

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

Civil Writ Petition No.12267 of 2011

Date of decision: 28.9.2015

Ram Singh

... Petitioner

Versus

M/s Jai Bharat Maruti Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs.Abha Rathore, Advocate,
for the petitioner.

Mr.Mohak Bhadana, Advocate,
for respondent No.1.

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

RAJIV NARAIN RAINA, J.

1. This petition is filed by the workman for setting aside the order dated 3rd December, 2009 and consequential award dated 13th September, 2010 passed by the learned Presiding Officer, Labour Court-I, Gurgaon. The prayer is for setting aside the illegal termination and to award reinstatement with continuity of service and other consequential benefits including full back wages. The reference has been declined.

2. The facts are that the petitioner was employed with the respondent management on 1st March, 1990 and served till 13th October, 1995 when his services were arbitrarily and illegally dismissed. The

petitioner came in conflict with the management when he became actively involved in trade union activities and was elected Joint Secretary of the workers union in 1994 and thereafter as its President from July, 1995 to 13th October, 1995. The friction between him and the management escalated and led to two charge sheets served on him one is dated 8th December, 1994 while the other is of 21st June, 1995. The petitioner filed replies to the charge sheets in detail but instead an Inquiry Officer was appointed to hold a domestic inquiry. The dispute raised by the petitioner by demand notice resulting in the appropriate Government referring the matter to the Labour Court at Gurgaon.

3. The management entered appearance and contested the case by filing its statement of claim. The learned Tribunal framed three issues, the first of which was whether a fair and proper inquiry has been held against the petitioner by the management. Parties led their evidence before the Labour Court, both oral and documentary.

4. The validity of the inquiry was taken up as a preliminary issue and decided in favour of the management vide order dated 3rd December, 2009. Vide main award, the reference has been declined and the petitioner has not been granted any relief. A finding has been returned by the Labour Court that the act of dismissal was not an act of victimization. This finding is assailed by the petitioner on the ground that the material evidence has been ignored. The plea of victimization was specifically taken in the pleadings. The petitioner prays that he was actively involved in trade union activities which was the *causa causans* of the order of dismissal from service. The petitioner had served a general demand notice on common

issues/disputes as the leader of the Union to the management regarding an incentive scheme which was demanded to be formulated afresh as is more beneficial to the workers. But before the matter could be taken up for resolution between the employer and the employees, the petitioner was removed from the scene. Petitioner says that the two charge sheets served on him are on false and trumped up charges and suffer from lack of bona fides. The imputation of misconduct in the first charge sheet was that on 5th December, 1994, the petitioner was found missing from the work place from 4:30 p.m. to 6:00 p.m. When he was called by the Department Manager at about 6:10 p.m. On that day to attend his office he was asked to complete his routine production. On this, the workman became violent and used foul language against his superior officer. The workman was advised to behave himself in future with his seniors on which the officer was threatened by the petitioner in an aggressive mood. By this action, the petitioner had made himself liable for misconduct under Clause 36.15 and 36.24 of the Certified Standing Orders of the Company. He was asked to explain within 48 hours of receipt of the letter as to why disciplinary action should not be taken against him. If the reply was not received in time, the charge would be presumed to have been admitted. In this charge sheet, his previous record was also raked up on various different dates i.e. from 23th November, 1993 to 3rd October, 1994 which are in the nature of refusal to work for which an advisory note was issued to the petitioner; slowing down production/instigation; misbehaviour/assaulting the Security Supervisor on which ground he was suspended and a charge sheet was issued; also refusal to accept suspension letter but later on suspension was revoked on an

undertaking given to keep good behaviour in future; violation of injunction orders and raising dirty slogans along with fellow workers and of trying to stop the vehicle of the Company Vice President.

5. The second charge sheet relates to an occurrence of 19th June, 1995 while working in 'B' shift when the workman along with one Harban Singh while working on a factory machine had caused complete breakage of its iron block. In the inquiry, the charges were proven on both the charge sheets resulting in dismissal of the petitioner.

6. So far as the second charge sheet is concerned, when Sanjay Yadav, Senior Executive Officer [Production] was called as workman's witness, WW3, he made a statement that the summoned record had not been brought by him because it has been destroyed. He deposed that it is a rule of the company that the production record of each year is destroyed at the end of the year. For this reason the record could not be produced. On this the court required the General Manager to make a statement in writing on which further examination was deferred.

