

(2018) 07 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14005 Of 2012

Gurdev Singh Gill

APPELLANT

Vs

Presiding Officer, Labour Court, Bathinda And Another

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c)

Citation : (2018) LLR 953 : (2018) 3 SCT 776

Hon'ble Judges : Shekher Dhawan, J

Bench : Single Bench

Advocate : Sonia G. Singh, P.K. Mutneja

Final Decision : Dismissed

Judgement

1. Present writ petition under Article 226/ 227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the impugned award dated 27.03.2012 (Annexure P/14) passed by respondent No.1 and to direct the respondent-management to award 50% back wages and to consider the petitioner for further promotion.

2. Facts relevant for the purpose of decision of this writ petition; that a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, "the Act") was made in the following terms:-

"Whether termination of services of workman - Gurdev Singh Gill is justified and in order? If not so, to what relief he is entitled"

3. As per the petitioner, he worked as an Apprentice from 15. 09.1980 to 14.09.1981 and the he worked as temporary office Assistant from 14.10.1981 to 17.05.1982. He was then working as a skilled worker since 10.06.1983. In April, 1994, the petitioner had undergone for an operation for replacement of knees and on his resuming duty, the petitioner requested for assigning him a light duty. The respondent-Management started harassing the petitioner and he was served with a charge sheet levelling false allegations. Reply was filed by the workman.

His services were terminated on with effect from 24.06.1997 without holding fair and proper enquiry and since then, he is unemployed.

4. The case of the respondent-Management is that the reference itself is not maintainable as the services of the petitioner were terminated after he was found guilty of acts of major misconduct in a domestic enquiry. In fact, the work and conduct of the petitioner was not found to be satisfactory during his service and he was issued adverse memos as well as warning letters regarding dereliction of duties and unauthorized absence from duty. He was never harassed by the Management. The petitioner was served with a charge sheet dated 24.05.1996 on account of major mis-conduct which was followed by another charge sheet dated 10. 06.1996. After considering the reply filed by the petitioner, domestic enquiry was ordered, which was conducted by the Executive, Cooperative Affairs. The enquiry officer completed the enquiry and held the petitioner-workman guilty of the charges contained in both the charge sheets. The Management concurred with the said findings. The report of enquiry was supplied to the workman. The Management decided to impose penalty of dismissal from service, but subsequently, taking a lenient view, the punishment of dismissal was converted into discharge by way of punishment so that the workman may get the terminal benefits.

5. Learned Labour Court pronounced the award on 27.3.2012 against the workman and in favour of the Management. Being aggrieved of the impugned award, the petitioner-workman is before this Court by way of present writ petition.

6. The main contention raised by learned counsel for the petitioner is that the petitioner was a victim of harassment as he had suffered ailment and he had to undergo surgery of knee replacement. Thereafter, he was harassed and two charge sheets were issued to him on flimsy grounds. The main grounds taken as a challenge to the enquiry proceeds are given below :-

(1).that the enquiry officer failed to summon the witnesses for which the list was supplied by the petitioner, thereby causing irreparable loss to the workman and denying him due opportunity to plead his innocence;

(2). that no complete list of witnesses and list of documents was supplied to the petitioner; and

(3). that even punishment awarded to the petitioner is disproportionate as it was not a case of theft or fraud and at the most, even false allegations are on the point of negligence only.

7. Learned counsel for the petitioner further contended that the petitioner had given proper reply to the charge sheet, but the Enquiry Officer was appointed who conducted the enquiry with pre-determination and the enquiry was just a formality and was not conducted in a fair and proper manner at all and was against the principles of natural justice. To support his arguments, he has placed

reliance on the decision of a Co-ordinate Bench of this Court in Shiv Datt Sharma Vs. The State of Punjab and others, 1962 PLR 431 and decision of Hon`ble Rajasthan High Court in Deoki Nandan Kulshreshtha Vs. State of Rajasthan and another, 1986 (4) SLR 734.

