

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13868-2011
Date of Decision: 15.11.2022

Phool Kumari

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and
another Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Surinder Gandhi, Advocate,
for the petitioner.

Mr. Madan Pal, Advocate,
for respondent No.2.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the order dated 29.12.1997 (Annexure P-1) and order dated 13.08.2010 (Annexure P-4); and also seeking directions to respondent No.2 to reinstate the petitioner in service with full back wages.

The facts of the case, in nutshell, are that the petitioner-work lady asserted that she was appointed on part time basis on consolidated monthly remuneration as an Instructress, vide appointment letter dated 25.03.1992. She joined the duty on the same day. She continued to work as such. However, on 19.12.1995, a show cause notice was issued to the petitioner; alleging that she was willfully absent from the duty. Since, the petitioner did not file any reply to the said show cause notice, therefore, the

Enquiry Officer was appointed to enquire into the matter and to submit his report. An inquiry was conducted. The Enquiry Officer had submitted his report on 19.03.1997 holding the petitioner to be guilty of the misconduct of remaining willfully absent from duty. Thereafter, a show cause notice dated 03.10.1997 was served upon the petitioner, to which she filed a reply dated 21.11.1997. However, finding the reply filed by the petitioner to be not satisfactory, her services were terminated, vide order dated 03.02.1998. Alleging these facts, the petitioner raised an industrial dispute. The same was referred to the Labour Court. The Labour Court has answered the reference against the petitioner. Hence, the present petition.

Arguing the case, the learned counsel for the petitioner has submitted that the inquiry conducted by the respondent-management was not proper. The petitioner was not granted due opportunity of hearing. Not only that, even the Labour Court had framed the preliminary issue qua the inquiry and had held that the inquiry proceedings were not valid. Thereafter, the Labour Court has wrongly permitted the respondent-management to lead the evidence to prove the charges against the petitioner; despite the fact that no specific application with such a prayer was ever moved by the respondent. Therefore, the entire approach of the Labour Court is against the law. In support of his arguments, learned counsel for the petitioner has relied upon two judgments rendered by this Court in cases of **The District Ayurvedic Officer, Karnal Vs. Ram Ratti and another, 2017(4) PLR 841** and **Jagmal Singh Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon and another, 2017(4) S.C.T. 817**. He has

further submitted that there is no evidence against the petitioner to substantiate the charges against her. Hence, the award deserves to be set aside.

On the other hand, learned counsel for the respondent-management has submitted that it is not even in dispute that the petitioner was engaged as a part time Instructress in the Welfare Centre at Village Kharak Kalan, which was later on shifted to village Bamla. The petitioner remained continuously absent from the duty. Whenever the Inspector and the higher officials visited the centre, the petitioner was never found present. Thereafter, the authorities had ordered shifting of the centre from Village Bamla to TIT Bhiwani. When the Welfare Inspector had gone for ensuring shifting of the centre to TIT Bhiwani, the petitioner had even created obstructions in the same. On account of this misconduct of remaining absent from duty and not functioning properly, the petitioner was issued charge-sheet. An inquiry was conducted against the petitioner, in which she was found to be guilty of the misconduct alleged against her. Thereafter only, the services of the petitioner were terminated in terms of the appointment letter; which provided that in case the service of the petitioner was found to be unsatisfactory; then her services could be terminated at any time. Learned counsel for the respondent-management has further submitted that although the Labour Court has held the inquiry conducted by the respondent-management to be not in accordance with law, however, thereafter the respondent-management was permitted by the Labour Court to lead evidence to prove the misconduct against the petitioner before the court

itself. Accordingly, the respondent-management had examined the witnesses before the Labour Court, which have proved the misconduct alleged against the petitioner. The evidences led by the respondent-management have duly been appreciated by the Labour Court. Hence, the award passed by the Labour Court is totally in accordance with law. So far as the requirement of an application being moved by the respondent-management for permission for leading evidence before the Labour Court to substantiate the charge against the petitioner is concerned, it is submitted by the learned counsel that in the present case, the Labour Court itself had granted an opportunity to the respondent-management to lead the evidence. By availing that opportunity only the evidence was led before the Labour Court. There is no provision in the Industrial Disputes Act prohibiting the Labour Court from *suo moto* permitting the respondent-management to lead the evidence before the Labour Court to prove the charge against the petitioner. Hence, no fault could be found with the course of action adopted by the Labour Court.

Having heard the learned counsel for the parties and a perusal of the material available on record, this Court finds substance in the arguments raised by the learned counsel for the respondent. It is not even in dispute that the petitioner was engaged only as a part time Instructress for a few hours per day and the letter of engagement itself had specified that her services could be terminated at any time; if her work and conduct was found to be not satisfactory. In the present case, although, the inquiry conducted by the respondent-management has been found to be invalid by the Labour

Court, however, the respondent-management was permitted to lead the evidence to support the charge against the petitioner. In exercise of availing that opportunity, the respondent-management had examined the witnesses to bring home the charge against the petitioner. The said witnesses have categorically proved the misconduct alleged against the petitioner through their consistent and corroborative testimony. The Labour Court has duly appreciated the evidence led by the respondent-management qua the charge against the petitioner. This Court finds itself in agreement with the findings recorded by the Labour Court qua upholding the charge against the petitioner. No fault could be found with the appreciation of material brought on record by the respondent-management before the Labour Court.

Although, learned counsel for the petitioner has submitted that after finding the inquiry to be invalid, the Labour Court does not have any power to permit the respondent-management to lead the evidence by exercising *suo moto* powers and no application was made by the respondent-management to lead the evidence to prove the charge before the Labour Court, after the inquiry conducted by the respondent-management was held to be invalid, therefore, whatever evidence has come on file from the respondent-management, that cannot be read by the Labour Court, however, this Court does not find any merit in the argument raised by the learned counsel for the petitioner. Undisputedly, the inquiry conducted by the respondent-management was found to be invalid. However, thereafter, the Labour Court had granted an opportunity to the respondent-management to lead the evidence and by that opportunity only, the respondent-management

has led the evidence against the petitioner. That the said evidence has duly come on record of the Labour Court without any objection from the petitioner. Otherwise also, any objection by the petitioner would have been totally meaningless. It is totally within the power of the Labour Court to decide its course of action after the inquiry pleaded by employer is held to be invalid. The Labour Court has full power to *suo moto* permit the respondent-management to lead the evidence after it finds the inquiry to be invalid. There is no prohibition under any provision of Industrial Disputes Act or any other law restricting such power of Labour Court. Moreover, even the petitioner has led her evidence before the Labour Court in support of her case, though the same has not found to be sufficient. Although, learned counsel for the petitioner has relied upon two judgments rendered by this Court in ***Ram Ratti's case (supra)*** and ***Jagmal Singh's case (supra)*** however, a perusal of the said judgments makes it clear that the said judgments are totally distinguishable on the particular facts of those cases. Rather, none of the judgments categorically lays down as law that the Labour Court do not have *suo moto* power to grant opportunity to lead the evidence by the respondent-employer after the inquiry conducted by it is found to be not valid. Therefore, this court does not find any substance even in this argument of the learned counsel for the petitioner.

In view of the above, since the charge against the petitioner has been found to be proved, therefore, the termination of the engagement of the petitioner is by way of disciplinary measure. Such an action, being inconsonance with the terms of the appointment and being by way of

disciplinary measure, is even excluded from the definition of the 'retrenchment' as defined under the Industrial Disputes Act. Therefore, the petitioner could not even raise any claim before the Labour Court qua any kind of relief against such a termination.

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

(RAJBIR SEHRAWAT)
JUDGE

15.11.2022
adhikari

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