

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

LPA No.1703 of 2016 (O&M)
Decided on : 23.01.2019

Arjun Singh

..... Appellant

Versus

Presiding Officer, Industrial Tribunal-cum
-Labour Court, Hisar and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Vikram Sheoran, Advocate
for the appellant.

Mr. Amit Gupta, Advocate for
Mr. Ankur Mittal, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.

CM-3474-LPA-2016

This is an application for condonation of delay of 319 days in
filing the appeal.

For the reasons mentioned in the application, delay of 319 days in
filing the appeal is condoned.

CM stands disposed of.

LPA-1703-2016

This intra-court appeal assails the judgment dated 21.08.2015
passed by the learned Single Judge vide which CWP No.11342 of 2012 filed
by the appellant was dismissed.

2. The facts, in brief, necessary for adjudication of the present
appeal as narrated therein may be noticed. The appellant, who was a regular

employee of Haryana Tourism Cooperation Ltd., was posted as counter incharge of petrol pump at Aasa Khera being run by respondent No.2. During inspection for the financial year 1994-95 and 1995-96, there was embezzlement of money as well as of stock worth ₹ 3,37,238/-. The appellant being counter incharge was held liable for the same and charge-sheeted under Rule 21 of the Certified Order of the Corporation vide memo dated 20.03.1996. Thereafter, a regular departmental inquiry was held against the appellant wherein he was held responsible for the embezzlement jointly and severally along with two other officials namely Mann Singh and R.D.Gupta, who were also charge-sheeted for the same allegations. The appellant was removed from service vide order dated 12.11.1997 as a result of the above inquiry. A criminal case was also got registered against the appellant for embezzlement wherein he was convicted vide judgment and order dated 26.04.2007 by the trial Court. The said order was challenged in appeal before the Appellate Court and the Appellate Court vide judgment dated 18.09.2007 acquitted the appellant. After dismissal from service, the appellant raised an industrial dispute before the Industrial Tribunal by filing Reference No.02 of 2006, which was dismissed by the Industrial Tribunal vide its order dated 09.08.2011. Thereafter, the appellant assailed the said order before the learned Single Judge through CWP No.11342 of 2012. The learned Single Judge vide impugned order dated 21.08.2015 dismissed the writ petition. Hence, the present Letters Patent Appeal.

3. The learned Single Judge has disagreed with the finding of the Labour Court regarding delay and laches and that demand notice was submitted belatedly. It has been noticed in the order that after the removal of

the appellant from service in 1997, the statutory appeal was filed without delay, but the appeal itself was decided after a considerable lapse of time in the year 2003 due to which the demand notice was served in the year 2004. The learned Single Judge rejected the plea of the management that the service of the demand notice claiming reinstatement, with back wages, suffered from delay and in our opinion, rightly so, because the delay cannot be attributed to the workman, for the reason mentioned above.

4. On merits, the learned Single Judge rejected the claim of the appellant-workman in its entirety. Learned counsel for the appellant argued that the relevant documents were not supplied to the workman nor did the management lead any evidence in support of its case. It was further argued that a copy of the inquiry report was not supplied to the appellant before issuance of show cause notice, which prevented him from representing against the findings of the Inquiry Officer before the disciplinary authority. It was also submitted that while the appellant, who was employed as a counter incharge was removed from service, one R.D.Gupta, Tourist Officer, who was charge-sheeted on account of the same incident, was let off with a milder punishment of stoppage of three annual increments with cumulative effect. It must be noticed here that the appellant was accused of embezzlement while Mr. R.D.Gupta was charged for lack of supervision. There is difference between the two sets of allegations and the learned Single Judge in our opinion has rightly concluded that the workman cannot allege discrimination on this plea that there has been violation of Article 14 of the Constitution of India.

5. Coming to the core issue, if removal from service could be set aside on account of procedural flaws in the inquiry as alleged by the learned

counsel for the appellant, suffice it to say that what had weighed with the learned Single Judge as well as with the Labour Court is the unexplained payment of huge amounts of money by the appellant to D.R.Malik, R.D.Gupta and Maan Singh to hush up the matter. While there is no direct evidence, as to the purpose for which the money was paid, there is however, a clear admission by the appellant-workman that lakhs of rupees were paid by him to his co-employees leading to a strong inference of an unholy nexus. Though the appellant was acquitted in criminal proceedings against him, there was no explanation for the money given by him to his co-employees during the course of the inquiry. The standard of proof in a domestic enquiry or in a case of a civil nature is vastly different for that in a Criminal trial. In the former, a less rigorous standard i.e. preponderance of evidence will suffice, while in the latter, Court must satisfy that the evidence brought on record proves a fact beyond reasonable doubt. The learned Single Judge noticed that the findings of the Labour Court were not perverse and did not call for judicial review.

6. In view of the above discussion, we have no hesitation in holding that the removal of the appellant-workman from service was legal and for justifiable reasons.

7. Consequently, we endorse the judgment of the learned Single Judge and dismiss the present appeal.

(AJAY KUMAR MITTAL)
JUDGE

23.01.2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No