

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

LPA No.2125 of 2017 (O&M)

Date of decision: February 14, 2020

The Rohtak Central Cooperative Bank, Rohtak ...Appellant

Versus

Mohinder Singh and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Vinod S. Bhardwaj, Advocate for the appellant.
Mr. Sandeep Singhal, Advocate for respondent No.1.

Rakesh Kumar Jain, J.(oral)

This Letters Patent Appeal is directed against the order dated 25.09.2017, by which the writ petition filed by the appellant against the orders dated 09.02.1993 (Annexure P-4) and 02.05.2017 (Annexure P-7) was dismissed.

In brief, the respondent No.1 was appointed as Secretary in the appellant bank in the year 1976 and worked as such till 31.03.1989, when his services were terminated by the appellant on the basis of an enquiry report for some alleged misconduct attributed to him. The respondent No.1 raised an industrial dispute in terms of the provisions of Section 10 of the Industrial Disputes Act, 1947, which was referred by the appropriate Government to the Industrial Tribunal-cum-Labour Court in terms of Section 10 (i) of the Act to adjudicate upon the issue “whether the termination of services of Shri Mohinder Singh is justified? If not, to what

relief is he entitled?”.

Thereafter, the claim statement was submitted by respondent No.1, to which reply was filed by the appellant and on the pleadings of the parties, the following issues were framed by the Labour Court:-

- (1) Whether the management had conducted a fair and proper enquiry before passing the order of dismissal?
- (3) As per terms of reference?
- (3) Relief?

The issue regarding enquiry was treated as preliminary issue. The Labour Court vide its order dated 09.02.1993 decided issue No.1 in favour of respondent No.1 and other issues also which dismissed the reference vide award dated 04.10.1993. The respondent No.1 challenged the award dated 04.10.1993 by way of Civil Writ Petition No.2442 of 1994 titled as Mohinder Singh Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another, which was allowed on April 23, 2009, whereby award dated 04.10.1993 was set-aside and the matter was remanded back to the Industrial Tribunal-cum-Labour Court, Rohtak for a fresh decision in accordance with law. In the said order, this court has held that once issue No.1 was decided vide order dated 09.02.1993, it was no more open to the Labour Court to have reversed the same by its order dated 04.10.1993. After the remand, the Labour Court passed the award afresh on 02.05.2017 maintaining the finding recorded on 09.02.1993 by the Labour Court, keeping in view the observation of this court that the issue, which was decided on 09.02.1993, was no more open to the Labour Court for the

purposes of reversal and since there was no challenge to that issue at the instance of the management, therefore, it attained finality. Be that as it may, now it was the turn of the management to challenge the award dated 02.05.2017 and the order dated 09.02.1993 before this court. The said writ petition was dismissed vide order dated 25.09.2017 and hence the present Letters Patent Appeal has been filed.

Learned counsel for the appellant has vehemently argued that respondent No.1 was an habitual absentee, work shirker and was also involved in embezzlement and thus, his services were rightly terminated after holding an enquiry. In this regard, he has basically relied upon the findings recorded by the Labour Court in its award dated 04.10.1993.

On the other hand, counsel for respondent No.1 has submitted that the finding recorded in the award dated 04.10.1993 cannot be used against him until and unless the findings recorded by the Labour Court on 09.02.1993 were upset. It is submitted that once it has been held that the enquiry against respondent No.1 was neither fair nor impartial, the order of termination passed upon the said enquiry is patently illegal.

We have heard learned counsel for the parties, carefully considered the facts of the case and are of the considered opinion that there is no merit in this appeal for the purposes of interference, because even if the argument of counsel for the appellant is accepted that finding recorded on the preliminary issue was not required to be challenged separately and was to be challenged only with the main award, the counsel for the appellant has failed to point out any error in the finding recorded on 09.02.1993, from which we are satisfied that no opportunity of hearing was given to

respondent No.1 while conducting the enquiry as he was not duly associated.

Thus, in view of aforesaid facts and circumstances, there is hardly any merit in the present appeal and the same is hereby dismissed, though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

February 14, 2020
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No