

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

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CWP No.29460 of 2019 (O&M)
DATE OF DECISION: 02nd DECEMBER, 2022

Jasbir Singh

.... Petitioner

Versus

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

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. M.S. Rana, 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 praying for quashing/setting aside of the impugned order dated 22.07.2009 (Annexure P-7), whereby the service of the petitioner was terminated and order dated 25.05.2010 (Annexure P-10), whereby the appeal of the petitioner was dismissed and also the impugned award dated 01.04.2019 (Annexure P-13) passed by respondent No.1 against the petitioner, with certain other prayers made in the present petition.

The brief facts, as involved in the present petition, are that the petitioner asserted that he was appointed as Driver on 06.08.1996 under the respondent-Management. The petitioner continued as such upto the year 2009. However, his service was terminated on 22.07.2009

without giving an opportunity of hearing. Asserting these facts, the petitioner had raised an industrial dispute. The same was referred to the Labour Court. However, the Labour Court has answered the reference against the petitioner. Hence, the present petition has been filed by the petitioner/aggrieved workman.

Arguing the case, learned counsel for the petitioner has submitted that the petitioner was issued a charge-sheet on 18.08.2006 for remaining willful absent. Although in the said charge-sheet an enquiry was held and the petitioner was found guilty, however, the petitioner was not inflicted any punishment in the said proceedings. But the respondent No.2-Management has passed the termination order against the petitioner on the basis of some subsequent mis-conduct, in which no proper enquiry was held. The order was passed even before expiry of seven days time, which was provided to the petitioner to explain his conduct. Therefore, the order passed against the petitioner was totally illegal. Although the petitioner had availed the remedy of statutory appeal, however, even his appeal was rejected on the ground of delay. Even, the Labour Court has not appreciated the fact that no enquiry was held in the second alleged mis-conduct of the petitioner. Hence, the order passed by the Departmental Authorities, as well as, the award passed by the Labour Court, all are non-sustainable. In the end, the counsel has submitted that the Labour Court has not paid any attention to the length of service of the petitioner so as to apply its mind to quantum of punishment; as required under Section 11-A of the Industrial Disputes Act, 1947 (for short, the Act) and lenient view should have been taken and the Labour Court should have interfered under Section 11-A of the Act.

Having heard learned counsel for the petitioner and having perused the case file, this Court does not find any substance in the arguments raised by the counsel for the petitioner. It is evident from the record that the petitioner had remained absent from service and on that account, the petitioner was issued a charge-sheet dated 18.08.2006. A due enquiry was held in the said charge-sheet. The Enquiry Officer had submitted his report dated 26.10.2006, holding the petitioner to be guilty. Thereafter, the matter was put up before the Board of Administrations of the respondent, which issued a show cause notice dated 09.02.2007 seeking reply from the petitioner as to why his service should not be terminated. On receiving the reply, the Board of Administrators deferred the infliction of any punishment upon the petitioner, rather, directed that the petitioner be kept under watch initially for a period of six months and his future conduct be observed. But the conduct of the petitioner had not improved, in any manner. On 22.06.2009, the petitioner was deputed to take the vehicle on 27.06.2009 at 8.00 AM and to report in the office of Civil Surgeon, Rohtak to perform the duties in Pulse Polio Programme. But he did not report there. Rather he was found in drunkun condition and his vehicle was found standing as damaged. Not only that, when the petitioner was put on election duty for Lok Sabha Election in the year 2009 and was directed to report to the S.D.O., Public Health from 27.04.2009 till 10.05.2009, he had not reported there for duty; and thus remained absent. For the said mis-conduct, a separate charge-sheet was issued. This entire conduct of the petitioner led to termination of his service, vide order dated 22.07.2009. A perusal of the termination order itself shows that it was passed after considering all the aspects, including

the earlier proceedings in which the petitioner was found guilty, as well as, his subsequent conduct which the respondent-Management had observed after deferring the punishment earlier.

Although it is argued by the counsel for the petitioner that the respondent had not conducted any enquiry in the second charge-sheet dated 15.07.2009, however, a perusal of the termination order shows that the second charge-sheet is not even the basis for passing the termination order. Moreover, the respondent has not even claimed to have conducted any enquiry into the second mis-conduct. Therefore, the parties were permitted by the Labour Court to lead the evidence on that aspect before it. While appearing as a witness before the Labour Court, the petitioner has categorically admitted his absence alleged in the second charge-sheet dated 15.07.2009. Therefore, even the aspect of absence alleged in the second charge-sheet stands proved against the petitioner before the Labour Court.

In view of the cumulative effect of the above said facts and circumstances, it cannot, by any means, be said that the respondent-Management has committed any illegality or has violated any statutory provisions for taking the disciplinary action against the petitioner. Even, the argument of the counsel for the petitioner that lenient view should have been taken and the Labour Court should have interfered under Section 11-A of the Act does not have any merit. The admitted conduct of the petitioner shows that even that exercise of discretion on the part of Labour Court would not have been justified, by any means. So far as the leniency is concerned, that was shown even by the respondent-Management. However, the petitioner himself has squandered that

leniency shown by the respondent-Management. The petitioner had remained absent on several occasions and had invited even earlier punishments during the short span of service. Therefore, this Court does not find any illegality or perversity even in the approach of Labour Court in not exercising powers under Section 11-A of the Act. This Court agrees with the findings recorded by the Labour Court qua the merits of the case. Hence, this Court does not find any illegality, impropriety or perversity with the award passed by the Labour Court.

In view of the above, finding no merit in the present petition, the same is dismissed and the award passed by the labour Court is upheld.

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

02nd DECEMBER, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes