

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-13279-2014 (O/M)
Date of decision : 03.10.2023

The Managing Director, PEPSU Road Transport Corporation, Patiala and
another Petitioners

Versus

Presiding Officer, Industrial Tribunal, Patiala and another Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Anil Kumar Sharma, Advocate
for the petitioners.

Mr. M.L. Saggar, Senior Advocate with
Mr. Armaan Saggar, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioners (PEPSU Road Transport Corporation) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the award dated 19.02.2013 (Annexure P-1), passed by the Industrial Tribunal, Patiala (hereinafter referred to as 'the Tribunal'), whereby the reference has been answered in favour of Late Shri Piara Singh (husband of respondent No. 2-Baljit Kaur) by setting aside the termination order and reducing the punishment to that of stoppage of three annual increments with cumulative effect from the date of termination i.e. 09.07.1999. It is apposite to state here that respondent No. 2-Baljit Kaur also expired during pendency of this

writ petition and her legal heirs were brought on record of this case.

2. Briefly, Piara Singh (deceased-workman) through the Trade Union Council, Patiala, raised an industrial dispute by serving demand notice dated 23.07.2000, which was subsequently referred for adjudication to the Labour Court, Patiala. Thereafter, Piara Singh filed his claim statement, however, during the pendency of the reference, Piara Singh expired and his wife (Baljit Kaur) was impleaded as his legal heir and thereafter, an amended statement of claim was filed on 19.09.2008, wherein it was claimed that Piara Singh worked with PEPSU Road Transport Corporation (hereinafter referred to as 'petitioner-Corporation') as a Driver No. 516 from 17.09.1970 to 23.07.1999 when his services were terminated on 24.07.1999 illegally, without any notice, charge sheet, inquiry or compensation. It was claimed that at the time of termination of his services, workman (Piara Singh) was drawing Rs. 9,000/- per month. It was also claimed that the workman (Piara Singh) remained unemployed and juniors/new persons were still working. Accordingly, prayer was made for reinstatement of workman (Piara Singh) with continuity of service and full back wages.

3. The aforesaid claim/amended claim was contested by petitioner-Corporation herein on the plea that the reference was bad in the eye of law on account of delay and laches as the services of workman (Piara Singh) were terminated in the year 1999 and during all these years, the workman (Piara Singh) did not bother to take appropriate steps qua his termination and now, his legal heir cannot take benefit of wrong done by

workman (Piara Singh).

On merit, the petitioner-Corporation herein admitted that the workman (Piara Singh) was working as a driver and his services were terminated on 09.07.1999 after holding a fair and proper inquiry in accordance with procedure as laid down in Conditions of Appointment and Service Regulations, 1981 of respondent-Corporation, by which the services of the workman (Piara Singh) were governed. It was the stand of the petitioner-Corporation before the Tribunal below that on receipt of report of pilferage of diesel of bus No. 7372, the workman (Piara Singh) was placed under suspension, vide order dated 25.09.1996 and subsequently, he was charge sheeted, vide memo dated 09.10.1996 for the charges of stealing 100 liters of diesel worth Rs. 890/- from bus No. PJG-7372, misconduct and acts subversive of official discipline. It was claimed that subsequently, another chargesheet dated 22.04.1997 in place of above charge sheet dated 09.10.1996 on the same allegations and charges, was issued to workman (Piara Singh), to which he never replied. It was submitted that after holding an inquiry, the services of workman (Piara Singh) were terminated, vide order dated 09.07.1999. It was stated that the workman (Piara Singh) challenged the aforesaid termination order by filing an appeal before the Chairman of the Corporation, however, the said appeal was rejected, vide order dated 11.05.2000. Accordingly, it was claimed that the action of respondent-Corporation was legal, bonafide and justified and in accordance with the rules and regulations of petitioner-Corporation.

It was pleaded that in case, Tribunal came to the conclusion that the inquiry is not fair and proper, in that event, opportunity to justify the action be afforded to petitioner-Corporation. It was claimed that till his death, workman (Piara Singh) remained gainfully employed after termination of his services from the petitioner-Corporation. All other averments of statement of claim denied being wrong and accordingly, the prayer for dismissal of the the claim statement was made.

