

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

CWP-5852-2012

Date of Decision: 17.11.2022

Haryana Tourism Corporation Ltd.

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon

and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Padamkant Dwivedi, Advocate,
for the petitioner.

Mr. Sachin Mittal, 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 impugned award dated 14.11.2011 (Annexure P-12) passed by respondent No.1.

The facts of the case, in brief, are that the respondent-workman asserted that he was appointed and regularized as Mortar Mate-cum-Chowkidar by the petitioner-Corporation w.e.f. 19.11.1991 in the pay scale of Rs.750-940. Thereafter, the petitioner continued to serve in the same capacity upto the year 1998 without any cause of complaint. However, the petitioner-Corporation issued the charge-sheet dated 15.06.1998 regarding an alleged incident dated 17.09.1996. In that charge-sheet, an inquiry was held. The Enquiry Officer found the respondent-workman to be guilty of the

charge. Thereafter, the petitioner-Corporation inflicted the punishment of dismissal from service, vide order dated 17.01.2002. The respondent-workman filed an appeal but even the said appeal was dismissed, vide order dated 09.12.2002. The proceedings undertaken by the petitioner as well as the inquiry conducted against the respondent-workman were alleged to be totally illegal. Asserting these facts, the respondent-workman raised an industrial dispute, which was referred to the Labour Court. The Labour Court has answered the reference in favour of the respondent-workman and has ordered the reinstatement of the respondent-workman with continuity of service and 50% of back wages. It is challenging the said award dated 14.11.2011; that the present petition has been filed.

Arguing the case, the learned counsel for the petitioner has submitted that since the Labour Court had found the inquiry to be not valid, therefore, the Labour Court should have granted an opportunity to the petitioner-Corporation to prove the charges against the respondent-workman before the Labour Court; by permitting leading of the evidence. However, no such opportunity was granted to the petitioner-Corporation. Learned counsel has further submitted that; in alternative, this defect was found by the Labour Court, the Labour Court could have remanded the matter to the punishing authority for conducting the inquiry afresh. However, none of the course of action was adopted. Learned counsel has further submitted that since the respondent-workman had a very short spell of service, therefore, instead of ordering the reinstatement, the compensation should have been awarded to the respondent-workman. Therefore, the impugned award

passed by the Labour Court is non-sustainable and deserves to be set aside.

On the other hand, learned counsel for the respondent-workman has submitted that the inquiry conducted by the petitioner-Corporation was vitiated because the respondent-workman was not even granted an opportunity to cross-examine the witnesses produced by the petitioner-Corporation. Since the inquiry was found to be invalid, therefore, the Labour Court has the powers under Section 11-A of the Industrial Disputes Act to modify the punishment imposed upon the respondent-workman. Accordingly, the order of dismissal has been reverted into an order of reinstatement but with only 50% of back wages. There is no illegality in the course of action adopted by the Labour Court. Although the petitioner-Corporation had not made any specific prayer for permission to prove the charges against the respondent-workman by leading the evidence before the Labour Court, however, the petitioner-Corporation had examined its witnesses before the Labour Court as well. Even as per the testimony of the witnesses examined before the Labour Court, the charges against the respondent-workman could not be sustained by the petitioner-Corporation. Therefore, the punishment order has rightly been set aside.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the respondent-workman. Needless to say that the petitioner-Corporation proceeded against the respondent-workman to inflict punishment for a misconduct. However, even as per the admission of the witnesses of the petitioner-Corporation, the respondent-workman was not granted

opportunity to cross-examine the witnesses during the inquiry. Therefore, the inquiry stood vitiated and therefore, the evidence led in the inquiry could not be read against the respondent-workman. No doubt in case the inquiry was held by the Labour Court to be vitiated, then the petitioner-Corporation could have been granted opportunity to prove the charges against the respondent-workman before the Labour Court by leading the appropriate evidence, however, the petitioner-Corporation did not even chose to move any application in that regard. Therefore, it was deliberate omission on the part of the petitioner-Corporation not to make any effort to lead the evidence in support of the charge before the Labour Court. This also reflects the inherent lack of faith in the charge levelled against the workman; on the part of the petitioner-Corporation itself. Moreover, despite there being no specific application to that effect, the Labour Court has taken the evidence by permitting the witnesses to be examined by the parties before the Labour Court. Even during that evidence, the petitioner-Corporation could not bring home charge against the respondent-workman. This Court does not find any illegality, perversity or inconsistency in the appreciation of the material available on the record or in the course of action adopted by the Labour Court.

Although, learned counsel for the petitioner has submitted that there is a short span of service, therefore, instead of grant of reinstatement, the compensation could have been awarded by the Labour Court, however, even this assertion is not factually correct. Undisputedly, the respondent-workman had joined the service in the year 1991 and his service was

terminated in the year 2002. Therefore, the respondent-workman had undergone a spell of service of more than ten years, whereas the period prescribed for earning pension in case of superannuation has been of ten years. Therefore, by no means, the tenure of the respondent-workman can be said to be a short spell. Moreover, the Labour Court has kept in mind the fact that the respondent-workman had not been gainfully employed anywhere else during the interregnum. Therefore, there is neither any illegality in the order of reinstatement nor there is any illegality in the order of granting 50% back wages.

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

(RAJBIR SEHRAWAT)
JUDGE

17.11.2022
adhikari

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