

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

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CWP No.21552 of 2021 (O&M)
DATE OF DECISION: 22nd MARCH, 2022

Nibha Panda

.... **Petitioner**

Versus

**Presiding Officer-cum-Industrial Tribunal & Labour Court, U.T.
Chandigarh and others**

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Ranjiv S.Dhiman, Advocate,
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari quashing the award dated 08.02.2021 (Annexure P-6) published on 30.04.2021, passed in reference No.54/2015, whereby respondent No.1 declined the reference, with a further prayer to issue a writ in the nature of mandamus directing the respondents to reinstate the petitioner with all consequential benefits including full back wages from the date of termination till the date of reinstatement.

The facts in brief as involved in the present petition are that the petitioner was engaged by respondent No.4-the Contractor, to perform duties of a Security Guard with respondent No.3. Thereafter, the petitioner was transferred/deputed in a different hospital under the respondent-department. The petitioner did not like the fact of transfer, therefore, she raised objection against that. But ultimately, she had joined

pursuant to the transfer/deputing her to a duty at that place. Subsequently, she had even raised an objection against the duty roster prepared by the Security Officer working under respondent No.2. As per the allegations which have come on record, the co-employees of the petitioner had filed certain complaints against her. On being informed, respondent No.4 had even warned the petitioner to be careful and mend her ways. However, there was no improvement in her conduct. This led to initiation of the proceedings against the petitioner qua terminating her service. She was given show cause notice. The said show cause notice was received by the petitioner and she had even filed the reply to the same. Thereafter, second show cause notice was issued to the petitioner. The petitioner filed reply even to that show cause notice. However, finding the reply(s) filed by the petitioner not to be satisfactory, respondent No.4-Contractor disengaged the petitioner from service by passing a specific order dated 05.03.2015. Copy of the same was sent to the petitioner. However, the petitioner refused to accept the same. Thereafter, another letter was written to the petitioner requiring her to get her account settle and to return the property of respondent No.4. However, even that was not received by the petitioner. Accordingly, the service of the petitioner was terminated by respondent No.4 on the ground of the conduct of the petitioner was not good.

Aggrieved against the termination of service, the petitioner had served a demand notice, which led to making a reference to the Labour Court. The Labour Court has answered the reference against the petitioner. Hence, the present petition.

Arguing the case, the counsel for the petitioner has submitted that the respondents had not held any enquiry to establish the allegations of mis-conduct against the petitioner. Hence, the entire action of the respondents is totally illegal. The counsel has further submitted that the charges against the petitioner are otherwise also illegal. The service of the petitioner was terminated only because the petitioner had written a letter raising her grievance; directly to the higher officials. Beside this, there is no allegation of any mis-conduct against the petitioner. Hence, the Labour Court has gone wrong in law in answering the reference against the petitioner. The counsel has also submitted that no compensation has been paid to the petitioner. The persons junior to her have been retained, whereas, the respondents should have followed the rule of last come first go. The replacement of the petitioner has been done only on the asking of respondent No.2 i.e. the Director, Health Services, Government Multi Specialty Hospital, Sector-16, Chandigarh.

No other argument was raised.

Having heard the counsel for the petitioner and having perused the record, this Court does not find any illegality or impropriety with the award passed by the Labour Court. It is not in dispute that the respondent No.4 had not held any enquiry into the allegation of mis-conduct at the time of passing of the order. However, mere fact of non holding of the enquiry would not vitiate the award passed by the Labour Court. It is well established that in case the employer had not held the enquiry qua the allegation of mis-conduct against a workman at the time of termination of her service, then the employer can also prove the mis-conduct before the Labour Court. In the present case, the employer has

produced the entire material before the Labour Court regarding the misconduct and over-reaching behavior of the petitioner, which was not becoming of the workman and which also tantamount to misconduct on the part of the petitioner. Even, the complaints made by the co-employees, as well as, the correspondence made by the official respondents with the contractor have been duly placed on record. Hence, it cannot be said that there is no evidence against the petitioner. Moreover, this Court finds the conclusion arrived at by the Labour Court to be perfectly valid. Not only the documents were placed on record before the Labour Court, rather, even the witnesses were examined. The witnesses were subjected to due cross-examination. However, the petitioner could not bring out anything to impeach their credit or to deflate the charge of misconduct against her. Needless to say that the petitioner has not examined even a single witness to support her allegations either against the official respondents or against the contractor; as such.

Another argument raised by the counsel for the petitioner is that neither the petitioner was paid any compensation nor was the rule of last come first go followed. However, this argument of the counsel for the petitioner is also liable to be noted only to be rejected. The termination of the service of the petitioner was by way of punishment on account of misconduct. Such termination is not retrenchment as per the definition given in the Act. Therefore, the respondents were under no duty to either pay the compensation or to observe the rule of last come first go. Hence, this Court does not find any fault with the action of the respondents even on this ground. In the end, the counsel for the petitioner

has submitted that the petitioner has been replaced only on the asking of respondent No.2-Director Health Services, Government Multi Specialty Hospital, Sector-16, Chandigarh and therefore, the termination is without any basis. However, this argument has to be rejected for two simple reasons. Firstly, there is no allegation of bias or malafides, on record, against respondent No.2 as such. Otherwise, respondent No.2 was fully authorized to ask the contractor for deputing competent security guard, if he was to engage one as provided by respondent No.4. After all the security of the hospital is the responsibility of respondent No.2. Therefore, there was nothing wrong, if respondent No.2 had written a letter to the contractor to provide another workman/security guard to discharge the duties of the hospital security in a better manner.

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

22nd MARCH, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes