

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

CWP-25500-2014 (O&M)
Date of decision : 05.10.2023

MAHIPAL (SINCE DECEASED) THROUGH HIS LRS.

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. David Sardana, Advocate
for respondent No.3.

HARSH BUNGER, J.

1. Petitioner [Mahipal (since deceased)] (here-in-after referred to as 'the workman') had filed the instant writ petition, seeking a writ in the nature of *certiorari* for setting aside the Award dated 15.05.2009 (Annexure P-6) passed by the learned Industrial Tribunal-cum-Labour Court-III, Faridabad (here-in-after referred to as 'the Tribunal'); whereby the reference of industrial dispute raised by the petitioner regarding termination of his services; has been answered against him.

Further prayer was made for quashing of the Enquiry Report dated 27.03.1996 (Annexure P-3) as well as order dated 14.02.1997 (Annexure P-4) passed by the Director, Higher Education (respondent No.2); whereby he agreed with the proposal of the Management of respondent No.3-College for termination of services of the workman.

Another prayer was made for quashing of letter dated

26.02.1997 (Annexure P-5); whereby services of workman were terminated, along with prayer for directing respondent No.3-College to reinstate the workman into service and to grant other consequential benefits.

2. Briefly, the workman raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. As per the claim statement, the workman claimed that he was working with respondent No.3-College as a Sweeper since 29.08.1985 and his service record had remained satisfactory. The workman claimed that he became a member of the Union and on account thereof, respondent No.3-College was finding opportunity to suspend him. The workman stated that on 27.03.1996, a charge-sheet was served upon him on the basis of false charges, which was replied by him and without considering the said reply, a domestic enquiry was initiated against him. Sh. O.P. Ahuja, Advocate was appointed as an Enquiry Officer to which he raised his objection; however, the said objection was rejected by the Management and he was compelled to join the enquiry proceedings. The workman claimed that the enquiry was not conducted in a legal manner by the Enquiry Officer and he twisted the proceedings as per his own wish. A Show Cause Notice dated 13.06.1996 was served upon the workman, to which, he submitted his reply on 16.06.1996; however without considering the same, respondent No.3-College sought approval from the Director, Higher Education, Haryana vide its letter dated 21.06.1996 for termination of his services, which was accorded by the Director and thereafter, the services of workman were terminated on 14.06.1997 by the Management of the respondent-College. Workman claimed that before terminating his services,

the provisions of the Industrial Disputes Act had not been complied with; accordingly, he prayed for re-instatement in service along with continuity thereof and back wages.

3. The afore-said claim of the workman was contested by respondent No.3-College; wherein it was stated that the workman was appointed as a Sweeper on temporary basis on 01.09.1985; however, his conduct was not satisfactory. It was the stand of the respondent-College that the workman had been given warnings and had been charge-sheeted many times for committing misconduct and ultimately, a charge sheet dated 27.03.1996 had been issued upon him and thereafter, Sh. O.P. Ahuja, Advocate was appointed as an Enquiry Officer and the workman had fully participated in the enquiry proceedings and he was given full opportunity to cross-examine the witnesses by the Management and also to produce his defence. A Show Cause Notice along with a copy of the enquiry report was served upon the workman and after following due process and procedure, services of the workman were legally terminated on 26.02.1997. The other allegations levelled by the workman were denied and prayer was made for dismissal of the claim petition.

4. A re-joinder was filed by the workman to the written statement filed by the Management.

5. On the basis of the pleadings of the parties, the following issues were framed :-

- “1. Whether the domestic enquiry resulting into the termination of services of the claimant is legal, fair and proper ?*
- 2. As per reference.*
- 3. Relief.*

6. In order to prove his case/claim, the workman examined himself as WW1 and relied upon the following documentary evidence :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
<i>1</i>	<i>MX1</i>	<i>Reply to charge sheet.</i>
<i>2</i>	<i>W1 to W10</i>	<i>Copies of letter written by the petitioner/workman to the enquiry officer as well as respondent during enquiry proceedings.</i>
<i>3</i>	<i>W11 and W12</i>	<i>Postal receipt.</i>
<i>4</i>	<i>W13 to W15</i>	<i>Acknowledgment dues.</i>

7. On the other hand, respondent No.3-College has examined Sh. O.P. Ahuja, Enquiry Officer as MW1 and has also adduced following documentary evidence :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
<i>1</i>	<i>M1</i>	<i>Copy of letter dated 29.03.1996 vide which he had been appointed as enquiry officer.</i>
<i>2</i>	<i>M2</i>	<i>Copy of charge sheet dated 27.03.1996.</i>
<i>3</i>	<i>M3</i>	<i>Copies of enquiry proceedings containing 20 pages.</i>
<i>4</i>	<i>M4</i>	<i>Copy of enquiry report.</i>

8. It appears that Issue No.1 was treated as a preliminary issue and the same came to be decided by the learned Tribunal below vide its order dated 07.11.2008 by holding that the enquiry conducted against the workman was fair and proper.

