



In the High Court of Punjab and Haryana, at Chandigarh

Letters Patent Appeal No. 22 of 2023 (O&M)

Reserved On: 14.08.2024
Pronounced On: 28.08.2024

Puneet Duggal

... Appellant(s)

Versus

Marriott Hotels India Private Limited and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Puneet Duggal, Appellant, in person.

Mr. Ashwani Kumar Chopra, Senior Advocate
with Mr. Brahmjot Singh Nahar, Mr. Aayush Chandra
and Ms. Shreyasi, Advocates, for respondent No.1.

Anil Kshetarpal, J.

1. Brief Facts of the Case

1.1 In this intra court appeal, the workman assails the correctness of the judgment and order passed by the learned Single Judge (SB) on 28.05.2024, which, in turn, has set aside the award passed by the Industrial Tribunal-cum-Labour Court (hereinafter referred to as "the LC").

1.2 The SB has directed the management to give compensation equivalent to three years' salary in lieu of the reinstatement of the workman with the payment of 40% back wages as ordered by the LC.

1.3 The relevant facts, in brief, are that on 05.03.2011, the appellant was appointed as 'Global Reservations & Customer Care Sales

Agent' at a remuneration of ₹20,951/- per month. His services were

dispensed with on 14.04.2015 on the ground that the appellant has failed to adhere to the minimum performance standards and the management has lost its confidence in his abilities to perform his duties. While terminating his services, it was observed that he will receive one month's salary in lieu of his contractual notice. On the demand notice served by the appellant, the matter was referred to the LC. The writ petition filed by the management to challenge the award of the LC has been allowed by recording the following reasons:

- i) The appellant lacks the potential to run the international business of the management which had global care centre for hotel and travel bookings.
- ii) The appellant did not have the acumen for this particular job.
- iii) The termination in the present case does not carry any stigma and it was the failure of the employee to show minimum potential in discharge of his duties.

2. Arguments put forth by the learned counsel representing the parties

2.1 Heard the appellant in person and the learned senior counsel representing respondent No.1 and with their able assistance, perused the paper book as well as the written synopsis filed by them in support of their respective submissions.

2.2 The appellant, while highlighting the certain facts and the findings of the LC submits that the SB has erred in substituting the relief of reinstatement with three years' salary.

2.3 Per contra, the learned counsel senior counsel representing respondent No.1 has filed the synopsis of arguments which read as under:-

“A. Impugned Order is as per law and meets the ends of justice

The Ld. Single Judge had considered the submissions of both parties (at page 21 to 25 of LPA) and passed the Impugned Order setting aside the Award and partly allowing the Writ Petition. The following findings were noted in the Impugned Award.

(a) The allegations of the Respondent No. 1 ex facie demonstrate that Appellant lacked the potential to perform his duties. A single mistake on part of the Appellant would cause catastrophic losses to Respondent No. 1 and therefore, Respondent No. 1 had to judge the performance of the Appellant. Accordingly, this function could not be delegated to the a court as held in the Labour Court's Award (Page 26 of LPA).

(b) The ground taken by the Labour Court that there was no inquiry and opportunity given to Appellant is incorrect, as this is not a case of employment termination due to trimming of the work force. The documents admitted by the Appellant in cross examination, which are the errors from 5 May 2011 till 15 March 2014 demonstrate that the Appellant did not have the required acumen for performing his job which had tarnished the reputation of

Respondent No. 1. Therefore, termination of employment in the present case does not carry any stigma. It was failure on part of the Appellant to meet minimum standards of performance of his duties (Page 26 to 27 of LPA).

(c) In light of the nature of employment and Respondent No. 1's business, reinstatement would be inexpedient, as it would have repercussions on the Respondent No. 1's business. Appellant worked for 4 years; however, there is documentary proof of non-performance, which caused the Respondent No. 1 to lose faith and confidence in the Appellant. Therefore, retention of Appellant in employment in such a situation would be highly inappropriate. (Page 27 to 28 of LPA). However, given that the Appellant has worked for 4 years, compensation equal to 3 years' salary was awarded by the Ld. Single Judge (Page 29 of LPA).

