IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14078-2000 (O&M)
Date of Decision:14.10.2024

SUMER SINGH ..... Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK AND ORS ..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. R.K. Malik, Sr. Advocate with
Mr. Kartikey Chaudhary, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. AG, Haryana.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 11.11.1998 (Annexure P-6) and Award dated 07.06.2000 (Annexure P-7) whereby Labour Court has upheld inquiry conducted by respondent-Management and answered the reference against him.

2. On 01.04.1977, the petitioner was appointed as Conductor in the Transport Department. He remained in service from 1977 to 1995. During his 18 years service, he was implicated in 52 departmental proceedings. He was subjected to punishment of censure or recovery of embezzlement or stoppage of annual increments.

3. The respondent initiated a departmental inquiry on the basis of complaint of Suraj Bhan-Inspector. The petitioner was served charge-sheet. The reply of petitioner was found unsatisfactory, thus, an inquiry officer was appointed who conducted inquiry on the basis of evidence led by both sides. The petitioner admitted his guilt. He was found guilty and

accordingly a show cause notice was served. Prior to imposing punishment of termination from service, the respondent deferred the matter for 2 months to watch act and conduct of petitioner because he had assured that he will work with dedication. Unfortunately, during the intervening period, he again committed embezzlement and a complaint was filed against him. In such circumstances, the respondent vide order dated 09.03.1995 terminated him from service.

4. Mr. R.K. Malik, Sr. Advocate for the petitioner submits that petitioner was not terminated from service on account of his previous conduct whereas he was dismissed from service on account of charge-sheet where there was allegation of speaking loudly at a Senior Officer. Except speaking loudly, there was no other allegation against him. The punishment was disproportionate to alleged offence. He had already rendered service of 18 years and it was a pensionable job, thus, punishment of dismissal from service was a harsh action.

5. Per contra, Mr. Raman Sharma, Addl. AG, Haryana submits that petitioner was implicated in 52 departmental proceedings. He was not dismissed on account of one isolated case. For two different acts, two separate charges are required to be issued, however, while imposing punishment, previous conduct of a workman may be considered. The attitude of petitioner was so bad that he committed embezzlement even during the pendency of departmental proceedings.

6. I have heard the arguments and perused the record.

7. From the perusal of impugned order, it is evident that Suraj Bhan-Inspector appeared before the Labour Court as a witness and deposed that petitioner had abused and threatened him and caused

hindrance in his official duties. The petitioner was implicated in 52 department proceedings and subjected to different punishments. In many cases, he was guilty of embezzlement of funds. He committed embezzlement even during the pendency of impugned departmental proceedings. The department conducted proper inquiry and petitioner admitted his guilt.

8. The Labour Court has recorded categoric findings *qua* departmental inquiry and conduct of the petitioner. The relevant extracts of findings recorded by Labour Court are reproduced as below:

> "*In this case the management has adduced in evidence document Ex MW-2/A containing list of 52 cases in which departmental action was taken against the workman. Number of times he has been censured, number of times he has been imposed recovery of amount of number of times his annual increments have been stopped. The detail is mentioned in Ex MW-2/1 to Ex.MW-2/52. These documents are the photocopies of the orders which were passed against the workman while taking disciplinary action. These documents are concerned with the cases mentioned in the list Ex MW-2/A. The most of the cases are of embezzlement of amount and few cases are of absence from duty and misbehavior with superior officers. In connection with these documents workman has stated that he never received these orders. These documents have been produced by the management to show the previous conduct of the workman and the reasons of taking extreme step against the workman. In my view although regarding misconduct proved in this case it was possible to have a thinking to reduce the punishment awarded but at the time of awarding punishment the previous conduct of the workman can not be ignored. Keeping in view the misconduct of the workman proved the termination order also can be passed and a lessor*

punishment also can be awarded. The facts and circumstances of this case show that the workman does not deserve sympathy of court and any leniency while awarding sentence. See the conduct of the workman he has been awarded punishment 52 times and he still wants that he should be allowed to remain in service and to create nuisance for the general public and higher officers of the department. Such type of acts of indiscipline are increasing day by day in the Government offices. Any leniency shown may encourage other employees also to do such type of acts of misconduct in future. In these circumstances I am of the view that termination order passed by the General Manager is justified. I feel in such type of cases of grave misconduct minor technicalities if any should not be allowed to stand in the way of natural justice. Such type of persons time and again make efforts to regain their services through Court also taking benefit of few minor technicalities. Case law cited by the learned A.R. of the workman 1998 (2) RSJ 526 in case Geeta Ram Garg V/S The Presiding officer, Labour court, Bhatinda and others is also of not much help to the workman in this case."

9. The respondent has conducted proper departmental inquiry and found the petitioner guilty. He was found involved in 52 cases. He was subjected to different punishments. The petitioner is primarily claiming that punishment of dismissal from service is harsh punishment and it should be substituted by compulsory retirement.

10. It is a settled proposition of law that scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its

jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in ***Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998*** while adverting with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in ***Union of India and Others v. P. Gunasekaran.*** The relevant extracts of the judgment read as:

> *"19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran13 held thus :*
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> > *"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in*

exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy

of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

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To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."

11. The judgments cited by petitioner do not come to his rescue because it is case of an incorrigible employee. Punishment for minor or

major misconducts on 52 occasions and commission of offence even during the pendency of departmental proceedings indicates that petitioner was an incorrigible employee and question of disproportionate punishment could be considered had he not been involved in any other offence.

12. Applying the law laid down by Hon'ble Supreme Court, this Court neither finds that penalty imposed by authorities is disproportionate to alleged offence nor finds any infirmity warranting interference of this Court.

13. The present petition sans merit and deserves to be dismissed and accordingly dismissed.

14. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

14.10.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*