4 On 02.03.2005, issues were framed and the respective parties led their evidence.

5. After considering the case of respective parties and also the evidence and documents placed on record, the Tribunal below came to the conclusion that the termination order was disproportionate to the misconduct and also considering the fact that the workman (Piara Singh) had since expired, accordingly, the Tribunal below came to the conclusion that it was a fit case for awarding lesser punishment in lieu of termination of workman under Section 11-A of Industrial Disputes Act, 1947 and consequently, the Tribunal below ordered that the termination order dated 09.07.1999 is reduced to stoppage of three annual increments with cumulative effect from the date of termination i.e. 09.07.1999. Further, a direction was issued that the legal heirs of workman (Piara Singh) shall be entitled to all service benefits as per rules and petitioner-Corporation was further directed to pay the legal dues including pensionary benefits to the legal heirs of workman (Piara Singh) with stoppage of three annual increments with cumulative effect from 09.07.1999.

6. Being dis-satisfied with the aforesaid award, petitioner-Corporation has filed the instant writ petition before this Court.

7. Learned counsel for the petitioner-Corporation contends that the Tribunal below has erred in passing the impugned award dated 19.02.2013 (Annexure P-1), thereby setting aside the termination order of workman (Piara Singh) and converting the same into punishment of stoppage of three annual increments with cumulative effect from the date of termination i.e. 09.07.2009. It is contended that the Tribunal below has wrongly exercised its power under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') as the punishment imposed upon the workman (Piara Singh) was not shockingly disproportionate to the charges proved against him. It is contended that the petitioner-Corporation has lost confidence in the workman (Piara Singh), which was primary factor for terminating his services, however, the said factor has not been considered by the Tribunal below. It is submitted that the position held by the workman (driver) is one of faith and trust and a person guilty to breach of trust should be imposed punishment of removal from service only.

Learned counsel for the petitioner-Corporation also contends that the Tribunal below appears to have been swayed by the fact that since the amount defrauded by the workman (Piara Singh) was very less, whereas it was actually a matter of loss of confidence in the employee. It is accordingly submitted that the instant writ petition be allowed by setting aside the impugned award and restoring the punishment imposed upon the workman (Piara Singh).

8. On the other hand, learned senior counsel appearing for respondent No. 2 (Baljit Kaur through her legal heirs) submits that Piara Singh (workman) was working as a driver with petitioner-Corporation and he worked till 23.07.1999 when his services were illegally terminated. It is contended that at the time of inquiry, no documents were supplied to workman and he was not afforded any opportunity to examine petitioner-Corporation witness. It is submitted that the Tribunal below has passed a well reasoned award on the basis of evidence led by the respective parties before it and no interference is required to be made in the same. Accordingly, prayer has been made for dismissal of the instant writ petition.

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

10. As regards the ambit and scope of Section 11-A of 1947 Act is concerned, the same was considered by Hon'ble the Supreme Court in *Workmen of M/s Firestone Tyre and Rubber Co. of India P. Ltd. v. Management*, 1973 (1) SCC 813, and the following was observed :-

“38. Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh

indicating victimisation, Under Section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11A.”

Further, in *Jitendra Singh V. Vaidya Nath Ayurved Bhawan Ltd. (AIR 1984 Supreme Court 976)*, while examining the scope of Section 11-A, Hon’ble the Supreme Court observed :-

“Wide discretion is vested in the Tribunal under this provision and in a given case on the facts established, the Tribunal can vacate the order of dismissal or discharge and give suitable direction.

However, while awarding punishment to an employee for a proved misconduct the employer is required to take into consideration the relevant factors like length of service, gravity of misconduct alleged against the employee, the nature of service and the impact of delinquency of the employee on the nature. The employer cannot award a punishment arbitrarily. The Legislature has conferred wide discretion on the Labour Court and the Tribunal to interfere with the quantum of punishment awarded by the employer. In a given case, if after examination of the relevant factors the Labour Court or the Tribunal feels satisfied that the

penalty imposed by the employer is not commensurate with the act of misconduct or is unjust it can award a lesser punishment. Of course, for interfering with the quantum of punishment awarded by the employer the Tribunal has to record cogent reasons, while the employer cannot award penalty to the employee arbitrarily or whimsically. The Labour Court or the Tribunal cannot also interfere with the award of punishment without assigning cogent reasons.”