9. Thereafter, the Tribunal below, vide impugned Award dated 15.05.2009 (Annexure P-6) answered the reference against the workman.

10. In the afore-mentioned circumstances, the workman has filed the instant writ petition before this Court. It appears that during pendency

of these proceedings, the workman expired on 26.07.2015 and his legal representatives were brought on record.

11. Learned counsel for the petitioner (workman through his LRs) submits that the learned Tribunal below has erred in law and facts in rejecting the claim. It is submitted that the learned Tribunal below has wrongly held that the domestic enquiry was just, fair and proper. It is submitted that the Enquiry Officer-Sh. O.P. Ahuja, was the legal representative of respondent No.3-College and in that regard, the workman raised an objection; however, his objection was rejected and the workman was compelled to participate in the enquiry proceedings; therefore, the enquiry proceedings were biased. Learned counsel further submits that the workman was not provided adequate opportunity to defend his case; therefore, the enquiry report was *per se* bad and is also not based on the evidence available on the record. Learned counsel next submits that the primary charge against the workman was that he did not drain out the rain water collected on the roof of the Geography Department on 16.01.1996 and therefore, disobeyed the lawful orders issued by the superiors. In this regard, it is contended by learned counsel for the petitioner that the response of the workman to the afore-said charge has not been considered by the Enquiry Officer; wherein he had stated that since the water was leaking from the naked wires and he apprehended electric current therein and on account of that reason, he did not drain out the water from the ceiling. It was submitted that the termination of services of the workman was nothing but an act motivated by vendetta by respondent No.3-College as the workman had become a Member of the Employees' Union. It is

submitted that even otherwise, the punishment awarded to the workman is disproportionate to the charge of misconduct against him.

With the afore-said submissions, learned counsel for the petitioner has submitted that the impugned order/letter/Award be set aside and necessary relief be granted.

12. Per contra, learned counsel appearing for respondent No.3-College opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has considered the evidence/material available on the record and has passed a well-reasoned and justified award. It is submitted that the enquiry proceedings have been conducted after following the principles of natural justice and affording due opportunity of hearing to the workman and the workman had duly participated in the enquiry proceedings. It is submitted that the learned Tribunal below has also returned a finding that the enquiry proceedings were fair and proper. Therefore, it is contended that once there is no illegality or perversity in the enquiry proceedings, then the awarding of punishment falls within the domain of the Management and no interference is required to be made in the same. It is submitted that the workman had committed the acts of insubordination and considering the totality of circumstances, the workman was rightly awarded the punishment of dismissal from service. Accordingly, the prayer for dismissal of the writ petition has been made.

13. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

14. 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.*

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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... ”

15. After considering the material/evidence available on the record, the learned Tribunal below vide impugned Award dated 15.05.2009 (Annexure P-6), answered the reference against the workman by holding as under :-

14. A perusal of record reveals that to prove the charges levelled against the claimant, the respondent had examined before the enquiry officer MWI Shri Anand Singh, Principal of the respondent school who deposed that on 31.8.1995, the Head clerk Shri Ashok Mangla had asked the claimant to drain out the water from room No. 6 but the claimant did not listen to him and ultimately he had been given order in writing to drain out the water and only then he drained it out. Then on 16.1.1996, Shri Ashok Mangla had asked him to drain out the same water which had

collected on the roof of geography department due to falling of rain but the claimant did not drain it out saying that he did not have the bamboo broom. On 17.1.1996, also he was called upon to drain out the water but he straight away refused to drain out the water by taking a plea that he could get electric current. This witness produced on record Ex. MI copy of complaint and further stated that in March 1992, the claimant had committed such act and had asked for forgiving him by submitting Ex. M3. This witness was cross-examined at length by the workman himself. The management had then examined MW2 Shri Ashok Mangla, head clerk who corroborated the version of MW1 before the enquiry officer and he too was also cross examined by the workman. The respondent had then examined MW3 Shri Hans Raj, Sweeper before the enquiry officer who deposed that he had drained out the water from the room of geography department on 16.1.1996. The charges levelled against the workman had been proved during the enquiry. As per the report of enquiry officer, the charges levelled against the claimant that he had refused to drain out the water collected on the roof of geography department on 17.1.1996 and had given lame excuses as well as the charges that he had refused to drain out the water on 31.8.1995 had been fully proved. In view of the report of the finding officer, the case of act of insubordination by the workman are proved. No doubt, the court has discretionary power under section 11-A on the point of quantum of punishment and if it is established that quantum of punishment awarded to the workman is disproportionate to the proved misconduct then this court is competent to set aside the punishment. It is to be appreciated as to whether the punishment awarded by the management is proportionate with the proved

