

(2014) 07 P&H CK 0854
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1740 of 2013 (O and M)

Kuldip Sharma

APPELLANT

Vs

The Doaba Co-operative Milk Producers Union Ltd.

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2014) LabIC 4242

Hon'ble Judges : Jasbir Singh, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Balram Singh, Advocate for the Appellant

Judgement

Jasbir Singh, J.

CM No. 4409 of 2013

1. For the reasons mentioned therein, CM is allowed and delay of 08 days in filing the present appeal is condoned.

CM No. 4410 of 2013

For the reasons mentioned therein, CM is allowed and delay of 402 days in re-filing the present appeal is condoned.

LPA No. 1740 of 2013

2. The appellant who is not a committed employee has filed this appeal against the judgment dated 20.12.2011 passed by learned single Judge dismissing the writ petition filed by him bearing No. CWP No. 11939 of 2009. In that writ petition, he has challenged the order dated 08.07.2005 (Annexure P/30) passed by respondent No. 1 and resolution dated 26.07.2006 (Annexure P/33) passed by respondent No. 5 terminating his services.

3. Why the Court has said that the appellant is not a committed worker, is because he is habitual for remaining absent from duty. Virtually, he remained absent from duty in every year of his 10 years service tenure before his

termination. Following chart makes it very clear:--

4. Above chart shows that the appellant is in the habit of remaining absent from duty. Further, there are sufficient documents on record to show that he is in the habit of remaining absent from duty. He failed to explain the reason for remaining absent from his duty, as directed by the authority.

5. We have perused the paper book.

6. There is also nothing to show that what ailment the appellant was suffering from which compelled him to remain absent from duty. No such document showing that the appellant getting medical treatment has been placed on record or shown at the time of arguments.

7. The appellant had joined the service with respondent No. 1 in the year 1983. Since from the year 1991, he has shown his habit of remaining absent from duty without any reason or justification for which in the year 1996, his two annual increments were stopped with commutative effect. Prior to that date, his subsistence allowance falling between 12.10.1993 to 01.06.1994 was forfeited. Again, he remained absent from duty between 30.10.1994 to 22.03.1995 and a warning was issued to him asking him to remain cautious in future. Despite that he failed to maintain his work and conduct and remained absent from duty many times as has been referred in earlier part of this order. A charge-sheet was issued to him. After receipt of his reply, an enquiry was conducted in which he was found guilty by the competent authority vide order dated 08-07-2005 (Annexure P/30) dismissing him from service for remaining absent on two occasions in the years 2003 and 2004. It has also come on record that during enquiry, he was afforded full opportunities to explain the reason for remaining absent from duty. The Enquiry Officer upon analysis the statements of the witnesses and other documents on record, awarded a verdict against him vide letter dated 13.05.2005. Before taking final decision, a show cause notice was given to him. Report of enquiry was also handed over to him asking him to file a reply within a period of four weeks which he did file on 30.06.2005. The punishing authority in its order dated 08.07.2005 taking note of his reply, has observed as under:--

"xxx xx xxx xx xxx

The undersigned has deeply considered the Enquiry findings, Inquiry proceedings and the documents produced during the Inquiry. The Inquiry Officer proved all the charges against alleged accused mentioned in the charge-sheet and accepted the charges. It is also found correct that Inquiry Officer gave full opportunity to the delinquent official to present his case.

The previous attendance record of Sh. Kuldip Sharma DHCC was also deeply considered and was found unsatisfactory. This employee is habitual of absence from duty in illegal manner without the permission of higher official for a long time. It is decided that in view of the serious charges being proved against Sh.

Kuldip Sharma that such an indiscipline employee is not fit to keep in the organizations."

8. It is stated by the appellant that he had challenged that order in appeal. When memorandum of appeal was not entertained, he sent his representation through post to the appellate authority as well as to the revisional authority. Both appeal and revision also met with the fate of dismissal, and he came to this Court by filing CWP No. 11939 of 2009 which was dismissed on 20.12.2011. In the process of filing the writ petition, the appellant has taken more than four years.

9. Learned single Judge taking note of the fact that he is the habitual offender for remaining absent from duty, came to the conclusion that the appellant has been rightly terminated from service. When dismissing his writ petition vide impugned judgment, it was observed as under:--

"xxx xx xxx xx xxx

It is not in dispute that the petitioner was absent from duty for a period of 152 1/2 days with effect from January, 2002 to September, 2003 and 164 days with effect from October, 2003 to June, 2004 for which he was issued two separate charge-sheets. He was issued show cause notices for the aforesaid lapse; however, he did not furnish any reply, although it has been stated that the reply was made on 30.06.2005 just a few days earlier to the dismissal order. A detailed and thorough enquiry was conducted.

Arguments of learned counsel for the petitioner is that the aforesaid two absent periods, separate enquiry was to be conducted. Both the charge-sheets were issued for being absent from duty. Both the charge-sheets contain more or less similar allegations that the petitioner willfully absented himself from duty. In case the enquiry in both the charge-sheets was conducted together, it would not have adversely affected the interest of the petitioner because ample opportunities were granted to him to defend his case. Thus, the argument of the petitioner is not accepted.

Other argument of learned counsel for the petitioner is that similarly situated employee Kulwant Singh, who was also awarded almost same punishment but his punishment was reduced to the stoppage of one increment has no merit because there is nothing on record to show that the said employee also remained absent for such a long period and moreover, it is discretion of the authority to decide how much punishment is to be awarded to the delinquent which should not be an act mala fide.

The third argument is that the appeal of the petitioner was not decided in consonance with the provisions of Rule 33.6. The said argument has also no merit as the petitioner has only moved an application before the concerned authorities for his reinstatement in service. Communications Annexures P. 31 and P. 32 clearly show that no appeal was filed. That being the position, no question of violation of principles of natural justice arises as the representation filed for

the aforesaid purpose was rejected.

The last argument of learned counsel for the petitioner has also no force as the revision before the Revisional Authority is not maintainable because no order passed by the Appellate Authority has been made the subject-matter of challenge in the present petition. More so, the petitioner has also not challenged the order of revisional authority, Annexure P. 38, before this court."

10. It was rightly stated that the appellant remained absent from duties w.e.f. January, 2002 to September, 2003 and October, 2003 to June, 2004 for which he was issued two separate charge-sheets but he remained silent instead of filing reply. Further, there is nothing on record to show that the above objections were taken when charge-sheet was issued. Also simply because lessor punishment was awarded to a similarly situated employee, namely, Kulwant Singh, who was also awarded almost same punishment but his punishment was reduced to stoppage of one increment, there is no ground to show leniency of lessor punishment towards the appellant. There is nothing on record to show that the said employee also remained absent for such a long period. As he has been noticed in the earlier part of the order, appellant is in the habit of remaining absent from duty and also showed lack of commitment towards his work for which he was employed.

11. The contention of learned counsel for the appellant that his appeal was not entertained also is devoid of merit as he had only moved a representation for his reinstatement which was rejected. Thus he had failed to show that any prejudice was caused to him on account of that. He has failed to show any plausible reason or justification for remaining absent from duty repeatedly from service continuously of many years. During inquiry, he was given full opportunity to defend his case. Even before this Court, he has failed to give any plausible reason or justification as to why he had gone on leave for a very long period.

12. No case is made out to cause interference by this Court in the present appeal. Dismissed.