

CWP-17573-2000 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-17573-2000 (O&M)
Decided on: January 04, 2024

State of Haryana and another

...Petitioners

Versus

Om Parkash (deceased) through his Lrs & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Praveen Chander Goyal,
Additional Advocate General, Haryana,
for the petitioners.

Dr. Rishi Pal Singh Garttan, Advocate,
for respondent Nos. 1(i) & 1(ii).

SANJAY VASHISTH, J.

1. General Manager, Haryana Roadways, Delhi (being Management), has challenged the award dated 01.10.1999 (Annexure P-6), passed by the Industrial Tribunal-cum-Labour Court, Rohtak (hereinafter referred to as 'the Tribunal'), in Reference No. 2 of 1996.

Learned Tribunal accepted the reference sent to it for adjudication by the Governor of Haryana in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), by holding that the workman is entitled to be reinstated on his previous post with continuity of service and 40% back wages.

2. Facts in brief are that on the recommendation of the Subordinate Service Selection Board, Haryana, respondent No. 1 - Om

Parkash (hereinafter referred to as, 'the Workman') was employed as a driver by the Haryana Roadways, Rewari. He joined as such on 07.02.1990 and was transferred from Rewari to Bahadurgarh office of Haryana Roadways, Delhi, on 23.07.1990, where he worked upto 11.07.1991. As per appointment letter (Ex. M-1), workman was under probation for a period of two years, within which his work and conduct was required to be examined to the satisfaction of the employer. The service of the workman was terminated during probation period, vide order dated 11.07.1991, passed by the General Manager, Haryana Roadways, Delhi, on the ground that the workman did not obey the orders of his seniors and he entered the premises under the influence of liquor and also abused the senior officers. However, neither any regular inquiry was held after charge-sheeting the workman, nor any opportunity to lead evidence in connection with the alleged misconduct, was afforded to him. Only one month's notice was given to the workman before his termination, vide letter (Ex. M-5). No retrenchment compensation was paid to the workman at the time of his termination. Workman pleaded before the Tribunal that his termination was in violation of the provisions of Section 25-F of the Act, as he had completed 240 days in service as on the date of termination.

3. After completion of pleadings, framing of issues and noticing rival contentions of the parties, learned Tribunal came to the conclusion that Department of Haryana Roadways is covered within the ambit of the definition of 'Industry', as defined under Section 2(j) of the Act. It is also found that giving employment as driver to the workman by the management

on the recommendation of the Subordinate Service Selection Board, Haryana, is also not in dispute. The factual aspects, such as transfer of workman from Rewari to Bahadurgarh on 23.07.1990; two years' probation period, as per appointment letter (Ex. M-1); termination order dated 11.07.1991; and that no retrenchment compensation was paid, remained undisputed. Learned Tribunal, however, noticed that vide letter (Ex. M-6), workman was given an opportunity of personal hearing on 04.05.1991. Further, from letter (Ex. M-7), it transpired that the workman appeared before the General Manager, Haryana Roadways, Delhi. In the document (Ex. M-7), it has been mentioned that workman confessed his guilt and requested for being pardoned. However, no statement of the workman regarding confession of guilt, was ever recorded.

4. As per case of the management, the guilt was confessed by the workman before the General Manager, Haryana Roadways, Delhi, but the said officer never appeared before the Tribunal to explain the confession made by the workman. Thus, learned Tribunal held that while terminating the service of an employee during his probation period, with the allegation of misconduct etc., regular inquiry should have been held and reasonable opportunity of hearing is to be afforded to the concerned employee.

5. There is another aspect in the matter. Completion of 240 days within 12 calendar months, prior to the date of termination, is evident from the record and, therefore, said period of working is to be considered as a continuous period of service in one calendar year. However, while terminating the workman, compliance of Section 25-F of the Act was not

done.

In this regard, learned Tribunal has recorded a firm finding that no retrenchment compensation was ever paid to the workman though one month's notice was served upon him before passing the order of termination from service. Thus, it is categorically held that termination of the workman was in violation of Section 25-F of the Act.

6. By taking note of the facts available on record, learned Tribunal developed an impression that some misconduct had been done by the workman and thereafter, only General Manager, Haryana Roadways, Delhi, made up his mind to terminate the workman from service. As per the allegations of misconduct, workman abused the higher officers of the department, under the influence of liquor, and also refused to perform his duties.

Considering that workman was out of service for the last 8 years alongwith some other circumstances, it has been concluded by the learned Tribunal that nothing can be recorded to say that the workman did not earn any amount during his termination period. Thus, in view of the law laid down in **M.K. Kohli v. Alfadeal Chemicals, Faridabad, (1997-2) 116 PLR 81** and **Maya Sethi v. Presiding Officer, Industrial Tribunal-cum-Labour Court, S.C.T. 1997 (1) 622**, learned Tribunal held that the workman is entitled to be reinstated on his previous post with continuity of service and 40% back wages.

7. It would not be out of place to mention here that during pendency of the present writ petition, the workman – Om Parkash

(respondent No. 1) unfortunately expired on 08.01.2023 and thereafter present proceedings are being looked after by his Legal Heirs i.e. widow and son, who were impleaded as respondent Nos. 1(i) and 1(ii) respectively, vide order dated 31.08.2023, passed in CM-3761-CWP-2023.

8. Since there is no challenge to the finding of 40% back wages, recorded in the impugned award dated 01.10.1999 (Annexure P-6), same cannot be even considered for any enhancement.

However, going through the reasons given, after examining the evidence in totality, I do not find any legal infirmity in the well reasoned award passed by the learned Tribunal, warranting interference in exercise of powers conferred by Article 226 of the Constitution of India.

9. In view of above, present writ petition fails being devoid of any merit. Accordingly, the same is hereby dismissed. However, there shall be no order as to costs.

10. Pending civil miscellaneous application(s), if any, are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

January 04, 2024
Pk Kapoor

Whether speaking/reasoned?	✓ Yes / No
Whether reportable?	Yes / No ✓