

***** Vs. Presiding Officer, Labour Court and Another

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Court : Punjab and Haryana

Decided On : Mar-03-2014

Appellant : *****

Respondent : Presiding Officer, Labour Court and Another

Judgement :

CWP No.3855 of 2014 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CWP No.3855 of 2014. Date of decision:

03. 03.2014 Madhu Sudan ...Petitioner Vs. Presiding officer, Labour Court and another ...Respondents CORAM: HONBLE MR.JUSTICE GURMEET SINGH SANDHAWALIA ***** Present: Mr. Girish Agnihotri, Senior Advocate with Mr. Vijay Pal Singh, Advocate for the petitioner. **** G.S.SANDHAWALIA, J.

(Oral).

1. Challenge in the present writ petition is to the award dated 19.8.2013 (Annexure P/20) which has upheld the termination order dated 20.5.1998 (Annexure P/7) and the appellate orders dated 7.12.1998 (Annexure P/9) and dated 23.3.1999 (Annexure P/11) along with enquiry reports Annexures P/5 and P/6.

2. From a perusal of the paper-book, it would be clear that the workman raised a demand vide notice dated 7.1.2002 (Annexure P/13) wherein it was pleaded that he was appointed as Special Conductor on 1.1.1994 and worked upto 20.5.1998 when his services were terminated vide Annexure P/7. The enquiry proceedings

were challenged on the ground that the service conditions of the workman were governed by rules and regulations namely Haryana Civil Services (Punishment and Appeal) Rules, 1987 (hereinafter referred to as the

198. Rules.) and procedure prescribed under the said rules had not been followed. The enquiry was not fair and proper and no opportunity of defence was afforded to the workman. The appeal of the workman was wrongly Kumar Pardeep 2014.03.10 11:25 I attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh CWP No.3855 of 2014 -2- rejected.

3. The matter was referred to the Labour Court and objection was raised that order was passed in 1998 and the challenge was laid after four years. It was submitted that the petitioner workman was employed on contract which was discontinued after finding him involved in a fraud and misrepresentation amounting to ` 11,148/- and he had misbehaved with one passenger during his service tenure. He had tampered with the official record and way bills etc. and the provisions of 1987 Rules were not applicable as he was on contract basis on a consolidated salary of ` 1400/- per month. The departmental enquiry had been conducted against him and he had cross-examined the official witnesses and had been given opportunity of leading evidence. Thereafter his services were dispensed with. The Appellate Authority had also rejected his case after giving him an opportunity of personal hearing. The management examined Rattan Kumar as MW1 whereas the workman examined himself as AW1 and initially the award was passed against the workman on 25.8.2010. The workman preferred Civil Writ Petition No.17521 of 2011 against the same wherein this Court remanded the issue for reconsideration on account of the fact that the Labour Court had failed to deal with the effect as to whether the 1987 Rules were applicable to contractual appointees. Thereafter, the reference has now again been decided against the workman which is the subject matter of challenge in the present petition.

4. The Labour Court noticed the provisions of 1987 Rules and held that the workman did not come within the purview of a Government employee as he was appointed on contractual basis and therefore, the said Rules were not applicable and the enquiry was not to be held under Kumar Pardeep 2014.03.10 11:25 I

attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh CWP No.3855 of 2014 -3- the 1987 Rules. It was further held that the enquiry was held in the present case and the workman was given adequate opportunity to defend himself and thereafter, order was passed whereby his service contract was terminated. Finding of fact was recorded that there were two charges against the workman and in both the enquiries the workman had been informed and he had participated in the enquiry and had cross-examined the witnesses. He had also in his statement made before the Enquiry Officer begged forgiveness for the wrong entries made by him and assured that he would not repeat any such mistake and had not produced any witness in view of his admission.

5. Learned senior counsel for the petitioner has vehemently argued that the order was stigmatic in nature and therefore, the petitioner has been gravely prejudiced. Reliance has been placed upon the Division Bench judgment of this Court in Sudhir Sharma Vs. The Punjabi University, Patiala and another 2004(5) Services Law Reporter 847 to submit that an adhoc employee could not be terminated without complying with the provisions of rules of natural justice. Nothing has been argued on the point that the finding recorded by the Labour Court that being a contractual employee the workman was not entitled for the procedure provided under the 1987 Rules.

