

(2019) 04 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 19 Of 2018 (O&M)

State Of Haryana And Others

APPELLANT

Vs

Bijender Singh And another

RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(a)

Citation : (2019) 04 P&H CK 0032

Hon'ble Judges : Krishna Murari, CJ;Arun Palli, J

Bench : Division Bench

Advocate : Deepak Balyan

Final Decision : Dismissed

Judgement

1. Heard. For the reasons mentioned in the application, delay of 68 days in re-filing the appeal is condoned. Application stands disposed of.

LPA No. 19 of 2018

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 24.08.2017 passed by the learned Single Judge allowing the writ petition filed by respondent No.1 hereinabove challenging the order of his dismissal.

2. Facts required to be noticed in brief can be summarized as under:-

Respondent No.1-workman was appointed on contract basis as driver w.e.f. 26.06.2008 with Haryana Roadways Depot, Jind, Haryana.

Subsequently, his services were regularized on 05.10.2011. A notice dated 11.01.2012 was issued to show cause as to why his appointment be not cancelled as he was not holding the prescribed minimum qualification of matriculation and obtained appointment on the basis of submitting false documents. The petitioner (respondent No.1 herein) submitted his reply to the show cause notice. However, the General Manager vide order dated 05.07.2012

terminated the appointment of the respondent-petitioner with immediate effect. The respondent-workman raised an industrial dispute by making a demand notice under Section 2(a) of the Industrial Disputes Act, 1947. A reference was made to the Labour Court which dismissed his claim vide award dated 11.11.2014 which was put to challenge by filing the writ petition.

3. Learned Single Judge vide order impugned in this appeal finding that when the services of the respondent-petitioner having been regularized he was a regular employee and thus before his termination a domestic enquiry as prescribed under the Service Rules was required to be conducted. Since the Labour Court failed to consider this aspect of the matter, hence the award made was bad in law.

4. The case was set up by the workman that his Matric certificate contained an endorsement "Compartment Till March-1988" and the certificate submitted by him at the time of appointment contained the same endorsement and as such there was no concealment on his part and therefore, his appointment could not have been cancelled on the said ground. His further case was that on being confronted that he does not hold essential qualification since he is not matriculate, another certificate of having passed

10 th class from the Board of High School and Intermediate Education, Allahabad (UP) was submitted along with an application dated 17.04.2012 which on enquiry was found to be forged and fabricated.

5. It is no doubt correct that the appointment of the respondent-petitioner was cancelled after issuing show cause notice seeking an explanation which was not found satisfactory.

6. The issue which arises for our consideration is as to whether the opportunity afforded can be said to be a sufficient compliance of the principle of natural justice required to be observed or it is farce.

7. One of the fundamental principles of natural justice is *audi alteram partem* that no man should be condemned unheard. As long as in 1723 in the case of *R. versus University of Cambridge* (1723) 1 STR 757, while tracing out the history of the principles of natural justice, Kings Bench observed that the first hearing in human history was given in the Garden of Eden and even "God himself did not pass sentence upon Adam, before he was called upon to make his defence". Natural justice is a great humanizing principle intended to invest the law with fairness and secure justice. The soul of natural justice is fair play in action.

8. Hon'ble Supreme Court has reiterated time and again that the doctrine of natural justice cannot be imprisoned within the straight jacket formula and would depend upon the facts and relevant circumstances as also the statute. The principles of natural justice are required to be considered in the context of the facts, situation and in view of the schemes and rules applicable to a particular case.

9. Equally undisputed is the principle in respect of the application of principle of natural justice where on admitted and undisputed fact only one conclusion is possible and under law only one penalty is permissible.

The Court may not issue writ to compel the observance of principle of natural justice as it would amount to futile writ.

10. The other aspect which requires to be considered is whether non-observance of any of the principles enshrined in the statutory rules or the principles of natural justice have resulted in deflecting the course of justice. In other words in a given case if it can be held that despite some deviation from the principles of natural justice it has not resulted in grave injustice or has not prejudiced the cause of the delinquent, the Court is not bound to interfere. Reference may be made to the pronouncements of the Hon'ble Apex Court in *State of U.P. v. O.P. Gupta*, AIR 1970 SC, 679 and *S.K.Kapoor v. Jagmohan* AIR 1981 SC 136 laying down the above proposition.

11. Learned counsel for the appellant-employer contended that fraud vitiates everything and since in the case in hand the appointment was obtained by practicing fraud, no notice or opportunity of any kind was required to be given and the order cannot be said to suffer from any infirmity as the fraud was established on the basis of verification of two certificates. There can be no dispute with the proposition that fraud vitiates everything but for that it is necessary that either fraud should be established either on an admission or on undisputed facts. In a situation where it is not admitted or is disputed and the findings in that regard are to be arrived on an analysis, the principle of natural justice immediately come into play which require a notice and opportunity of hearing.

12. In the case in hand admittedly a notice was given to the respondent-petitioner to defend himself but the question for consideration is whether the same would tantamount to a sufficient notice so as not to vitiate the resultant order. The respondent-petitioner submitted his reply to the show cause notice which was not found sufficient by the authorities.

13. The opinion formed by the Appellate Authorities for cancelling the appointment of the respondent-petitioner is based on an alleged enquiry into the certificates submitted by him from two different Education Boards. It is undisputed that in the process the enquiry made by the appellants for verification of the veracity of the certificates the respondent-workman was not associated at any stage. The fact further goes to show that he was never given any opportunity to produce any evidence in rebuttal of the report obtained by the appellants from the Education Board behind the back of the respondent-workman. It is an admitted case that the services of the respondent-workman was confirmed much before passing of the impugned order and there are rules in place governing his service conditions namely, Haryana Transport Department (Group-C) Haryana Roadways Services Rules, 1995 and Haryana Civil Services

(Punishment and Appeal) Rules, 1987 whereunder a regular employee is to be subjected to a domestic enquiry as per the procedure prescribed before any of the prescribed punishment could be inflicted.

14. A three Judges Bench of the Hon'ble Apex Court in the case of Avtar Singh v. Union of India and others 2016(8) SCC 471, in respect of the powers of the employee to recall the appointment orders based on fraud has observed as under:-

"Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties.

15. In the concluding part, in the aforesaid judgment, it was further held as under:-

"In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

16. Learned Single Judge has set aside the impugned order leaving it open to the appellant-employer to hold domestic enquiry under the disciplinary Rules and to complete the same within a period of six months with a further direction to the respondent-workman to cooperate in the enquiry.

17. We are also of the considered opinion that once the services of the respondent-workman were confirmed and he came within the purview of the Rules, the appellant-employer could not have resorted to outrightly cancel the appointment on the ground of alleged fraud based on the basis of the ex-parte enquiry reports submitted by the two Education Boards without the respondent-workman being associated therewith. Such a course adopted by the appellant-employer is in gross violation of principle of natural justice. In our considered opinion as well, the appropriate course would have been to subject the respondent-workman to a disciplinary proceedings as per the procedure prescribed under the Rules by issuing a charge-sheet confronting him with the material against him with an opportunity to produce the evidence in defence and pass appropriate orders in accordance thereof.

18. In view of the above facts and discussion, no illegality is reflected from the impugned order passed by the learned Single Judge, which requires any interference.

The appeal accordingly fails and stands dismissed.