

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

CWP-1896-2022

Date of Decision: 07.02.2024

AGGARSAIN HOSPITAL

.... Petitioner

Versus

INDUSTRIAL TRIBUNAL, PATIALA THROUGH PRESIDING
OFFICER AND ANOTHER

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Vivek Salathia, Advocate for
Mr. Vikas Mehsempuri, Advocate for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. Petitioner/Management (Aggarsain Hospital), has filed the present writ petition for issuance of a writ in the nature of certiorari for quashing of award dated 06.10.2021 (Annexure P-3) passed by respondent No.1, in favour of respondent No.2-Pushpa Devi (workwoman), whereby she was ordered to be reinstated in service alongwith 50 % back wages.

2. Reference No.206/2016 has been answered in favour of the workwoman by holding that her termination from service is improper and unjustified and therefore, she is entitled for reinstatement.

Further, observed that in case the back wages are not paid within a period of 45 days from the publication of the award,

Management-Aggarsain Hospital shall be liable to pay the amount alongwith interest @ 6 % per annum till its realization.

3. Respondent No.2-Pushpa Devi served a demand notice dated 07.09.2015, and on the failure of conciliation proceedings, dispute was referred to Industrial Tribunal-cum-Labour Court, under Section 10 (1) (c) of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947') vide Endorsement No.1998 dated 01.07.2016.

4. Pleaded case of respondent No.2-workwoman is that she was appointed as '*Parchee clerk*' on 01.04.1985 and continued to work under the Management (petitioner herein) till 06.05.2015. After rendering about 30 years of service, suddenly, an unjust demand was raised by the Management asking workwoman to produce her matriculation certificate. However, workwoman failed to produce the original matriculation certificate, and thus, was shunted out from the service. Thereafter, workwoman raised an industrial dispute in which she challenged the enquiry proceedings by alleging that all such proceedings were conducted against the rules and in violation of the principles of natural justice, and thus, her order of termination is illegal.

5. On the other hand, petitioner-Management pleaded that the removal of Pushpa Devi-workwoman from service is genuine. As per rules, for appointment to the post of clerk (*parchee clerk*), minimum qualification of matriculation is required and workwoman

has failed to produce any such qualification certificate. Therefore, she has been rightly removed from the service after being subjected to the enquiry, conducted as per law.

6. While conducting the proceedings, learned Tribunal found that workwoman was appointed on 01.04.1985 and after a gap of about 28 years i.e. on 09.02.2013, she was directed to submit a copy of her matriculation certificate. While dealing with the requirement of matriculation certificate and direction by the Management for its production, onus was firstly upon the Management to prove that as per rules, requisite qualification for the post in question (*parchee clerk*) is matriculation.

Learned Tribunal also held that the Management failed in discharging its onus because no such rule or regulation was ever produced since the beginning or even during the course of enquiry that under what procedure of law such certificate can be asked after rendering of 28 years of service. Moreover, any such rule or inquiry existing anywhere for recruitment to the post in question has not been produced before the learned Tribunal.

7. Not only this, witness appearing on behalf of the Management as MW1 clearly admitted that he had not brought any record of the appointment letter or advertisement of the vacancy, when it occurred and the rules pertaining to the appointment at that time. Rather, he deposed that Management is not in possession of any

such record except the one already produced in the file and even, said witness was not aware of any such rule.

8. Accordingly, the evidence of the said witness was dealt with by the Tribunal and relevant part of the award is reproduced hereinbelow:

‘Admittedly, the claimant was appointed on 01-04-1985 and for the first time the claimant was directed to submit the copy of matriculation certificate on 09-02-2013 i.e. after a period of 28 years. The pre-requisite for the charge of non-production of matriculation certificate was the essential qualification which was required at the time of the appointment of the claimant. To sustain charge of non-production of matriculation certificate being necessary qualification for the post of Clerk at the time of appointment of the claimant, the onus was on the respondent management to prove during the enquiry the material showing that matriculation was the necessary qualification for the post of Parchi Clerk at the time when the claimant was appointed way back in year 1985, Neither during the enquiry proceedings the relevant rules regulations or the records have been produced with regard to the appointment of the claimant in year 1985 nor any endeavour was made to produce the same before this Tribunal. Rather MWI during his cross examination has deposed that "I have not brought the record of appointment letter and record advertisement vacancy and rules of pertaining to the appointment, the details of management, the details of persons who interviewed by the management. We are not in possession of any other record except the one already produce in this file. I do not know whether if any rules were framed when workwoman was appointed. Workwoman was appointed in the year 1994". MWI has further deposed that workwoman was chargesheeted and enquiry was held against the workwoman. There is no written rules with regard to awarding punishment to the worker in case of any irregularity or misconduct on his part. MWI has also deposed during cross examination that I do not know the name of the person of the management who appointed this worker and made selection and issued the appointment letter. I do not know who was the head of the management at that time, I do not know whether there was any rules regarding the educational qualification for any qualification was prescribed by the management while making recruitment at the time when the worker was