8. While arguing on these points, learned counsel for the respondent-Management contended that the Management considering the ailment of the petitioner, he was put on lighter duty, but the petitioner was grossly negligent in discharge of his duties and as a result of that, the Management had issued two separate charge sheets to him. The petitioner was given due opportunity to file reply and the same was duly considered by the Management. Thereafter, an independent Enquiry Officer was appointed and the petitioner was duly associated in the enquiry proceedings through-out.

9. As regards to the points raised by learned counsel for the petitioner to challenge the enquiry proceedings, learned counsel for the respondent-Management contended that sufficient evidence was led by the petitioner and he was given due opportunity to examine the witnesses. As regard to the list of witnesses furnished by the workman for summoning them in the enquiry proceedings as witnesses, the same were given up as per the statement made by the workman himself and this fact has been recorded by learned Labour Court in the impugned award itself. At this stage, the petitioner cannot raise this plea that he was not given any opportunity to lead his defence or he was not given any opportunity to summon the witnesses. As regards to the plea of non-supply of list of witnesses and documents, the same were duly supplied before the start of enquiry proceedings and again, this fact finds recorded in the award pronounced by learned Labour Court. The Management has already taken a lenient view because the articles of charges were serious as contained in the two separate charge sheets and the conduct of the workman was highly negligent despite repeated warnings given to him, resulting into huge loss to the Management. More so, such negligent conduct on the part of the petitioner-workman is intolerable by the Management taking into consideration the nature of industry being run by the Management, which carries on the business of manufacturing of food items requiring highest standards. The workman was issued notice for dismissal from service, but taking a lenient view, the Management had ordered his discharge so as to enable him to get the terminal benefits. As such, the present writ petition is absolutely without any merit and the same deserves to be dismissed.

10. Having considered the submissions made by learned counsel for the parties and taking the matter into consideration in its entirety, this Court is of the considered view that in such like disciplinary matters, the scope of interference by the Court is certainly limited especially when a domestic enquiry has been conducted and due opportunity has been given to the parties. Certainly, the Court can look into the points whether the enquiry was conducted in fair manner and principles of natural justice were followed.

11. The main points argued by learned counsel for the petitioner have been considered by the Court. However, taking into consideration the fact that the petitioner himself had given up the witnesses during enquiry proceedings, now the petitioner cannot take the plea that he was not given due opportunity to defend his case by non-summoning of witnesses by the Enquiry Officer.

12. More so, the powers of the Enquiry Officer to summon any witness during enquiry is not that of Civil Court, but in the present case, the workman had already given up the witnesses during enquiry proceedings and as such, there is no controversy regarding summoning of witnesses by the Enquiry Officer.

13. As regards to the plea of supply of list of documents and list of witnesses, it has been observed by learned Labour Court that the same were supplied on the first day of enquiry, i.e., 18.6.1996 and the petitioner cannot deny the said fact. He was associated in the enquiry proceedings through-out.

14. In view of the above, there is no reason to come to the conclusion that the domestic enquiry was not conducted in proper manner; that the workman was not given due opportunity to defend his case and to set-aside the impugned award dated 27.03.2012 (Annexure P/14).

15. The Court has also considered the view taken by this Court in Shiv Datt Sharma's case (supra) and by Hon`ble Rajasthan High Court in Deoki Nandan Kulshreshtha's case (supra). The view taken in these cited cases is entirely distinguishable because in this case, the workman had himself given up the witnesses during the enquiry proceedings.

16. As regards to awarding of punishment to the petitioner-workman, first of all if the charges are proved in domestic enquiry, it is for the Management to decide about the quantum of punishment to be awarded to the workman. In the present case, there is no reason to come to a different conclusion keeping in view the nature of charges levelled against the petitioner and the fact that the respondent-industry is involved in manufacturing of food-stuff requiring its employees to be careful in discharge of their duties. At any rate, there are no grounds to set aside the impugned award, Annexure P/14.

17. In view of the above, the present writ petition lacks merits and the same stands dismissed.