7. Heard Mrs.Abha Rathore for the workman and Mr.Mohak Bhadana for respondent No.1 at length and perused the paper book.

8. The reason assigned in the order dated 3rd December, 2009 holding the inquiry to be fair and proper is that on receipt of the inquiry report Ex.P9 and Ex.P10, the Inquiry Officer discussed the evidence led by both the parties and only after that submitted his report and thus the inquiry proceedings are in order. The Tribunal took the view relying on **Employers**

Management West Bokaro Colliery of Tisco Limited v. Concerned Workman, Ram Pravesh Singh, AIR 2008 SC 1162 that the labour

Tribunal is not an appellate tribunal and it should not interfere with the findings recorded by the domestic tribunal. The fact situation in the case was as noted by the Supreme court to the following effect: "Findings recorded by the Tribunal that the workman had left the place of duty at 12.25 P.M. and, therefore, could not have reached the place of occurrence at 12.30 P.M. after collecting his other associates, is not based on any evidence. The case of the Management is that the respondent had left his place of duty at 12.05 P.M. and reached the place of occurrence at 12.30 P.M. after collecting his fellow workmen. There was sufficient time for the workman to reach the place of occurrence within half an hour as the distance between the place of duty and the place of occurrence was only 1 k.m. The duty of the respondent- workman was upto 1.00 O'clock. Even if, it is accepted that he left the place of duty at 12.25 P.M., then also, he left the place of duty during his duty hours." The labour court in the aforesaid case had committed error in applying standards of culpability beyond reasonable doubt whereas it should have applied the test of preponderance of probability in domestic inquiries.

9. On merits, the Labour Court held that in the domestic inquiry, the workman had participated and had signed the day to day proceedings in token of acceptance. The witnesses produced by the management were cross-examined at length and a number of times by deferment, the inquiry proceedings were adjourned on his request whenever requested for good reason. Moreover, he was allowed to engage a representative of his choice to defend himself. For these reasons, the Labour Court did not think it proper to interfere with the inquiry proceedings and the report. The Labour Court while dealing with the issue of inquiry being fair and proper as a

preliminary issue is not required to hold a full fledged trial and has only to see *prima facie* whether the inquiry has been conducted in a fair and proper manner in consonance with the principles of natural justice and is procedurally correct in achieving its milestones set out to arrive at the truth in a fair manner but at the same time it can be said that a procedurally fair inquiry may stand vitiated by errors and incorrect conclusions drawn by the Inquiry Officer on the evidence led. The Inquiry Officer acts as a decision-maker in the first instance and is the manager and master of the facts. The Labour Court has to be extremely cautious in not over stepping its jurisdiction at the preliminary stage to be seen as concluding the entire trial at the interim stage leaving nothing substantial to undertake any further as though the remaining trial is an empty formality. The inquiry officer has to step a little beyond the confines of procedural fairness by expressing opinion and retuning findings on the merits of the charge after meaningful appreciation of the oral and documentary evidence. That stage is not reached and has to be left in its full form to be examined after the evidence has been let in by both the parties.

10. At the second stage of the trial after the preliminary issue was decided in favour of the management, the predominant question arose as to the justification of the dismissal order or whether lesser punishment would suffice.

11. The Labour Court returned findings as follows: (1) the management pleaded that the workman was not a protected workman was correct position in law since the workman neither produced any list of protected workmen nor any dispute was pending before any authority as

required under Section 33 of the Industrial Disputes Act, 1947; (2) because the workman is not protected workman, then it follows that the plea of victimization is also misplaced, wrong and baseless and is not proved; (3) Victimization is a serious allegation which the workman had to prove with authenticated proof. For this proposition, the Labour Court relied on the authority in **Messers Bharat Iron Works v. Bhagubhai Balubhai Patel and others**; 1976 SCC (L&S) 92. Besides, the Labour Court noticed the decisions of the Madras and Calcutta High Court in **P.Selvaraj v. Brakes India Limited and another**; 1993 (1) LLN 151 and **Indian Iron and Steel Co. Ltd. v. Bhavesh Chandra Dutta and others**; 2004 LLR 181. The latter on the point that if the inquiry report has not been furnished to the workman, it will not be a ground to set aside the punishment of dismissal when the disciplinary authority has held the inquiry in accordance with the prevalent rules.

