
(2000) 09 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17805 of 1998

N.F.L. Employees (Pry) Consumers Coop. Store Ltd.

APPELLANT

Vs

Industrial Tribunal, Punjab

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 09 P&H CK 0009

Hon'ble Judges : S.S. Sudhalkar, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. Kapil Kakkar, for the Appellant; Mr. Paramjit Batta, for the Respondent

Judgement

S.S. Sudhalkar, J.—Petitioner is the employer of respondent No. 2. By this writ petition, the petitioner has challenged the award of the Industrial Tribunal, Punjab dated 7.4.1998 (copy Annexure P/12) vide which it was held that the action of the petitioner in reducing the rank of respondent No. 2 from that of Salesman to that of Messenger which also amounted to termination of his services, without enquiry, on the charges of misconduct is illegal and unjustified and it was declared that he shall be deemed to be in service as a Salesman without break and also entitled to all the consequential benefits including full back wages.

2. The case of respondent No. 2 is that he was employed as Salesman with the petitioner since 1988. He was awarded penalty of reduction in rank by appointing him as Messenger in the minimum of scale of that post. He served a demand notice contending that his services were terminated w.e.f 6.2.1994 without any notice, charge sheet or enquiry and that his order of punishment was illegal, null and void. The State Government initially declined to make a reference of the dispute and rejected the demand of respondent No. 2 on the assumption that the action of the management did not amount of termination of service but it was his transfer to another job on which he did not join. However, the Government re-

considered the matter on the representation of respondent No. 2 and referred the dispute to the Industrial Tribunal, Punjab and the term of reference was as under :-

"Whether the action of the management in reverting the workman from the post of Salesman to that of helper is justified ? If not, to what relief is he entitled ?"

3. The Industrial Tribunal passed the impugned award and hence this writ petition has been filed by the employer.

4. After hearing learned counsel for the parties, we find that this writ petition is without merit. The post of a Messenger/Helper is a class IV Post. Respondent No. 2 was appointed as Salesman. The post of Salesman is a Class III post. It is also not in dispute that respondent No. 2 was initially not appointed to any class IV post on the establishment of the petitioner, therefore, there was no question of reverting him to a class IV post from the higher post of Clerk or Salesman. The Tribunal has observed that the reversion necessarily implies reduction in rank and would be in the nature of major penalty particularly when it is based on the specific charge of misconduct. It, therefore, held that the order of reversion in this case amounted to illegal termination of service.

5. The charge sheet/memorandum was issued to respondent No. 2 on various charges including that an instrument meant for pilfering the Gas from the Cylinders was found in the LPG Godown, of which respondent No. 2 was a custodian and that he kept the above illegal instrument in godown and had pilfered gas from filled cylinders to empty cylinders through the said instrument. The other charges are the consequential charges based on the above allegations

6. The Tribunal has observed that the petitioner in his written statement did not dispute the correctness of the averments in the statement of claim that the order was passed without any fair and proper enquiry being held but it tried to justify the action on the plea that firstly it did not amount to imposition of major penalty and order was passed on the basis of confession made by respondent No. 2 in writing before Shri Om Parkash, Convener of the Store and other persons and attached copy of that writing with the written statement and that writing is dated 8.6.1993.

7. Copy of writing is at Annexure P/3, which is a letter allegedly written by respondent No. 2 to the President of the petitioner Store at Bhatinda. It is as under:-

"With due respect, I state that LPG Truck Operators have given me instrument for gas removal from cylinders with misguiding me. I used the same one or two times. Please forgive me for the same. In future, I shall not do any type of action in which there will be loss of Co-operative Store. Kindly forgive me."

8. It is clear that this writing was not given during the enquiry proceedings. This writing is dated 8.6.1993 and the charge sheet is dated 13.6.1993. The Tribunal has considered this question and observed that when the punishment is awarded

to the workman, without enquiry or as a result of enquiry which is not found to be fair and proper, it is open for the management to seek permission to lead evidence in proof of the charge of misconduct so as to justify the action and it is also equally well settled that it is not the function of the Tribunal or the Court to advise the employer or management in this regard and it is for the management to take decision without any delay before the conclusion of the proceedings. The Tribunal observed that no such permission was sought by the petitioner in this case. It also observed that the petitioner in his written statement before it tried to justify its action on the basis of alleged confession.

9. The Tribunal also considered that fact that respondent No. 2 had submitted his detailed reply to the charges and denied the same and had contended that false story regarding the alleged recovery of instrument from the LPG Godown was concocted. The Labour Court also held that the Inquiry Officer was appointed but the enquiry was held in the absence of respondent No. 2 and he was not given any opportunity to cross-examine any of the witnesses to support the charge against him. He was also not given any opportunity to lead evidence. It is also held by the Labour Court that charge No. 9 corroborates the version of respondent No. 2 in his reply in which he has reiterated in the witness box that he had asserted his innocence and that the said writing was obtained from him under threats and pressure. The writing Annexure P/3 is dated 8.6.1993 and according to charge No. 9 a short time thereafter on 13.6.1993, respondent No. 2 appeared before the President, Vice President and other office-bearers and threatened them thumping on the table uttering that he has not done anything, they may do whatever they want to do, and he will see.

10. It is observed by the Tribunal that when these charges were specifically denied, it was incumbent on the petitioner to lead evidence in support of the charge against the workman in his presence and it was the duty of the Enquiry Officer to afford opportunity to respondent No. 2 to cross-examine the witnesses and lead his own evidence. This is not done. It is also observed by the Tribunal that even the copy of the enquiry report was admittedly not made available to respondent No. 2 before passing the impugned order.

11. We find that the Tribunal has come to a right conclusion. The enquiry conducted without joining the delinquent cannot be said to be a departmental enquiry and cannot be the basis of termination of services or of reversion by way of punishment. The Tribunal has also observed that the confessional writing does not inspire confidence. We do not find any infirmity in the award. If the petitioner could not conduct the enquiry properly there was no reason as to why evidence was not led before the Tribunal.

12. As a result we find that this writ petition is without merit and is dismissed.

13. Petition dismissed