

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11898 of 1994

Date of Decision: 11.12.2015

Gurmail Singh

... Petitioner

Versus

The Presiding Officer, Labour Court,
Patiala and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.P. Kaushal, Advocate,
for the petitioner.

Mr. Dhruv Gupta, Advocate,
for R-2 & R-3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

1. The impugned award dated July 30, 1993 passed by the Presiding Officer, Labour Court, Patiala is inadequate in its judicial work in answering the reference when the rights of the workman under section 11-A of the Industrial Disputes Act, 1947 ("the Act") for award of lesser punishment have not been considered and weighed in the award. The examination has been limited to the quality of the departmental inquiry held against the delinquent petitioner on the touchstone of whether it was fair and proper.

2. The Labour Court failed to realize that there is a procedural aspect of an inquiry while on the other hand there is an equally important facet. This is whether despite being procedurally correct, still are the

findings proper on evidence and whether the punishment inflicted is justified. On this aspect substantial justice is involved and the labour court is required to pierce through the veil of the inquiry proceedings to measure the quantum of punishment. This aspect has not been dealt with by the labour court and the fault is incurable except on remand to consider the case under section 11-A of the Act. The result is that the impugned award cannot be sustained and it has to be set aside and the case remanded to the Labour Court to consider the question of quantum of punishment under section 11-A of the Act which is a flaw and lacuna left in the award which cannot be cured by this Court by forming its own opinion since the original jurisdiction under section 11-A of the Act is exercised by the Labour Court alone. Since the case has not been considered under section 11-A of the Act, this Court would not embark upon assessment as to quantum of punishment on its own and leave it to the Labour Court to opine on, in the first instance.

3. To the extent indicated above, without expressing any opinion the writ petition is allowed. The award is set aside. Case is remanded for passing fresh award. The parties are directed to appear before the Labour Court on 11.01.2016. It will be the earnest endeavour of the Labour Court to decide the question of quantum of punishment within six months from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

11.12.2015
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