As noted above, the Ld. Single judge after appreciating the material on record, set aside the Labour Court Award and categorically held that (a) termination of Appellant's employment is for poor performance. It is non-stigmatic nature; and no inquiry was required; and (b) since the Respondent No. 1 had lost faith in the Appellant, he could not be reinstated. Considering that the Appellant had worked for 4 years, compensation was awarded.

Respondent No. 1 has already paid INR 7,54.236 in compliance of the Impugned Order, which was pocketed by Appellant.

B. Inquiry is not required to be conducted in termination of employment for poor performance.

(a) The Labour Court failed to consider that the Appellant's case is of continuous poor performance and not of misconduct by the Appellant and erroneously held that in case of the non-performance by the Appellant, a full fledged inquiry was required (Annexure P/1a at page 60 to 68, relevant pages 66 to 68 of LPA).

(b) Given the precision required for travel bookings, Appellant was required to adhere to minimum standards of performance as per the LSOP (Annexure P/3 at page 77 of the LPA). Further, under the terms and conditions of employment (Annexure P/2 at page 75 of LPA), the Respondent No. 1 had the right to terminate the Appellant's employment for a loss of faith without assigning any reason. Appellant has admitted in his cross examination that he was required to adhere to the minimum standards mentioned in the LSOP and appointment letter (Appellant's cross examination at page 190 of the LPA).

(c) Appellant's non-performance was objectively determined through four instances of wrong bookings made by him.

In accordance with the LSOP, warning letters were

issued to the Appellant. (Annexure P/5 and P/6 (Colly) at pages 84 to 87 of the LPA). Appellant did not deny the wrong bookings made by him during his cross examination before the Labour Court. (Appellant's cross examination at page 190 of the LPA).

(d) After the fifth incident of wrong booking made by the Appellant, Respondent No.1 had no option but to issue the Termination Notice (Annexure P/7 at page 88 of LPA). The Termination Notice refers to the wrong booking made by the Appellant, as well as the four warnings previously issued in accordance with LSOP for wrong booking made by Appellant. The Termination Notice mentions the poor performance of Appellant as the reason for termination of employment and not misconduct.

(e) As demonstrated above, the present case one of simpliciter termination basis poor performance which does not warrant an inquiry; therefore, the Respondent No. 1 did not conduct an inquiry. The Labour Court failed to appreciate that the termination of employment was not for disciplinary action, but due to repeated poor performance by the Appellant (Ground A of the Writ Petition at page 49 and 50 of LPA).

(f) The above finding of the Labour Court is also contrary to the settled position of law as decided by the Hon'ble Apex

Court with regard to the process termination of employment by the employer in cases of poor performance. (Ground C of be followed for the Writ Petition at page 50 and 51 of LPA). The Hon'ble Supreme Court in Rakesh Kumar Srivastava v. State of Jharkhand and Ors. reported in (2011) 4 SCC 447 had held that in case of termination because of unsatisfactory service, being a case of termination simpliciter and not a stigmatic termination, neither notice nor any opportunity of hearing is required. The same position was taken by the Hon'ble Delhi High Court in Davinder Arora vs. Management of Albert and David reported in 2002 (3) LLN 661.

- (g) *Further, the Labour Court has erroneously relied upon precedents which are not applicable to the present case. The Apex Court in the Rajesh Kumar Srivastava case has held that termination of employment due to misconduct is distinct from termination due to poor performance. Termination due to misconduct by an employee is based on adjudicatory assessment, hence a departmental inquiry is required. On the other hand, termination of employment due to poor performance is identifiable from an objective reading of the Appellant's record and hence no inquiry is required. The reliance placed by the Labour Court on Raghubir Singh v. General Manager, Haryana*

Roadways, Beicco Lawrie Limited v. State of West Bengal and Anr; Usha Breco Mazdoor Sangh v. Management of M/s Usha Breco Limited and Management of Ritz Theatre private Limitedv. Workmen is erroneous as in the facts of these cases, the respective employees were charged with misconduct and misdemeanour, and not poor performance (Ground J at page 54 of LPA).

(h) Appellant had relied on judgment dated 16 April 2024 passed in SLP (C) 8788 and 8789 of 2023 during the hearing. It is submitted that this judgment is not applicable to the facts of the present case as it does not consider termination of employment for poor performance. As noted in para 9 of the said judgment, the employee was terminated from employment as he did not possess the requisite qualifications as per the rules. The facts of the present case are distinguishable, as the Appellant was terminated for poor performance.

C. *Appellant has wilfully concealed that he has received INR 17,59,163 till date from Respondent No. 1.*

The Appellant has wilfully suppressed in the LPA that he has already received INR 17,59,163 at various stages during the litigation from the Respondent No. 1, including payment for legal expenses. The payments made by the Respondent No. 1 to the Appellant from the termination of his employment till date are reproduced below.

Sl. No.	Components	Amount
1.	Payments made at the time of termination of employment inclusive of (a) notice pay - INR 87,035; (b) retrenchment compensation INR 41,902; (c) leave encashment - INR 8380; and (d) accrued salary - INR 15,802.	INR 87,035
2.	Payments made in accordance with interim order dated 21 November 2018 (including litigation. expenses of INR 1,00,000.	INR 9,17,236
3.	Payments made in compliance of the order passed by the Ld. Single Judge of this Hon'ble Court in the Writ Petition.	INR 7,54,236
Total		INR 17,59,163

D. Labour Court failed to consider and appreciate the material on record which demonstrated Appellant's conduct.

(a) The Labour Court had failed to consider much less appreciate that the Appellant had changed his stand in pleadings at various stages. The pleas taken by the Appellant, which demonstrate his conduct are referenced below.

Sl. No.	Document	Stand taken by Appellant
1.	Annexure P/8 Demand Notice (at page 89 of LPA)	Para 5- Appellant stated that he never received any warning Para 6- Appellant stated that he was not given any service compensation or notice pay; and the Respondent no. has violated principles of natural justice. Para 8- Ordered to do illegal work as well as personal work which the Appellant had refused. So services terminated without rhyme and reason.

2.	<i>Annexure P/10- Application under section 2(A-2) of the Industrial Disputes Act, 1947 (at page 99 of LPA)</i>	<i>Para 1- Got sign some papers and employment was terminated without conducting any inquiry.</i>
3.	<i>Annexure P/12 Evidence Affidavit of Appellant (at page 134 of LPA)</i>	<i>Para 6- Intention to victimise as Appellant Affidavit of Appellant (at played active role in organising the workers.</i>
4.	<i>P/12 Cross examination of Appellant (at page 190 of LPA)</i>	<i>Appellant stated that he was aware of the LSOP the LSOP. He also did not deny that he had made a wrong booking and stated that he was forcefully made to sign on a warning letter. Hea also stated that he had not mentioned the allegation of forceful signatures either in his evidence affidavit or claim statement.</i>

(b) The Appellant also made unsubstantiated allegations against his manager, etc., but failed to lead any evidence before the Labour Court in this regard. Further, the LSOP clearly states that an employee is liable for wrong bookings made by him and this is a minimum standard that is required to be met. (Ground E and G at page 51 and 53 of LPA)."

3. **Analysis of the arguments and discussion by the Bench**

3.1 Having heard the appellant and the learned senior counsel representing respondent No.1, this Bench is of the considered view that the appeal deserves to be allowed for the following reasons.

