
(2006) 07 P&H CK 0153
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10861 of 2006

Sushil Kumar

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 144 PLR 340

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Advocate : Sushil Bhardwaj, for the Appellant;

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—The challenge in this petition filed under Articles 226/227 of the Constitution of India is to the award dated 30.7.2004 (Annexure P-12) whereby the claim of the petitioner-workman has been dismissed.

2. The petitioner-workman at one point of time was employee of respondent No. 2-Society as a Clerk-cum-salesman. He was appointed in the year 1983. On account of remaining absent from 1.9.1993 he was suspended on 17.5.1994. On 10.8.1994 the petitioner was served with a charge sheet which was replied by him on 17.8.1994. Since the reply of the petitioner-workman to the charge sheet was not found satisfactory an enquiry officer was appointed to probe the matter. It appears from the record that the enquiry was proceeded exparte against the petitioner-workman. On the basis of enquiry report the services of the petitioner were terminated vide resolution dated 2.3.1995. The petitioner-workman challenged the legality of the termination order dated 2.3.1995 before the Labour Court. His claim was contested by the Society by filing a detailed reply. Their stand was that the services of the petitioner were rightly terminated on 2.3.1995 on account of his absence from 1.9.1993 till that date. Based upon the pleadings of the parties the Labour Court settled the issues. Both the parties led evidence and ultimately vide the impugned award dated 30.7.2004 the claim of the

petitioner-workman was dismissed. Hence this petition.

3. We have heard learned Counsel for the petitioner and have also gone through the paper book carefully.

4. There were mainly two charges against the petitioner-workman firstly absence from duty w.e.f. 1.9.1993 and secondly misuse/embezzlement by showing 30 bags of urea less thereby causing loss to the respondent-society. The enquiry as well as the award of the Labour Court have been challenged mainly on the ground that the petitioner was not intimated about the enquiry which was proceeded against him ex parte against the principles of natural justice; the enquiry officer Hardeep Singh himself was the signatory of the resolution vide which the petitioner was placed under suspension; the enquiry was conducted in the absence of the presenting officer and that the enquiry report was prepared in a biased manner. Learned Counsel for the petitioner has argued that the Labour Court has completely ignored these aspects of the matter and as such the award is liable to be set aside. There is no substance in the contention raised by the learned Counsel for the petitioner. The requirement of natural justice must depend upon the circumstances of the case nature of enquiry the rules under which the Tribunal is acting the subject matter that is being dealt with and so forth. The strict rule of evidence are not applicable in departmental enquiry and the standard of proof being different it is sufficient to establish a charge by evidence albeit not by any conjecture or surmises acting upon which reasonably and objectively a reasonable man could uphold the charge. A bare perusal of the impugned award shows that the petitioner-workman had remained absent from 1.9.1993 till the date of his termination i.e. 2.3.1995 for about one and half years. It also reveals that the letters/notices were also sent to him on 20.9.1993 and 9.10.1993 to resume duties. The notice dated 9.10.1993 received back with the report of refusal. No doubt he sent a medical certificate issued by one Bansal Nursing Home Pundri for the period 5.9.1993 to 5.11.1993 alongwith his leave application but he was advised to furnish medical certificate issued by the CMO. He did not adhere to the requirement of respondent-Society. He was thus placed under suspension on 17.5.1994 followed by charge sheet. He though filed reply to the charge sheet but did not join the enquiry despite the fact that he was duly intimated and he made reply to it seeking suspension allowance. The sequence of the events suggests that admittedly he was well aware of the pendency of the enquiry against him. However despite that he did not participate in the enquiry. He permitted the enquiry to proceed exparte by his own act and conduct. When the factum of absence is not in dispute the only limited enquiry is required to be conducted for ascertaining as to whether he had sufficient explanation or not? The only explanation submitted by him was of his ailment. The same is of no help to him since he had not submitted a certificate from the CMO of the Government Hospital as directed by the respondent-society. Now it does not lie in his mouth to say that the enquiry was not proper on the grounds referred to above.

5. Apart from this there was also a charge of embezzlement of 39 bags of urea during the period 25.2.1992 to 31.3.1993. A bare perusal of the award as well as paper-book shows that the petitioner-workman in response to the charge sheet sent a reply where there is no denial of the same but with a plea that it was a clerical mistake. However there is no explanation as to how the said clerical mistake had arisen. There is also no proof that the alleged mistake was bonafide. Admittedly he had deposited an amount of Rs. 5355/- which was equal to the embezzled 39 bags of urea on 22.4.1993 and took the receipt. This led the Labour Court to conclude that the embezzlement may be temporary is equally serious and no enquiry was necessary once the embezzlement though temporary was admitted. A bare perusal of the award shows that before drawing the said conclusion the Labour Court had discussed the evidence oral as well as documentary with reference to the different authoritative pronouncements of the Hon"ble Supreme Court.

6. We are in total agreement with the findings recorded by the Labour Court. Nothing has been shown to us to take a contrary view.

7. For the discussion above this petition fails and the same is dismissed in limine accordingly.