

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3347 of 2018(O&M)
RESERVED ON 22.04.2021
DECIDED ON : 12.05.2021

Kirpal Singh

...Petitioner

versus

Presiding Officer, Industrial Tribunal, Amritsar and Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner in
CWP Nos.3347 of 2018 and
for the respondents in CWP No.25879 of 2018.

Ms. Paramjit Kaur Deol, Advocate
for the petitioner in CWP Nos.25879 of 2018 and
for the respondents in CWP No.3347 of 2018.
*(The aforesaid presence is being recorded through video
conferencing since the proceedings are being conducted
in virtual court due to COVID-19)*

GIRISH AGNIHOTRI, J.

Since common question of law and facts are involved in both writ petitions i.e. CWP Nos.3347 and 25879 of 2018, the same are being taken up together and are disposed of by this common order.

For the sake of convenience, facts are being taken from CWP No.3347 of 2018 titled as 'Kirpal Singh Vs. Presiding Officer, Industrial Tribunal, Amritsar and Ors.'.

Petitioner-Kirpal Singh, stated to be aged 57 years, has filed the present writ petition *inter alia* with a prayer for quashing the impugned award dated 08.11.2017 partly to the extent of not granting the relief of

reinstatement in service and also for quashing of the impugned order dated 01.07.2013 (Annexure P-9) passed by respondent No.3 and also to direct the respondents to reinstate the petitioner in service with continuity of service and full back wages.

Learned counsel for the petitioner based on pleadings in the petition, submits that petitioner was initially appointed in the respondent Bank (The Gurdaspur Central Cooperative Bank Limited, Gurdaspur) on 17.07.1978 to the post of Peon. Vide memo dated 29.10.2010, the petitioner was charge-sheeted. On 28.06.2011, the petitioner was reinstated pending inquiry. On 10.01.2012, the enquiry report was submitted by the enquiry officer. It was so recorded in the enquiry report that petitioner cannot be directly held responsible with the embezzlement. It is the pleaded case of the petitioner that the petitioner was never charged for destroying the record as the same was in possession of the Branch Manager. On 16.10.2012, show cause notice was issued to the petitioner proposing punishment of dismissal from service. On 15.11.2012, the petitioner submitted reply to the same. Vide order dated 01.07.2013, the petitioner was dismissed from service. Thereafter, on 16.07.2013, the petitioner served a demand notice under Section 2 (a) of the Industrial Disputes Act and thereafter statement of claim was filed on 25.09.2013. On 08.11.2017, the reference to the Labour Court was answered partly in favour of the workman. The Industrial Tribunal in its award, ordered that the workman be treated as compulsory retired from the date of order of dismissal dated 01.07.2013. A further direction was given to the respondent-Bank to make payment of entire retiral benefits, which are admissible to him as per rules, within three months of passing of the award. Relevant extract of the concluding paras of

the award are reproduced hereunder:-

'21.As already discussed above, the enquiry officer has come to conclusion at page no.133 of the enquiry report that charge of mis-appropriation is not proved against the workman, but he has destroyed the record. On the basis of this, the dismissal order dated 01.07.2013 was passed. This dismissal order is harsh as the main charge against the delinquent is not proved. As per section 11-A of I.D. Act, the Tribunal can inflict the lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require and the Tribunal shall rely on the material on the record and shall not take any fresh evidence in relation to this matter. The workman has put on long service with managements and dismissal order shall take away his right of retiral benefits. Keeping in view inquiry report Ex. R8 on file and keeping in view that main charge of mis-appropriate is not proved, as per section 11-A of I.D. Act order of dismissal is set aside. In view of the above discussion, it would be appropriate and justified that punishment of workman is converted to that of compulsory retirement at the most with all his retiral benefits, which are admissible to him as per service rules of managements, intact from the date of dismissal. All those benefits will be paid to him and treat him to be compulsory retired and all the benefits shall be paid within three months of passing of this award. Accordingly, issues no.1 to 4 are held partly in favour of workman and against the managements.

Relief.

22.In view of my discussion, made on above issues, reference is answered partly in favour of workman and workman be treated as compulsory retired from the date of order of dismissal i.e.01.07.2013. All his retiral benefits be kept intact from the date of removal i.e. 01.07.2013 and department is directed to make him payment of entire retiral benefits, which are admissible to him as per rules, within three months of passing of this award. Reader of this Tribunal is directed to forward two copies of this Award to Assistant

*Labour Commissioner/Labour-cum-Reconciliation Officer,
Gurdaspur, as required under Section 15 of the I.D.Act read
with Notification No.S.O.66/C.A.14/1947/S.17/2008
dt.1.10.2008. File be consigned to record room.*

November 8, 2017.

S.D.
(Jasjit Singh Bhinder)
Addl. District & Sessions Judge,
Presiding Officer, Industrial Tribunal,
Amritsar.'

Learned counsel for the petitioner has then made reference to two additional facts. It is firstly, submitted that on the same/similar issue, the petitioner was never named in the FIR No.34 dated 05.05.2011 (Ex.R6) registered on the basis of complaint (Ex. R5). Secondly, he submits that unlike other co-workmen e.g. Shingara Singh and others, the petitioner was not subjected to any arbitration proceedings at all.

