



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232

CWP-10908-2020
Decided on : 27.05.2024

State of Haryana and another
Versus
Prem Singh and another
... Petitioner(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Satish Singla, AAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate
for respondent No.1 – workman.

SANJAY VASHISTH, J. (Oral)

1. On the very outset, Mr. Rajesh K. Sheoran, counsel for respondent No.1 – workman, points out that in the order dated 04.04.2024, his presence has been wrongly marked on behalf of the petitioners, whereas, in actual, he is representing respondent No.1 – workman.

Keeping in view the aforesaid statement, presence of Mr. Rajesh K. Sheoran, be treated as appearing on behalf of respondent No.1 and presence of learned State counsel be treated on behalf of the petitioners, as present writ petition has been filed by the State. Office to carry out necessary corrections accordingly.

2. Petitioner – State of Haryana through State Transport Commissioner, Haryana, Chandigarh, being Management, has filed the instant writ petition, whereby, award dated 09.12.2019 (Annexure P-1), passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat - respondent No.2 (in short, ‘learned Tribunal’), has been sought to



be quashed.

3. Vide impugned award dated 09.12.2019 (P-1), reference No.136 of 2009, filed under Section 10(1)(C) of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), has been answered in favour of respondent No.1 – Prem Singh (workman).

4. Pleaded case of the workman is that he was serving as conductor with the petitioner – Department (Management) having Card No.C-150, and was charge-sheeted on 26.09.1986 by the General Manager, Haryana Roadways, Karnal Depot, containing false charges. In fact, the inquiry conducted by the Inquiry Officer, is alleged to be in complete violation of the principles of natural justice, as no material witness was examined by the Management. Thus, he pleaded that the termination of services, based upon the said inquiry is liable to be set-aside.

5. On the other hand, in the written statement, Management pleaded that the workman was a habitual offender. He had joined the services as 'Conductor' on 08.11.1979, which continued up to 04.02.1987. He remained out of services w.e.f. 07.03.1980 to 03.11.1981 i.e. one year, seven months and twenty six days. Further pleaded that during this period, 16 times, workman was found guilty of embezzlement, issued less tickets thrice, found with excess amount once and ten times, he was found guilty of other offences. Due to this, he was punished with stoppage of 16 increments, service censured thrice, without pay leave thrice and warning 11 times. Total 29 punishments had already been inflicted upon him.

The workman was once again caught by the inspecting team on 17.09.1986, when he was on duty on bus No.HYM-3928 from Rohtak to Chandigarh and Chandigarh to Delhi. Instead of reaching to Chandigarh, he



got returned the bus from Ambala Cantt. He was caught by the inspecting team at Shahabad and an excess amount of Rs.12.50 paisa was recovered from him, as he had not issued tickets to five passengers, who had boarded the bus from Ambala for Shahabad.

On the basis of report of inspecting team, workman was charge-sheeted under Rule 7 of the Punjab Civil Services Rules, 1952. Enquiry Officer submitted report on 22.01.1987, in which, workman was held guilty. Thereafter, show cause notice was issued on 23.01.1987, and after receiving of the reply from the workman, and providing him opportunity of personal hearing, vide order dated 04.02.1987, the punishing authority terminated his services and restrict the suspension period to subsistence allowance. Appeal preferred by the workman, against the termination order, was also dismissed by the Appellate Authority.

In the written statement, Management pleaded that the services of the workman were rightly terminated, after complying the procedure laid down and following the principles of natural justice.

6. Be that as it may, after examining the pleadings of the parties and their respective evidences, learned Tribunal reached to the conclusion that no presenting officer was ever appointed, and then recorded its specific finding in paragraph No.11 of the impugned award (P-1), which is as under:-

“11. It is not the case of respondents that any presenting Officer was appointed. Also, it is not the version of respondents that the claimant was made aware of the fact that he was entitled to be assisted in the enquiry by another Government Servant. On the contrary, it was admitted on behalf of MW-1 that the Enquiry Officer had not the required. Suffice it to say that the cited cases squarely covers the situation in hand and as such, it is to be taken that report dated



22.01.1987, whereby Enquiry Officer had held the claimant guilty, tantamount to miscarriage of justice on account of non-appointment of Presenting Officer as well as the fact that the claimant was not made aware of the fact that he was entitled to be assisted in the enquiry by another Government Servant.”

