

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

2024:PHHC:133585



**CWP No.18682 of 2024
Date of Decision: 14.10.2024**

Gursewak Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: None for the petitioner

Mr. Aman Dhir, DAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 16.03.2023 (Annexure P-14) whereby Labour Court answered the reference against him.
2. The respondent is a Co-operative Society. The petitioner was appointed as a Peon-cum-Chowkidar in the office of respondent No. 4 for 89 days on daily wages. His service was extended from time to time. He was appointed on regular basis on 13.08.1999. The respondent initiated proceedings against him. An Enquiry Officer was appointed. The Enquiry Officer found him guilty of misconduct. He did not file reply to enquiry report. He was terminated by competent authority. He moved an



application to labour authorities. The matter came to be referred to Labour Court which vide impugned award has answered the reference against him.

3. The Labour Court has recorded a categoric finding to the effect that copy of enquiry report was sent to workman, however, he did not file reply. He did not bring this fact on record and the said fact unearthed during evidence. The Labour Court did not find any infirmity in the enquiry report and consequent action taken against the workman. The relevant extracts of award dated 16.03.2023 are reproduced as below:-

“Issue No. 1

9. Onus to prove this issue was upon the respondents/management. The workman claimed that he was appointed as a peon cum -Chowkidar vide resolution dated 06.01.1999 by the respondents and his services were confirmed vide resolution dated 13.08.1999. He was suspended on 03.11.2014 and his services were terminated by the respondents on 20.07.2015.

The respondents on the other hand contested the claim of the workman that his claim is not maintainable as he was required to file appeal before the competent authority. The workman approached the Hon'ble High Court of Punjab and Haryana by way of filing CWP No.17462 of 2014, which was decided with the direction to respondent No.2 to consider the representation of the workman and to pass necessary orders and the Joint Registrar declined the claim of the workman by passing an speaking order dated 28.10.2014 and his services were ordered to be terminated after adopting proper procedure and in lawful manner.



Since the onus to prove this issue was upon the respondents/management, but they fail to offer MW-1 for his cross-examination and therefore the statement of the witness MW-1 in the form of examination in chief cannot be read into evidence, it being in complete. On the other hand the workman has also not led any evidence, when the ex parte proceedings against the respondents were ordered to be set aside. Even if the statement of the workman is considered as a piece of evidence, the documents produced by him proved that the respondents terminated his services after adopting proper procedure. Admittedly the workman filed a Civil Writ Petition No. 17462 of 2014, vide which he claimed the arrears of salary, increments and vide order dated 27.08.2014, the said writ petition was disposed off by the Hon'ble High Court, which is Exh. W-4. In compliance of the same, the Joint Registrar passed order dated 28.10.2014, vide which the claim of the workman was dismissed. The workman himself produced on file the copy of resolution dated 20.07.2015, vide which his services were terminated. The workman has also produced on file the copy of resolution dated 13.01.2015 vide which he was issued charge-sheet along with list of witnesses. The reply to said charge-sheet was submitted by the workman which is Exh. W-7. The copy of termination order Exh. W-5 goes to prove that the Assistant Registrar vide his letter dated 16.02.2015 appointed Rajinder Kumar Inspector as enquiry officer, who submitted his report on 29.04.2015. The copy of enquiry report was sent to the workman, but the workman did not reply to the notice and it was considered that he admitted the enquiry report and on the basis of the same, his services were ordered to be terminated, but now in the claim petition the workmen



nowhere agitated the enquiry conducted by the respondents, rather he kept silence about the enquiry proceedings conducted by the respondents. From his own evidence the factum of enquiry has come to light. The Tribunal in such circumstances has to ascertain as to whether any such enquiry was conducted or not. The factum of enquiry is evident from the documents produced by the workman and further enquiry into the matter as to whether the enquiry was conducted as per law or not, is not an issue in the present matter. Therefore, it is concluded the termination of the workman is after enquiry and not in the way he claimed. The workman has failed to point out any defect in the enquiry. Therefore, this issue is decided in favour of the respondents/management.”

4. From the perusal of findings recorded by Labour Court, it is evident that an enquiry was conducted against the petitioner and he was found guilty. On the basis of report of Enquiry Officer, services of the petitioner were terminated. He did not file reply to show cause notice which was issued on the basis of enquiry report. He did not disclose factum of enquiry before Labour Court. This Court while exercising writ jurisdiction cannot act as an appellate Court. There is no jurisdictional error or factual infirmity in the impugned order warranting interference.

5. The petitioner while assailing the impugned award has prayed for release of salary/wages for the period he actually worked.

6. The respondent shall consider claim of petitioner qua wages,



if any, outstanding, within two months from today.

7. In the wake of above, the petition stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

14.10.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:		No