IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-14531-2015 (O&M)
Decided on :29.07.2025

AJAIB SINGH . .Petitioner

Versus

INDUSTRIAL TRIBUNAL PATIALA AND ORS . . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Vikas Singh, Advocate for the petitioner.

Mr. Anil Kumar Sharma, Advocate for respondents No. 2 & 3.

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HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present writ petition, the challenge is to the Award dated 08.02.2013 (Annexure P-2) by which, the claim raised by the petitioner that his services have wrongly been terminated by the respondent-department, has been rejected and his claim for reinstatement, continuity in service and full back-wages has been denied and the findings which have been recorded by the labour Court is against the petitioner, which is causing prejudice.

2. Learned counsel for the petitioner argues that though, in the present case, the charge-sheet dated 28.04.1997 was served upon the petitioner with the allegations that the petitioner has misappropriated Rs. 52/- by not issuing the tickets to 13 passenger on route Patiala to Bassi on 19.03.1997, but said charge has only been proved against the petitioner to the tune of Rs. 28/- hence, the petitioner-conductor had only committed theft of Rs. 24/-, the imposition of punishment of dismissal from service dated 30.03.1999 (Annexure P-1) is disproportionate to the charges alleged and proved against the petitioner-conductor and therefore, the labour Court failed to modify the punishment of dismissal from service imposed against the

petitioner despite having jurisdiction to do so under Section 11-A of the Industrial Disputes Act, 1947 (herein after referred to 1947 Act).

3. Learned counsel for the petitioner further submits that under similar circumstances, the other conductors, on whom the similar charges were alleged and proved, the lessor punishment has been imposed upon them and therefore, on this account also, the petitioner-conductor has been discriminated and which fact has been ignored by the labour Court vide award dated 08.02.2013 (Annexure P-2) while upholding the order of punishment of dismissal passed against the petitioner by the respondent-department.

4. Learned counsel for the respondents submits that once a charge-sheet dated 28.04.1997 has been served upon the petitioner for embezzlement of Rs. 52/- and the embezzlement has been proved. Even if, the same has been proved qua Rs. 28/-, the same is good enough to impose punishment of dismissal from service upon the petitioner.

5. Learned counsel for the respondents further submits that once, the embezzlement of Rs.28/- is proved against the petitioner, the major punishment imposed upon the petitioner is as per the settled principle of law. Learned counsel for the respondents submits that the Labour Court has appreciated all the facts and material evidence which have been brought on record while declining the claim of reinstatement, continuity in service alongwith full backwages the petitioner, hence, the impugned award dated 08.02.2013 (Annexure P-2) is liable to be upheld.

6. Learned counsel for the respondents further submits that this Court will not have jurisdiction to amend the punishment especially when the allegations of embezzlement have been proved against the employee concerned.

7. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

8. The petitioner was proceeded against for the allegations of embezzlement of Rs. 52/- for not issuing the tickets to 13 passengers. The said allegations were made subject matter of the departmental proceedings and it is a conceded fact that in the departmental proceedings embezzlement of Rs. 28/- is proved , on the basis of which, the punishment of dismissal from service have been awarded to the petitioner vide order dated 30.03.1999 (Annexure P-1).

9. The question which has been raised by the learned counsel for the petitioner is that once, the allegations of embezzlement of Rs. 52/- was alleged and only Rs. 28/- have been found to be embezzled whether the respondents were under obligation to not to inflict the maximum punishment of dismissal from service against the petitioner and the entire charge had to be treated as false so as to impose lessor punishment as compared to such a grave punishment of dismissal from service.

10 It may be noticed that the embezzlement of Rs. 28/- has been proved against the petitioner-conductor. The punishment of dismissal from service has been imposed upon the petitioner after holding due enquiry proceedings . Once, the allegations of embezzlement has been proved against the petitioner irrespective of the fact whether the same was of Rs. 52/- or for Rs. 28/-, the employer was within the jurisdiction to impose the punishment against the petitioner.

11. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No. 784 of 2001*** titled as ***'Karnataka State Board Transport Corporation versus B. S. Hullikatti, decided on 22.01.2001,*** even if the embezzlement is of a very small amount

still the employer will have the jurisdiction to impose the punishment of dismissal of service.

The relevant paragraph of the said judgment is as under:-

"On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. this act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is fund that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company.

they act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retiral benefits. ”

13. Further, the quantum of the punishment can only interfered by this Court, when the said punishment is shockingly disproportionate to the charges alleged and proved.

14. As per the judgment of the ***Hon’ble Supreme Court of India in Civil Appeal No.219 of 2023 titled as Union of India and others vs. Const. Sunil Kumar, decided on 19.01.2023***, the Court cannot interfere even if the punishment is disproportionate unless and until the punishment is shockingly disproportionate to the charges alleged and proved. The relevant paragraph of the said judgment is as under:-

“ 6.2 Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering

with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of Union of India Vs. R.K. Sharma; (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.

6.3 Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.

6.4 At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable."

15. Further argument of the learned counsel for the petitioner that under the similar circumstances, where there was misappropriation different punishment has been imposed upon the similarly situated employees.

16. This Court cannot step into the shoes of the employer to award the punishment to the employee concerned. Merely that in the same circumstances, the different punishment has been imposed by the employer, cannot be a ground to change the punishment awarded to the petitioner-conductor in the present case, especially when it has already been held that in the case of the embezzlement, the employer is within the jurisdiction to impose the maximum punishment upon the employee concerned.

17. Even otherwise, the Award dated 08.02.2013 (Annexure P-2) of the Labour Court can only be interferred in case the same is perverse to the facts or law. In the present case, no perversity has been shown to this Court in the aforementioned impugned Award that the same is contrary to the facts

or the material evidence that was brought on record or the settled principle of law so as to invite any interference by this Court.

1. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

18. Consequently, the writ petition is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

29.07.2025
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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: ~~Yes~~/No