11. As regards the scope of interference by the High Court in the Award passed by the Labour Court/Tribunal in exercise of its power under Section 11-A of 1947 Act is concerned, in *Jitendra Singh V. Vaidya Nath Ayurved Bhawan Ltd.*, Hon’ble the Supreme Court observed :-

“Under Section 11-A, advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. But, the High Court under Article 227 of the Constitution does not enjoy such power, though as a Superior Court it is vested with the right of superintendence. The High Court is undisputably entitled to scrutinise – the orders of subordinate Tribunals with the well accepted limitations. In that case the Supreme Court interfered with the order of High Court which had in turn interfered with the award of the Labour Court.”

Further, in *Instrumentation Limited, Kota V. Rajasthan Pradesh hind Mazdoor Sabha and another* (arising out of Civil Writ Petition No. 225 of 1985, decided on 15.12.1992) 1993 (1) WLC 318; the Rajasthan High Court held as under :-

“42. When the Labour Court or the tribunal in exercise of its power under Section 11-A interferes with the award of punishment and the employer challenges the order of Labour Court or the Tribunal before the High Court in exercise of its jurisdiction under Articles 226 and 227 the High Court will always keep in mind the self-imposed legislations for interference in its certiorari jurisdiction. The High Court will not upset the award passed by the Labour Court or the Tribunal merely because on a re-appreciation of evidence available on record or reconsideration of the entire case it is possible for the High Court to come to a different conclusion or to form a different opinion. The High Court will have to give due regard to the legislative wisdom of conferring wide discretion on the Labour Court or the Tribunal by virtue of the provisions of section 11-A to interfere with the punishment awarded by the employer. The High Court will not interfere with the exercise of discretion conferred upon the Labour Court or the Tribunal unless the High Court comes to the conclusion that the award of the Labour Court or the Tribunal suffers from error of law apparent on the face of it. Notions of discipline differ from person to person and if the Legislature has thought it proper to confer an appellate jurisdiction on the Labour Court or the Tribunal, there is little justification for the High Court to usurp that jurisdiction and act as an appellate Court while considering the legality of award passed by the Labour Court or the Tribunal.”

12. In the instant case, the Tribunal below came to the conclusion that fair opportunity was given to workman (Piara Singh) and proper inquiry was conducted by the petitioner-Corporation. However, while considering the issue as to whether the termination of services was proper and justified, the Tribunal below has returned the following findings :-

“16. Perusal of the enquiry file Ex.M2 reveals that on 25.09.1996 Labh Singh, Inspector made report against Piara Singh regarding pouring out diesel from diesel tank of Bus No. 7372. He reported that on 24.06.1996, he was on Barnala-Sangrur checking duty when at 16.15, he alighted from bus at Budbar Bus Stand from the private bus, and noticed Bus No. 7372, which was standing on Tractor Workshop near Budhar Punjab Cloth House. When he reached near the bus, he noticed that one plastic pipe of 2nd diameter and 6 feet of length was fitted in the tank and its other end was fitted in a Plastic Can of 35 liters. Diesel was pouring out from the tank to the Plastic Can and Piara Singh Driver No. 516 was wiping his hands with the cloth, standing near the Plastic can and was noticing whether the Can is filled or not. He asked the driver, what was going on, he touched his knee and asked for forgiveness and said that in future he would not repeat that. He took in possession the pipe and diesel filled Plastic Can, the diesel of which was taken from the diesel tank of Bus No. 7372. He also enquired from Tarsem Singh, Conductor No. BL 20, who was also on duty. He told that he had gone to fetch

mechanic regarding break down of the bus, from the workshop and at about 20.00, Tarsem Singh Conductor No. BL 20 reached Budhbar. He reached Barnala Workshop through Truck along with the Plastic Can and plastic pipe at 21.10 and deposited the same with Gurmail Singh, Head Clerk. Bus No. PIG 7372 was taken to Barnala from Budbar by Gurmeet Singh Luhar and Piara Singh Driver where the diesel was filled in the bus from Workshop and the report was submitted, recommending strict action against Piara Singh Driver No. 516.

