



CWP-20514 of 2023 :1:

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

**290**

**CWP-20514 of 2023 (O&M)  
Date of decision : 11.02.2025**

**CHRISTIAN MEDICAL COLLEGE LUDHIANA AND ANOTHER**

..... Petitioners

**VERSUS**

**INDUSTRIAL TRIBUNAL, LUDHIANA AND ANOTHER**

..... Respondents

**CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

**\*\*\***

Present :- Mr. Vishal Gupta, Advocate  
for the petitioners.

Respondent No.2-Arun Malik in person.

**\*\*\***

**Harsimran Singh Sethi, J. (Oral)**

1. In the present petition, the challenge is to the award dated 29.03.2023 (Annexure P-10) passed by the Presiding Officer, Industrial Tribunal, Ludhiana by which, the respondent No.2-workman has been reinstated in service with continuity but 40% backwages.

2. Learned counsel for the petitioners argues that the respondent No.2-workman was proceeded against by issuance of a charge sheet dated 30.09.2013, copy of which has been appended as Anneuxre P-3 and keeping in view the fact that the Enquiry Officer found the charges against the respondent No.2 having been proved, after complying with the rules of



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natural justice, the respondent No.2-workman was dismissed from service vide order dated 05.06.2014 (Annexure P-5). Learned counsel submits that once nothing evident has come on record that the enquiry conducted against the respondent No.2-employee is faulty in any manner, the grant of relief of reinstatement with continuity of service alongwith 40% backwages and interest, is incorrect and therefore, the impugned order passed by the Tribunal is liable to be *set aside*.

3. The respondent No.2-workman who appears in person submits that the similar charges were alleged against four other employees namely the respondent No.2 workman-Arun Malik, one John TC, Roxwell Samuel and Gulshan Masih against all of whom, the allegations were proved but, John TC and Roxwell Samuel left the job whereas, Gulshan Masih who was similarly situated as the workman, has been reinstated with the backwages and therefore, applying a different yardstick for the respondent No.2-workman qua the same allegations is arbitrary and illegal. The respondent No.2-workman further submits that the aforementioned fact has been noticed by the Labour Court while granting the relief and therefore, the two employees alleged of same allegations, are to be treated in a similar manner and not in a differentiating manner. The respondent No.2-workman further submits that the allegations which have been alleged against him in the charge sheet dated 30.09.2013 were only of creating noisy scenes on 16.09.2013 in the auditorium, which are not such serious that the same will lead to the dismissal of the respondent No.2-workman from service and charges alleged and proved are totally disproportionate to the ultimate



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punishment imposed.

4. I have heard learned counsel for the petitioner as well as the respondent No.2-workman and have gone through the case file with their able assistance.

5. Certain facts are conceded such as that the allegations as per the charge sheet which have been attached as Annexure P-3 is for creating a noisy scene on 16.09.2013 in the auditorium. It is also a conceded position that the said allegations were alleged against the respondent No.2-workman Arun Malik, one John TC, Roxwell Samuel and Gulshan Masih.

6. The one Gulshan Masih against whom also the enquiry was conducted and the similar charges were proved but no action has been taken against him only on the ground that the said Gulshan Masih apologized. The other two workmen namely John TC and Roxwell Samuel, left the job immediately upon the service of the charge sheet leading the respondent No.2-workman behind.

7. Once, the allegation against the respondent No.2-workman Arun Malik and Gulshan Masih were same and the same allegations were proved against both the workmen, taking two different action against two workmen involved of the same allegation is not at all permitted. It is a settled principle of law by Hon'ble the Supreme Court of India in **Civil Appeal No.1334 of 2013 titled as 'Rajendra Yadav Vs. State of M.P. and others decided on 13.02.2013'** that in case, two employees are alleged of the same misconduct, taking different action against the two even after proving the same allegations is not at all permissible. The relevant paragraph



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of the judgment of Supreme Court of India **Rajendra Yadav** (supra) is as under:-

*“12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.*

*13. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407**, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In *Shaileshkumar Harshadbhai Shah case (supra)*, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.”*

8. In the present case, the petitioners have taken two different actions upon proving of the same allegations against the two workmen such



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as the respondent No.2-workman has been dismissed from the service whereas, Gulshan Masih, no action has been taken against him and he has been reinstated with all the backwages and is still working as of now.

