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

CWP-19398-2017

Date of Decision: 04.01.2024

Ravinder Singh

....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Rohtak and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Singal, Advocate
for the petitioner.

Mr. Parveen Chauhan, Advocate for
Mr. Gagandeep S. Wasu, Advocate
for respondent No.2.

HARSH BUNGER, J.

1. Petitioner (Ravinder Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of Certiorari for quashing impugned award dated 05.06.2017 (Annexure P-11), whereby the reference of industrial dispute raised by the petitioner has been answered against him.

2. Shorn of unnecessary details, the brief facts emanating from the paperbook are that the petitioner was appointed as Lower Division Clerk (LDC) with the O/o Superintending Engineer (OP Circle) UHDEVN, Rohtak. The petitioner applied for leave from 23.11.2009 up to 14.12.2009 as his mother was ill and during this period, petitioner claimed that he received a call from a member of family of his close friend, who reside in Canada, to the effect that his friend was seriously ill, accordingly, the petitioner went to Canada and after coming back to India, he immediately joined his duty on 13.12.2013. The petitioner was chargesheeted on the charge that he had remained absent from duty from 23.11.2009 and he went to Canada (out of India) without permission and that he abandoned his job. The petitioner submitted his reply to the chargesheet and thereafter, the Inquiry Officer was appointed and inquiry was held and the Inquiry Report was submitted whereupon, a show-cause notice was issued to the petitioner on 19.01.2015, to which the petitioner submitted his reply and thereafter, the petitioner was dismissed from service vide order dated 19.03.2015.

The petitioner challenged his dismissal from service by raising the industrial dispute on the plea that no proper procedure was followed while conducting the inquiry and passing of the dismissal order. The petitioner also claimed that his services have been terminated in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter "1947 Act"). Accordingly, he prayed for reinstatement with continuity in service and all other consequential benefits.

3. The aforesaid claim of the petitioner was contested by the respondent-Department on the plea that the petitioner had taken leave on account of illness of his mother but he left behind his ailing mother and went

to Canada without informing the Department while leaving the country and came back after about 4 years to join his duty. It was submitted that the petitioner was chargesheeted and after conducting a proper inquiry, he was dismissed from service. It was also stated that the proper procedure under the Haryana State Electricity Board notification dated 13.09.1990 was followed and no provision of the Industrial Dispute Act was violated, accordingly, prayer for dismissal of the claim petition was made.

4. On the basis of pleadings of both the parties, the following issues were framed:-

“(1) Whether termination of services of workman is justified and if not, to what relief he is entitled? OPW

(2) Whether the management has conducted a fair and proper enquiry? OPM

(3) Relief.”

5. The parties led their respective evidence in support of their claim.

6. The Tribunal below vide impugned award dated 07.06.2017 (Annexure P-11) rejected the claim of the petitioner.

7. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner. It is submitted that the petitioner was appointed as LDC on 29.03.1987 and thereafter his services were regularized in the erstwhile Haryana State Electricity Board, however, the petitioner was terminated vide order dated 19.03.2015. Learned counsel for the petitioner contends that the petitioner

had rendered regular satisfactory service of about 27 years (including the period of absence from 14.12.2009 up to 12.12.2013). It is submitted that no other penalty had ever been imposed upon the petitioner during his service career and therefore, the punishment of termination is too harsh and unjustified in the fact and circumstances of the case. Learned counsel for the petitioner further submits that the inquiry was not conducted as per procedure laid down in Regulation 7 of the Haryana State Electricity Board Employees Punishment and Appeal Regulations, 1990. Accordingly, it is submitted that the impugned award is liable to be set aside and appropriate direction be issued for reinstating the petitioner with all consequential benefits.

9. On the other hand, learned counsel for respondent No. 2-Department has opposed the prayer of the petitioner by submitting that the Tribunal below has considered the entire material/evidence available on the record and had passed a well reasoned and justified award which does not call for any interference by this Court. It is submitted that the petitioner had remained absent from duty for a long period of almost 4 years and he went to Canada without seeking any permission from the Competent Authority. It is further submitted that before terminating the services of the petitioner, due opportunity of hearing was afforded to him. It is submitted that the petitioner was duly served with the charge sheet to which petitioner submitted his reply and thereafter, an Inquiry Officer was appointed who conducted the inquiry and submitted his Inquiry Report and thereafter, even a show-cause notice was issued to the petitioner to which the petitioner had submitted his reply and after carrying out the proceedings, the order of dismissal from service was passed against the petitioner. It is further submitted that there is

no illegality or perversity in impugned award, accordingly, prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the parties and perused the paper book with their able assistance.

