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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

CWP-17142-2021
Date of decision: 26.07.2022

Ashok Kumar

.....Petitioner

Versus

Factory Manager, M/s Minda Industries Limited and another

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

**Present: Mr. Ashwani Bakshi, Advocate
for the petitioner**

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Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, praying for issuance of a writ, order or direction in the nature of certiorari quashing order dated 11.04.2018 (Annexure P-11) and award dated 15.02.2019 (Annexure P-13) passed by the Industrial Tribunal-cum- Labour Court-II, Gurugram (in short, 'the Labour Court').

The brief facts of the case, as involved in the present writ petition are that the petitioner-workman was appointed with the respondent-employer as Operator on 03.10.2006. Subsequent thereto, he was

confirmed by issuing a written order by the Assistant Manager of the respondent-employer. However, on 01.05.2010, services of the petitioner were terminated without issuing any notice. Although, the respondent-employer claimed to have conducted an enquiry into the allegations levelled against the petitioner-workman, however, the enquiry was alleged to be in violation of the principles of natural justice. Raising these disputes, the petitioner had sought for reference to the Labour Court. The industrial dispute was referred to the Labour Court. The Labour Court has answered the dispute against the petitioner-workman, vide impugned award dated 15.02.2019. Hence, the present writ petition.

Arguing the case, counsel for the petitioner-workman has submitted that finding of the Labour Court that the enquiry was valid and proper, is totally unjust and illegal. The petitioner-workman was not even granted a proper opportunity of being heard during the enquiry. Not only that, even reply to the show cause notice qua punishment; which was sent by the petitioner-workman through Post, was not received by the management. Even the Postman had given a report to the effect that the respondent-employer had refused to accept the said reply. Moreover, no charge has been proved against the petitioner-workman. There were inconsistencies in the statements of the witnesses produced by the management. In the end, counsel for the petitioner has submitted that even if the inquiry was found to be valid by the Labour Court, the Court should have exercised its power under Section 11-A of the Industrial Disputes Act, 1947 and should have modified the punishment in order to make the same commensurate with the misconduct alleged against the petitioner-workman.

The punishment imposed upon the petitioner is on the higher side and disproportionate to the alleged misconduct. Hence, the award of the Labour Court deserves to be set aside and the petitioner-workman deserves to be reinstated in service with full back wages with continuity of service.

Having heard counsel for the petitioner and having perused the record, this Court does not find any substance in the arguments raised by counsel for the petitioner. The management had levelled very serious allegations against the petitioner qua gross misconduct of causing hurdle in production; holding meetings in the factory premises without any permission; instigating and inciting the co-workers and insubordination etc. The enquiry was held in the said charges. The petitioner-workman even participated in the aforesaid enquiry. Although counsel for the petitioner has pointed out that, at one stage, the petitioner was not informed about the next date before the Enquiry Officer, which resulted in his absence before the Enquiry Officer. However, there is no evidence even to that effect. The Labour Court has duly appreciated the evidence led before the Enquiry Officer; as well as; the procedure followed by the Enquiry Officer during the proceedings of enquiry. The entire material to prove the misconduct of the petitioner has already been placed on record by the employer. Accordingly, the Labour Court has rightly held the enquiry to be valid and proper. This Court does not find any illegality or perversity in the findings recorded by the Labour Court.

Counsel for the petitioner has further submitted that the Labour Court should have exercised the power under Section 11-A of the Act so as to modify the punishment, however, the Labour Court has miserably failed

in that regard, and therefore, this Court is required to interfere in the matter so as to modify the punishment inflicted upon the petitioner. However, even on this ground, the reasoning given by the Labour Court is quite proper and valid one. The Labour Court has rightly not interfered with the punishment imposed against the petitioner-workman. So far as this Court is concerned, it is well established that the quantum of the punishment is better left to the discretion of the punishing authority. In the present case, even that discretion has been subjected to the appraisal by the Labour Court and has been found to be rightly exercised by the management. This Court also does not find that the punishment imposed upon the petitioner-workman to be disproportionate to the misconduct so as to shock the conscience of the Court. Hence, even this Court does not find any ground to interfere with the punishment imposed upon the petitioner by his employer.

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

(Rajbir Sehrawat)
Judge

July 26, 2022
mohan bimbura

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No