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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 04.04.2024

Punjab Water Supply & Sewerage Board and others

. . . Petitioner(s)

Versus

Presiding Officer,
Industrial Tribunal Bathinda, and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sarthak Gupta, Advocate
for the petitioner(s).

Mr. Brijesh, AAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Present case is an example to know how the State authorities, whose prime function is to render its public services, can go after a fourth class employee working on the post of 'Mali', by dragging him in litigation proceedings, one after the other.

Herein, in the present case, it is undisputed fact that the workman has served in the Department from 01.02.1976 to 08.08.1994 i.e. for about 18 years, on the post of 'Mali', and thereafter, twice his termination orders were set-aside. But still, feeling dissatisfied, the Management again terminated the workman, and forced the workman to indulge in the litigation for more than three decades. Despite reference being answered against the Management all the times, again an attempt has been made by challenging the award dated 10.08.2023 by way of present writ petition, which has been passed in favour of the workman.

2. Petitioners i.e. (i) Managing Director, Punjab Water Supply &

Sewerage Board, Sector 19, Chandigarh; (ii) Executive Engineer, Punjab Water Supply & Sewerage Board, Division No.1, Bathinda; (iii) Executive Engineer, Punjab Water Supply & Sewerage Board, Division Bathinda, Now at Sangrur; and (iv) Sub-Divisional Officer, Punjab Water Supply & Sewerage Board, Sub-Division, Mansa (being Management) have filed the present writ petition, assailing therein award dated 10.08.2023 (Annexure P-5), passed by respondent No.1 i.e. learned Presiding Officer, Industrial Tribunal, Bathinda (in short, 'learned Tribunal'), whereby, Reference No.85 of 2013, under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), has been answered in favour of respondent No.2 – Satan Dass (workman).

3. On issuance of demand notice by the workman, Assistant Labour Commissioner referred the industrial dispute to the learned Tribunal, for its adjudication. Referred question for adjudication was as under:-

“Whether termination of workman at the hands of respondents is unauthorized and illegal, and if so, then to what relief he is entitled for?”

4. Pleaded facts at the instance of the workman are that, he was appointed as 'Mali' by the Sub-Divisional Officer, Punjab Water Supply & Sewerage Board, Sub Division, Mansa (respondent No.4) on 01.02.1976 against the permanent job. Later on, he was promoted as work charge. Benefit of revision of pay-scales were also given to him from time to time. On 08.08.1994, services of the workman were illegally terminated without any notice, charge-sheet, inquiry or compensation. Said termination was set-aside by the Labour Court vide its award dated 06.06.2000. This way, he

was reinstated with continuity in service, but without back-wages.

Against said award dated 06.06.2000, Management (petitioners herein) filed writ petition, but the same was dismissed by this Court (Punjab and Haryana High Court). In consequence to the reinstatement in service, workman re-started serving the Department.

Second time again, services of the workman were terminated on 06.08.2001. Said termination was challenged by him before this Court (Punjab and Haryana High Court) by way of CWP-6336-2002, but same was disposed of vide order dated 24.04.2002, with a direction to the workman to file representation before the competent authority. Representation filed by the workman was rejected on 13.06.2002, and thereafter, again workman filed CWP-12762-2002. This time, again termination order was set-aside by this High Court vide order dated 26.05.2005, and direction was issued to reinstate the workman into service along with other benefits. Management did not stop here and thus, filed an appeal before the Hon'ble Apex Court, which was disposed of by granting liberty to initiate the disciplinary proceedings against the workman, so that the appropriate order can be passed.

5. Workman further pleaded that his services were again terminated on 15.11.2012, as a consequence of improper charge-sheet and unfair inquiry, without even payment of compensation. Workman pleaded that neither any document was supplied nor the liberty to cross-examine or to lead evidence was afforded to him.

6. In the written statement filed by the Management (petitioners herein) before the learned Tribunal, it is stated that they have rightly decided the claim of the workman, and defended the procedure adopted during the

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course of conducting of inquiry. After inviting pleadings of the parties, following issues were framed:-

- “1. Whether the termination order of workman is legal, valid and justified? If so its effect? (OPM)*
- 2. Whether reference is not maintainable? (OPM)*
- 3. Whether the workman has no locus standi to file this reference? (OPM)*
- 4. Relief.”*

7. Primarily, there were two charges against the workman i.e.; (i) absence from duty since 29.06.1994; and (ii) misbehaviour with the officer, which falls under the Punjab Govt. Conduct Rules, 1966.

8. After examination of the record and appreciation of the evidence, learned Tribunal reached to the conclusion that the proceedings adopted during the course of inquiry were unfair.

Management relied upon the proceedings of the inquiry, which was recorded in question-answer form (Ex.6).

9. To examine the correctness and fairness of the inquiry, learned Tribunal looked into the material proceedings recorded therein. It was found that the proceedings were recorded on 29.06.2009 and were adjourned for 20.07.2009. But the Management failed to produce the proceedings recorded on 20.07.2009.

Further, inquiry proceedings were conducted on 21.08.2009 and that day simple questions were put to workman, as well as the Presenting Officer and then proceedings were adjourned for 04.09.2009.

On 04.09.2009, again same questions were put to the workman

by the Inquiry Officer with regard to the charge-sheet. Statement of witness Mr. J.C. Goel, was recorded and in the last proceeding, Inquiry Officer did not mention the name of witnesses to be cross-examined on the next date of hearing, but recorded the statement of the material witnesses. Copy of the proceedings dated 29.10.2009, has been produced as Ex.M-11, and on that date, workman is shown to be absent, and Inquiry Officer recorded the statement of JE Balwinder Singh vide Ex.M-10.