11. In *State of Punjab v. Dr. P.L. Singla [2008 (8) SCC 469]* the Hon'ble Supreme Court, while dealing with unauthorized absence, has stated thus: -

"Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct."

Again, while dealing with the concept of punishment the Court ruled as follows: -

"Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence."

12. Thus, the unauthorized absence by an employee, as a misconduct, cannot be put into a straightjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in Dr. P.L. Singla (supra).

13. However, in ***Tushar D. Bhatt v. State of Gujarat and another*** [2009 (11) SCC 678], the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Hon'ble Supreme Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organization such an approach and attitude of the employee cannot be countenanced.

14. Further, in ***Government of India and another v. George Philip***, 2007(1) S.C.T. 357, Hon'ble Supreme Court observed as under: -

"In a case involving overstay of leave and absence from duty, granting six months time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy

the same."

15. Keeping in view the aforesaid legal judicial pronouncements, it is evident that absence from duty without permission is a misconduct and the employees must maintain discipline and devotion to duty.

16. In the instant case, the Tribunal below has returned the following finding:-

"12. After hearing both the sides and appreciating the entire evidence adduced in the case, I am of the considered opinion that the present petition deserves to be dismissed. The petitioner had admittedly, got sanctioned his leave from 23.11.2009 to 14.12.2009 on account of illness of his mother. However, he left behind his ailing mother and went to Canada. As per own deposition of the petitioner, he had gone to Canada in November 2009 and come back on 4.12.2012 but he joined duty on 13.12.2012. Pertinently, the petitioner had got sanctioned his leave with effect from 23.11.2009 and as per his own deposition, he had gone to Canada in November 2009 itself. Thus, in other words, he never intended to attend to his ailing mother, for which, he had taken leave and he straightway went to Canada. As per his own admission, the petitioner returned on 4.12.2012 and thereafter, he joined his duty on 13.12.2013 i.e. after about a year of his allegedly coming back from Canada. No name of the friend who was ill in Canada, has been disclosed by the petitioner. The record pertaining to Visa papers, as to when they were started to be processed has been produced by the petitioner. Thus, the respondent issued the charge sheet and conducted enquiry and eventually dismissed him from service. As per own admission of the petitioner in his cross examination, he was issued the charge sheet to which, he had submitted

his reply and then, after conducting an enquiry, he was held guilty and then, he was issued a show cause notice and he had submitted his reply thereto and then, after giving personal hearing, he was removed from service. The charges leveled against the petitioner in the charge sheet were inter alia that he had left the country and gone to Canada without seeking prior permission and that he had remained absent from duty upto 12.12.2013 and the same have not been refuted by him. Thus, the enquiry report is found to be legal and valid and principles of natural justice were duly adhered to. It is so far well settled that this court cannot sit in appeal over the enquiry report and come to a different conclusion on appreciation of evidence led before the enquiry officer. There is no dispute with regard to the propositions of law laid down in the authorities relied upon by the learned AR for the petitioner but the same are not applicable to the peculiar facts of this case.

13. As a sequel to what has been discussed above, it is held that the impugned order dated 19.3.2015 dismissing the petitioner from service, legal and valid and the petitioner is, thus, not entitled to any relief. It is further held that a fair and proper enquiry has been conducted by the respondent as per law. Accordingly, both these issues are decided against the petitioner and in favour of the respondent.”

17. A perusal of the above extracted findings returned by the Tribunal below could manifest that the petitioner had remained absent from duty without permission for a long period of 4 years and rather he has gone abroad to Canada. It has come on record that the petitioner had returned to India in the year 2012 however he joined the duty only on 13.12.2013 i.e after about 1 year of his coming back from Canada. In the aforesaid

circumstances, I am of the considered view that the petitioner's absence from duty without permission and going abroad, amounts to misconduct and the punishment of dismissal from service awarded to the petitioner by the competent authority after holding departmental proceedings/inquiry against the petitioner cannot in any manner be categorised as shockingly disproportionate to the misconduct of the petitioner.

18. Keeping in view the above discussion; there is no scope for any interference in the findings returned by the Tribunal below vide impugned award dated 05.06.2017 (Annexure P-11), resultantly, the instant petition fails and the same is dismissed.

19. All pending applications (if any) shall stand closed.

04.01.2024
Himani

(HARSH BUNGER)
JUDGE

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |