

(2009) 09 P&H CK 0124
In the Punjab And Haryana At Chandigarh

Gurdeep Singh

APPELLANT

Vs

The Dhadogal Co-Operative Agricultural Service Society
Limited and Another

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2010) 1 LLJ 671 : (2009) 156 PLR 592 : (2010) 2 RCR(Civil) 241

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—Through the impugned award, the order made by the management of the workman terminating him from service on 16.08.1983, was confirmed. The workman/writ-petitioner assails the decision of the Labour Court on the ground that admittedly there had been no enquiry into the charges and the extreme penalty of dismissal made by the management was erroneous. The charges had not also been established before the Labour Court, but the Labour Court was in error in upholding the punishment of the management.

2. The charges attributed against the workman, who was a Salesman in Agricultural Service Society were; one, he had issued fertilizer against credit for a member of the Society who had died and he was, therefore, guilty of misconduct and causing financial loss. The second charge was that he had not increased the sales of essential commodities. The third charge was that he was habitually absent. A notice was reported to have been issued to the workman setting out the three charges and the workman had replied denying the charges. In a meeting of the Administrative Committee of the Society held on 16.08.1984, the Society purported to consider the reply of the workman on 16.08.1984 and proceeded to reject all the explanations given as unworthy of acceptance and removed him from service. Before the Labour Court on a consideration of the fact that there had been no regular domestic enquiry, the Labour Court found by

reference to decisions of the Hon"ble Supreme Court that even if the disciplinary enquiry had not been properly done by the management in the domestic enquiry, an Industrial Tribunal could allow a management to justify its action in the course of adjudication.

3. Before the Labour Court, the management attempted to expand the scope of enquiry and also the charges. Apart from stating that the workman had issued some fertilizers in the name of a dead person to his son, it was attempted to be proved that the workman had recovered from Ujagar Singh, Banta Singh and Amar Singh, who were members of the Society, amounts of Rs. 215, Rs. 50/- and Rs. 55/- respectively and they had been embezzled. When asked to explain how the enquiry before the Labour Court allowed for evidence, which were not even the subject of charges, the learned Counsel appearing for the management was prepared to concede that the case could be examined only with reference to the charges that had been imputed on the workman. If this evidence is left out of consideration, as regards the charge that the workman had issued fertilizers on credit on 10.11.1983 to the account of Shri Hazura Singh, although he had died on 04.09.1983, the management sought to prove that the fertilizer to the cost of Rs. 1842.50 paise had been issued against a credit which was available to the deceased person to the extent of Rs. 1576.80 paise. There was, thus, a shortfall of Rs. 300/- which was the loss occasioned to the Society. The response by the workman was, the fact of death of the member Hazura Singh had not been informed to the Bank and the cheque book, which was in the nature of a credit facility extended to a member, was brought with a thumb-impression of Hazura Singh on 10.11.1983, which he endorsed on bona fide belief that he was alive and issued the fertilizer. It was a usual practice that members would obtain the stocks even through relatives and in this case, the cheque had been presented by his son and he had no cause to suspect the bona fides. There was no loss to the Society since the son had paid over again an amount of Rs. 1842 and there is an excess amount in the hands of the management. The Labour Court, on finding that admittedly fertilizer had been released against the account of Hazura Singh after his death more than a month later held, the conduct showed that the workman was guilty of embezzlement.

4. In my view, such an inference was clearly wrong. It was not even a case of temporary embezzlement where the amount realized from a customer was being retained by the workman and deposited later to constitute an act of temporary embezzlement. On the other hand, it was a case of release of fertilizer stock against a credit account available for a member and the actual money which was available had also been paid by the son. It was in evidence that the Bank itself had not known the fact of death of Hazura Singh when the fertilizer had been released in the name of Hazura Singh. If there was an impropriety, the impropriety was that the workman attested the thumb-impression of Hazura Singh in November, 1983 even though he could not have been present, he having died even the previous month.

5. If the charge against the workman was that he had caused loss, it was not again correct. If the implication of the charge again was that the workman was guilty of embezzlement, even that was not correct for no part of the money collected from the Bank, was being retained by the workman. It was, on the other hand, a case of operation of a credit limit extended to a member and the money having been paid subsequently by the son. The indiscretion of the workman in permitting the stocks to be released was the only offence. The learned Counsel for the petitioner states that under the rules of the Society, the legal heirs of the deceased member also became a member after the death and the goods issued in the name of Hazura Singh would still be available to his son in his capacity as a legal heir when his name was substituted. On such a consideration, it could be seen that there was not even a case of a mis-delivery of some goods to a person, who was not entitled to the goods. What had been delivered in November, 1983, could have been probably delivered after the death to his son, had he been entered in their records as a member.

6. As regards the other two charges, namely, the poor performance of sale of essential commodities and his habitual absence, the learned Counsel for the respondent himself states that there was no evidence for the same. Even the resolutions of the Society give out no materials on the basis of which the charges were said to have been proved.

7. That leaves us for consideration of only whether the punishment of removal from service was justified under the circumstances. The Court's power to substitute an order of dismissal can never be doubted in the face of Section 11-A of the Industrial Disputes Act. The Labour Court held that it was a case of serious breach of trust and embezzlement and therefore, there was no scope for consideration of lesser punishment. In my view, it was not a correct assessment of the actual charge or the defence raised. No loss to the establishment had ever been established. No personal benefit to the son of the deceased member arose, for, in any event, he would have obtained to the benefit of purchase of the fertilizers in his capacity as a legal heir. The charge against the workman was at a different level, not of any dishonesty or want of integrity, but an action of indiscretion in passing a cheque brought by the son of the deceased without actually verifying whether the deceased was at that time alive or not. An endorsement on the cheque against a thumb-impression is a responsible act in the hands of a Clerk working in a Cooperative Society but the misconduct ought not to have been taken as so serious as to inflict upon him the punishment of dismissal. The order of termination had been made nearly 25 years early and it will not be appropriate to direct reinstatement after setting aside the award by the Labour Court. Of all types of punishments which are permitted under the Punjab State Cooperative Agricultural Service Society Service Rules, 1997, Clause 14(1)(ii) sets out as a major punishment; reduction in rank and removal or dismissal from service.

The award of the Labour Court is set aside only as regards the punishment which

under the circumstances and for the reasons set forth above, is too harsh. The workman shall be deemed to have been removed from service without back wages on the date of the award of the Labour Court on a partial proof of charge No. 1. In such a way, the workman shall be entitled to all terminal benefits that may become payable for his service from the date of joining of the Society till the date when the award was passed by the Labour Court.

8. The award of the Labour Court is, under the circumstances, set aside and the writ petition is allowed in the above terms. No costs.