Again, proceedings were recorded on 21.01.2010, and on this date, Inquiry Officer simply asked the questions to the workman, as to whether he want to say anything in regard to the statement of JE Balwinder Singh and Surinder Kumar.

10. During the course of arguments before this Court, counsel for the petitioners referred to the inquiry proceedings dated 21.01.2010 (appended as Annexure P-6 with the writ petition), and tried to make an unsuccessful attempt to satisfy the Court that in fact, offer was given to the workman, but he did not chose to say anything.

However, counsel admits that there is nothing mentioned to reach to the conclusion that statement was put to the workman and opportunity was given to the workman to cross-examine the witness upon the statement given by him.

Not only this, from the findings recorded by learned Tribunal, the conclusion can be drawn that JE Balwinder Singh got recorded his statement vide Ex.M10 on 29.10.2009 in the absence of workman, and then through proceedings dated 21.01.2010, a formality has been made by making an offer to the workman to say anything. In fact, there is nothing mentioned that the statement of JE Balwinder Singh recorded on

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29.10.2009, was handed-over to the workman and thereafter, offer of cross-examination was also given.

11. It is also strange that why the statement of such an important witness i.e. JE Balwinder Singh was recorded on 29.10.2009 (Ex.M-10), without recording the *ex-parte* proceedings, because of absence of the workman. In clear terms, statement of JE Balwinder Singh is recorded on 29.10.2009 in the absence of workman and the formal offer to the workman to say anything, is recorded in the proceedings on 21.01.2010, after a period of 2 months and 23 days. Even, there is nothing available on record to reach to the conclusion that workman was afforded opportunity to lead his defence.

12. Learned Tribunal has made a detailed discussion on the standard and manner of inquiry in paragraph No.10 of the impugned award, and the relevant extracted part of the same, is reproduced herein-below:-

“ The workman claimed his termination to be illegal and invalid without fair and proper enquiry. Exh. M-1 is the memorandum, vide which the workman was informed about the enquiry to be conducted on the charges contained in article of charges Exh. M-2. There were two charges against the workman. The first charges was that he was absent from duty since 29.06.1994 and secondly that he misbehaved with the officer, which comes under the Punjab Government Conduct Rules, 1966. The workman appeared before the enquiry officer, which is evident from the proceedings Exh. -6. These proceedings were recorded by the enquiry officer in the form of question answer and the workman was apprised of the charges leveled against him. The proceedings were recorded on 29.06.2009 and the proceedings were adjourned to 20.07.2009. However the respondents/management failed to produce the proceedings recorded on 20.07.2009. The further proceedings conducted by the enquiry officers were recorded on 21.08.2009. On this date, the enquiry officer put simple question to the workman, as well as the presenting officer and adjourned the proceedings on 04.09.2009. On 04.09.2009, the enquiry officer again put the same question to the workman as well as presenting officer with regard to the charge-sheet. On this date, the enquiry officer also recorded the Statement of

one witness, namely J.C Goyal.. First of all in the last proceedings the enquiry officer did not mention the name of the witnesses to be cross-examined on the next date and recorded the statement of material witnesses.

Exh. M-11 is the copy of the proceedings dated 29.10.2009 and on this date, the workman has been shown to be absent and the enquiry officer recorded the statement of Balwinder Singh Junior Engineer vide Exh. M-10, the proceedings were recorded on 21.01.2010 and on this date the enquiry officer has simply asked the question to the workman as to whether he wants to say anything with regard to the statement of the witness Surinder Kumar as well as Balwinder Singh JE. Therefore it is clear from the proceedings that no opportunity was granted to the workman to cross-examine the witness on the date, when his statement was recorded. Even the enquiry officer has not passed any ex-parte proceedings, although the workman was absent on 29.10.2009.

There is no document to prove that the workman was also afforded to lead his defence, The enquiry officer submitted his report Exh. M-24. The enquiry er returned the finding only 10 to 15 lines by referring to the statement of the witnesses that charges against the workman are proved reasonable doubt.

It is not clear from the enquiry report that, who has produced the documents with regard to the criminal litigation decided against the workman. The document produced by the respondents/management Exh. M-28 i.e. reply submitted by the workman and in the reply he had raised objection that he was not given an opportunity to cross-examine the witnesses and he was also not provided assistant of co-worker and was also not afforded to lead his defence.

The workman was also not told to seek assistance of any co-worker. The enquiry has been conducted in a very casual manner without following proper procedure. The case laws relied upon by the learned authorized representative of the workman are fully applicable to the facts of the case. In SCT 2009 Punjab and Haryana High Court 280, The delinquent officer was not afforded opportunity to cross-examine and was also not afforded opportunity to lead defence evidence and therefore the enquiry report as well as consequential orders were quashed. Similarly in STT 2008 (4) Punjab and Haryana High Court 414, the order of termination was ordered to be set aside as the enquiry proceedings were held to be initiated due to violation of principles of natural justice. Similarly in the present case the workman was not afforded opportunity to cross-examine the witnesses, the case law SLR 2002 (3) Punjab and Haryana High Court 252 as well as SCT 2009 Punjab and Haryana High Court 342 supported the claim of the workman. Therefore it is concluded that the enquiry officer did not conduct the enquiry by following proper and legal procedure and the workman has been deprived of his

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right to cross-examine the witnesses as well as to lead evidence in defence. As the result of the same, the order of termination passed by the respondents dated 15.11.2012 is held to be illegal null and void. This issue is accordingly decided the respondent/management.”

13. In view of the above, this Court does not find any scope to cause interference in any manner in the well reasoned award passed by the learned Tribunal. Thus, while maintaining the same, present writ petition filed by the petitioners (Management) is hereby **dismissed**.

(SANJAY VASHISTH)
JUDGE

April 04, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~