

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

CWP No.6937 of 1998 (O&M)

Reserved on: 03.05.2023

Pronounced on:26.05.2023

Ramesh Chand Sharma

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Karan Singh, Advocate
Legal Aid Counsel for the petitioner.

Mr. Anant Kataria, DAG, Haryana.

Mr. P.K. Mutneja, Senior Advocate with
Ms. Suverna Mutneja, Advocate and
Mr. Abhishek Sindhu, Advocate
for respondent No.3 to 5.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari, quashing the impugned order dated 11.09.1996 (Annexure P-8) whereby services of the petitioner have been terminated w.e.f. 11.12.1996 on expiry of three months notice period starting from 11.09.1996 passed by respondent No.5 and order dated 12.03.1998 (Annexure P-11) passed by respondent No.1 whereby appeal preferred by the petitioner against order dated 11.09.1996 has been dismissed.

2. In brief as stated the facts of the case are that the petitioner had joined respondent No.3-Indian Sugar and General Engineering Corporation on 23.02.1981 as Labour Welfare Officer in pursuance to appointment letter dated 30.01.1981. Services of Labour Welfare Officer are governed by the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 (hereinafter referred to as Rules of 1952). Vide letter dated 13.06.1995, petitioner was given

the additional charge of the post of Safety Officer wherein it was stated that the petitioner would be responsible for maintenance of all statutory and non-statutory record of safety, periodical inspection of various items and accident enquiries. Since the duties and responsibilities of Safety Officer were similar to Labour Welfare Office, petitioner accepted the additional charge of Safety Officer. Thereafter, vide order dated 19.06.1995, petitioner was also assigned additional duties of the post of Training and Safety Officer, however, the charge of Safety Officer stood withdrawn from the petitioner vide order dated 28.09.1995. On 19.10.1995, respondent No.4 unilaterally without taking consent of the petitioner and prior approval of respondent No.2, re-designated the petitioner's post as Senior Training and Development Officer. The petitioner protested against the aforesaid action to respondent No.4 but he was assured that it would not affect the petitioner in any manner and salary of the petitioner though revised on 31.10.1995 was on the same scale as was admissible for the post of Labour Welfare Officer. On 04.07.1996, though respondent No.5 fixed the salary of the petitioner as consolidated plus perks with retrospective effect i.e. w.e.f. 01.04.1996 but total emoluments remained the same and therefore, the petitioner while relying upon the assurance given by respondent No.5 that his services would not be affected adversely and no financial loss would be incurred, did not raise objection to the same. However, vide letter dated 11.09.1996 issued by respondent No.5, services of the petitioner have been terminated without assigning any reason w.e.f. 11.12.1996 in terms of para 3 of his appointment letter dated 30.01.1981. Against the said termination order dated 11.09.1996, petitioner filed a statutory representation/appeal, which also stood dismissed vide order dated 12.03.1998 passed by respondent No.1. Aggrieved against orders

dated 11.09.1996 and 12.03.1998, petitioner approached this Court by way of instant writ petition.

3. Learned counsel appearing for the petitioner would contend that services of the petitioner had been terminated without holding any enquiry or proving him guilty of any misconduct, simply relying upon clause 3 of the appointment letter of Labour Welfare Officer. Services of the petitioner were terminated as Senior Training and Development Officer whereas the respondents while doing so, relied upon para 3 of the appointment letter issued to the petitioner for offering appointment as Labour Welfare Officer. The petitioner was given additional charge of Senior Training and Development Officer while he was posted as Senior Welfare Officer. As per Rule 6 of the 1952 Rules, vide which services of Senior Welfare Officer were governed, before passing an order of punishment against the Welfare Officer, he has to be informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to be taken against him. Further the management could not impose any punishment other than censure except with the previous concurrence of the Labour Commissioner, Haryana. However, while terminating the services of the petitioner, neither the grounds on the basis of which such order had been passed was made known to the petitioner prior in time; nor prior approval of the Labour Commissioner, Haryana was taken before terminating services of the petitioner, therefore, the termination order is liable to be set aside. It was further argued that appeal preferred by the petitioner against the termination order was dismissed by relying upon Rule 7-A of the 1952 Rules, which stipulates that a person being a Labour Welfare Officer was debarred to perform any other duties except those mentioned in Rule 7 or to hold any other office or post without the previous sanction of the Labour Commissioner, while

completely ignoring the fact that the petitioner performed duties of Safety and Training Development Officer and Senior Training and Development Officer in terms of orders passed by the respondents and not out of his own volition. In any case, it was incumbent upon the respondents to take prior approval of the Labour Commissioner, Haryana before giving additional charge to the petitioner and the said fault cannot be attributed to the petitioner. It was also argued that there was no sanctioned post of Senior Training and Development Officer and therefore, the petitioner was never ceased to be Labour Welfare Officer and in fact, he was given additional charge of Senior Training and Development Officer.

