



CWP-18088-1999 (O&M)

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

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CWP-18088-1999 (O&M)

Date of decision: 03.09.2024

CHANDER BHAN (DECEASED) THOROUGH HIS LRS

...PETITIONER

Vs.

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II, FARIDABAD AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Vinod Kumar Kaushal, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

JAGMOHAN BANSAL, J (ORAL)

1. Mr. Vinod Kumar Kaushal, Advocate has put in appearance on behalf of the petitioner and filed Power of Attorney, which is taken on record. Registry is directed to tag the same at an appropriate place.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 24.02.1999 (Annexure P-10) whereby Labour Court has answered the reference against the workman.
3. The petitioner joined respondents as driver on 17.03.1980. On 26.08.1981, he was placed under suspension as there was allegation against him that he had slapped Prem Chand Gupta, Duty Clerk. He was reinstated on 07.10.1981. The respondents initiated an inquiry against him. The Enquiry



Officer submitted his report wherein petitioner was declared guilty. The Disciplinary Authority issued show cause notice dated 25.09.1991 (Annexure P-3) to him which culminated in his termination from service. He preferred an appeal before Additional Transport Commissioner, Haryana which came to be dismissed vide order dated 31.01.1995. After dismissal of appeal, he served demand notice under Industrial Disputes Act, 1947 and matter came to be referred to Labour Court which by impugned order has dismissed his claim.

4. Mr. Vinod Kumar Kaushal, Advocate submits that Authorities have mechanically dismissed the petitioner. The charges against him were not serious. The punishment awarded was disproportionate to alleged offence. There was only one witness.

5. Mr. Raman Sharma, Addl. A.G., Haryana submits that petitioner was subjected to detailed departmental inquiry wherein he was found guilty. The Disciplinary Authority considering his reply and evidence on record, ordered to terminate him. The Appellate Authority did not find any fault in the order of dismissal. The Labour Court has considered all the submissions of petitioner and thereafter passed the impugned order.

6. I have heard counsels for the parties and with their able assistance perused the record.

7. From the perusal of record, it is evident that a departmental inquiry was conducted wherein petitioner was found guilty. The Disciplinary Authority issued show cause notice and after considering petitioner's reply and evidence on record came to a conclusion that petitioner had slapped his colleague and he had missed to carry bus from Palwal to Ferozepur Jhirka. The act of the petitioner was not simple misconduct whereas it was a serious one. No responsible employee can be expected to beat his colleagues or miss from his



prime duty. He did not drive bus, thus, he missed his duty. Resultantly, many passengers must have suffered. Being a driver, he was duty bound to take the bus on the route assigned to him.

8. It is a settled proposition of law that scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998** while advertizing with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in **Union of India and Others v. P. Gunasekaran.** The relevant extracts of the judgment read as

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary



proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus :

“12. 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 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 Articles 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.*

13. Under Articles 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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22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily re-appreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to



impose appropriate punishment by itself, on offering cogent reasons therefore.”

9. Applying the law laid down by Hon'ble Supreme Court, this Court neither finds that punishment imposed by authorities is disproportionate to alleged offence nor finds any infirmity warranting interference of this Court. Moreover, from the perusal of record it comes out that neither there is allegation nor during the course of arguments there was averment that respondent authorities have not followed the procedure prescribed by law while conducting enquiry. The findings recorded by authorities are purely findings of fact and there is neither jurisdictional error or patent illegality in the impugned order warranting interference.

10. The present petition sans merit and deserves to be dismissed.

11. Dismissed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

03.09.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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