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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21672-2014 (O/M)

Date of decision : 25.09.2023

Jagdev Singh

..... Petitioner (s)

Versus

Presiding Officer, Industrial Tribunal, Patiala and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Gopal Singh Nahel, Advocate
for the petitioner (s).

Mr. G.S. Ghuman, Advocate
for respondents No. 2 to 5.

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HARSH BUNGER, J.

1. Petitioner (Jagdev Singh) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the impugned Award dated 09.09.2013 (Annexure P-3), passed by Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner regarding termination of his services, has been answered against him.

Petitioner further seeks a writ of mandamus for directing respondents No. 2 to 5-Punjab State Electricity Board (hereinafter referred as

'respondent-Management') to reinstate the petitioner and to grant all consequential benefits.

2. Briefly, the petitioner raised an individual industrial dispute regarding termination of his services. The said dispute was referred for adjudication to the Tribunal below. As per the claim of the petitioner, he had put in 25 years of continuous service under respondent-Management as workcharged and regular Assistant Lineman. The petitioner claimed that his services were wrongly, illegally and arbitrarily terminated on 29.10.2004 without any notice, chargesheet, enquiry or compensation, therefore, provision of Section 25-F of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') was not complied with and at the time of termination of his services, he was drawing Rs. 8,000/- per month. The petitioner also claimed that juniors to him had been retained in service and he has been victimized due to trade union activities. The petitioner further claimed that even fresh appointments had been made after his termination. With the aforesaid pleadings, the petitioner prayed for reinstatement in service and for grant of all other consequential benefits.

3. The aforesaid claim of the petitioner was contested by respondent-Management by taking certain preliminary objections regarding maintainability of the claim petition, jurisdiction as well as non-joinder/mis-joinder of necessary parties. On merits, respondent-Management stated that the petitioner served respondent-Management by producing bogus certificate for the period from 4/1980 to 3/1981 and 8/1981 to 6/1982; which was later on proved upon holding an enquiry by Senior XEN of Division Nabha, vide

his order dated 23.12.2003 by stating that the petitioner (Jagdev Singh) had never worked for the abovesaid periods. It is the stand of respondent-Management that services of the petitioner were terminated after holding fair and just enquiry into the allegations levelled against him with regard to procuring and producing bogus service certificate. It was further stated by respondent-Management that the petitioner had challenged his dismissal order before Hon'ble Punjab and Haryana High Court through CWP-6235-2004, which came to be decided on 27.08.2004 and thereafter, the petitioner filed an appeal before the appellate authority i.e. Chief Engineer (South), PSEB, Patiala, which was also dismissed, vide order dated 29.01.2004.. The other allegations/averments of the petitioner were denied by respondent-Management. Accordingly, prayer for dismissal of the reference was made.

4. From the pleadings of the parties, following issues were framed:-

“1. Whether services of the workman were terminated illegally by the respondent ? OPW

(2) Whether the reference is not maintainable ? OPM

(3) Relief.”

5. In support of its case, the petitioner examined himself as WW1 and other other hand, the Management examined one Darshan Singh, Divisional Superintendent of department as MW1, who tendered his affidavit Ex. M1 alongwith documents Ex. M2 to Ex. M4. The Management further examined one Surjeet Singh, Divisional Accountant of the department as MW2, who tendered his affidavit Ex. M5 alongwith documents Ex. M6 to

Ex. M11.

6. Upon considering the material/evidence available on record, the Tribunal below, vide impugned award, rejected the claim of the petitioner.

7. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court.

8. Learned counsel for petitioner submits that the Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is submitted that in similar circumstances, one Shri Harpal Singh son of Nazar Singh, who was also dismissed from service, vide office order dated 23.12.2003, had raised an industrial dispute regarding his termination, which was decided in his favour by directing reinstatement with continuity of service with 50% back wages, vide award dated 24.10.2013 (Annexure P-4). It is submitted that the said award has been upheld by this Court, vide order dated 27.11.2014 passed in CWP-8945-2014, however, an intra-court appeal (LPA-604-2015) is stated to be pending. Learned counsel for petitioner submits that the petitioner had been working with respondent-Management from 1977 and there had been no adverse entry to his knowledge. It is submitted that the enquiry was conducted against him in a slip shod manner as he was neither provided with the list of witnesses nor any witnesses were produced and he was also denied the right to cross examine the witnesses. It is submitted that even the copy of the alleged complaint made against the petitioner was not supplied to him nor any show cause notice was issued to the petitioner for proposed punishment. It is also submitted that the petitioner was not supplied legible copy of enquiry report, therefore, the

entire proceedings were vitiated and the order of dismissal from service has been passed without application of mind. It is contended that the services of the petitioner have been terminated in violation of Section 25-F of 1947 Act as he had completed more than 240 days in a calendar year. It is next submitted that before passing the order of termination, the authorities have not considered the length of service of the petitioner. With the aforesaid submissions, learned counsel for the petitioner prayed for quashing of the impugned award and for directing reinstatement of the petitioner alongwith other consequential benefits.