misconduct or not. In **Jarnail Singh's case (supra)**, it was held by our own Hon'ble High Court that labour court will not exercise its power under section 11-A of the Act modifying the dismissal when the misconduct against the claimant has been proved in the enquiry. In **T. Sundara's case (supra)** it was held that the right of the management imposing punishment is inherent with employer and the industrial law only calls upon him to justify the same. It was held that by means of section 11-A, the Tribunal is given power to examine the propriety of it. In **General Secretary, South India Cashew Factories Workers' Union versus the Managing Director, Kerla State Cooperative Development Corporation Limited and others 2000 LLR 657**, it was held that if the enquiry is fair and proper, then in the absence of any allegation of victimization or any unfair labour practice, the labour court has no right to interfere with the punishment. In **Chairman and Managing Director, Bharat Petroleum Corporation Limited's case (supra)** it was held that imposing of punishment on an employee is the function of the employer and interference with the quantum of punishment should not be open as a matter of right unless there are justifiable and supporting reasons therefor. In **Mahendra and Mahendra's case (supra)** it was held that labour court cannot by way of sympathy alone exercise the power and reduce the punishment as imposed by an employer upon a workman. In **Managing Director, Balasaheb Desai Sahakari S.K. Limited's case (supra)** it was held that labour court ordinarily should not interfere with the discretion exercised by the employer unless the same is found to be inconsistent with the provisions of a statute or otherwise perverse or unjust.

15. Applying the ratio of law as laid down in the above cited authorities to the facts and circumstances of the present case, it is proved from the evidence placed on record as well as from the report of enquiry officer that the workman had committed the acts of insubordination. In **Management of Asia Tobacco Company Limited's case (supra)** punishment had been modified as there was no previous record of misconduct against the workman and because the management had failed to issue a notice to him on the proposed punishment. However in the present case, the notice of proposed punishment had been issued upon the workman and hence the above cited authority is not applicable to the facts and circumstances of the present case and is distinguishable. In **Punjab Agro Industries Corporation Limited's case (supra)** the act of insubordination was not found to be malicious and willful and therefore punishment of dismissal was substituted with reinstatement alongwith 50% back wages. However, in this case it is not proved by the workman that his act was not malicious and willful. Therefore this authority is also distinguishable. In **Management, Aurofood Private Limited's case (supra)** it was observed that the allegations were trivial and could not justify an order of dismissal from service. Then instead of reinstatement, compensation was awarded. In Roop Singh Negi's case (supra) the workman had been dismissed from service for misconduct of committing theft and embezzlement. He was discharged in criminal case. The inferences drawn by disciplinary enquiry were not supported by any evidence and therefore order of dismissal from service was not held to be sustainable. However, in the present case, the act of insubordination by the workman has been fully proved. The enquiry conducted against the

workman was fair and proper. It is not proved that the respondent committed any act of victimization or any unfair labour practice therefore this court has no right to interfere with the punishment and with these observations I have no hesitation to reach to the conclusion that this court cannot interfere on the point of punishment awarded to the delinquent by the employer the same being proportionate to the proved misconduct of the claimant and his dismissal from service is a proper punishment and not on excessive side. The punishment awarded to him was not disproportionate to the misconduct committed by him. Hence he is not held entitled to any relief. With these observations, this issue is decided against the workman and in favour of respondent.”

A perusal of above extracted findings would show that the act of insubordination by the workman was proved on record and the enquiry conducted against workman was held to be fair and proper and workman failed to show that respondent-Management had committed any act of victimization or any unfair Labour practice.

16. When the case in hand is considered on the anvil of legal position indicated above, no fault can be found with the findings returned by the Tribunal below.

17. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts

illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or

Tribunal or the quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of certiorari *Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477; Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61; Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976; R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507 and Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.*

18. No other point has been urged.
19. Considering the totality of circumstances in the light of legal principles stated above, there is no scope for any interference in the impugned Award dated 15.05.2009 (Annexure P-6) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad; resultantly the instant writ petition fails and the same is accordingly dismissed.
20. All pending application/s, if any, shall also stand closed.

October 5th, 2023
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(HARSH BUNGER)
JUDGE