appointed in the hospital. Volunteered the minimum qualification of clerk is 10th pass. There are different qualifications for different posts. During cross examination above on 16-09-2019 MWI was directed to produce the list of prescribed qualification of different posts on the next date of hearing. On 08-11-2019 MWI has deposed during cross examination that We do not have record which I asked to produce on the last date of hearing i.e. List of prescribed qualifications for different posts volunteered stated that record is old and not traceable. We also do not have the record of new rules under which there is provision of qualification for the post of clerk is graduation or any other qualification etc. It is correct that enquiry was conducted and the record pertaining to the same is already attached with the Court file. On 08-11-2019 MWI has further deposed in cross examination that we came to know about the qualification of the workman-being non matric after going through the file. I cannot tell on which date the said file was seen by the Chairman. Personal of the the workman is not attached with the Court file. Volunteered the same is in the record. I can produce it on the next date of hearing if I be given some time. MWI has also deposed during cross examination that I do not know the date on which the rule regarding qualification of the clerk (parchi clerk) framed or not. Usually the qualification of the clerk i.e. Parchi Clerk is Matric. The qualification of clerk i.e. Parchi Clerk is matric in the Industry and Departments.'

9. Learned Tribunal also examined the validity of the enquiry which was rather shattered by the evidence led by the workwoman as Ex.W1/A to W1/E. Workwoman filed reply (Ex.W1/A) to one letter dated 21.02.2015, wherein she submitted that in response to the letter dated 04.02.2015, Management asked to submit a reply within a period of 7 days. Workwoman had requested for supply of the documents, but those documents were never supplied to her. Rather vide letter dated 13.02.2015, an enquiry was initiated against her by appointing an enquiry officer. Again, vide letter dated 21.02.2015, a request was made by the workwoman to supply the

documents, but on the same day, workwoman was informed that her request letter does not bear any date, therefore, such request is meaningless.

10. In regard to the manner of conducting of inquiry, the finding given by learned Tribunal is recorded in paragraph No.10 and 11 and the same is reproduced hereinbelow:

‘10. Procedurally since major penalty of termination has been imposed the enquiry was required to be conducted in strict adherence to the principles of natural justice. The show cause was required to be issued containing the substance of the imputations of misconduct/misbehavior with distinct in definite article of charges, a statement of imputation in support of each article of charge containing a statement of relevant of facts including any admission or confession made by the employee accompanied by a list of documents by which and a list of witness by which the article of charges were proposed to be sustained. Thereafter, the enquiry officer was required to deliver a copy of article of charge, statement of imputation of misconduct/misbehavior and a list of documents and witnesses by which or whom each article of charge was proposed to be sustained and was also required to give the claimant sufficient time for written defence. The claimant/workwoman thereafter, as per procedure was to be permitted to engage a legal practitioner or a person of her choice to defend him/her and to inspect or take extracts from the records pertaining the case for purpose of preparing the written statement, however, this has not been followed in the enquiry proceedings. As discussed above, no witness has been examined on behalf of the respondents in the enquiry, hence there was no opportunity with the claimant to cross examine the material in support of the charges rather strangely the letters in response to the show cause have been made the substantive basis for inflicting punishment At the time of

conclusion of enquiry the report ought to have contained the article of charges and statement of imputation of misconduct/misbehavior along with the material substantiating the same. Thereafter, the defence of the employee in respect of each article of charge and an assessment of evidence in respect of each article or charge with the finding on each article of charge and reasons thereof was required. But the same is totally absent in the enquiry.

The above is sufficient to bring in the enquiry proceedings within the ambit of being defective and invalid.'

