

(2000) 10 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16134 of 1999

State Transport Commissioner, Haryana	APPELLANT
Vs	
Nafe Singh	RESPONDENT

Date of Decision : 09-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (2000) 10 P&H CK 0132

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

Bench : Division Bench

Advocate : Mr. Raghbir Chaudhary, D.A.G, for the Appellant; Mr. R.K. Malik, for the Respondent

Judgement

S.S. Sudhalkar, J.—This writ petition is filed by the State challenging the award of the Labour Court dated 16.12.1998, copy Annexure P4, vide which respondent No. 1 was ordered to be reinstated with continuity of service. However, back wages were restricted to 40% and that his three increments were withheld with cumulative effect. This order passed by the Labour Court substituted the order passed by the petitioners terminating services of respondent No. 1.

2. An inquiry was held against respondent No. 1 on the charge of embezzling Government money. The respondent No. 1 was a conductor and the allegations against him were that he embezzled an amount of Rs. 341/-. It is alleged against him that while performing his duties as a Conductor, he did not issue tickets to various passengers although he had collected money from them. The Labour Court award also shows that respondent No. 1 had not challenged the correctness of domestic inquiry but he had prayed for leniency.

3. Counsel for the petitioners urged that lenient view cannot be taken in the case of embezzlement of this nature and if such a view is taken, it will encourage similar acts by other conductors. Counsel for the respondent No. 1 has cited *Ram Kumar v. State of Haryana*, AIR 1987 Supreme Court 2043. That was a case where the bus conductor had not issued tickets to nine passengers although he

had taken fare from each of them. The services of bus conductor were terminated. The Supreme Court held that the enquiry was not proved to have been vitiated by any reason. The appeal of the workman was held without any substance and, thus, dismissed. The Supreme Court, however, keeping in view the fact that the appellant-workman was a father of five minor children and had no other means of livelihood and that being his first offence, directed the respondents to consider the re-employment of the appellant-workman to the post of Conductor or to any other post, to which he may be found to be suitable.

4. The learned counsel for the petitioners has relied on judgment of Supreme Court in U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, . The charge for which punishment was awarded in that case was that the workman who was a conductor went to the Assistant Cashier, in a cash room in a drunken state and demanded money from him. When the latter refused, the workman abused and threatened to assault him. It was held to be an act of misconduct. The Supreme Court held that when the charge of mis-conduct was proved, punishment of removal was not disproportionate and substitution of the same by punishment of stoppage of one wage increment and payment of 50% of back wages was not justified. On the contrary, it was held to, be capricious and arbitrary exercise of discretion by the Labour Court. In the present case also, embezzlement cannot be said to be an act which can be lightly looked upon. In the case of Ram Kumar (supra), the Supreme court did not interfere with the punishment but only suggested that the workman may be considered for re-employment. The later authority in the case of U.P. State Road Transport Corporation (supra) will also apply to the present case.

5. In the light of above discussion, the writ petition is allowed. The order of re-instatement with 40% back wages passed by the Labour Court is set aside.

6. Petition allowed.