7. In the present case, allegation against the workman is that he embezzled an amount of Rs.12.50 paisa. In fact, he didn't issue tickets to total five of the passengers @ Rs.2.50 per head, who were coming from Ambala to Shahabad. Learned Tribunal has even recorded its finding that the statements of the passengers, who were travelling in the roadways bus without tickets, have not been recorded.

8. While examining the said part of the award, even this Court finds that there is nothing brought on record by the Management in regard to the names and other particulars of the persons, who were traveling in the roadways bus without tickets, to establish, if any such tickets were issued by the workman.

Therefore, Mr. Rajesh K. Sheoran, counsel for respondent No.1 – workman, submits that the amount of embezzlement i.e. Rs.12.50 paisa only, by way of not issuing the tickets to the five passengers, and the fact that the names and other particulars of those persons, who travelled without tickets, had not even surfaced during the course of inquiry, clearly indicates that the story put-forth by the Management, is hypothetical and highly improbable.

9. Even, during the course of hearing before this Court, an effort was made to find out the names of those five passengers, who were allowed to travel without tickets by the workman, after receiving of an amount of Rs.12.50 paisa (in total), from them. Neither anything has come out from



the record, nor any satisfactory reply has been received from the officials of the petitioner – Department (Management), who are present in Court today to assist the learned State counsel.

Thus, learned State counsel is not in a position to dispute the facts, observed by this Court, as recorded herein-above.

10. The factum of 29 punishments inflicted upon the workman, on account of several instances, is not required to be examined for the purpose of looking into the sustainability of the award under challenge before this Court, because, he has been punished separately for them. The findings recorded by learned Tribunal, in paragraphs No.12, 13, 14 and 15, are also reproduced here-under for reference:-

“12. Coming the merits of the case. The allegation against the claimant was that he had embezzled an amount of Rs. 12.50 by way of not issuing tickets to five passengers @ Rs. 2.50 per head, who were coming from Ambala to Shahabad. In his cross- examination, MW-1 Vikas Kumar, Clerk, Haryana Roadways, Karnal (Who had produced the enquiry file) stated that as per enquiry file, the Checking Staff had not recorded the statement of the passengers who were found travelling in the roadways bus without ticket. He also admitted that neither the Checking Staff had reported about the checking of cash available with the claimant nor the tickets were compared with Way Bill in respect of alleged embezzlement.

13. To my mind, the statements of the passengers, whom the claimant had not issued tickets, despite having received the fare from them as well as checking of cash available with the claimant and comparison of the tickets with the Way Bill was must before holding the claimant guilty of alleged embezzlement. Similar observations has been made in State of Haryana Vs. Mohan Singh SLR 1985(2) 116 decided on 12.04.1985; The State of Punjab Vs. Pritam Singh 198 D/d



05.08.1993, *Didar Singh Vs. The Presiding Officer, Labour Court, Batinda 334 D/d 27.03.2003. It remained unexplained that in the absence of above-mentioned necessary evidence, what led the Enquiry Officer to come to the conclusion that the claimant had committed the alleged embezzlement.*

14. *Feeling tight, Id.AR for respondents drew the attention of Court to the cross-examination of the claimant (WW-1), wherein admitted that he was already punished by the department as many as 29 times and contended that the claimant was a habitual offender, who should not be spared, on account of some technical flaws and more so when, he himself admitted he was given full opportunity to defend his case. The contention is not sustainable because in the instant case, the court has to see whether proper procedure before holding enquiry against the claimant was followed or not. In the opinion of Court, the previous conduct of claimant was relevant only at the time of inflicting punishment.*

15. *In view of my discussion, it is amply clear that the inquiry proceedings initiated against the claimant were not fair and proper and as such, the enquiry report dated 22.01.1987 is hereby set-aside. Resultantly, order dated 04.02.1987 (passed on the basis of enquiry report dated 22.01.1987), vide which service of claimant was terminated, stands set-aside automatically.”*

11. In view of above, this Court has also reached to the conclusion that the inquiry conducted by the Management is not as per law, as the proper procedure of conducting of inquiry, was not followed. Further contention that the workman, is habitual offender is irrelevant, because, every workman/employee has a right to go through the process of law i.e. conducting of fair, proper and impartial inquiry proceedings.



Thus, noticing the fact that the inquiry itself is found to be defective by the learned Tribunal, I do not find any substantial reason to cause interference with the finding recorded in the impugned award dated 09.12.2019 (P-1). Therefore, while maintaining the same, present writ petition stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

May 27, 2024
J.Ram

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