6. After hearing learned senior counsel at length this Court is of the opinion that no case for interference is made out in the facts and circumstances of the present case. A perusal of the copy of show cause notice (Annexure P/2) would go on to show notice was issued to the petitioner that an irregularity has been committed by him from the month of November, 1996 to 21.2.1997 and it had been found that he had sold already sold tickets by making cuttings in way bills. The details were Kumar Pardeep 2014.03.10 11:25 I attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh CWP No.3855 of 2014 -4- given against the dates of embezzled amount which was to the tune of ` 11,148/-. Accordingly, reply was solicited and the workman was informed that if the reply was not filed within the time prescribed the exparte proceedings would be initiated against him. The said show cause notice also contained copy of report containing

33 photostat copies of documents in which cuttings/over writings had been made. Rishi Rattan, Sub Inspector was examined by the department who deposed regarding the cuttings on the way bills and he was duly cross- examined. The Enquiry Officer noticed that the workman had got recorded his statement that inadvertently he made cuttings/over writing on the way bills and he also deposited the amount in Government treasury and had given his apology and did not want to produce any defence witness and lenient view should be taken as he was a poor and married person. Accordingly, the inquiry report was given against him. It was in such circumstances his contract was terminated. In the appeal also, the Appellate Authority the Assistant State Transport Commissioner heard the workman who took the plea of forgiveness and came to the conclusion that there was no logic in allowing to continue such a corrupt employee in service and rejected his appeal vide order dated 7.12.1998 (Annexure P/9). The second appeal was dismissed on the ground that it was not maintainable on 23.3.1999 (Annexure P/11).

7. A three Judge Bench of the Apex Court in Karnataka Bank Ltd. Vs. A.L.Mohan Rao 2006 (1) SCC63 held that it is not for the High Court to replace the order of termination, and once there was loss of confidence in the employee, order of reinstatement would not be justified. In Uttaranchal Transport Corporation Vs. Sanjay Kumar Nautiyal 2008 (2) SCT174 it was held that the Labour Court and the Kumar Pardeep 2014.03.10 11:25 I attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh CWP No.3855 of 2014 -5- High Court were not justified in taking the view that the punishment was disproportionate once it was found that the Conductor had not issued tickets to about half of the passengers travelling in the bus. In Divisional Manager, Rajasthan S.R.T.C. Vs. Kamruddin 2009 (7) SCC552 it was noticed that disciplinary proceedings were initiated against the employee for similar misconduct, for the fifth time and therefore, it would be misplaced sympathy in ordering reinstatement.

8. Reliance upon Sudhir Sharma's case (supra) by the counsel for the petitioner is without any basis in the facts and circumstances of the present case. In that case finding had been recorded that there was no enquiry and the adhoc employee had

been dismissed by stigmatic remarks, therefore, the petition was allowed and the termination order was quashed with liberty to the employer to proceed in accordance with law. In the present case as noticed above, procedure has been followed whereby workman has been given proper opportunity to associate with the enquiry. He has admitted his guilt both before the Enquiry Officer as well as before the Appellate Authority. The fraud and misappropriation of such an huge amount of ` 11,148/- by an employee who was yet on contract would show his dishonest intention and the authorities were justified to terminate his contract. The Labour Court has examined the issue in detail and passed a well reasoned order which is not liable to be interfered with.

9. It has time and again been held by the Apex Court that while exercising the powers of writ jurisdiction under Article 226 of the Constitution of India, this Court is to exercise its power only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice has taken place. *Kumar Pardeep* 2014.03.10 11:25 I attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh CWP No.3855 of 2014 -6- place. The High Court will not convert itself into a Court of appeal and indulge, appreciate or evaluate evidence and correct errors in drawing inferences or correct errors of mere formal or technical character. The said principle was laid down in *Surya Dev Rai vs. Ram Chander Rai and others*, 2003 (6) SCC675 wherein it has been held that where the Tribunal has acted illegally in exercise of jurisdiction conferred on it and decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice, this Court would interfere. The error of law has to be apparent on the face of the record and it has to be manifestly clear that the conclusion of law recorded by the Tribunal is on an obvious misinterpretation of the relevant statutory provisions or in ignorance of the same. Thus, what can be corrected is an error of law, which should be of such a character which is apparent on the face of the record and if the statutory provision is capable of two constructions and one of it had been adopted by the Tribunal, it may not be desirable to correct the same by way of writ of certiorari.

10. In the present case, no such error of law or fact has been shown which would warrant interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India. Accordingly, there is no scope for interference in the well reasoned award of Labour Court and the writ petition is dismissed. 03.03.2014 (G.S.SANDHAWALIA) Pka JUDGE Kumar Pardeep 2014.03.10 11:25 I attest to the accuracy and integrity of this document Punjab and Haryana High Court, Chandigarh

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