3.2 The word “retrenchment” has been defined in Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as “The 1947 Act”). It expressly excludes the termination of services of a workman by the employer as a punishment inflicted by way of disciplinary action. In other words, the retrenchment under the 1947 Act does not cover the termination of services of an employee as a punishment. A bare reading of the order dated 27.04.2015 shows that the appellant has been terminated from his services by a stigmatic order as it can be noticed that on account of the appellant’s failure to adhere to the minimum performance standards, the management has lost its confidence in his abilities to perform his job and hence his services are terminated. The order, in the instant case, cannot be treated to be a simple order of termination. The services terminated on the basis of the alleged misconduct is not retrenchment but it amounts to dismissal. Reliance is placed upon the judgment in *Narsingh Paul v. Union of India (2000) 3 SCC 588*.

3.3 Once it has been found that the appellant was dismissed from his service on account of his failure to adhere to the minimum performance standards, it was incumbent upon the employer to hold departmental inquiry while giving an opportunity to the appellant to prove his case. The authorized representative of the management has unequivocally admitted in evidence that the appellant was given the excellent performance certificates, which are Ex. P3 to Ex.P28. As per the case of the appellant, he was issued the abovesaid certificates including the last one in January, 2015. The appellant claims that on 19.03.2015, four warning letters were forcibly got

signed from him. All the four warning letters are from March, 2015.

Whereas in April, 2015, he was dismissed from service. In these circumstances, the departmental inquiry was necessary to grant an opportunity to the appellant to prove that the allegation regarding his performance not being upto the minimum performance standards is incorrect. Admittedly, in this case, neither any disciplinary proceedings or inquiry was held nor the appellant was given a fair opportunity to prove his case.

3.4 The SB has incorrectly held that the order of termination does not carry any stigma. The relevant part of the dismissal order reads as under:-

“Due to your continued failure to adhere to the minimum performance standards expected for your role, the Management has lost confidence in your abilities to perform your duties as a Global Reservations & Customer Care Sales Agent and your services are hereby terminated immediately. You will receive 1 month’s salary in lieu of your contractual notice.”

It is, thus, evident that the learned Single Judge has overlooked this fact.

3.5 The SB has further erred in overlooking the fact that the appellant was not given an opportunity to prove that his performance was upto the desired performance standards as expected. He has relied upon ‘excellence/appreciation certificates’ issued to him from time to time including the last one issued in January 2015 and these documents were proved before the Labour Court as Ex.P3 to Ex.P28, however, in the impugned judgment these documents have been overlooked.

Labour Court was limited. In fact, the learned Single Judge has not held that the procedure adopted by the management for termination of the appellant from service was fair and proper. In fact, the aforesaid finding of the LC has not been disturbed. In the facts of this case, particularly when the order passed casts aspersions on the competence of the appellant, the course adopted by the SB was not correct.

3.7 This Bench now proceeds to examine the contentions of the learned senior counsel representing respondent No. 1. The submission under clause A(a) of the written synopsis is with reference to the scope of the Court's interference in the order of dismissal from service. In substance, it is claimed that the appellant lacks potential to perform his duties. However, this was required to be proved by holding a departmental inquiry and granting a fair opportunity to the appellant to prove his case. The appellant was a regular employee who had worked for more than four years while earning as many as 26 letters of excellence and appreciation including the last one issued in January, 2015. The appellant alleges that all the four warning letters were got forcibly signed from him on 19.03.2015, whereas he was dismissed from service on 27.04.2015. It was incumbent upon respondent No.1 to prove in the disciplinary proceeding that the appellant lacks potential to perform his duties.

3.8 Similarly, the argument under clause A(b) is not based upon the correct facts. The order dismissing the appellant from service casts aspersion on his competence to perform. In other words, the appellant has been characterized as incompetent employee who has continuously failed to

adhere to perform the minimum performance standards. The appellant was

required to be given an opportunity to prove that the allegations made against him by the employer were false.

3.9 Similar is the position of the submission under clause A(c). The appellant has been adjudged incompetent without proving these assertions by the management. Ms. Ruchi Verma, while appearing in evidence, claimed that the disciplinary proceedings were held, however, subsequently, she admitted that no such proceedings were held. She admitted that no charge sheet was issued to the appellant.