11. It has also been pleaded in the preliminary submissions of the written statement that if this Court thinks that the enquiry was not fair and proper, then the opportunity be given to the respondent to produce the entire evidence before this Court. Such plea is not sustainable, Perusal of the respondent evidence reveals that despite of the repeated opportunities requisite relevant record i.e. records relating to the service of the claimant as well as rules and regulations prevailing at the time of appointment of the claimant were not produced. Such prayer in the pleadings is beyond the nature of the present enquiry proceedings. This Tribunal ought not to give specific findings firstly with regard to the enquiry, thereafter, is required to give opportunity to the respondent to produce evidence. The issues already framed are sufficient to bring within its ambit the validity and legality of the enquiry. As per record once the respondent witnesses were being challenged with regard to the validity of the enquiry proceedings and even specific suggestions have been put to the witnesses with regard to the validity of enquiry. In the pleadings of the claimant it has been pleaded that enquiry conducted was an eye wash and no procedure was adopted, no cross examination of witness was allowed to do, and the objections raised by the applicant in the enquiry proceedings were gone unheeded. The respondents were well within their right to prove before this Tribunal that enquiry conducted by the respondents was fair and proper and to produce the evidence to prove the misconduct of the claimant.'

11. Even during the course of hearing before this Court, learned counsel for the petitioner-Management was asked to provide any such requirement that at the time of giving appointment for the post of *parchee clerk* requisite qualification was matriculation. Upon this, learned counsel expressed his inability to provide any such rule/regulation. Even, learned counsel for the petitioner could not submit any reasonable justification that suddenly, what made the Management to ask for a matriculation certificate when a satisfactory service had already been rendered for 28 years by the workwoman. Again, there is no justification for such an unreasonable action by the petitioner -Management.

12. In such circumstances, this Court is also of the view that most probably the stand taken by the workwoman appears to be correct that it is nothing but a ploy to oust her from service and to avoid paying the remuneration and other service benefits in lieu of the service rendered by her.

13. While contradicting the findings of the learned Tribunal, learned counsel for the petitioner argues that it is not even within the domain of the learned Tribunal to conduct a parallel enquiry, once the inquiry has already been completed by the Management. He further submits that Court is there only to examine the procedural defect and illegality committed, while conducting enquiry proceedings. While submitting so, learned counsel for the petitioner relies upon the

judgment of Hon'ble Apex Court titled as 'The Management of Ritz Theater (Private) Ltd. Delhi Vs. Its Workmen', 1963 AIR (Supreme Court) 295: Law Finder Doc Id #111116 and refers to paragraph No.12.

For the sake of convenience, paragraph No.12 is reproduced herebelow:

'12.We do not think that this view can be accepted as correct. In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute. It is quite conceivable, and in fact it happens in many cases, that the employer may rely on the enquiry in the first instance and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that merely by adopting such a course, the employer gives up his plea that the enquiry was proper and that the Tribunal should not go into the merits of the dispute for itself. If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will

have to be given to the employer to cite additional evidence. Instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter.'

14. This Court has also gone through the cited judgment, but is of the view that the facts in the present case are quite different from the facts of the cited case. There is no dispute that in the case in hand, no document was delivered to the workwoman on her asking. She was never offered/permitted to engage a legal practitioner or a person of her choice to defend charges leveled against her. Even, no witness has been examined by the Management during the course of enquiry. Therefore, there was no opportunity with the workwoman to conduct cross-examination to bring truth on the record.

At the time of conclusion of the enquiry, the enquiry report ought to have contained the article of charges and statement of the imputation of misconduct/misbehavior alongwith the material substantiating the same. In the absence of all this, it was well within the domain of the learned Tribunal to examine the complete proceedings of the enquiry. Despite repeated opportunities, even before the learned Tribunal, petitioner-Management failed to produce the service record of the workwoman as well as the rules and

regulations prevailing at the time of appointment of the workwoman.

15. Thus, this Court is also of the view that the pleadings raised by the workwoman in her claim statement that conducting of enquiry was completely an eye wash, that too without following the due procedure and without any cross examination, appears to be absolutely genuine and this Court is unable to fall in agreement with the submissions addressed by learned counsel for the petitioner.

Accordingly, the **impugned award dated 06.10.2021 (Annexure P-3) is maintained and the present writ petition stands dismissed.**

February 07, 2024
rashmi

Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no