12. More important is the discussion of the Labour Court on the issue of Section 11-A of the Industrial Disputes Act, 1947 when it was argued on behalf of the workman that the Labour Court has power to set aside the punishment of dismissal from service or reduce the punishment even though the inquiry has been decided against the workman in a fair and proper manner in its procedural aspects. The Labour Court noticed a catena of decisions of various High Courts including this Court on the point. These decisions are : **Ram Gulam v. Haryana Dairy Development Cooperative Federation Limited and others**; 2008 (1) LLJ 647, **Indian Farmer's Fertilizer Corporation Limited v. P.O. Labour Court, Chandigarh**, 1999

(1) LLJ 1040, **J.S.Gulati v. Improvement Trust, Ludhiana and others**;

1983 (II) SLR 100, **J.K.Synthetic Limited v. Labour Court and another;** 1994 LLR 472, **Rajasthan State Road Transport Corporation v. Ram Karan Chauhan and another;** 1995 LLR 319 and **The Chief General Manager, State Bank of India, Chief Office, Lucknow v. B.C.Verma and another;** 1994 LLR 29.

13. All the above referred rulings including of this Court have been distinguished in one sweep by the labour court on the ground that in the present case, there are allegations of misconduct against the workman. This is a misreading of the ratio of those cases. Section 11-A of the Act operates only in cases of misconduct and does not deal with the cases of retrenchment. The Labour Court was expected to do fair reading of the case law and cull out its ratio and distinguish each of them on facts and not to have simply pasted them in one lot and distinguished them on a fallacious notion that those cases did not deal with misconduct.

14. The Labour Court went to the extent of holding that the allegations of previous misconduct have been proved against the workman during the inquiry proceedings even when there was no evidence produced justifying each instance mentioned in one of the charge sheets.

15. The Labour Court relied on the decision in **U.P.State Road Transport Corporation v. Nanhe Lal Kushwaha;** 2009 LLR 1149 to persuade itself to hold that though the Labour Court can interfere with the quantum of compensation awarded by the employer in exercise of its power under Section 11-A of the Industrial Disputes Act but ordinarily, the discretion exercised by the employer in imposing punishment should not be interfered with thinking that to be an absolute rule. If it were so then it

would amount to rewriting section 11-A. The Labour Court must assign sufficient and cogent reasons as to the premises on which the punishment imposed could be said to be the best measure suitable and commensurate with the gravity of the misconduct or is disproportionately excessive, conceding that the power to impose punishment is a managerial function not to be lightly interfered with by substituting discretion of the punishing authority. The Labour Court again returned to the past conduct to justify the action and to hold that no ground for leniency or misplaced sympathy should be allowed to intercede with employer's right to dismiss an employee.

16. The jurisdiction under Section 11-A is a wise one which must be exercised judiciously and frugally because judicial discretion cannot be exercised either whimsically or capriciously but on known principles of interference. But that does not mean that the labour court is a mute spectator when called upon to perform under section 11-A to fit the crime to the punishment and the punishment to the crime. This is one of the most difficult terrain to understand and decide but by and large it must be anchored in the conscience of the court after the totality of facts and circumstances are present in its mind. It is often said that angels rush in where angels fear to tread. Section 11-A is where the labour court is put to its most gruelling test and all its experience and a human heart must be put on the razor's edge. It should scrutinize and analyze the entire evidence and material on record but what is more important is how it proceeds to do so where no teacher can be of any help except the facts of the case which instruct discretion and how it is to be exercised to balance the interests of

the warring sides. Much to this end the Labour Court relied on **Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited and another**; 2008 (II) SCC (L&S) 298. In pre-amended law [prior to introduction of s.11-A on 15.12.1971] the position so far as interference with management's decision to dismiss, discharge etc. and substitution of opinion of management was that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management otherwise it may not; see authority in **Indian Iron and Steel Company Limited v. Workmen**, AIR 1958 SC 130 at 138. The ruling in **Firestone Tyre and Rubber Co. (supra)** explaining section 11-A has altered the landscape of disciplinary action. It was opined that Section 11-A the Act had brought about a complete change in this behalf. This Court, despite insertion of Section 11-A not only conferred jurisdiction on the Tribunal to alter the quantum of punishment imposed upon a workman, but also held that it can enter into the merit of the matter so far as determination of the proof of misconduct or otherwise on the part of the workman is concerned.

The Supreme Court held:

"The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

It was furthermore held:

"40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the

evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved."