9. The Tribunal has categorically held in paragraph 38 of the award dated 29.03.2023 (Annexure P-10) that once Gulshan Masih has been allowed to work who was also involved in the same mis-cadre and against whom also the charges were proved, without there being any action taken, dismissing the respondent No.2-workman from service is arbitrary and illegal. Learned counsel for the petitioner has not been able to dispute the said fact or prove the said ground to be contrary or perverse to any evidence which has come on record. Rather, during the hearing also, learned counsel for the petitioner conceded that Gulshan Masih is working as of now despite involved in the same allegations as being alleged against the respondent No.2-workman.

10. Further, the allegations are to be seen for inflicting the punishment. Even if the enquiry was held by the Enquiry Officer, the punishment which is disproportionate to the charges alleged cannot be imposed. In the present case, there is only one allegation of creating nuisance on a particular day i.e. 16.09.2013 alongwith other four employees. Even if, the same is proved, then also, the same will not give the liberty to the petitioner to invoke the jurisdiction to dismiss the workman who had rendered 18 years of service with petitioner-institution. The punishment imposed is shockingly disproportionate to the charges alleged and proved.

11. Keeping in view the fact that this Court is exercising

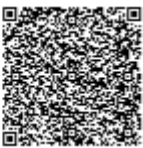
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jurisdiction under Article 226 of the Constitution of India and the justice is to prevail, the findings needs to be recorded i.e. the facts and circumstances of the present case imposing the punishment upon the respondent No.2-workman of dismissal in service ignoring the 18 years of service due to one incident, is totally disproportionate to the charges alleged and proved especially when, the workman-accused of the same misconduct, is being allowed to continue in service without there being any punishment imposed upon him.

12. Further, the respondent No.2-workman remained out of service from the year 2014 onwards and has not been reinstated even as of now despite the award dated 29.03.2023 in his favour. The punishment of only 40% backwages is good enough to punish respondent No.2-workman for the said misconduct.

13. Further, the respondent No.2-workman who has addressed the arguments submits that he will maintain the dignity of the office as well as the institution at all times to come and will not create any such situation henceforth so as to defame the institution, which is giving him bread and butter.

14. Learned counsel submits that the petitioner has raised an argument that the respondent No.2-workman does not fall within the definition of the respondent No.2-workman. Learned counsel submits that the same has wrongly been overruled by the Tribunal. A bare perusal of paragraph 37 would show that due reasons have been given to hold the respondent No.2-workman as workman keeping in view the definition of



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workman under Industrial Disputes Act, 1947. No material evidence has come on record that no manual work was being performed by the respondent No.2-workman while discharging his duties merely that the designation was given the maintenance of coordinator does not mean in any manner that the respondent No.2-workman was not performed the manual duties. In the absence of any such evidence brought on record and pointed out to this Court, the finding recorded in paragraph 37 of the Labour Court award cannot be treated as a perverse so as to grant the benefit to the petitioner.

15. Learned counsel for the petitioner submits that the grant of interest to workman against whom the allegations have been proved should also be reconsidered. The workman who appears in person submits that in case management reinstates him in service, he would have no objection in case the grant of interest @ 6% on the backwages is waived off.

16. Keeping in view the above, as the parties have agreed the grant of interest at the rate of 6% on the backwages admissible to respondent-workman stand waived off and the award dated 29.03.2023 (Annexure P-10) stands modified to the said extent.

17. Petition is disposed of in above stated terms.

18. Pending applications, if any, also stand disposed of accordingly.

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

**11.02.2025**  
Rimpal

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable :      | No  |