

Neutral Citation No:2024:PHHC::056689
CWP-22854-2015(O&M) 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CWP-22854-2015(O&M)
Date of Decision: 25.04.2024

Vikram Singh

.... Petitioner

Versus

The Board of School Education Haryana, Bhiwani through its
Chairman/Secretary and anr

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. S.K. Verma, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate
for respondent No.1.

SANJAY VASHISTH, J.(Oral)

1. Petitioner (workman) has filed the present writ petition challenging the award dated 04.10.2013 (Annexure P-5) passed by Industrial Tribunal-cum-Labour Court, Hisar, whereby, reference No. 23 of 2011 has been decided against the petitioner-workman.

2. Brief factual matrix of the case is that the father of the petitioner, namely, Sh. Brahm Singh was employed as Clerk with the respondent–The Board of School Education, Bhiwani. After the death of Sh. Brahm Singh, at his place, his son i.e. petitioner - Vikram Singh was appointed on the same post on compassionate grounds w.e.f. 19.11.2013. Before even completion of one year of service, he showed the signs of indiscipline, such as remaining absent from duty, insubordination as well as gross negligence. On account of his absence from duty on 26.08.2004, 10.09.2004, 15.09.2004, 21.09.2004, 24.09.2004, 07.10.2004, 11.10.2004, between 12:45 p.m,

10:03:00 pm on 14.09.2004 and for about 3-4 hours on 29.09.2004, he

was firstly suspended on 13.10.2004. Thereafter, considering the act of the petitioner as an act of gross misconduct, Respondent-Board charge-sheeted the petitioner under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and accordingly, Charge sheet (Ex. M1) was issued to him.

3. After completion of enquiry, petitioner was afforded an opportunity for personal hearing and also a show cause notice was issued in that regard. However, petitioner neither filed any reply to the show cause notice nor appeared for attending the personal hearing. Accordingly, vide order dated 16.03.2007 (Ex. M11), Chairman of the Board exercised his powers to remove the petitioner from service with immediate effect.

4. The service appeal filed by the management was dismissed by the Board of Directors and thereupon, demand notice dated 01.07.2000 was issued raising an industrial dispute. After failure of the conciliation proceedings, department of Labour Commissioner found that an industrial dispute is made out and referred the same for its adjudication to Labour Court under Section 10(1)(c).

5. At the first instance, while examining the sustainability of the order of termination of service of workman, vide order dated 19.07.2013, learned Labour Court reached to the conclusion that the enquiry conducted by the respondent-Education Board was not proper as per law. However, on moving of application by the respondent for leading evidence to prove charges against the petitioner as per the right given to him under section 11-A of the Act i.e. said permission was granted. Accordingly, Respondent-Board led its evidence to

prove the charges.

6. After completion of the evidence by the respective parties, learned Labour Court recorded its findings that the petitioner has remained absent for the period for which he has been charge-sheeted and whenever, any explanation was sought in regard to his absence, he always assured to improve his conduct, but to no avail.

In fact, to the affirmative evidence led by the respondent–Education Board before the labour Court, petitioner failed to lead any evidence in rebuttal. Thus, labour Court reached to the conclusion that the charge of his being absent from duty is well proved. However, in regard to other two charges, no substantial material was available and same were held to be unproved.

For the sake of convenience, relevant Paragraphs No. 12 to 16 of the impugned award dated 04.10.2013 (Annexure P-5) are reproduced hereinbelow:

“12. The question for determination is whether the respondent has been able to prove. the charges as contained in the charge sheet dated 09.12.2004 Ex: M-1 are proved or not. As stated above, the charges against him were regarding absence from duty and insubordination.