Perusal of the enquiry file Ex.M2 also reveals that on 26.09.1996 Jugraj Singh S.I, made report against Piara Singh to the extent that "It is brought to your notice that on 24.09.1996 Sh. Piara Singh Driver No. 516 performed duty on Bus No. PJG-7372 to Sangrur and the distance of which was 102 Kms. On 25.09.1996, when the diesel was filled in this Bus, it was 124 litters. Thus, 100 litters extra diesel was filled in this vehicle, the cost of which comes to Rs. 790/-. Before that on 14.09.1996, diesel was filled in this vehicle".

17. On the basis of report of Labh Singh, Piara Singh was suspended vide office order No. 1171 dated 25.09.1996 which is at, C.P. 29 of the enquiry file Ex.M2, notice of which was served upon the workman vide Endrst. No. 3149/Personnel of the same date. Thereafter, he was charged vide Memo No. 3492 dated 09.10.1996 for.

1. *Misconduct*

2. *On 24.09.1996 by stopping the bus at Budbar, sending the conductor for giving information to Barnala Workshop and stopping the bus no. PJG 7372 and taking 100 liters of diesel from the bus and causing loss of Rs. 790/- to the Corporation.*

3. *Breach of discipline*

While deciding issue no. 1, it has already been held that workman did not conduct any cross examination upon Labh Singh, Chief Inspector and Jugraj Singh and Tarsem Singh. The loss of diesel from the bus is also not disputed by Piara Singh when, his statement was recorded. He in his statement recorded on 27.06.1998, during the enquiry, which is at C.P. 96, took the plea that on 24.09.1996, he was on duty on Bus No. 7372. The breaks of the vehicle were not proper. He parked the vehicle at Budhar and sent the conductor to Barnala workshop for information. He was not well and took medicine. The vehicle was parked near the workshop of Tractor. Labh Singh Chief Inspector told him that diesel is being taken from his vehicle. When he reached there 35 litter can was already filled and plastic pipe was taken from the tank by Labh Singh. He has no role in the same. Thus, his statement reveals that he admitted the pilferage of 100 litter diesel from Bus No. PIG 7372, but he has shown ignorance as to who has committed the pilferage. The enquiry officer gave findings against the workman, because he did not conduct the cross examination upon the

management witnesses, inspite of opportunity given and came to the findings that he had taken out more diesel, also before the theft and found all the three charges proved against him. The management on the basis of enquiry report issued show cause notice No. 17851 dated 04.12.1998, which is at C.P. 83 of enquiry file, with copy of enquiry report proposing the penalty of dismissal from service. The workman submitted reply to the same. He was also afforded personal hearing and was heard in person on 29.04.1999, but was removed from service vide order no. 479 dated 09.07.1999. His appeal was also dismissed. His service record was considered before dismissal of service, which reveals that he was warned 5 times, censured 3 times, suspended 7 times, terminated 1 time, token recovery was made 4 times, but there is silver lining in the dark cloud of his career as he was also given appreciation report over the period of 29 years and considering the length of his service, which was 29 years as he joined as Driver on 17.09.1970 and was dismissed on 09.07.1999, the termination order was disproportionate to the misconduct. The appropriate order would have been recovery of the cost of 100 litter of diesel or along with stoppage of increments, but terminating the services of the employee, who had put in 29 years of service with the corporation, for causing loss of Rs. 790/- to the Corporation is disproportionate to the misconduct committed by him. Therefore, it is a fit case where considering the total length of service of the

workman and also considering that he is no more (since died) and his legal Heirs are facing hardships, it is a fit case for awarding lesser punishment in lieu of termination of the workman under Section 11A of I.D.A. 1947.”

13. I have considered the above extracted findings of the Tribunal and also the discretion exercised by it; however in the light of the legal position indicated above and also the peculiar facts of this case; I do not find any illegality in the discretion exercised by the Tribunal below by considering the long length of service of 29 years of Late Sh. Piara Singh and also noticing that the deceased employee was also given appreciation report over the period of 29 years.

14. In view of the foregoing discussion, finding no merit in the instant writ petition, the same is accordingly dismissed.

15. All pending applications, if any, shall stand closed.

(HARSH BUNGER)
JUDGE

03.10.2023
sjks

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