

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
210 CWP-766-2002
Date of Decision:20.04.2024
GHANSHYAM DASS Petitioner

Versus

STATE OF HARYANA AND ORSRespondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sushil Bhardwaj, Advocate for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

SANJAY VASHISTH, J.(Oral)

1. Petitioner-Ghanshyam Dass has filed the present writ petition seeking quashing of the award dated 24.07.1998 (Annexure P-1) passed in reference No.245 of 1985 filed under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), whereby petitioner has been denied back wages and his one increment has also been stopped with cumulative effect and the period i.e. from the date of removal from service to reinstatement has been ordered to be treated as suspension period.

2. Learned counsel for the petitioner/workman submits that petitioner-Ghanshaym Dass was working with Haryana Roadways, Karnal as Conductor and vide impugned award dated 24.07.1988 (Annexure P-1), he has been awarded three sentences i.e.

(i) denial of backwages from the date of removal from the service till the date of award; and

(ii) stoppage of one increment with cumulative effect; and

(iii) treating the period from removal of service till passing of the award as suspension period.

Thus, submits that for one act, there could be only one punishment and awarding of more than one punishments would be hit by the law of double jeopardy.

3. Pledged case of the workman is that he worked with the management as Conductor from the year 1972 till 06.12.1980. Workman was chargesheeted on the ground that on 08.07.1980, while performing his duties as Conductor with Bus No.3655, on Panipat and Haridwar route, he did not issue tickets to four of the passengers travelling from Panipat to Haridwar and by not charging them, he misused the official capacity and caused loss to the Government to the tune of Rs.65.60/-. On the said charges, the enquiry was conducted and order of dismissal from service was passed.

4. On issuance of demand notice, the industrial dispute was raised and same was referred to the Labour Court for its adjudication. The said industrial dispute was decided by Sh.K.K. Doda, learned Presiding officer, Labour Court, Ambala vide order dated 22.02.1988, holding that the workman was not entitled to any relief. Thus, in the first round of litigation, reference was answered against the workman.

5. Feeling aggrieved, workman filed one CWP-11362 of 1988, which was allowed on 12.01.1988, vide which award was quashed and matter was remanded to the Labour Court for its fresh decision in the light of observation made in the said judgment.

6. Broadly speaking, Hon'ble High Court directed the Labour Court to redetermine the punishment imposed by the Employer because it seemed to be erroneous.

While re-deciding the issue of genuineness of the punishment, learned Labour Court noticed that the workman served the Management for about 8 years and there is no material/evidence to say that he was habitual of this kind of conduct. However, it was also noticed that though, he allowed four passengers to travel without ticket from Panipat to Haridwar, but there is no allegation of receiving the fare and retaining it with himself or accepting money from the passengers on any account. Thus, considering the totality of the circumstances, including the conduct of the workman, the observation regarding the punishment was revisited by the Labour Court and while exercising the power under Section 11-A of the Act of 1947, the order qua dismissal of the workman from the service was set aside.

The operative and concluding part of the award dated 24.07.1998 passed by learned Labour Court is reproduced herebelow:

“ The workman was appointed as Conductor in the year 1972 and his services were terminated vide order dated 8.12.80 so he had eight years services to his credit at the time of his termination. There is no evidence on the file that he was habitual of this type of mis-conduct. An attempt on the part of the workman to cause loss to the tune of Rs. 45.60 paise to the Government is not such a serious misconduct which can warrant the punishment of termination. Hence punishment awarded to the workman is quite dis- proportionate to the proved his mis-conduct. In such circumstances this court has jurisdiction to exercise the powers under section 11-A of the Industrial Disputes Act to interfere with the order of the punishment.

Keeping in view of my above discussion as the punishment of dismissal is dis-proportionate and not comensurate to the proved mis-conduct.

Hence the same cannot be sustained in the eyes of law.

Thus the same is liable to be set-aside. Consequently the workman will be entitled to reinstatement with continuity of service. However he will not be entitled for the back wages from the date of his removal till the date of award. It will be further appropriate to stop one increment of the workman with cumulative effect. Hence this issue is hereby decided accordingly.

Relief

Keeping in view of my above discussion and finding on the aforesaid issue though the domestic enquiry conducted by the management is legal and valid. However the punishment awarded to the workman was disproportionate to the proved misconduct. Hence in exercising of powers under section 11-A of the Industrial Disputes Act the dismissal of the workman from the service is liable to be set-aside. He is entitled to be 'reinstated with continuity of service as conductor or on any other post having the same pay scale but he shall not be entitled for any back wages from the date of his removal till the date of award. This period shall be treated as suspension period. I further ordered to stop one increment of workman with cumulative effect.

The reference shall stand answered accordingly "

7. Thus, learned counsel for the petitioner submits that second time also, learned Labour Court has committed an error by awarding three separate punishments in lieu of reinstatement in service. The punishments awarded to the workman as reflected in the impugned award are as under:

- (i) denial of backwages from the date of removal from the service till the date of award; and
- (ii) stoppage of one increment with cumulative effect; and
- (iii) treating the period from removal of service till passing of the award as suspension period.

8. In a similar situation, this Court (Punjab and Haryana High Court) in the case of **'Tilak Raj Vs. State of Punjab' 1997 (2)**

S.C.T. 286 (CWP-1703-1981, Date of Decision:21.11.1996),

concluded as under:

“5. Shri Sehgal submits that the Labour Court could not award two punishments at the same time while invoking powers under Section 11A of the Industrial Disputes Act. His client has been awarded the penalty of stoppage of one increment with cumulative effect and also the back wages have been deprived to him and the period of his absence from duty was ordered to be treated as leave of the kind due., This argument of Mr. Sehgal is correct as the punishments awarded by the Labour Court would be attracted by the principles of double jeopardy. Since the award in the present case has been passed in the year 1980, it may not be proper for this Court to remit the award to the Labour Court to against pass appropriate order. This Court would like to exercise the powers under Article 226 of the Constitution and order that management would not deprive the workman of the increment with cumulative effect as ordered by the Labour Court. Now, the workman would be entitled to the reinstatement to his services with benefit of continuity of service. However, he would not be entitled to any back wages and his period of absence from duty would, of course, be treated as leave of the kind due. Resultantly the present writ petition is partly allowed. The award (Annexure P.9) is partly set aside and is hereby modified as indicated above. In all other respects the same is hereby confirmed. With above directions and observations the present writ petition stands disposed with no orders as to costs.”

9. After going through the ***Tilak Raj case (supra)***, this Court is *ad-idem* with the view taken by their Lordships. By applying the said ratio in the present case and exercising the power under Article 226 of the Constitution of India , the impugned award is partly set aside by observing that Management would not deprive the workman of the increment with cumulative effect as ordered by Labour Court . Also, the workman would be entitled to reinstatement to his services with benefit of continuity of service. His period of absence i.e. from the date of termination from the service till the passing of the earlier award dated 22.02.1988 or reinstatement in the

service, would be treated as leave of the kind due. However, he would not be entitled to any back wages for the period from the date of termination to the first award/reinstatement. Thus, award is partly set aside and is hereby modified as indicated hereabove.

In all other respects, the findings/observations recorded in the award would sustain. It is needless to observe separately that the pay scale of the petitioner would be reassessed accordingly and all the consequential benefits would also be extended to him within four months of submission of the certified copy of this order to the Management.

With the aforementioned terms and observations, present writ petition stands disposed of.

April 20, 2024

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Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]

JUDGE

yes/no

yes/no