4. Per contra, Mr. P.K. Mutneja, learned Senior Advocate assisted by Ms. Suverna Mutneja and Mr. Abhishek Sidhu, Advocates appearing for respondents No.3 to 5 would argue that though the petitioner was initially appointed as Labour Welfare Officer, he was re-designated as Senior Training and Development Officer w.e.f. 19.10.1995 and one Faqir Chand was appointed as Labour Welfare Officer, which is evident from letter Annexure R-3/2, which was duly intimated to the Labour Commissioner, Haryana vide Annexure R-3/3. Therefore, since the petitioner ceased to be Labour Welfare Officer on his re-designation as Senior Training and Development Officer, Rule 6 of the 1952 Rules is not applicable to him. It was further argued that as per Clause 3 of the appointment letter dated 30.01.1981, during the probationary period, either party can terminate the services by giving three months' notice or salary in lieu thereof and therefore, services of the petitioner have rightly been dispensed with by giving three months' notice. It was argued that as per Clause 10 of the appointment letter dated 30.01.1981, every dispute, difference or question which may at any stage arise between the parties thereto or any person claiming under them, touching or arising out, or in respect of the said agreement, or the subject

matter thereto or rights or liabilities of either parties, shall be referred to sole arbitration of the Managing Director of the employer company or his nominee and the decision of the Arbitrator shall be final and binding on the parties. The petitioner herein without resorting to the said clause of arbitration has approached this Court and therefore, the writ petition itself is not maintainable. It was also argued that initially there was no sanctioned post of Senior Training and Development Officer and therefore, the petitioner was given the same pay scale, however, later on necessary sanction was obtained from the management and salary of the petitioner was revised on 04.07.1996 w.e.f. 01.04.1996. The petitioner herein ceased to be Labour Welfare Officer on his appointment to the newly sanctioned post of Senior Training and Development Officer and appointment of Faqir Chand on the post of Labour Welfare Officer, which appointments were duly intimated to the Labour Commissioner, Haryana.

5. I have heard learned counsel for the parties and have perused the paper book.

6. Admittedly, the petitioner was appointed as a Labour Officer vide appointment letter 30.01.1981 and then given the additional charge of the post of Safety Officer vide letter dated 13.06.1995. Apart from giving him additional charge, the petitioner was also made a Training and Safety Officer vide office order dated 19.6.1995. The post held by him was re-designated as Senior Training and Development officer and one Faqir Chand was transferred as Labour Welfare Officer vide office order dated 19.10.1995. However, the termination letter followed soon citing clause 3 of the appointment letter and giving three months notice period, which *per se* was an improper notice as six months notice or salary in lieu thereof, was required to be given, as per clause 3

of the appointment letter itself, once the petitioner had completed his probation period.

7. The appeal/representation preferred by the petitioner was rejected on the ground that the petitioner accepted the post of Training Officer, which was in violation of Rule 7A of Punjab Welfare Officers Recruitment and Conditions Service Rules 1953 (Rules of 1953), which does not permit a Welfare Officer to perform any other duty or hold any other post without prior permission of the Government, while also holding that if the petitioner was aggrieved, he had a remedy to approach the sole Arbitrator in terms of the appointment letter. It was also held that since the petitioner was not holding the post of Labour Welfare Officer, so he would not be governed by the Rules of 1953. What the appellate authority has failed to notice or appreciate is the fact that the additional charge was not given at the behest or on the asking of the petitioner, nor was the re-designation of his post as Senior Training and Development Officer done at his instance. Normally an employer is in a dominant position and it is not always the case that an employee, who is on lower rung, can take on the might of the person, who puts food on his table. In such a situation an employee is not in a position to protest about the change of the nature of his job description or what charge has been given to him. Even though it has been argued by learned Senior Advocate appearing for respondent Nos. 3 to 5 that the petitioner had asked for the post and was also benefited financially but he has not been able to establish this as a fact.