9. Per contra, learned counsel for respondent-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed a well reasoned and justified award, which does not call for any interference by this Court. It is submitted that the petitioner had duly participated in the enquiry proceedings, which is clear from the enquiry report Ex. M4. It is stated that during the enquiry proceedings, the petitioner had produced an office order dated 09.09.2002 indicating that the petitioner had worked as workcharged T-Mate employee from April 1980 to May 1981 and from August 1981 to June 1982, however, upon verification, the said letter was found to be false. It is submitted that a specific notice dated 23.12.2003 was sent to the petitioner regarding the proposed termination of services, however, the said notice was received back unserved whereupon notice was duly published in the newspaper 'The Tribune' dated 23.07.2004, calling upon him to show cause, however, the petitioner failed to appear and consequently, the petitioner was terminated from service.

It is next submitted that the petitioner had forged experience certificate for the purpose of getting promotion and had also forged the verification letter, which was submitted to the enquiry officer, therefore, the petitioner has been rightly terminated from service and nothing illegal was found by the Tribunal below as regards termination of service of petitioner. Accordingly, prayer for dismissal of writ petition has been made.

10. I have heard learned counsel for parties and have also perused the paperbook with their able assistance.

11. In the instant case, the Tribunal below has returned the following findings :-

“16. Workman when subject to cross examination admitted that enquiry was initiated against him regarding production of bogus certificate. He admitted as correct that he appeared before the Enquiry Officer. His appearance before the Enquiry Officer is further fortified from the proceedings Ex. M3 as discussed above.

17. Enquiry Officer in his report Ex. M4 submitted that service book of the workman was sent to Sub Division, Phagwara for verification of his service, but report was received that he had not worked there. During the enquiry proceedings Jagdev Singh produced before Enquiry Officer letter No. 9843 cit. 09.09.2002, in which it was stated that Jagdev Singh worked as work-charged T.Mate from April 1980 to March 1981 and when this letter was sent for verification, the same was found false and Enquiry Officer gave his categorical findings that

concerned official in order to save his service, got the forged letter issued.

Thus workman not only submitted forged certificate for the purpose of getting his promotion from work-charged employee to A.L.M., but also submitted false letter to the Enquiry Officer.

18. Enquiry Officer came to the categorical finding that service of Jagdev Singh at Sub Division, Phagwara and Sub Division Nathana is forged. Notice Ex. M6/1 dt. 23-12-2003 regarding proposed termination of services was sent to him, but could be delivered personally and was received back unserved. Thereafter, he was serviced notice through publication in the news paper The Tribune dt. 23.07.2004 asking him to explain his side of story failing which it shall be presumed that he has nothing to say. Even after the services of notice through publication in the newspaper Ex. M8 dt. 23.07.2004, he failed to appear, as a result of which his services were terminated. Workman filed C.W.P. No. 6235 of 2004, which was got withdrawn vide Ex. M10 on the plea that remedy of statutory appeal is available to the petitioner.

19. His appeal was dismissed vide Ex. M11. During the course of evidence, workman has also concealed the fact that enquiry was initiated against him. He also concealed the fact regarding filing C.W.P. against the respondent in Hon'ble Punjab and Haryana High Court and its subsequent withdrawal by him. Had he got his promotion due to submission of genuine experience certificate, he was at liberty to

get his previous service verified and submit the concerned record during the proceedings of this case also, but same has not been done by him. This also reveals that he is not an honest employee. He forged experience certificate for the purpose of getting promotion. He also forged verification letter, which was submitted to the Enquiry Officer and he concealed true facts from this Court also and for this reason, the prayer of AR of the workman that he be reinstated in service at the point where he was before getting his promotion is declined as he is not fit to be employed in public utility service, which respondent management is carrying on.

20. Thus, in view of the above discussion, it is held that termination of services of the workman is not illegal and is justified. However, as the workman raised industrial dispute by way of filing demand notice and after failure of conciliation proceedings, the dispute was referred to this court by the appropriate Government for adjudication, the reference is maintainable. Accordingly, issues No. 1 is answered against the workman and in favour of respondents and issues No. 2 is answered against the respondents and in favour of workman.

