

(2003) 09 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3437 of 2002

The State of Haryana and Others	Vs	APPELLANT
Sukhbir Singh and Others		RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 101 FLR 63 : (2004) 2 ILR (P&H) 431 : (2004) 1 LLJ 317 : (2003) 135 PLR 806

Hon'ble Judges : S.S. Nijjar, J; S.S. Grewal, J

Bench : Division Bench

Advocate : Palika Monga, A.A.G, for the Appellant; C.M. Chopra, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioners (hereinafter referred to as "the Management") have filed this writ petition seeking issuance of a writ in the nature of Certiorari quashing the award dated 18.1.2001 whereby respondent No. 1 (hereinafter referred to as "the workman") has been directed to be reinstated in service with 40% back wages.

2. At the outset, it needs to be noticed that the workman had also challenged the aforesaid award by way of CWP No. 7001 of 2002 claiming that he had been wrongly denied 60% of the back wages. The aforesaid writ petition filed by the workman was dismissed by a Division Bench of this Court on 6.5.2002.

3. Mr.C.M. Chopra, learned counsel appearing for the workman has submitted that the present writ petition filed by the Management is not maintainable as the award has already been upheld by a Division Bench of this Court. We are unable to accept the aforesaid submission of the learned counsel as the only issue involved in the aforesaid writ petition was whether the workman was entitled to the grant of full back wages. The legality of the award was already under

challenge in the present writ petition filed by the Management.

4. The workman was appointed as a Conductor in the year 1981. On 18.12.1990, he was placed under suspension on the receipt of the report that he has embezzled a sum of Rs. 130/- by way of non-issue of tickets to the passengers. A charge sheet was served on the workman, Enquiry was conducted. Charges were found to be proved against the workman. Thereafter, show-cause notice was issued to the workman on 3.6.1993 proposing the punishment of termination of the services of the workman. The workman was directed also to appear before the competent authority for personal hearing on 2.12.1993. He appeared before the competent authority and did not say a word in his defence. On 8.12.1993, the competent authority terminated the services of the workman. Aggrieved against the order of termination, the workman served a demand notice. Reference of the Industrial Dispute was made to the Labour Court, which gave the award dated 18.1.2001, challenged by the Management in the present writ petition.

5. Ms. Monga has vehemently argued that once the Labour Court had come to the conclusion that the workman had been found guilty of the charges, it ought not to have exercised jurisdiction u/s 11-A of the Industrial Disputes Act (hereinafter referred to as "the Act"). We find force in the submission made by the learned counsel. The workman had embezzled money belonging to the public. He was working in a public utility undertaking. The Management had entirely lost confidence in the workman. In such circumstances, the Labour Court ought not to have exercised the jurisdiction u/s 11-A of the Act. We are of the opinion that dishonest and unscrupulous workmen should have no place in public employment. If a dishonest employee is permitted to continue in service, it has a demoralising effect on all the employees who have been working honestly. Individuals who have acted dishonestly during the course of public service, cannot be shown any leniency.

6. Mr. Chopra has submitted that the workman needs to be treated leniently as he has already been punished by grant of only 40% back-wages. According to the learned counsel, dismissal from service would be disproportionate to the misconduct committed by the workman. We are unable to accept the submissions of Mr. Chopra. We are of the considered opinion that the Labour Court misdirected itself in exercising the discretionary powers u/s 11-A of the Act to reinstate a dishonest workman into service. Such misplaced sympathy would do much more harm to the morale of the general public and the honest workers than any conceivable good it may do to the workman reinstated. The interest of the public must take precedence over the interest of the individual workman.

7. Mr. Chopra learned counsel has then submitted that during the pendency of the present writ petition, the workman has been taken back on the job. During this interregnum, he has not committed any further misconduct. We are unable to accept that any equity would arise in favour of the workman merely because the workman has been taken back on the job by the Management. At the notice

of motion stage, this Court did not stay the operation of the award. The workman was, therefore, taken back on the job to avoid the penal consequences of non-implementation of the award. In view of the above, we find that the award of the Labour Court granting relief to the workman by way of reinstatement with 40% back wages is not sustainable.

8. Consequently, the writ petition is allowed. The award dated 18.1.2001 given by the Presiding Officer, Labour Court-II, Faridabad in Ref, No. 87/99, reinstating the workman with 40% back-wages is hereby quashed. No costs.

Sd/-

S.S. Grewal, J.

R.M.S.