

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

CWP-11383-2020 (O&M)

Date of Decision: September 17, 2020

M/s Ace Emergency Response Service Trust

..... Petitioner(s)

Versus

Presiding Officer and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tushar Gautam, Advocate
for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner being aggrieved of award dated 24.12.2019 (Annexure P-16), passed by respondent no.1, has filed the present writ petition.

Brief facts necessary for the adjudication of this matter are that Respondent – workman raised an industrial dispute through his demand notice dated 16.11.2016, with the averment that he was appointed by the respondent as Emergency Medical Technician (EMT) on 15.03.2013 and his services were confirmed on 15.02.2014. It is further stated therein that service record of the workman was good but in an abrupt manner, the workman was not allowed to continue with his duties on 09.09.2015.

Services of the workman, it is stated, were illegally terminated on

09.09.2015, while stating that his services were no longer required. It is alleged that the workman's services were terminated without serving any charge-sheet or conducting any domestic inquiry and without compliance of mandatory provisions of Section 25-F of the Act. The respondent claimed to be unemployed from the date of termination of his services. The workman claimed reinstatement along with all service benefits.

Written statement was filed by the present petitioner, who contested the matter while pleading that material facts have been concealed by the workman and his services were terminated after conducting a proper inquiry. Workman is stated to have misbehaved with the Head of ACE Emergency Response Services and the same was accepted by him on 12.09.2014. He refused to accept the warning letter issued to him. It is further stated that the workman again misbehaved on 21.08.2015 and did not respond for duty. Show cause notice dated 25.08.2015 was issued, but no reply was submitted. Another communication dated 27.08.2015 was issued through registered post and thereafter on 01.09.2015 but no reply was received till 05.09.2015 and ultimately the workman's services were terminated on 09.09.2015.

Following issues were framed by the learned Tribunal for adjudication:-

1. Whether the services of the workman were terminated illegally? If so, to what relief he is entitled? OPW.
2. Whether the workman was terminated after holding proper enquiry? OPR.
3. Whether the present reference is not maintainable? OPR.
4. Relief.

Workman led evidence to substantiate his claim. The present petitioner examined Mr. Sujeeb Das Mohapatra, Authorized Representative as MW1 and produced certain documents as detailed in para 7 of the award.

Learned Tribunal, on considering the matter answered the reference in favour of the workman and directed the present petitioner to reinstate the workman with continuity of service and back wages @ 50%, from the date of demand notice of the workman till his reinstatement in service. It is observed by the learned Tribunal that services of the workman were illegally terminated. No documentary or any other cogent evidence is stated to have been led by the petitioner to prove that proper procedure was adopted before terminating the service of the workman. No charge-sheet or domestic inquiry was conducted before termination of the workman's service on 09.09.2015. Aggrieved therefrom, present writ petition has been filed.

Learned Counsel for the petitioner vehemently argues that the learned Tribunal has misdirected itself in answering the reference in favour of the respondent-workman in the terms as stated above. It is submitted that the workman in fact, misbehaved with his superior and was negligent in performing his duties, which could endanger the life of a patient in an emergent situation. It is submitted that an inquiry was duly conducted, opportunity was afforded to the workman to present his case but he did not associate himself with the inquiry. Therefore, the findings returned by the learned Tribunal are incorrect.

Learned counsel for the petitioner further submits that all the relevant documents regarding the inquiry against the respondent workman

were handed over to the counsel representing the petitioner before the learned Tribunal but the same were never produced/exhibited by their counsel for reasons best known to him.

In this respect, learned counsel for the petitioner points out to the documents Annexure P-6 i.e. a purported inquiry report dated 24.08.2015, Annexure P-7 & P-8, show cause notices dated 25.08.2015 & 27.08.2015 issued to the workman, Annexure P-9, a reminder dated 01.09.2015 and Annexure P-10, a reply of notice dated 07.09.2015 purportedly submitted by the workman. The said documents, it is submitted, should be considered by this Court even though, never placed before the learned Tribunal. It is, thus, prayed that the impugned award dated 24.12.2019 (Annexure P-16) be set aside.

I have heard learned counsel for the petitioner and have gone through the paper book with his assistance.

At the outset, it is to be noticed that it was specifically stated before a co-ordinate Bench on 08.09.2020, that question of the Trust not being amenable to the Industrial Disputes Act, 1947, was not pressed. No argument in this regard has fairly been raised today.

