
(2014) 05 P&H CK 0343
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20066/2011

Commissioner, Municipal Corporation

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Penal Code, 1860 (IPC) — Section 148, 149, 307, 323

Citation : (2014) LLR 651

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Sanjiv Ghai, Advocate for the Appellant; Dinesh Nagar, Advocate for Respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—Challenge in the present writ petition is to the award dated 18.3.2011 (Annexure" P-8) whereby, the Labour Court, Chandigarh has directed that the respondent-workman shall be entitled for reinstatement with continuity of service and 50% back-wages 3 years preceding the date of demand notice dated 14.02.2003. A perusal of the paper book would go on to show that the respondent-workman was working as Safai Karamchari and was appointed on 24.03.1979. He was involved in FIR No. 2 dated 01.01.1995 u/s 148/307/323/149 IPC and on account of his arrest, was placed under suspension w.e.f. 27.01.1995 i.e. the date of his arrest. On conviction by the Session Judge, Chandigarh on 01.06.1996, show cause notice was served upon him on 27.08.1996 as to why his services should not be dismissed.

2. In his reply, the workman submitted an appeal against conviction was filed which had been admitted in the High Court and accordingly, the Commissioner of the petitioner-corporation on account of his conviction, dismissed the workman vide order dated 29.07.1997. thereafter, on 31.10.2000, the Division Bench of this Court acquitted the workman and his co-accused apart from one Dilbagh

Singh u/s 307 IPC read with section 149 IPC and maintained the conviction only u/s 323 IPC and sentenced them for the period which they had already undergone. It is pertinent to mention here that Ram Kumar s/o Phool Singh was given the same benefit, who was also an employee of the petitioner-corporation. Vide demand notice dated 14.2.2003 (Annexure P-5) u/s 2A of the Act, the workman raised an industrial dispute by pointing, out that earlier also, a representation had been given on 19.12.2000 requesting for reinstatement but no decision had been taken. It was submitted that the dispute was a private dispute which had taken place outside the premises and the precincts of the management. The matter being referred to the Labour Court, the petitioner-corporation took the plea that since he had been sentenced u/s 323 IPC on 31.10.2000 and he was having a criminal record, he was not fit to be retained in service. The order of dismissal was thus sought to be justified.

3. In the rejoinder to the reply, the petitioner-workman again took the plea that conviction u/s 323 IPC was not involving any moral turpitude and the order of dismissal is not justified.

4. Before the Labour Court, the workman examined himself as AW1 and examined Subhash Chand, Sr. Assistant as AW2, Bhupinder Singh Clerk as AW3 and Kamlesh Devi, Junior Assistant in the office of the Medical Officer of Health, Chandigarh as AW4.

5. The petitioner-corporation, on the other hand, examined Pardeep Kumar, Clerk as MW1. It was brought on record before the Labour Court that Ram Kumar was also working as Sweeper in the water supply department of U.T., Chandigarh and was involved in the same criminal case and he had been reinstated in service by that department.

6. The Labour Court came to the conclusion that the Punishing Authority was competent to pass the order of dismissal without inquiry but held that the concerned authority did not record a specific finding as to how the conviction passed against the work-man has rendered him ineligible to continue in service. It was noticed that the workman had completed about 16 years of service and the Punishing Authority did not record sound reasons while holding that the conduct of the workman had rendered him ineligible-, for government job. Accordingly, while placing reliance upon the judgment of the Apex Court in State of M.P. v. Hazari Lai, 2008 (2) SCT 148 it was held that the punishment order dated 29.07.1997 was not sustainable. It was noticed that the appeal was pending when the punishment order was passed and at that time, the conviction was also u/s 307 IPC but the same was set aside subsequently and the punishing authority would have taken a different view in favour of the workman had the conviction only been u/s 323 IPC and, therefore, set aside the dismissal order. The relief was limited to 50% back-wages by limiting the arrears upto 3 years immediately preceding the demand notice which was on 14.02.2003 i.e. 14.02.2000 when he served the demand notice but the workman was given the benefit of the continuity of service.

