MW-3, H.K. Sood, vide his report dated 31.10.1996. The Tribunal also held that the delay in raising industrial dispute corroborated the plea of the management that the petitioner intentionally absented from duty on 06.08.1994. In the aforementioned background, the learned Tribunal held that it was evident that the petitioner had absented from duty w.e.f. 06.08.1994 and despite issuance of notice/telegram he did not join duty. Thereafter inquiry officer was appointed and inquiry was conducted against the petitioner but he failed to join the inquiry proceedings. In the ex parte inquiry proceedings charges were proved against the petitioner and inquiry report dated 31.10.1995 was submitted by the inquiry officer, whereafter show cause notice dated 17.11.1995 was served upon the petitioner through publication but no reply was filed to the same and ultimately vide order dated 08.12.1995, was passed terminating the service of the petitioner.

8. I have heard learned counsel for the petitioner.

9. The only plea raised by learned counsel for the petitioner during the course of arguments is that the order of termination of

service in the facts and circumstances of petitioner having rendered 25 years of service is harsh and disproportionate consequently the same be set aside by passing an order of compulsory retirement so as to enable the petitioner to avail of retiral benefits. The plea of the petitioner is noticed to be rejected. No doubt the petitioner served for a period of 25 years but then for seeking greener pastures abroad absented from duty w.e.f. 06.08.1994 without submitting any application for leave or for that matter informing the management of his going abroad. Despite number of communications by the management as also issuance of telegram/registered letter to the petitioner requiring him to join duty, the petitioner failed to respond. Thereafter, despite issuance of charge sheet and on return of the same with the remarks of the postal authorities of the petitioner having gone abroad, publication of the same in news paper, the petitioner still failed to submit his reply to the charge sheet. On failure to submit reply to the charge sheet as also to join the inquiry proceedings despite issuance of notice in newspaper by the Inquiry Officer, the petitioner did not participate in the inquiry proceedings for the obvious reason that he was abroad and had settled there. Eventually the same led to issuance of show cause notice by the competent authority along with copy of inquiry report being forwarded to the petitioner but the same also met with the same fate and were returned with the remarks of the postal authorities of the petitioner having gone abroad. Thereafter, show cause notice was again issued in news paper by the competent authority but again the petitioner did not appear for the personal hearing leading to passing of order dated 08.12.1995 by the competent

authority terminating the service of the petitioner. The petitioner thereafter also maintained a stoic silence for a period of eleven years and it is only in the year 2006 that he woke up and approached the Assistant Labour Commissioner, Ludhiana and on failure of the conciliation proceedings, the matter was referred to the Tribunal under Section 10(1)(c) of the Industrial Disputes Act, 1947 vide order dated 09.06.2009, for adjudication of the following dispute:-

“Whether the termination of services of workman Sh. Sikandar Singh is illegal and unjustified? If so, to what benefit or relief the workman is entitled to?”

10. The facts of the case go to show beyond an iota of doubt the abandonment of service by the petitioner as well as failure to respond to the various communications not only asking the petitioner to rejoin duty but also to face inquiry proceedings as well as to file reply to the finding recorded by the Inquiry Officer as also to avail opportunity of hearing by the disciplinary authority. Admittedly, the petitioner has settled in Norway and instituted the proceedings before the authorities of the Labour Department and the Industrial Tribunal only in the fond hope of extracting monetary benefits on the pretext of the order of termination being disproportionate in view of the service rendered by him. The petitioner never had any qualms for even a single moment before proceeding abroad for greener pastures without seeking the permission of the employer or for that matter getting leave sanctioned. After abandoning service in the year 1994, the petitioner slept over his rights while settled abroad, whereafter he invoked the jurisdiction of the authorities under the Industrial Disputes Act

eventually leading to reference of his claim to the Industrial Tribunal-cum-Labour Court, Ludhiana.

