Court No. - 6

Case :- WRIT - C No. - 11990 of 2024

Petitioner :- Charan Pal Singh
Respondent :- Presiding Officer Labour Court Second Up Ghaziabad And Another
Counsel for Petitioner :- Jamal Ahmad Khan
Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondent and perused the record on board.

2. Petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India assailing the order dated 17.01.2024 passed by Presiding Officer, labour Court-II, in Adjudication Case No.457/1998, whereby additional issue being a preliminary issue has been decided against the present petitioner (workman) upholding the validity of the departmental enquiry procedure adopted by the employer. Record reveals that petitioner has been terminated from service, vide order dated 18.12.2010, on the basis of the departmental enquiry conducted by the employer. On the application moved by the petitioner under the U.P. Industrial Disputes Act, reference has been made to examine the validity of the termination order dated 18.12.2010. Having reference order received, learned Labour Court has framed preliminary issue qua the validity of the procedure adopted by the employer during departmental enquiry and decided the same in affirmative, vide order impugned dated 17.01.2024, upholding the procedure valid adopted during the departmental proceeding, which is under challenge before this Court.

3. Grievance of the present petitioner is that owing to the order dated 17.01.2024 his right to assail the reasoning/finding returned by the Inquiry Officer to reach final conclusion resulted into the termination of the present petitioner has been curtailed/negated, whereas, petitioner has got right to assail the same before labour tribunal/ court. In support of his submission learned counsel for the petitioner has placed the provisions as enunciated under Section 11-A of the Industrial Disputes Act, 1947 and speculated that after order dated 17.01.2024 passed by the learned labour Court only quantum of punishment has to be seen and nothing remains to be decided qua finding returned by

the Inquiry Officer during departmental enquiry.

4. Per contra learned Standing Counsel for the State-respondent has vehemently opposed the submissions as advanced by learned counsel for the petitioner and contended that there is nothing on the record to demonstrate that right of the petitioner to assail the finding/reasoning returned by the Inquiry Officer during the departmental enquiry has been curtailed. It is further contended that matter is still upon before the labour court to challenge the termination order and same can more appropriately be decided by the labour court after appraisal of evidence to be adduced by the parties.

5. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, I am of the considered view that learned labour Court has simply upheld the procedure valid which has been adopted during departmental enquiry, as clearly evident from the preliminary issue itself. Apart from that in the last paragraph of the order dated 17.01.2024, learned labour Court has returned categorical finding that while conducting the department enquiry, petitioner has been accorded full opportunity to adduce the evidence and put his defense wherein he has made his statement and also completed the cross-examination. All the documents which have been sought to be supplied has been supplied to the petitioner during the course of departmental enquiry. Lastly, learned labour Court came to the conclusion that the procedure in the departmental enquiry has been adopted as per canons of natural justice. In the light of the finding returned by the learned labour Court, it cannot be said that opportunity of the petitioner to assail the finding returned by the Inquiry Officer or reasoning assigned by him, which resulted into termination of the present petitioner, has been curtailed. Section 11 of the Industrial Disputes Act denotes the power of the Labour Courts/ Tribunal/ National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While examining the matter for granting relief to the workman, learned labour Tribunal etc. are entrusted power to examine the legality and validity of the discharge/dismissal order. The relevant phrase which has been employed under Section 11-A of the Industrial Disputes Act is quoted herein under:

"is satisfied that order of discharge or dismissal was not justified."

The said phrase as employed under Section 11-A of the Industrial Disputes Act clearly denotes the ample power of the labour Tribunal etc. to examine the correctness of the finding returned by the Inquiry Officer in passing the discharge or dismissal order. Maiden perusal of the aforesaid phrase does not

indicate anything adverse to the right of the workman to get the reasoning/finding assailed returned by the Inquiry Officer in the departmental enquiry. Even otherwise, learned labour Court has returned a categorical finding in the last paragraph of order dated 17.01.2024 that it will examine the grounds of departmental enquiry on which basis punishment has been imposed upon the workman.

6. In this conspectus, as above, I do not find any justifiable ground to entertain the instant writ petition and interfere in the order dated 17.01.2024 passed by the learned labour Court. Right of the present petitioner is still open to assail the grounds on which basis he has been terminated, meaning thereby the grounds as taken in the departmental enquiry to punish the present petitioner is still to be examined by the learned labour Court.

7. Instant writ petition is decided, accordingly.

Order Date :- 12.4.2024
Jitendra