7. Counsel for the petitioner-corporation has vehemently submitted that Hazari Lai's case (supra) was not applicable since in the said case, the conviction was only u/s 323 IPC and the services had been dispensed with by the employer on the ground of the said conviction. The Apex Court, in such circumstances, had held that he was not punished for any heinous offence and, therefore, upheld the order passed by the Tribunal which had allowed the application of the employee. It is thus submitted that in the present case, the conviction had been u/s 307 IPC and it was in such circumstances, the order of dismissal was passed. Even though the petitioner-workman had been acquitted u/s 307 IPC but it was submitted that the sting of conviction would continue and stigma was not obliterated. Reliance was placed upon the judgment of the Apex Court in Punjab Water Supply Sewerage Board and Another Vs. Ram Sajivan and Another, to submit that even if the offender was released on probation, the stigma of conviction would continue. On the issue of back-wages, it was further submitted that the workman was not entitled for back-wages and there was no fault of the department and the workman had been kept out on account of his conduct and since he had not worked, he was not entitled for the back-wages. It was accordingly submitted that giving back-wages from February, 2000 was not justified and reliance was placed upon judgment of the Apex Court in Union of India (UOI) and Others Vs. Jaipal Singh, and Division Bench judgment of this Court in LPA No. 930 of 2012, Sat Pal Dhawan v. State Bank of Patiala and others decided on 01.04.2013.

8. Counsel for the workman, on the other hand, submitted that similarly situated person namely Ram Kumar, who was also involved in the criminal case, had been acquitted u/s 307 IPC and he had been reinstated in service by his department. It was submitted that the petitioner had represented in the year 2000 and, therefore, was entitled to reinstatement from the date of his representation.

9. After hearing counsel for the parties, this Court is of the opinion that there is little scope for interference in the well-reasoned order passed by the Labour Court. A perusal of the cross examination of MW-1 Pardeep Kumar would go on to show that it was admitted by the said witness that the quarrel in which the workman was involved took place outside and after duty hours and it was between some private persons not connected with the office of the petitioner-corporation. This Court found that it was a case of free fight between two sides and it was on account of some remarks which had been passed against the women folk of the workman which led to the altercation. Only Dilbagh Singh was subsequently convicted u/s 307 IPC whereas the, petitioner and co-accused including Ram Kumar were acquitted of the said charge and only convicted under, section 323 IPC on 31.10.2000. Ram Kumar was working with the Water Supply Department of U.T., Chandigarh and he was reinstated in service by his department which would be clear from the statement of MW-1. When the offence had taken place on 1.1.1995, the office of the petitioner-corporation was under the U.T. Administration. Thus, two similarly situated persons were given different treatments on account of the same disqualification, which could not have been

done as the same would be violative of Article 14 of the Constitution of India since it would be absolutely arbitrary and violative of the doctrine of equality. In similar circumstances, the Apex Court in *Man Singh Vs. State of Haryana and Others*, granted the benefit to the appellant by noticing that the appellant and one Vijay Pal, both police officials, were dealt with in departmental proceedings on account of transporting liquor in violation of the prohibitory orders of the State Government. Vijay Pal's punishment in the departmental proceedings was set aside by the Appellate Authority after his acquittal by the criminal Court in the excise case whereas, the punishment imposed upon Mann Singh was not interfered with and the appeal and revision was dismissed. He filed a civil suit challenging the order whereby his two annual future increments with-permanent effect had been stopped. The Civil Court refused to interfere and the said judgment was upheld by the First Appellate Court and the High Court. The Apex Court thereafter allowed the appeal on the ground that there has to be similar treatment to both the officials. The relevant portion of *Man Singh's* case (*supra*) reads thus:--

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an, individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana

in different capacity with unblemished record of service.

20. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle.

