

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.1457 of 1994 (O&M)

Date of Decision: 7.12.2015

Punjab State Electricity Board

..... Petitioner

Versus

Presiding Officer, Labour Court, Amritsar and another

..... Respondents

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

Present: Mr.Parminder Singh-I, Advocate for the petitioner

None for L.Rs of respondent no.2

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 Labour Court, Amritsar has given parity in the matter of impositions of punishments and reinstated respondent no.2-workman after awarding him lesser punishment by stopping his two increments with cumulative effect. Late Charanjit Singh (respondent workman) (through his L.Rs) and one Darshan Singh were both involved and charged in the same incident for committing misconduct. The charge-sheets were issued separately to them. Mr.Parminder Singh, learned counsel for the petitioner-Board while assailing the award rightly submits that there is a distinction between the roles attributed to both the delinquent workmen. The gravity of the misconduct is different in degrees in the case of the present workman-late Charanjit Singh on two counts, one, that he mishandled the Line Superintendent and wrote abusive slogans in his hand on the walls of the

Sub-Station of the PSEB but Darshan Singh did not do such a thing. In the inquiries held against both the delinquents, Darshan Singh was awarded punishment of stoppage of two increments with cumulative effect by the Board while the present workman-late Charanjit Singh was dismissed from service for committing grave misconduct. In his first round of litigation before the Labour Court, on a reference made by the appropriate government, late Charanjit Singh remained unsuccessful. He approached this Court in a writ petition which was allowed and the award of the Labour Court was set aside to the extent that it was asked to revisit the question of punishment by affording an opportunity to the workman to adduce evidence in terms of the order of the Court dated 13th October, 1986 to mitigate punishment. In short, the Labour Court was asked to redo the award and exercise its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) as punishment of dismissal deserved reconsideration. The remaining part of the award was upheld which meant that the enquiry conducted against respondent no.2-workman was fair and proper. In the remand proceedings, the Labour Court has equated the punishments awarded to both the workmen and has exercised its discretion under Section 11-A of the Act and imposed lesser punishment of stoppage two increments with cumulative effect and granted continuity of service and full back-wages by its award dated 5th March, 1993.

2. The Punjab State Electricity Board approached this Court by filing the present writ petition challenging the impugned award on the contention noticed by the Division Bench of this Court in its order dated 2nd February, 1994 that the present was not a case where full back-wages should have been awarded by the Labour Court. While issuing notice of motion, the Division Bench stayed the payment of back-wages to the extent of 50% till further

orders. Resultantly, 50% of the back-wages had been paid to the workman. He was reinstated in service in absence of stay order. He died in harness on 25th March, 2011. His L.Rs were impleaded in his place for the purpose of prosecuting the present petition for monetary claims and the L.Rs waver for grant of full back-wages. However, no one represents them at the hearing today.

3. Mr.Parminder Singh, learned counsel for the petitioner submits that the degree of misconduct is far more serious in case of late Charanjit Singh than in the case of Darshan Singh, and therefore, the petitioner-Board was justified in its action of dismissing the respondent. At the same time, learned counsel realises that he cannot step any further back from the award of 50% back-wages since he is not in a position to urge restoration of the dismissal order. Ordinarily, the writ court would not interfere with exercise of judicial discretion exercised by the Labour Court on the evidence on record and in the matter of award of lesser punishment under Section 11-A of the Act dismissal being disproportionate to the gravity of the misconduct. This Court also may not have interfered at all in the award, but to the extent that there is a discernible qualitative difference in the two cases, then this Court should not put its imprimatur blindly on the award when it equalizes punishments when the roles of the two demand some difference to be drawn between the two. However, in doing so, it is not necessary that 50% back-wages ought to be withheld to make an amalgam of punishments. When the Labour Court exercises its jurisdiction under Section 11-A of the Act, it exercises original powers of the punishing authority in selecting punishment and it is for the Labour Court to choose a single punishment which the delinquent deserves in its judicial view. Therefore, the two issues cannot be mixed up, one of equality in the matter of punishment and the award of 50% back-wages.

Therefore, in order to draw a distinction between the two cases which distinction is quite apparent from a reading of both the charge-sheets and making a suitable allowance the award of the Labour Court deserves to be modified and the punishment of two increments with cumulative effect deserves to be increased to stoppage of three increments with cumulative effect to balance justice. I, therefore, do not see why the 2nd respondent should not be held entitled to full back-wages. It is so ordered. The L.Rs of late Charanjit Singh would be entitled to the balance of the back-wages.

4. Consequently, this writ petition is dismissed and the award of the Labour Court dated 5th March, 1993 is modified as above. The L.Rs of late Charanjit Singh are held entitled to full back-wages for the period the workman was kept out of service. The amount be calculated and paid to the L.Rs of late Charanjit Singh within two months from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

7.12.2015

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