13. To prove both the charges, the respondent examined Harveer Singh Assistant as MW1, Duli Chand Sharma the then Deputy Secretary as MW3, Bir Singh Superintendent as MW4 and Ramesh Kumar Assistant as MW5. They tendered in evidence their affidavits Ex. MW1/A, MW3/A to MW5/A respectively. MW1 and MW3 submitted the details. regarding absence of the petitioner from duty. As per those details the petitioner remained absent from duty on 26.08.2004, 10.09.2004, 15.09.2004, 21.09.2004, 24.09.2004, 07.10.2004 and 11.10.2004. Besides that he also remained absent from duty on 14.09.2004 from 12:45 to 03:00 PM and thereafter on 29.09.2004 for 3-4 hours. MW3 further placed on the file the photocopy of the office notings regarding absence of the petitioner from duty on the aforesaid dates as Ex. M-16 consisting of 12 pages. As per those notings the petitioner remained absent from duty on the aforesaid dates. His explanation for absence was sought. Every time he assured to improve his conduct,

but to no effect. in cross-examination of both the witnesses, the factum regarding absence on the aforesaid dates was not disputed by the petitioner; but it was suggested to them that in fact on those dates the petitioner was on leave which fact they denied.

14. *Therefore, the onus was upon the petitioner to prove that on the dates he was shown absent was in fact on leave and had proceeded on leave with the prior permission of the competent authority, but the petitioner did not lead any evidence to that effect. As stated above, the petitioner in fact did not lead any evidence in rebuttal to the evidence led by the respondent to prove. the charges. Therefore, the defence of the petitioner cannot be accepted. As such the first charge against the petitioner regarding absence from duty is proved.*

15. *Now I come to the second charge of insubordination. Although MW3 and MW5 have stated that the petitioner was in the habit of disobeying the office orders and he was not serious in his work, but they have not cited any instance to support their claim. Rather MW4 and MW5 have stated in their cross-examination that in their presence the petitioner had not misbehaved with any other employee. Therefore, the second charge against the petitioner is not proved.*

16. *The next question which arises for determination is as to whether the punishment awarded to the petitioner was disproportionate to his act of misconduct or not. Keeping in view the fact that' the petitioner had less than one year of service and during said period he remained absent from duty number of times, I am the, view that the punishment of dismissal from service awarded to him was not disproportionate. Had he put number of years in service, then his absence from duty for few days could be condoned: Although he has sought to explain that his absence from duty was not intentional as he was under depression on account of death of his father but he did not place on the file any medical record to that effect. If he was under depression he must be getting treatment from a doctor, but no such record has been produced by him. Therefore, his said explanation cannot be accepted and he is not entitled to any relief. This issue is decided against the petitioner."*

7. This Court does not find any substantial reason to cause interference with the well reasoned award and the findings therein.

8. At this stage, Mr. S.K. Verma, Advocate for the petitioners submits that order of punishment is disproportionate to the charges framed and therefore, he submits that instead of terminating the petitioner-workman from services, a lenient view can be taken.

However, this Court is unable to agree with the said submission also for the following reasons:-

(i) Conduct of the petitioner himself is disgraceful because he was given the appointment on the post of Clerk on compassionate grounds, on account of death of his father who was also serving on the post of Clerk. Probably, petitioner was never serious for the services to be rendered during the course of employment because he got extraordinary benefit of service, of course after losing his father.

(ii) As per the stand taken by respondent - Board, he was reminded several times to mend his ways, but after giving false assurance, he never cared.

(iii) He was appointed on compassionate grounds on 19.11.2003, but only after few months thereafter, he started absenting himself from the office without any prior leave, from the month of August. Till the time, he was suspended vide order dated 13.10.2004, he had remained absent nine times without any substantial reason.

(iv) Even, no allegation of animosity has been alleged by the petitioner against the any of the officials of the Board explaining that why the Board officials will go against him. Had it been a case of absence once or twice without prior permission, the situation could have been otherwise. Absenting himself time and again, despite repeated reminders that too within the first year period of attaining the job on compassionate grounds, speaks volume about the negligent, careless and indiscipline attitude of the petitioner.

(v) Lastly, a period of around 17 years has elapsed since the order of termination was passed on account of his own negligence, which he

9. Thus, in view of the aforementioned observations, without causing any interference with the impugned award dated 04.10.2013 (Annexure – P-5), the writ petition stands dismissed.

April 25, 2024	[SANJAY VASHISTH]
<i>rashmi</i>	JUDGE
Whether speaking/reasoned	yes/no
Whether reportable?	yes/no