

2024:PHHC:001878

242 **IN THE HIGH COURT OF PUNJAB & HARYANA**
AT CHANDIGARH

CWP-5375-2016

Date of Decision: 4th January, 2024

Omparkash @ Prakash

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Chanakya Pandit, Advocate
for the petitioner.

Mr. Satish Singla, DAG, Haryana.

Mr. Jagjot Singh, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Petitioner (Omparkash @ Prakash) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of impugned award dated 30.11.2015 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner, regarding termination of his services, has been answered against him. The petitioner further challenges the order dated 05.06.2009, whereby services of the petitioner were terminated.

Petitioner also seeks a writ of *mandamus* for directing

respondent No.2 – Jawan Prathmik Krishi Sehkari Limited (hereinafter to be referred as 'the Management') to allow the petitioner to resume his duties as Chowkidar.

2. Briefly, petitioner raised an industrial dispute regarding termination of his services, which was subsequently referred to the Tribunal, for adjudication.

3. Petitioner claimed that he was appointed as Chowkidar on 25.07.1997 by Jawan Rin Avam Seva Samiti Limited and the said Samiti along with three other Samitis merged into one society namely Jawan Prathmik Krishi Sehkari Samiti Ltd. (respondent No.2 herein). Petitioner claimed that he reported for duty on 27.03.2009 but was not allowed to mark his attendance and was threatened by Ramesh Chand Sharma (Manager) that his services will be terminated. In the said circumstances, petitioner filed a civil suit for permanent and mandatory injunction against the Society, wherein the written statement was filed by defendants therein, from where the petitioner came to know that his services had been terminated on 05.06.2009. Accordingly, petitioner withdrew the aforesaid suit on 23.12.2009 and raised the industrial dispute by serving demand notice. It is the case of petitioner that his work and conduct had remained satisfactory throughout his service period and no show cause notice was ever issued to him during his service tenure. Petitioner claimed that juniors to him were retained and his services were terminated without complying with the provisions of natural justice and without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'), accordingly, he claimed reinstatement in service along with all the consequential benefits.

4. The aforesaid claim of the petitioner was contested by

respondent No.2-Management on the plea that petitioner had committed some acts of gross misconduct in its premises on 31.03.2009, whereupon explanation was called from the petitioner vide letter dated 01.04.2009 and even a meeting of the Committee was also called; and petitioner was asked to submit his reply, however, he neither submitted any explanation nor turned up personally to submit his explanation. It was the stand of respondent No.2-Management that petitioner was very arrogant and usually consumed liquor during the duty hours and misbehaved with the senior officers, accordingly, it was submitted that it was not possible to conduct departmental inquiry against the petitioner, and therefore, his services were terminated w.e.f. 20.06.2009.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

*“(i) Whether the services of the claimant were illegally terminated? If so, what relief he is entitled to? OPW
(ii) Relief”*

6. Thereafter, both the parties led evidence in support of their case. The petitioner examined himself as WW-1 and one Omparkash s/o Shri Kadhera Singh, Member of respondent-Samiti as WW-2. On the other hand, respondent-Management examined Sh. Ramesh Chand as MW-1, Sh. Chander Pal s/o Deep Chand as MW-2 and Sh. Zile Singh as MW-3.

7. The Tribunal below decided the reference in question against the petitioner vide its impugned award dated 30.11.2015 (Annexure P-1) by holding that he was not entitled to any relief.

8. Being aggrieved against the aforesaid award dated 30.11.2015 (Annexure P-1), petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that Tribunal has

erred in law and fact in rejecting the claim of petitioner. It is submitted that respondent-Society had clearly admitted that no departmental inquiry, show cause notice, charge-sheet or any memo has been issued to the petitioner, therefore, the termination of his services was without affording any opportunity of showing cause or holding departmental inquiry, and against the principles of natural justice. It is submitted that Tribunal has decided the reference in a perfunctory manner. It is, therefore, prayed that the instant writ petition be allowed by setting aside impugned award dated 30.11.2015 (Annexure P-1) as well as order dated 05.06.2009, whereby the services of petitioner were terminated; and respondents be directed to allow the petitioner to resume his duties.

10. On the contrary, learned counsel for respondent No.2 has opposed the prayer made on behalf of the petitioner by submitting that petitioner had committed certain acts of gross misconduct in the premises of respondent-Management and an explanation was called from him, however, he failed to submit any explanation nor he appeared personally to tender any explanation, whereupon he was suspended on 08.04.2009. It is the stand of respondent No.2 that vide letter dated 20.05.2009 (Ex. M-9), petitioner was asked to appear before the PACS Committee on 05.06.2009, to explain as to why he should not be dismissed from his post, however being an alcoholic, petitioner failed to turn up for personal hearing or give any explanation for his gross misconduct, as such, it was not possible for the respondent-Management to conduct any departmental inquiry against him, and therefore, his services were terminated w.e.f. 20.06.2009. It is submitted that since petitioner himself did not come present to give any explanation regarding the allegations of misconduct levelled against him, accordingly the respondent-Management was constrained to terminate the services of

petitioner. It is submitted that the Tribunal was justified in passing impugned award dated 30.11.2015 (Annexure P-1), whereby claim of petitioner was rejected, accordingly, prayer was made for dismissal of the instant writ petition.

