

(1993) 10 P&H CK 0134
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6096 of 1986

Shri Ajit Singh

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 13-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311(2)
Police Act, 1861 — Section 34

Citation : (1994) 106 PLR 188

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Ajai Mittal, for the Appellant; Deepak Sibal, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner, a Driver in the Haryana Roadways, was dismissed from service as he had taken an alcoholic drink during the duty period, was unable to drive the bus full of passengers and "created a scene." Aggrieved by this order, the petitioner sought a reference u/s 10 of the Industrial Disputes Act, 1947. The Government of Haryana referred the matter to the Labour Court. After recording evidence, the Labour Court found that the dismissal of the claimant, was justified and in order and as such the claimant is not entitled to any relief." Aggrieved by this award, the petitioner has filed the present writ petition.

2. Mr. Ajai Mittal, learned counsel for the petition has raised a two-fold contention. Firstly it has been submitted that the order of dismissal is vitiated as no enquiry as contemplated under the provisions of Articles 311(2) was held. It has been further contended that the petitioner had given a reasonable explanation regarding the factual position and that on the evidence on record the award cannot be sustained. The claim made on behalf of the petitioner has been controverted by learned counsel for the respondents.

3. It is the admitted position that on September 12, 1980, the petitioner was driving Bus No. HBD 4996. He was prosecuted u/s 34 of the Police Act. He was produced before the Chief Judicial Magistrate, Karnal on September 18, 1980. He pleaded guilty. The Court convicted him. He was, however, released after being admonished. That having happened, the punishing authority found that the petitioner's conduct which led to his conviction was unbecoming of a public servant. Consequently, it passed the order of dismissal. In a case where a person is dismissed or removed from service "on the ground of conduct which has led to his conviction on a criminal charge." the provisions of Article 311(2) which provide for an enquiry and the grant of a reasonable opportunity before punishing a civil servant, are not attracted. The language of Proviso (a) to Article 311(2) is absolutely clear in this behalf. It provides an exception to the general rule that no person shall be dismissed, removed or reduced in rank except after an enquiry. The purpose of an enquiry is merely to find facts. Once a person holding a civil post has been tried by a competent court, the facts are established. Nothing remains to be enquired into.

4. Accordingly, no enquiry was required to be held before passing an order of dismissal. The contention raised by the learned counsel for the petitioner is totally bereft of merit and is rejected.

5. Mr. Ajai Mittal has referred to the decision of a Full Bench of this Court in Om Prakash Vs. The Director Postal Services (Posts and Telegraphs Department), Ambala and Others, . He has referred to the following observations appearing in para 21 of the judgment:-

"An order of dismissal or removal or for compulsory retirement can be passed under Rule 19(1) (without conforming to the procedure prescribed in Rules 14 to 18) not on the basis of the conviction, but only if the competent authority finds that the relevant misconduct of the concerned Government servant renders his further retention in public service undesirable. An order imposing a punishment on a " Government servant simply because of his conviction on a criminal charge without reference to the conduct which led to the conviction is not sustainable."

6. The contention raised by the learned counsel for the petitioner is misconceived. All that has been held by the Full Bench is that mere conviction does not render a civil servant liable to be punished.- It is his conduct that has to be considered by the authority to find out as to whether or not he deserves to be punished. In the present case, it has been found that the petitioner had consumed alcohol while he was driving a bus carrying passengers. He had endangered the lives of a number of people. It is this conduct which led to his conviction. It is on the basis of this conduct that the authority has considered the employee as unsuitable for continuing in service. The decision of the Full Bench and especially the observations mentioned above, do not advance the case of the petitioner in any manner whatsoever.

7. Equally lacking in merit is the second contention. It is no doubt correct that

the petitioner had given his own version of the incident. He had pleaded that the Bus had reached the quarters concerned by 7.20 PM and that the allegations against him were false. However, the learned Labour Court after examining the entire evidence has found that the plea raised by the petitioner is not tenable. It has found that the petitioner had pleaded guilty to the charge and was convicted u/s 34 of the Police Act by the Chief Judicial Magistrate Karnal. This is a finding of fact which calls for no interference in a writ petition. It may be mentioned that while hearing a writ petition, the court does not examine the evidence as if it is hearing an appeal. Findings of fact recorded by the Labour Court can be challenged only on the ground that they are based on no evidence. In such a case, the findings would be perverse. Nothing of the sort has happened in the present case. In the circumstances of the case, no interference whatsoever is called for.

8. Accordingly, there is no merit in this petition. It is dismissed. In the circumstances of the case, there will be no order as to costs.