Having gone through the file and having heard learned counsel for the petitioner, I do not find any merit in the present writ petition for the reasons as discussed below. Counsel for the petitioner is unable to deny that the relevant documents were indeed not produced before the learned Tribunal. It is sought to be explained that the relevant documents, in fact, were handed over to the petitioner's counsel, before the learned Tribunal, but he did not produce/exhibit the same before the learned Tribunal. It is to be

noticed that there is no such pleading, in the present writ petition accompanied by an affidavit of the authorized representative of the petitioner. Today, on a pointed query, learned counsel for the petitioner on instructions, submits that no complaint what-so-ever has been submitted against the counsel. A perusal of the file further reveals that the present petitioner in its written statement has not given any details regarding any inquiry etc., which was carried out in accordance with law prior to termination of services of the workman. Learned Tribunal in this respect has observed as under:-

“The workman in his demand notice and claim statement has pleaded that his services were terminated by the respondent on 09.09.2015 without serving any charge sheet and without conducting any domestic enquiry against him. On the other hand, the respondent in its written statement has pleaded that the services of the workman were terminated after conducting property enquiry.

But no documentary or any other cogent evidence has been placed on record by the respondent to prove that any charge sheet was given to the workman or any domestic enquiry was conducted against him before termination of his service on 09.09.2015. No copy of charge sheet or copy of proceedings or report of alleged domestic enquiry allegedly conducted by the respondent, as pleaded by the respondent in its written statement, has been adduced in its evidence by the respondent. The respondent in its written statement has also not disclosed the name of the Enquiry Officer who allegedly conducted the alleged domestic enquiry against the workman nor the respondent has examined any such Enquiry Officer in its evidence. Oral statement made by MW1 Sh. Sujeeb

Das Mohapatra by way of his affidavit Exhibit MW1/A tendered by him in its examination-in-chief is not sufficient to hold that the respondent issued any charge sheet against the workman and conducted any domestic enquiry against him before the termination of his service. MW1 in his affidavit Exhibit MW1/A has also not disclosed the name of the alleged Enquiry Officer who allegedly conducted the enquiry against the workman.

In such circumstances, it is not established on record that any charge sheet was issued by the respondent to the workman and the services of the workman were terminated by the respondent after conducting proper domestic enquiry. It is not the plea of the respondent that compliance of the mandatory provisions of Section 25-F of the Act was made by the respondent before termination of the services of the workman. Therefore, it is held that the respondent terminated the services of the workman illegally. Hence, the respondent is liable to be directed to reinstate the workman in service with continuity of service.”

Even, at this stage, there is no cogent reason forthcoming, as to why the relevant documents, if any, were not produced before the learned Tribunal. I have also gone through the documents sought to be pressed in service by learned counsel for the petitioner at this stage. Learned counsel submits that an enquiry was in fact conducted and so far as the allegations against the workman are concerned, reference has been made to the document attached as Annexure P-6, which is titled as 'Convening Order' in respect to a Court of Inquiry to 'investigate the circumstances under which the employee-workman refused to follow the emergency case at 7:00 P.M.

on 21.08.2015'. The purpose of the Court of Inquiry is categorically stated to be

'to investigate the circumstances under which employee ID-T0060-EMT Vijay Singh, refused to follow the emergency case at approximately 7:00 P.M. on 21 August 2015'.

There is no mention of any show cause notice to the workman qua termination of his service. It is thereafter, recommended by the said 'Court of Inquiry' constituted for the purpose above, that the workman-employee had refused to attend the emergency patient and thus violated the medical provision ethics, therefore, his services should be terminated. A show cause notice was directed to be issued.

Learned counsel for the petitioner is unable to deny that pursuant to such recommendation, no inquiry regarding termination of service of the workman was conducted. In fact a perusal of the documents sought to be relied upon are reflective of a dichotomous stand of the petitioner. In the written statement submitted by the petitioner before the Tribunal, it is specifically stated that the workman did not respond to the show cause notice/s issued to him and that he refused to participate in the internal inquiry held at the Head Office. This is belied by the termination order dated 09.09.2015 (Annexure P-11), in which there is a specific reference of reply dated 07.09.2015 statedly submitted by the workman. In fact, a copy of the so-called reply is even attached by the petitioner with this writ petition as Annexure P-10.

Be that as it may, it is reiterated that there is no cogent, plausible and reasonable explanation which is forthcoming before this Court, to justify

non-production of the purported documents before the learned Tribunal, to show that proper procedure was adopted by the petitioner before terminating the respondent-workman’s services or that provisions of Section 25-F of the Act were complied with.

Keeping in view the facts and circumstances above, I do not find any ground what-so-ever to interfere in the impugned award dated 24.12.2019. Accordingly, this writ petition, being devoid of any merit, is dismissed with no order as to costs.

17.09.2020
Sunil

(LISA GILL)
JUDGE

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