11. I have heard learned counsel for the parties and gone through the paper book with their able assistance.

12. There is no dispute about the fact that petitioner was appointed as Chowkidar and was working with respondent No.2-Management. From the perusal of reply filed by Management before the Tribunal, it is apparent that a specific stand has been taken therein that due to arrogant attitude of the petitioner, the Management could not prove the charges prior to dismissal order of petitioner, however, Management will prove all the charges before the Tribunal. It appears that respondent-Management reserved its right in its written statement to prove the charges against the petitioner, whereupon evidence was led before the Tribunal and upon considering the same, following findings were returned by the Tribunal:-

“11. MW1 Ramesh Chand, working with the respondent Samiti since 1976 and has got as initially as Secretary and later promoted in the year 2007 as Manager in the Cooperative Bank in the respondent Samiti has stated that on 31.3.2009 at about 1.00PM/2.00 PM the claimant had come in the office under the influence of liquor and started giving filthy abuses to him and to other staff members and also misbehaved with him and other staff members. On this thus the said witness tried to make understand the claimant but he has not changed his behaviour and in this regard the Manager of the Society sent a letter dated 1.4.2009 to the claimant wherein he was advised to file his reply by 7th April, 2009 and simultaneously, an executive committee meeting of PACS was also called on 8.4.2009 for deciding the action against the

claimant vide notice dated 1.4.2009. On 8.4.2009 the meeting was held under the Chairmanship of Dy. President of PACS committee and a decision was taken by the majority of the members to suspend the claimant from duty and intimation was sent to the claimant regarding his suspension. It has been further stated by Shri Ramesh Chand witness that the claimant has been absenting from his duty w.e.f. 1.4.2009 without any lawful permission or authorization regarding which a call letter was sent to the claimant on 15.5.2009 through Registered Post as well as through UPC post but the claimant neither reported for duty explanation regarding nor his submitted any unauthorized absenteeism. It was further stated by this witness that on 5.6.2009 a meeting was held as per the previous meeting under the chairmanship of Dy. President Shri Netra Pal and the deponent was authorized to write the proceedings and accordingly the proceedings were written by the deponent in the meeting it was decided by the Samiti that the services of claimant Om Parkash may be dismissed w.e.f. 5.6.2009 and the same was dismissed accordingly in view of the decision taken by the Samiti vide resolution Ex. R-2. It was further stated by Ramesh Chand that the claimant was very arrogant and the domestic enquiry could not take place and services of claimants were terminated/dismissed on the alleged misconduct after using liquor and misbehaviour. As per law laid down by Hon'ble Supreme Court authority it is specifically mentioned that "even, if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to given an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action.

12. The evidence adduced by MW2 Chander Pal and MW2 Zile Singh is also on the same line as adduced by MW1 Ramesh Chand.

13. As per the evidence and arguments advanced by both the parties it is amply proved that due to his habit of drinking liquor during duty hours and then giving filthy abuses to his seniors, his services of claimant were terminated and the respondent have proved the allegations of drinking wine during duty hours and giving filthy abuses by leading cogent evidence. Hence there is no illegality in the order of dismissal of claimant Omparkash and accordingly issue No. 1 is decided against the claimant and in favour of respondent.

Relief

14. As a sequel to my aforesaid discussion while deciding issue No. 1 and case law there is no merit in the reference petition and accordingly the reference petition is dismissed holding that the claimant is not entitled to any relief against the respondent. No costs. Copies of award be sent to the authorities concerned and the file be consigned to record after due compliance.”

A perusal of the above extracted findings would manifest that the Management had clearly proved before the Tribunal that petitioner was in the habit of drinking liquor during duty hours and gave filthy abuses to his seniors and his services were rightly terminated. In the present petition, petitioner is seeking quashing of the impugned award as well as the order of termination only on the ground that no opportunity of hearing was afforded to him before terminating his services. However, it appears that on account of the act and misconduct of the petitioner, departmental inquiry could not be conducted against him, and the Management had reserved its right to prove the charges of misconduct against the petitioner before the Tribunal below. Since the Management has proved before the Tribunal that the petitioner was habitual of drinking alcohol during working hours and hurling filthy abuses to his seniors, accordingly no fault can be found with the findings returned by the Tribunal.

13. Keeping in view the above discussion, I do not find any illegality or perversity in impugned award dated 30.11.2015 (Annexure P-1) passed by the Tribunal, and resultantly, the instant writ petition is dismissed.

14. All pending application(s), if any, shall also stand closed.

4th January, 2024

Apurva

(HARSH BUNGER)

JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No