Records of the case show that on 15.02.2018 notice of motion was issued in the present writ petition. In response thereto, respondent No.3-Bank filed a written statement wherein it has been *inter alia* contended that the Board of Directors has unanimously decided to issue show cause notice for imposing punishment of dismissal upon the petitioner. It has further been submitted that enquiry in accordance with law has been conducted against the employee. He has been given due opportunity to put forth his defence. After following regular procedure, the punishment proposed was imposed on the petitioner.

I have given thoughtful consideration to the peculiar facts and circumstances pleaded by the petitioner in his writ petition as also by the respondents in their written statement. I have also carefully gone through the detailed award passed by the Industrial Tribunal.

It has come on record that other three workmen namely, Manjit

Singh, Dalbir Singh and Darshan Singh also faced arbitration proceedings but the same were decided in favour of the workmen. These three workmen were acquitted by the trial Court in case FIR No.34 dated 5.5.2011, vide judgment dated 05.11.2018 and the said judgment of acquittal dated 05.11.2018 has attained finality. This Court also notices another fact that the award passed by the Industrial Tribunal is dated 08.11.2017 whereas the writ petitions both by the workmen as well as the Bank have been filed after approximately one year.

In the award dated 08.11.2017, learned Tribunal has dealt with all the facts and grounds taken by the petitioner as well as the respondent Bank. After vividly noticing all the facts, the Labour Court has *inter alia* observed in its award that the petitioner was exonerated by the police during investigation. He was accordingly, reinstated pending enquiry vide order dated 28.06.2011. Thereafter, the complete procedure followed by the Bank in holding the enquiry has also been briefly discussed. The Industrial Tribunal has then come to the conclusion that in the departmental enquiry report, the charges of mis-appropriation are not proved, however, allegations regarding destroying the record have been allegedly proved. It has been observed that dismissal order is harsh as the main charge against the delinquent is not proved. The Tribunal has thus proceeded under Section 11 -A of the Industrial Disputes Act, 1947 keeping in view the fact that the petitioner herein had put in sufficiently long service with the Management and the dismissal order shall take away his right of retiral benefits. It was deemed appropriate and justified that punishment of dismissal is converted to that of compulsory retirement. The Tribunal also noticed that one Sh. Dwarka Dass, Branch Manager, was found guilty for not maintaining and

producing the relevant record. He was accordingly, proceeded against by the Bank and dismissed from service. Importantly for same/similar allegations, in the FIR dated 05.05.2011 and in other connected matters during investigation and trial, the co-workers were found not guilty and were found innocent/acquitted. It is also a matter of fact that the arbitration proceedings initiated by the Bank were also either dropped or decided in favour of co-workers. Petitioner has rendered sufficiently long service with the Bank. The petitioner in the present case has rendered about 35 years of service on the date of passing the dismissal order dated 01.07.2013. In Feb, 2018, when present writ petition was filed, the petitioner was 57 years of age.

In the writ petition bearing *CWP No.25879 of 2018* titled as '*The Gurdaspur Central Cooperative Bank Ltd Vs. Kirpal Singh and Anr.*', it has been argued by learned counsel for the petitioner-Bank, by making reference to pleadings in the petition *inter alia* that acting upon preliminary report presented by Sh. R.K. Malhotra, domestic enquiry was conducted by Sh. Santokh Raj, Manager. In the enquiry report, reference to the report of M/s Data Soft Computers and the preliminary enquiry report has been made. It was observed that the bank records have been deliberately misplaced by workman in connivance with other bank officials. It is submitted that the Board of Directors on consideration of the enquiry report, had decided to issue show cause notice for punishment of dismissal to workman. In para 17 of the writ petition, filed by Bank, it has been *inter alia* contended that the workman was granted every opportunity to defend and present his case to the highest level i.e. the Board of Directors of the Bank. It is submitted that the Bank had followed the entire process, and thereof imposed the punishment of dismissal upon the workman.

Resultantly, for the facts and reasons noticed above, the writ petition filed by the workman as well as by the Bank are dismissed with no order as to costs and the order/award dated 08.11.2017 passed by the Industrial Tribunal is upheld.

Before concluding, it is deemed appropriate to record that in the writ petitions filed by the respondent-Bank e.g. in CWP No.25879 of 2018 application i.e. CM No.13354-CWP-2020 was filed *inter alia* with a prayer to stay the executing proceedings arising out of the impugned award herein dated 08.11.2017. This Court vide order dated 09.12.2020 passed in the applications filed by the respondent-Bank, had issued directions to the Bank to deposit the amount so calculated in the form of an FDR, with the Registrar General of this Court.

Accordingly, as a consequence to the above, the amount so deposited by the Bank in the form of an FDR with the Registrar General of this Court be released in favour of workman.

Ordered accordingly.

(GIRISH AGNIHOTRI)
JUDGE

12.05.2021
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/No