

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

206

CWP No.14782 of 1995 (O&M)
DATE OF DECISION: 03rd AUGUST, 2022

Richpal

.... **Petitioner**

Versus

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

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Anil Shukla, Advocate for the petitioner.

Mr. Vijay Singh, Advocate and
Ms. Rishu, Advocate for respondent No.2.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the impugned award (Annexure P-5).

The case of the petitioner, in nutshell, is that the petitioner joined the service with the Punjab University as Sweeper w.e.f. 05.10.1964. Later on when the respondent-university was created, the petitioner joined the respondent-university. The petitioner continued to work with due diligence and performed his duties to the satisfaction of his seniors. However, the petitioner was wrongly shown as absent from duty w.e.f. 20.02.1984. After conducting an enquiry, the service of the petitioner was terminated vide order dated 24.05.1990. The petitioner raised an industrial dispute against the termination. The same was

referred to the Labour Court. The Labour Court has answered the reference against the petitioner. Hence, the present petition has been filed.

Arguing the case, learned counsel for the petitioner has submitted that the petitioner had been wrongly shown to be absent from duty w.e.f. 20.02.1984. The petitioner was, in fact, transferred to another post of Mate. He worked on the said post. However, that has not been taken into consideration by the respondent-university. Learned counsel has further submitted that the Labour Court has wrongly upheld the proceedings of the departmental enquiry. The petitioner was not granted due opportunity of hearing so as to defend himself. Moreover, the Labour Court has gone wrong in law in not considering the quantum of punishment, even if the enquiry was held to be valid by the Labour Court. In the end, the counsel for the petitioner has submitted that although the termination order has been passed on 24.05.1990, however, that has been made operative retrospectively w.e.f. 20.02.1984. The respondent-university could not have passed the termination order with retrospective effect. The order passed by the respondent-university has wrongly been upheld by the Labour Court.

On the other hand, learned counsel for the respondent-university has submitted that the petitioner had absented from the duty w.e.f. 20.02.1984. There is no material on record to show that the petitioner ever worked on the post of Mate, as asserted by the petitioner. Accordingly, for a long absence, the enquiry was initiated against the petitioner. He was found guilty by the Enquiry Officer. Hence, the order of termination has rightly been passed against him after following due

procedure. Qua granting opportunity of hearing to the petitioner, learned counsel for the respondent-university has submitted that the petitioner joined the enquiry proceedings at the initial stage. However, later on he stopped attending enquiry proceedings. Several letters were sent to the petitioner requiring him to join the proceedings. However, he chose not to participate in the proceedings. Ultimately, the authority had passed the order on the basis of the report submitted by the Enquiry Officer. Qua the retrospective effect of the order, learned counsel for the respondent-university has submitted that, in fact, when the petitioner was served a show cause notice for inflicting punishment upon him at the initial stage, he had approached the Civil Court challenging the said show cause notice. When the relief was not granted by the Civil Court, then the appeal was filed by the petitioner before the District Judge. The petitioner could not get any relief even from the District Judge. Hence, after the petitioner exhausting of all these remedies, the respondent-university had picked up the process of inflicting the punishment upon the petitioner from the stage it was stopped on account of the Court proceedings. Hence, in effect, it is not a retrospective order. It is only postponement of the final order to a subsequent date on account of intervention of the judicial proceedings, qua which the respondent-university had no choice.

Having heard the counsel for the parties, this Court does not find any substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that the petitioner participated in the enquiry proceedings in the first instance. However, he stopped attending the enquiry proceedings later on. Despite that; the authority had proceeded in the departmental enquiry by following due procedure and

by examining the witnesses and bringing on record the relevant material. Therefore, this Court does not find any illegality or irregularity in the order passed by the Labour Court qua upholding the validity of the enquiry proceedings. The record shows that the petitioner has been duly heard in the matter. No fault could be found with the action of the respondents qua the departmental proceedings conducted against the petitioner.

Although the counsel for the petitioner has submitted that the Labour Court has not applied its mind qua the quantum of punishment as provided under Section 11-A of the Industrial Disputes Act (for short, the Act), however, this Court does not find any substance even in this argument. Firstly, this is the discretion of the Labour Court to exercise or not to exercise the power under Section 11-A of the Act. If while upholding the enquiry proceedings, the Labour Court was convinced of the quantum of punishment inflicted upon the petitioner, then no fault could be found with the process adopted by the Labour Court; in not exercising the power under Section 11-A of the Act. Moreover, since the enquiry proceedings were held to be valid and the dismissal of the petitioner from the service was held to be by way of disciplinary punishment, therefore, the very fact of termination of the service of the petitioner was excluded from the definition of the 'retrenchment' as provided under Section 2 (oo) of the Act. The Labour Court could have got the jurisdiction to exercise power under Section 11-A of the Act only on account of the termination being found as a 'retrenchment' as defined under the Act, and had the employer not followed the procedure prescribed for retrenching a workman. However,

since on account of disciplinary punishment, the termination of service of the petitioner was not within the definition of 'retrenchment', therefore, the Labour Court, otherwise also, was not authorized to exercise the power under Section 11-A of the Act. In that eventuality, the discretion exercised by the Punishing Authority has to be kept intact.

Even qua the argument raised on the retrospectivity of the order, this Court finds substance in the arguments raised by the counsel for the respondents. It is not even in dispute that when the show cause notice for inflicting punishment was issued to the petitioner, he had approached the Civil Court and having failed before the Civil Court, he has approached in appeal before the District Judge. Therefore, after the completion of the proceedings before the Courts of law, the respondent-university had taken over the proceedings from the stage; it was left earlier on account of the intervening judicial process. In that eventuality, the order passed by the respondent-university cannot be branded as an order inflicting punishment of dismissal with retrospective effect. The same is bound to be treated as postponement of the order of termination; on account of the intervening judicial process, but for which the order could have very well been passed effective from the date it is made effective now. Since, the respondent-university did not have any option not to follow the orders passed in Court proceedings, therefore, they cannot be faulted if they have given effect to the punishment from the date as envisaged to the original show cause notice.

In view of the above, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous application, if any, is also disposed of as such.

03rd AUGUST, 2022
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*