

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24854 of 2016 (O&M)

Date of Decision: 07.01.2020

The Director, State Transport, Punjab & Anr.

... Petitioners

VS.

Presiding/General Secretary, Punjab Roadways Conductor Union,
Chandigarh & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Ms. Samina Dhir, DAG Punjab

Mr. Amit Kaith, Advocate for the respondent No.1

GIRISH AGNIHOTRI, J. (Oral)

(1) The present writ petition has been filed by the petitioner – the Director, State Transport Punjab and another, *inter alia*, with a prayer to quash the order/award passed by the Labour Court dated 07.10.2015 (P1).

(2) The workman had raised the demand notice through the Union. The same was converted/treated as a reference by the Government.

(3) Briefly, the facts which can be noticed are that vide order dated 29.03.2000, the workman was imposed with a punishment to bring him to minimum of the pay scale for 4 years and his pay for suspension period was forfeited (over and above the subsistence allowance). The allegations in this order were that he had allegedly not issued the tickets after collecting the fare from the passengers.

(4) On the other hand, the stand of the workman was that the impugned order has fallen to error as the same was based on no evidence and was rather passed merely on account of suspicion. The Labour Court in this regard has recorded the following findings:-

“I have very thoughtfully considered the rival contentions of both the sides. With regard to punishment order bearing endorsement No.4771-77 dated 29.03.2000 learned representative for the union has vehemently argued that the workman was held guilty only on the basis of suspicion which cannot be allowed and is illegal. Now this court is to see as to whether there is any strength in this argument of learned representative for the union. The Management to prove that fair & proper inquiry has been conducted and charges against the workman stood proved during the inquiry has placed on record Exhibit ‘W2’ i.e. inquiry file and perusal of the inquiry file Exhibit ‘W2’ reveals that the Inquiry Officer while submitting his report in its findings has recorded that the charge of embezzlement of Rs.120/- against the workman did not stand prove and charges of embezzlement of Rs.721/- and cutting on the way bill stood proved on the basis of suspicion. So it stands established from the inquiry report that the workman has been held guilty on the basis of suspicion. Now the next question arises as to whether the delinquent employee can be held guilty on the basis of suspicion then here authority Nand Kishore Prasad vs. State of Bihar & Ors (supra) relied upon by learned representative for the union is a guiding star wherein Hon’ble Supreme court of India was pleased to hold as under:-

Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallised by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the

place of proof even in domestic inquiries. As pointed out by this Court in [Union of India v. H. C. Goel](#)(1) , the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules."

In the light of above authority the Inquiry Officer erred while basing his report on the basis of suspicion. The authority relied upon by learned representative for the union is fully applicable in the present case as in the present case the charges against the workman were proved by the Inquiry Officer on the basis of suspicion and the Inquiry report cannot be looked into and the inquiry report deserves to be set aside on this score only. In the light of discussion made above, punishment order bearing endorsement No.4771-77 dated 29.03.2000 is not sustainable in the eyes of law and the same is set aside and the workman is held entitled to consequential benefits as a result of setting aside of above order."

(5) The second grievance of the workman was that the impugned order dated 19.05.2005 (though wrongly mentioned as 24.10.2005 in the award) has also fallen to error. It was again the case of the workman that no proper enquiry was held and the punishment has been awarded merely on account of the suspicion. The Labour Court has further gone to record that the management placed on record the enquiry file Ex.W1 to show that fair and proper enquiry was conducted but perusal of Ex.W1 reveals that complete file has not been placed on record by the management with regard to passing of this order. The Labour Court has recorded its finding on this issue to the following effect:-

"I agree with learned representative for the union that adverse inference needs to be drawn against the management for non production of inquiry file and withholding the record of which it was custodian. In absence of complete inquiry file this

court cannot come to the conclusion as to whether fair & proper inquiry was conducted against the workman and also that full & fair opportunity was granted to the workman before passing the impugned order bearing endorsement dated 24.10.2005. As such the impugned order bearing endorsement dated 24.10.2005 is set aside. As a sequel of above discussion impugned orders bearing endorsement 29.3.2000 and 24.10.2005 are set aside. The management is directed to release the increments stopped vide impugned orders bearing endorsement 29.03.2000 and 24.10.2005 and to re-fix the pay of the workman accordingly and to pay him arrears after re-fixation of pay and other consequential arrears as result of setting aside of above orders.”

(6) This Court is of the view that there is no infirmity in the order passed by the Labour Court. The findings to be so recorded by the punishing authority are required to be definite and the guilt should be proved beyond doubt.

(7) Therefore this Court upholds the order passed by the Industrial Tribunal-cum-Labour Court, UT Chandigarh dated 07.10.2015. The petitioner-management is directed to, however, re-fix the pay of the workman as a consequence of quashing of the order dated 29.03.2000 and 24.10.2005 (19.05.2005). The payment of arrears after re-fixation of pay and other consequential benefits shall be restricted to 38 months prior to filing of the demand notice.

(8) At this stage, to be fair, learned counsel submits that the workman shall forego any claim for interest on the said amount.

(9) With these observations, the writ petition stands disposed of.

07.01.2020
Vvishal

(Girish Agnihotri)
Judge