RELIEF

21. In the light of my finding regarding above noted issues, this reference is hereby answered against the workman to the extent that termination of services of the workman is legal and justified. Parties to the reference are directed to bear their own costs, as the reference pertains to the year 2006.

File be consigned to the record room.”

A perusal of above extracted findings returned by the Tribunal would indicate that the petitioner had participated in the enquiry proceedings. The said was duly admitted by petitioner in his cross examination before the Tribunal below. As per the enquiry report (Ex. M4), it has been stated that service book of the petitioner was sent to Sub Division Phagwara for verification of his service, however, the report was received that he had not worked there. It has come on record that during the enquiry proceedings, the petitioner produced before the Enquiry Officer a letter dated 09.09.2002 wherein it was stated that the petitioner worked as workcharged T-Mate from April, 1980 to March, 1981, however, when the said letter was sent for verification, the same was found false. Accordingly, it was stated that the workman not only submitted forged experience certificate for the purpose of getting his promotion from workcharged employee to Assistant Lineman, but had also submitted false letter to the Enquiry Officer. It is further evident that notice dated 23.12.2003 regarding proposed punishment was sent to the petitioner, which was received back unserved, however, subsequently, the notice was published in the newspaper 'The Tribune' dated 23.07.2004. Despite publication of notice, the petitioner failed to respond to the same and consequently, the petitioner was terminated from services. Even an appeal filed by the petitioner against the said termination order was dismissed, vide Ex. M11.

12. Contours of the scope of interference by High Court in disciplinary proceedings are well settled. In ***Union of India v. P.***

Gunasekaran, 2015 (1) S.C.T. 5, Hon'ble Supreme Court held as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a) the enquiry is held by a competent authority;*
- b) the enquiry is held according to the procedure prescribed in that behalf;*
- c) there is violation of the principles of natural justice in conducting the proceedings;*
- d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i) the finding of fact is based on no evidence. Under*

Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.*

xxx xxx xxx

18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court...”

13. When the findings returned by the Tribunal below are considered in the light of legal position indicated above, it is observed that learned counsel for petitioner has failed to point out any procedural irregularity or

illegality in the departmental proceedings. The only submission raised by learned counsel for the petitioner was that legible copy of the enquiry report was not served upon him. Infact, the said contention clearly reflects that the enquiry report was provided to the petitioner, however, in case, he found that the said enquiry report was not legible, he could have moved necessary application for seeking legible copy thereof before the authority concerned, however, no effort on behalf of the petitioner is forthcoming. It is evident that the petitioner was very well aware of the proceedings being initiated against him and he failed to respond to notice regarding proposed punishment, which was duly published in the newspaper and consequently, the order of termination was passed. An appeal filed against termination order was also dismissed. In view of the above, it is held that the enquiry proceedings conducted against petitioner were fair and proper.

14. The other contention of learned counsel for the petitioner is that in similar circumstances, enquiry proceedings were initiated against co-employee, namely, Harpal Singh, who was also terminated from service and upon his raising an industrial dispute, the matter was referred for adjudication to the Tribunal below, which had allowed the claim of Harpal Singh by directing his reinstatement in service with 50% back wages. In this regard, the petitioner has attached copy of award dated 24.10.2013 passed in the case of Harpal Singh.

15. I have gone through the copy of the award dated 24.10.2013 (Annexure P-4) passed in the case of Harpal Singh, however, in my considered view, the said case is distinguishable on facts. In the case of

Harpal Singh, it was found that no document regarding bogus certificate was produced by the department nor any of the management witness stated that the said workman (Harpal Singh) was not working as workcharged employee for the relevant period. Even no effort was made to call for the record from the concerned division at Bathinda where the records were said to be available. Accordingly, it was stated that non-availability of the service book of the employee of workcharged period cannot vanish his period of service.

16. On the other hand, in the instant case, as per the enquiry report (Ex. M4), the service book of the petitioner (Jagdev Singh) was sent to Sub Division Phagwara for verification of his service, but a report was received that he had not worked there. Rather, during the enquiry proceedings, the petitioner produced before the enquiry officer a letter No. 9843 dated 09.09.2002, indicating that the petitioner worked as workcharged T-Mate from April, 1980 to May, 1981 and when the said letter was sent for verification, the same was found false. Therefore, in my considered view, the petitioner cannot claim any benefit on the basis of his submission that as regards the case of his co-employee (Harpal Singh), his termination was found to be bad whereas the termination of the petitioner has been upheld.

17. Considering the totality of circumstances in the light of legal position indicated above, there is no scope for interference in the impugned award dated 09.09.2013 (Annexure P-3). Resultantly, the instant civil writ petition fails and the same is dismissed.

18. All pending application/s, if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

25.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No