8. The services of the petitioner were terminated, without any notice, by invoking clause 3 of the appointment letter and that too, after the petitioner had worked for 15 years, without any complaint made against him. This action in itself is violative of all principles of natural justice. Another important factor that needs to be considered is whether Rules of 1953 would be applicable in the case

of petitioner, who had been appointed as Labour Welfare Officer vide letter dated 30.01.1981 and in case the post of the petitioner was then re-designated as Senior Training and Development Officer, without his say-so, could the terms and conditions of the appointment letter, as was issued to the petitioner for his appointment as Labour Welfare Officer, be then invoked only to terminate his services? In the opinion of the court, the respondents cannot be allowed to use clause 3 of the appointment letter dated 30.01.1981 issued to the petitioner for his appointment as Labour Welfare Officer, when they themselves had changed the conditions of the appointment unilaterally by re-designating the petitioner to hold post of Senior Training and Development Officer and replacing him with Faqir Chand. Using the same analogy, if the petitioner no longer held the post of Labour Welfare Officer as per appointment letter, as acknowledged by the respondents, he could not be relegated to approach the Arbitrator. Invoking of clause 3 of the appointment letter by the respondents, which has lost its validity, as terms and conditions have been violated by the respondents themselves, cannot be permitted.

9. The petitioner has been left in a quandary. The Rules of 1953, which would have been applicable as per the appointment letter, have been disregarded by the respondents themselves. Rule 6 of the Rules of 1953 requires that no order of punishment shall be passed against the Welfare Officer without assigning reason on the basis of which said action is proposed to be taken and he shall be given a reasonable opportunity to defend himself. It is further provided that previous sanction of the Labour Commissioner is required for imposition of any punishment other than censure. The relevant part of Rule 6 of 1953 Rules is reproduced as under:-

“6. Conditions of service of welfare officers-

(1) *a Welfare Officer shall be given appropriate status corresponding to the status of the other executive heads of the factory.*

(2) *the condition of service of a Welfare Officer would be the same as of the other members of the staff of corresponding status in the factory (**).*

(3) *Notwithstanding anything contained in sub-rule (2) the management may impose any one or more of the following punishment on welfare officer:-*

Minor punishments

I. Censure.

II. Withholding of increments including stoppage at an efficiency bar.

Major punishments.

I. Reduction to a lower stage in the time scale.

II. Dismissal or terminations of service in any other manner.

Provided that an order of punishment shall be passed against the Welfare Officer unless he has been informed of the grounds on which it is proposed to take action and given a reasonable opportunity of defending himself against the action proposed to be taken in regard to him.

Provided further that the management shall not impose any punishment other than censure except with the previous concurrent of the Labour Commissioner, Haryana.

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10. The respondents themselves are blowing hot and cold at the same time. On the one hand they are arguing that Rules of 1953 would not be applicable as the petitioner had been ceased to be Labour Welfare Officer on his re-designation as Senior Training and Development Officer, however, on the other hand, services of the petitioner have been terminated by invoking clause 3 of the appointment letter issued to him for the post of Labour Welfare Officer. If it is assumed for the sake of arguments that Rules of 1953 are not applicable as the petitioner had

been re-designated as Senior Training and Development Officer, even then the principles of natural justice would come into effect, which again have been blatantly disregarded, as services of the petitioner have been terminated without holding an inquiry or even without serving a show cause notice. The order dated 11.09.1996 vide which services of the petitioner have been terminated states merely *‘Your services shall stand terminated with effect from 10.12.1996 (evening) on expiry of three month notice period starting from today, 11.9.1996 in terms of para-3 of your appointment letter No.wp-pf dated 30.01.1981.....’* There is no reason at all assigned as to on what basis/allegation/charge, services of the petitioner have been terminated.

11. As an upshot of my finding, instant writ petition is allowed and consequently orders dated 11.09.1996 (Annexure P-8) and 12.03.1998 (Annexure P-11) are set aside. By now, petitioner ought to have attained the age of superannuation and therefore, he will be deemed to be reinstated in service from the date of his termination and will be entitled to all notional benefits as he would have been entitled to, had he been superannuated on attaining the age of superannuation i.e. pension, gratuity, leave encashment etc., as per relevant service Rules. The retiral benefits as admissible to the petitioner shall be released to him within a period of three months from the date of receipt of certified copy of this order.

(JAISHREE THAKUR)
JUDGE

May 26, 2023
Pankaj*

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