
(2000) 09 P&H CK 0061

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17012 of 1999

The Punjab Land Development and Reclamation Corporation
Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court, U.T. Chandigarh

RESPONDENT

Date of Decision : 28-09-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11

Citation : (2000) 09 P&H CK 0061

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

Bench : Division Bench

Advocate : Mr. D.s. Keer, for the Appellant; Mr. V.P. Sharma, for the Respondent

Judgement

S.S. Sudhalkar, J.—By this writ petition, the employer is challenging the award of the Labour Court dated 18.1.1999 (copy Annexure P/1). Respondent No. 2 was workman of the petitioner. He joined duty on 3.8.1990 and he had proceeded on leave after few days i.e. w.e.f. 24.8.1990 which he had applied on account of domestic reasons. The leave was sanctioned. He joined duty again on 3.1.1991. The leave was granted upto 26.10.1990 only. Enquiry was conducted. However, it has been held by the Labour Court that the Inquiry Officer conducted the enquiry in one Kitting and recorded the statement of three witnesses of the department but no opportunity was afforded to respondent No. 2 to cross-examine the witnesses. It was held by the Labour Court that the petitioner did not adhere to the principle of natural justice in the enquiry and the enquiry is not legal and valid. The Labour Court observed that the order of terminating the service was a harsh one and it set-aside and ordered that two increments of respondent No. 2 be withheld from cumulative effect. The Labour Court, therefore, set-aside the termination and ordered respondent No. 2 to be reinstated with continuity of service with all the attendant benefits and back wages to the extent of 50% and two increments of respondent No. 2 shall be withheld with cumulative effect.

2. When the matter came up before the Bench on 14.12.1999 for motion

hearing, learned counsel for the petitioner made a statement that the petitioner is ready to take back respondent No. 2 in service provided that he gives up his claim for 50% back wages.

3. Learned counsel for the petitioner has tried to assail the award of the Labour Court. It may be noted that respondent No. 2 has not filed any writ petition challenging the award. However, the enquiry is held to be not proper and the reason for the punishment is only because of absence from duty for the above mentioned period.

4. Learned counsel for the petitioner has relied on the case of U.P. State Road Transport Corporation and others v. Mahesh Kumar Mishru and others, AIR 2100 SC 1151. In that case, a bus conductor was found to have issued tickets to passengers but they were short distance tickets. The allegation against the conductor was that though the passengers had boarded the bus at the "High Court" for "Manauri" for which they should have been charged Rs. 1.80, they were issued tickets from "Zero Road" to "Manauri" and they were charged only Rs. 1.50. After enquiry, his services were terminated. The order was challenged in departmental appeal which was rejected. The conductor thereafter approached the State Public Service Tribunal (Tribunal) for quashing the order of termination on various grounds but the Tribunal dismissed the claim. This order was challenged by way of writ petition in the High Court, which by its judgment dated 12.2.1998 partly allowed the writ petition and directed that the conductor shall be reinstated in service but he will be paid 25% of the back wages only. This judgment was challenged by the employer in the Supreme Court.

5. The Supreme Court held that it can interfere in the punishment inflicted upon if it shocks the conscience of the Court. It is further held that High Court can do so. It has held that, therefore, it cannot be said that High Court cannot interfere with the quantum of punishment imposed on the delinquent employee after disciplinary proceedings. It was found by the Supreme Court that the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the bus for which the punishment of dismissal from service was highly disproportionate. It held that the contention of the counsel for the employer that the High Court could not have interfered with the punishment inflicted upon the respondent, could not be upheld.

6. This judgment does not in any way help the petitioner. Ultimately, even in spite of the fact that the allegation regarding tickets for lesser destination being issued, the Supreme Court did not interfere with the judgment of the High Court which held that the punishment upon the conductor was disproportionate.

7. Learned counsel for the petitioner has also cited the case of Mukesh Khanna V. Chandigarh Administration, Chandigarh and another, 1999(2) LLJ 1433 : 1999(3)

SCT 104(P&H)(DB). It was held in that case that the petitioner (in that case) was not really interested in the job but he actually wanted to grab the salary on one pretext or the other. This judgment also in no way helps the petitioner.

8. In this case, the back wages are restricted to 50%. Only because the learned counsel for the petitioner made a statement that the petitioner is ready to take back the workman if he gives up the back wages, it cannot be said that the back wages cannot be granted. It may be noted again that the workman has not challenged the award and we, therefore, do not make any observation regarding the part of the award which is against the respondent No. 2. We also find that Section 11A of the Industrial Disputes Act has been rightly considered by the Labour Court. The charge of absence from duty for the above mentioned period, the absence was only because the petitioner continued to remain absent after leave period was expired, cannot be said to be serious to invite the punishment of dismissal. This is not a case where the duty of the petitioner is such that absence can be said to be a grave misconduct.

In view of the above we do not find any reason to interfere with the award of the Labour Court. This writ petition is, therefore, dismissed.

9. Petition dismissed.