10. Similar is the position in the present case. There is no denying the fact that Ram Kumar was appellant No. 4 before the Division Bench in a criminal appeal filed and was reinstated whereas, the petitioner was wrongly dismissed. Article 14 of the Constitution of India was thus openly violated and the petitioner was entitled for the benefit of reinstatement. The Punishing Authority, at the time of imposing the punishment also did not notice the fact that the conviction had nothing to do as such with" the conduct of the workman and the incident had taken place outside the premises and not when the workman was on duty. The order of dismissal did not discuss this aspect and the Punishing Authority also failed to take into account the fact that whether any moral turpitude was involved as noticed above. Perusal of the judgment of the Division Bench would go on to show that it was a free fight inter se the parties on account of some comment passed regarding the women folk which led to the offence being committed. In such circumstances, the dismissal order was not justified. Rule 13 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 provides that the ground of conduct which has led to the conviction of a criminal charge is to be taken into consideration by the punishing authority and, therefore, the said order of termination was not justifiable. Rule 13 reads thus:--

13. Special procedure in certain cases.--Notwithstanding anything contained in rules 8, 9, 10, 11 and 12-

(i) Where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge; or

11. The non-application of mind thus by the punishing authority on this aspect would also render the order illegal and liable to be quashed. The reference to Punjab Water Supply and Sewerage Board (supra) is without any basis since the dismissal is not to be solely on the ground of conviction, as noticed above but the conduct of the employee had also to be taken into consideration. In the said

case, the employees" had assaulted their senior officials as the transfer order was not cancelled in spite of protests. The conviction was recorded and the services were also terminated. The employees were released on probation and the Labour Court had directed reinstatement with continuity of service but without back-wages. The writ petition had been dismissed and matter was taken to the Apex Court. The Apex Court allowed the appeal on the ground that the stigma of conviction would continue to remain. Therefore, the said judgment would not be applicable.

12. 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. 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*, . It is 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 in misinterpretation of the relevant statutory provisions, or in ignorance in regard of the same. Thus, what can be corrected is an error of law, which: would be of such 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.

13. The second submission regarding the back-wages is liable to be accepted partly. It has come on record that immediately after the conviction was altered to section 323 IPC on 31.10.2000, the respondent-workman filed a representation before the" department and the said representation was diarized vide Dairy No. 10391 in December, 2000, which would be clear from the statement of AW-3 Bhupinder Singh (Annexure R-3) who had brought the record. Similarly, AW-4 had also failed to produce the record pertaining to the said representation and the order passed on the said representation, if any, which would be clear from Annexure R-4, the cross-examination of the said witness. Thereafter, the workman thereafter served demand notice on 14.2.2003 and raised an industrial dispute and, therefore, it cannot be said that there was any delay on his part in raising the said issue. His right to raise the said issue came up when the conviction was altered since in his reply to the show cause notice, he had said that his appeal was pending and he was hopeful that conviction u/s 307 IPC was liable to be interfered with. The Labour Court had thus while rightly balancing the equities inter se the parties and granting, only 50% back-wages 3 years prior to the demand notice dated 14.2.2003 should have noticed that demand was raised

only in December, 2000 after the appeal had been accepted. Thus, the amount would become payable from 01.01.2001.

14. The judgment in Jaipal Singh's case (supra) thus would not be applicable since in the said case, reinstatement had been ordered with full back-wages and consequential benefits on account of the acquittal in appeal. The Apex Court held that full back-wages were not liable to be paid since the person had been kept out of service due to his involvement in the criminal case.

15. The Division Bench judgment in Sat Pai Dhawan's case (supra) is also not applicable since in the said case, the employee had been involved in a corruption case but had superannuated after his acquittal. The claim for full back-wages was declined by the Single Judge on the ground that initially there was sentence of conviction which was set aside in appeal and, therefore, he was kept away from his job and the bank was not responsible to keep him away. Thus; the said judgment would have no applicability and in the present case, it is not a case of corruption.

16. In the present case, back-wages are being given after the issuance of the demand notice and have also been restricted to 50%. The appeal was decided on 31st October, 2000 and, therefore, the entitlement of the workman arose from the year 2001, after the demand. However, since the acquittal was on 31.10.2000, the workman would be entitled for back-wages from 1.1.2001 instead of February, 2000 and the award is liable to be modified only to this extent. Even otherwise, back-wages have only been granted from the date when the appellant was sentenced u/s 323 IPC and no relief has been granted from the date of his termination i.e. 29.7.1997. Accordingly, the present writ petition is partially allowed by only modifying the Award that the petitioner will be entitled to 50% back-wages from 1.1.2001.