3.10 The submission under clause B(a) also lacks substance because the appellant's case was not of continuous poor performance particularly when there were 26 letters of excellence/appreciation issued in his favour. The alleged performance warnings were issued during a short duration of 16 days because the first warning is alleged to be dated 03.03.2015 whereas the last one is dated 18.03.2015. Moreover, the appellant, while appearing in evidence has denied that he had made booking with incorrect dates about the proposed visit of customers.

3.11 The respondent No.1's counsel has relied upon the Local Standard Operating Procedure (hereinafter referred to as "LSOP") issued by the respondent, which is not a part of the certified standing order. Moreover, such LSOP being unilaterally prepared by the management is not binding upon the workman. He may have signed the same, however, there is a difference of bargaining strength between the employer and the employee. Such contracts fall within the mischief of Section 23 of the Indian Contract Act, 1872 (hereinafter referred to as "the 1872 Act"). While adversely

Water Transport Corporation Limited v. Brojo Nath Ganguly and Another (1986) 3 SCC 156, held that such clause in the service rules/regulation/policy is void being opposed to the public policy under Section 23 of the 1872 Act and is also ultravires Article 14 of the Constitution of India. Such unconstitutional bargains or contracts were held to be irreconcilable with what is right or reasonable or the terms which are so unfair or unreasonable that they shock the conscience of the Court.

3.12 The submission under clause B(c) is reiteration of the earlier submission, which has already been examined. Hence, needs no further deliberation.

3.13 Similar is the position with regard to the submission under clause B(d). In the opinion of the Bench, the order dismissing the appellant from service is stigmatic and not a simplicitor order of discharge. Hence, the submission under clause B(d) is not worth acceptance.

3.14 This Court has carefully read the judgment passed in *Rakesh Kumar Srivastava v. State of Jharkhand and Others (2011) 4 SCC 447*. In that case, the services of a Munsif, who was working on probation, were dispensed with by a simple order. Hence, the same is not applicable the facts of the present case. Similarly, in *Davinder Arora vs. Management of Albert and David 2002 (3) LLN 661*, the work of employee was working on probation as Medical Representative was not found satisfactory. Hence, by a simple order, he was discharged from the service during probation period.

3.15 The argument under clause B(g) is again lacks substance because it has been consistently held by the Courts that misconduct of

argument under Clause B(h) is not required to be analyzed because this Bench is not relying upon the order passed on 16.04.2024 in SLP (C) No. 8788 and 8789 of 2023.

3.16 Under Clause 'C', it has been projected that the appellant has concealed the material facts. It would be noticed here that while dispensing with the appellant's service, he was paid only one month notice period pay. He was also not paid the retrenchment compensation which was admittedly subsequently paid on 29.05.2015 i.e. after one month of the date when his services were dispensed with. In this case, the demand notice was served by the employee on 11.05.2015, whereas the retrenchment compensation, in accordance with Section 25F of the 1947 Act, was paid only on 29.05.2015. As per the table reproduced in Clause 'C' payments under clause (2) are made in accordance with Section 17B of the 1947 Act and payment under clause (3) has been made to the appellant in terms of the learned Single Judge's order. With these payments, the workman's claim to reinstatement would not stand frustrated or such payments would not estop to claim reinstatement.

3.17 With regard to argument under clause D(a), it would be noticed that in the facts of the present case, it was incumbent upon the management to hold a departmental inquiry. With reference to clause D(b), the appellant was never given an opportunity to substantiate the allegations against manager. At this stage, it would be noticed here that the effect of the stigmatic order passed by respondent No.1 continues to impact his future employment and career. In such circumstances, it was inappropriate for the

4. Decision

4.1 Keeping in view the aforesaid discussion, the present appeal is allowed and the judgment passed by the learned single Judge is not sustainable and the award passed by the Industrial Tribunal-cum-Labour Court is restored.

4.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

August 28th, 2024
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No