11. The plea of the petitioner that the order of termination of service be converted into one of compulsory retirement in view of 25 years of service does not impress me in the facts and circumstances of the case. Similar plea was considered by a Coordinate Bench of this Court in Managing Director, PRTC & others vs. Gurdev Singh and another 2015 (6) SLR 668, wherein it was held that the management was running a Public Sector Undertaking and the charge against the workman who was a driver was of having remained absent from duty for a period of 1 year, 6 months and 17 days. The Coordinate Bench held that the same would be construed as a serious misconduct and gross dereliction of duty. The order of the Tribunal converting the punishment of termination of service of the workman to lesser penalty of stoppage of five increments with cumulative effect on the ground that he had service of more than 16 years and had accepted the allegations and had pleaded with folded hands to take a lenient view was reversed by the Coordinate Bench and the impugned award set aside by holding that the employer-corporation was running a Public Sector Undertaking, charges against the workman, who was serving as a driver of having remained absent from duty for 1 year, 6 months and 17 days had been proved, the same would constitute a serious misconduct and gross dereliction of duty and that in view of the decision of Hon'ble the Supreme Court in B.C. Chaturvedi vs. Union of India 1996 (1) SLT 617, held that the action of reducing the penalty from termination to that of compulsory retirement on the basis of

length of service had not been approved by Hon'ble the Supreme Court. Relevant extract of the decision of Managing Director PRTC's case (supra) is reproduced as under:-

1. The Pepsu Roadways Transport Corporation (hereinafter to be referred to as the 'Corporation') has filed the instant writ petition challenging the award dated 12.06.2012 (Annexure P-1) passed by the Industrial Tribunal, Bathinda to the extent that an order of termination of services of the respondent/workman has been converted to a lesser penalty of stoppage of five increments with cumulative effect.

8. The scope of judicial review in matters of disciplinary proceedings and quantum of punishment came up for consideration before the Hon'ble Supreme Court of India in BC Chaturvedi v. Union of India and others, 1996 (1) SCT 617 and it was observed as follows:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in

exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In Hombe Gowda Educational Trust and another V. State of Karnataka and others, 2006 (1) SCT 197, the Hon'ble Supreme Court had observed as under:

"The Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment."

In State of Rajasthan & another V. Mohd. Ayub Naz, 2006 (1) SCT 445, the Apex Court has held as under:

"For the foregoing reasons, we are of the opinion that a Government servant who has willfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court, has no right to receive the monetary/retrial benefits during the period in question. The High Court has given all retrial benefits which shall mean that a lump sum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the

circumstances, and the admission made by the respondent himself that he was willfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent.”

11. Two aspects which have weighed with the Tribunal for imposition of a lesser penalty are that the workman had considerable length of service i.e. more than 16 years and secondly, that he had accepted the allegations against him and had pleaded with “folded hands” to take a lenient view.

12. The petitioner/Corporation is running a public utility service. The charge duly proved against the workman who was serving as a Driver was having remained absent from duty for a period of 1 year, 6 months and 17 days. The same would be construed as serious misconduct and gross dereliction of duty.

13. In BC Chaturvedi's case (supra), the Apex Court had not approved the action of reducing the penalty from termination to that of compulsory retirement on the basis of length of service

14. The Tribunal while passing the impugned award apparently has been swayed by the fact that the workman had admitted his guilt and had prayed for leniency with “folded hands”. It is by way of sympathy that the punishment of termination has been reduced to that of stoppage of five increments with cumulative effect. The discretion vested with the Industrial Tribunal/labour Court under Section 11-A of the Act does not admit for such benevolence. In the considered view of this Court, a serious misconduct of having absented from duty over a prolonged period of time having been duly proved, the punishment of termination from service could not be seen

as grossly disproportionate or one that would shock the conscience of the Court. As such, in the facts of the present case, there was no occasion for the tribunal to have interfered and exercised its powers under Section 11-A of the Act.

15. For the reasons recorded above, the writ petition is allowed and the impugned award dated 12.06.2012 at Annexure P-1 is set aside.

12. In the instant case, the petitioner abandoned service by remaining absent from 06.08.1994 and the charges of unauthorized absentism been proved against the petitioner. In the light of the position as noted in the preceding paragraphs, I do not find any circumstance whatsoever warranting interference with the order passed by the Tribunal or for ordering the conversion of the punishment of termination into that of compulsory retirement. The writ petition is bereft of merit. Accordingly finding no merit in the writ petition, the same is dismissed.

(B.S.WALIA)
JUDGE

05.08.2019
rajesh.k.khurana

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