215 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-123-CWP-2020 in/and
CWP-8896-2012
Date of decision : 26.05.2023

Parshotam Lal **...Petitioner**

Vs.

Presiding Officer Labour Court Ambala and others **...Respondents**

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. D.S.Matya, Advocate for petitioner.
Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

***

MANOJ BAJAJ, J.

CM-123-CWP-2020

This application has been filed for early hearing of the main petition, which was admitted vide order 19.08.2019.

For the reasons mentioned in the application, same is allowed and the date of hearing of the main petition is pre-poned to today.

Main case

By means of this writ petition filed under Article 226 Constitution of India petitioner has prayed for issuance of a writ in the nature of certiorari for quashing of the impugned award dated 04.10.2011 (Annexure P-6) passed by Industrial Tribunal, whereby industrial dispute raised by petitioner through Reference No.54-2009 was decided against him.

Learned counsel has submitted that the petitioner had joined Haryana Roadways as Conductor and he performed his duties sincerely, but when he was posted at Sub Depot Panchkula, a false and frivolous case bearing FIR No.143 dated 05.04.1999 under Section 409 Indian Penal Code, 1860 was

VANITA
2023.05.30 16:52
I attest to the accuracy and
authenticity of this
order/judgement.

registered against him. According to the learned counsel, simultaneously the petitioner was subjected to the departmental proceedings, wherein the extreme punishment of dismissal from service was imposed upon him vide order dated 15.06.2000. He submits that the petitioner availed the remedy of statutory appeal against order dated 15.06.2000, however, the appeal was also dismissed on 01.03.2005. Mr. Matya, learned counsel for the petitioner has argued that thereafter the petitioner raised industrial dispute through demand notice dated 05.05.2008 (Annexure P-2) and the parties were sent before the Labour Court and vide impugned award dated 04.10.2011 (Annexure P-6), the claim of the petitioner has been declined.

Learned counsel has argued that the petitioner was never posted as a Cashier at Bus Stand Panchkula, therefore, the whole case of the management alleging embezzlement of Rs.4,85,000/- is not believable and considering the evidence in the criminal case, Additional Chief Judicial Magistrate Panchkula acquitted the petitioner from the criminal charges vide judgment dated 01.08.2007 (Annexure P-8). According to him, the Labour Court has failed to appreciate the facts and circumstances of the case properly, therefore, the interference is warranted by this Court in exercise of jurisdiction under Article 226 Constitution of India.

Notice of motion in the petition was issued on 11.05.2012 and in response, written statement dated 03.10.2012 on behalf of respondent Nos.2 and 3 was filed. As per the contents of the written statement, the workman admitted in writing on 04.02.1999 that he worked as Cashier and Rs.94,624/- was found deficient during surprise checking by officers and he in his statement agreed to reconcile the cash by 05.02.1999. As per the averments in

VANITA
2023.05.30 16:52
I attest to the accuracy and
authenticity of this
order/judgement.

the written statement, in another statement dated 15.02.1999, the petitioner admitted that approximately a sum of Rs.4.90 lacs is due against him and the details of various deposits total amounting to Rs.1,39,243/- have been given. As per the stand of the management, the inquiry proceedings were conducted in proper manner, but workman neither filed any reply to the charge sheet nor cross-examined the witnesses. Upon conclusion of the inquiry, opportunity of hearing was afforded to him and the punishing authority vide order dated 15.06.2000 dismissed him from service. Further, while denying other averments in the writ petition, it has been prayed that the writ petition be dismissed.

After hearing learned counsel, this Court finds that indeed the inquiry proceedings were carried against the petitioner, but he did not effectively participate in the same and as per the inquiry report, the charges against the petitioner-workman were proved, whereupon he was dismissed from service. After failure of his statutory appeal, the petitioner did not challenge the decision dated 01.03.2005 and preferred to invoke the Industrial Disputes Act, 1947. In the said proceedings as well, the Labour Court has examined the material on record carefully before deciding the issue No.1 against the petitioner by making following observations:-

> "*It would be seen that no reply to the chargesheet was given by the claimant, as is clearly mentioned in the enquiry report Ex. M7. The chargesheet clearly mentioned that he was working as Cashier at Bus Stand, Panchkula. The claimant did not file any reply meaning thereby that he admitted the charges. Also it was mentioned in the enquiry report that he was called many times to put in his defence but he did not bother to make even his own statement. He also did not cross-examine Manohar Lal, Cashier who had appeared on behalf of the department. During inquiry, he would either not appear or would appear late for delaying the enquiry proceedings. All this gives rise to a presumption that the claimant had no defence to offer.*

VANITA
2023.05.30 16:52
I attest to the accuracy and
authenticity of this
order/judgement.

> *8. He had written letters to the department that he would be depositing the amount found short. The authorized representative for the claimant argued that those letters were not proved properly as those were not put to the claimant in the cross-examination. Even if those letters are ignored the claimant gets no benefit as it has already been held above that he made implied admission of the charges and evidence during enquiry, as he remained silent. There is nothing to show that the enquiry was not conducted as per rules and procedure prescribed and/or the Enquiry Officer misconduct himself. This court is not sit as a court of appeal qua the enquiry report but it is only to be seen whether it was fair and proper.*
>
> *9.The Enquiry Officer mentioned that despite chargesheet having been delivered at the claimant's address he did not file any reply and also during proceedings he did not offer any defence and resorted to himself improper conduct by either being absent or being late.*
>
> *10. The authorized representative for the claimant argued that the dates of depositing of money given by the witness of the management were not correct because during those days the claimant was either ill or not on duty. This aspect cannot be given magnified importance because it has already become clear from the evidence discussed above that the claimant admitted his fault, by depositing part of the amount, by not replying to the chargesheet and by not properly setting up any defence. Since he did not object to any such thing, he admitted that he was given the duty of Cashier and that there was misappropriation of funds."*

A reading of the above would show that the findings returned by the Labour Court on material issues are based upon proper appreciation of the evidence on record and do not call for any interference.

Resultantly, finding no merit in this writ petition, this Court is not inclined to exercise the extraordinary writ jurisdiction under Article 226 Constitution of India.

Dismissed.

(MANOJ BAJAJ)
JUDGE

26.05.2023

vanita

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No

VANITA
2023.05.30 16:52
I attest to the accuracy and
authenticity of this
order/judgement.