

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101)

CM No.14392 of 2023 in/and
CWP No.15232 of 2004 (O&M)
Date of Decision : 31.08.2023

Surender Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Tapan Kumar, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.14392 of 2023

The present application has been filed for fixing some actual date in the present petition.

Notice of the application to the counsel opposite.

Mr. Tapan Kumar, Deputy Advocate General, Haryana, who is present in the Court accepts notice and raises no objection for the grant of the prayer as made in the present petition.

Keeping in view the above, application is allowed and on the oral request of learned counsel for the parties, the main case is taken up for hearing today.

CWP No.15232 of 2004

1. The present petition has been filed challenging the order dated 07.08.2003 (Annexure P-9) by which the order of punishment of termination of services was imposed as well as the order passed by the Appellate Authority dated 05.04.2004 (Annexure P-11) by which, the punishment has been modified to the extent that the petitioner will be reinstated in service from the initial stage of pay.

2. Certain facts which led to the filing the present petition are that the petitioner was working as a Conductor in the Haryana Roadways and was posted at the Faridabad Depot. While working on the said post, he was charge-sheeted on 27.11.2002 with the allegation that the petitioner, who was the Conductor, along with the bus driver, were found selling diesel by extracting the same from the bus. The petitioner filed a reply that the allegations alleged against him are incorrect as the petitioner was not well and had gone to take medicine, he was not involved in the allegations alleged. The enquiry was conducted into the allegations and keeping in view the enquiry report submitted by the Enquiry Officer on 17.03.2003, the allegations were proved against the petitioner. The show cause notice was issued to the petitioner on 16.06.2003, which was replied by the petitioner vide reply dated 06.08.2003 and ultimately, an order was passed by the Punishing Authority on 07.08.2003 terminating the services of the petitioner on the ground that the allegations alleged against the petitioner that he was involved in extracting diesel from the Government Bus by taking the said bus outside the Bus Stand were proved.

3. Aggrieved against the said order of punishment, the petitioner filed an appeal, which appeal was decided by the Department vide order dated 05.04.2004 stating that as the petitioner was not seen at the site of the incident,

hence the allegation that the petitioner was also involved as an accomplice cannot be said with certainty but as there was an involvement of the petitioner as the bus had been taken out of the Bus Stand without payment of additional fee and same was parked at an unscheduled place and the explanation being given that bus had been stopped at a particular place because he was not medically well, cannot be accepted. The punishment was modified by reducing the punishment of termination of service to that of reverting the petitioner to the initial time scale and nothing will be paid for the suspension period beyond the payment already made. The said orders are under challenge in the present petition.

4. Learned counsel for the petitioner submits that in the present petition, the facts have been totally ignored by the authorities concerned while imposing the punishment. Learned counsel argues that the bus had already left Mathura Bus Stand towards its destination and thereafter, some defect was noticed in the bus coupled with the fact that the petitioner was also not feeling well, that is why the bus was stopped at some place where, the Sub Inspector had raided the bus and the allegations were alleged that the diesel was being pilfered which allegation is totally arbitrary and illegal especially when, the Appellate Authority had recorded a finding that the petitioner was not present at the spot of incident. Even the witnesses admitted that the petitioner was not at the spot and the involvement of the driver was not found for pilfering the diesel.

5. Learned counsel for the respondents on the on the hand submits that though, the allegations against the petitioner as well as the driver were proved during the enquiry proceedings but keeping in view the certain facts, the Appellate Authority found the involvement of the petitioner qua the

allegations on certain aspects only, that is why, the punishment of termination of services have been modified to that of reduction to time scale by the impugned order.

6. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

7. The arguments being raised by the petitioner is that once the presence of the petitioner at the site was not established and the bus had only been stopped because it had developed certain technical defects, the imposition of the punishment upon the petitioner is bad. In this regard, it may be noticed that as per the petitioner, the bus was already on way from Mathura to his destination when the same was stopped. The Conductor has to remain with the bus in case the same had already left Mathura Bus Stand and was proceeding towards its destination. The petitioner could not have left the bus at a isolated place being the Conductor. Though, the allegation with regard to the pilferage has not been established according to the order passed by the Appellate Authority but the conduct of the petitioner as reported by the Sub Inspector has not been disbelieved entirely by the Appellate Authority. That being so, the reduction of the punishment by the Appellate Authority, keeping in view the evidence, which had come on record, is perfectly valid and legal.

8. With regard to the argument of learned counsel for the petitioner that once the petitioner was not present at the site where the bus was raised by the Sub Inspector, the petitioner should not have been punished, it may be noticed that the allegation that the bus had suffered a technical snag due to which the same was stopped at a shop of mechanic, a finding of fact has already come on record that there was no mechanic shop where the bus was parked at the time when the Sub Inspector had reached the bus and made

report qua the pilferage of the diesel. These facts have weighed with the Appellate Authority not to discharge the petitioner fully of the allegation alleged while modifying the punishment imposed.

9. Further, the imposition of punishment is the jurisdiction of the employer and the Court cannot interfere unless and until the punishment so imposed is shockingly disproportionate to the charges alleged. In the present case, the punishment imposed is not shockingly disproportionate to the charges alleged and proved, hence, no interference is called for by this Court in the facts of the present case.

10. No ground is made out for interference by this Court.

11. Dismissed.

August 31, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No