17. On the above premises, the Labour Court has shut out completely what it was actually required to do in exercise of its power under Section 11-A of the Act and was expected and required to evaluate the evidence by culling out the vital facts from the less important and beading them together to make a whole picture and then examining whether both the charge sheets could *ex facie* support the action of extreme punishment of dismissal and deprivation of livelihood. In carrying out this exercise, it has to apply the tests of proportionality and reasonableness and not be swayed by the immaterial or non-essential facts as whether the petitioner was a protected workman or not, the issue was without a rudder and not necessary to decide the reference. A protected workman or not, the petitioner deserved a fair deal at the hands of the Labour Court and the notion in its mind that it is not the appellate authority is fundamentally incorrect. When the Labour Court exercises jurisdiction under Section 11-A of the Act, it substitutes itself to be the Inquiry Officer and then examines the evidence on record or additional evidence and materials which may be brought on record for the first time before the Labour Court and then decide on the choice of punishment, the most difficult job, but the court cannot throw up its arms

and take the path of least resistance or abdicate its exclusive function by upholding the punishment. The Labour Court has a right to choose punishment itself from the range available in the Certified Standing Orders of the Company or as it deem best. It plays a dual role when placed in this situation. It becomes the Inquiry Officer to make what amounts to a fresh report on an analysis of the materials on record whilst reviewing the punishment order it sits in authority akin to appeal because it can substitute punishment. This is what the section 11-A is all about a brilliant legislative measure against foul play. It is, therefore, wrong to hold that the Labour Court does not sit as a court of appeal when acting under Section 11-A of the Act, a provision known only to labour jurisdiction and none else. The labour court becomes the primary adjudicator of punishment. Neither the Civil Court nor the High Court nor the Supreme Court can directly exercise jurisdiction under Section 11-A except in proceedings arising out of Section 10(1)(C) read with Section 2-A of the Industrial Disputes Act, 1947 in exercise of power of secondary judicial review, even then the opinion of the Labour Court on proportionality and quantum not measured on strength of case law but on facts of the case and from case to case remains predominant. The Labour Court cannot shut out consideration altogether merely because the inquiry was procedurally fair and, therefore, it was proper and the punishment imposed is not open to be tinkered with. The Labour Court is not a court of law. It has only the trappings of the court and its jurisdiction has been explained by the Full Court of the Supreme Court sitting in 1950 [all 9 Hon. Justices] in **Bharat Bank Limited, Delhi v. Employees of the**

Bharat Bank Limited; AIR 1950 SC 188 : 1950 SCR 459.

18. The Labour Court should have read the binding authority in *Bharat Bank* and the decision of the Supreme Court on scope of Section 11-A in **Workmen of M/s Firestone Tyre and Rubber Co. v. Management**, AIR 1973 Supreme Court 1227 and *Indian Iron & Steel* cases which are significant in understanding the jurisdiction of the Labour Court and what goes on in it while carrying out the yeoman service it performs to reach justice to the common man at cheap cost. The object of introducing Section 11-A as held in *Firestone* is that the Tribunal should have power in cases when necessary to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment as it deems fit but it cannot act arbitrarily, capriciously and whimsically in an off hand manner.

19. With the introduction of Section 11-A of the Act, a sea change is brought about in law of domestic inquiry in the Labour Court domain.

In *Firestone*, the Supreme Court observed : -

“It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal on discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct, itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11(A) now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relied on the findings recorded by him in a

domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11(A).”

20. Thence, it is for the Labour Court to examine after analysis of the evidence whether the conclusions reached at the departmental inquiry were perverse, vindictive or mala fide and amounted to resort to unfair labour practice and by way of victimization as in the Fifth Schedule to the Act. Once the Labour Court understands the nature of its power, jurisdiction and authority under Section 11-A, then it remains least dependent on case law since it is expected that the Labour Court is acquainted with the in precedents as it developed over the years pertaining to its jurisdiction and is presumed to be conscious of them when dispensing even handed justice favouring neither of the parties before it. In this regard, the Labour Court cannot remain obsessed with precedents without culling out their ratio in their historical perspective as the law grew and continues to grow with the currents and undercurrents because a special character to restore peace and harmony in the industry as so felicitously explained by the Hon. Justices of the Supreme Court in *Bharat Bank* case. But in this pursuit the labour court must keep in mind the gravity of the offence, the impact the same would have on the other workmen as also the fact as to whether the same will have an adverse effect over the functioning of the industry which are relevant considerations among a host of consideration which may come into play.

21. As the award has been read out to me and the way I have understood it, I find no critical analysis of the evidence on record measured

against the severest punishment by applying the dual mode of proportionality and reasonableness which are the twin elements of Article 14 of the Constitution to reach just conclusions appropriate to the cause. If there are no reasons contained as to why the punishment inflicted is the appropriate measurement of punishment or why a lesser punishment was not commensurate with the alleged misconduct, then it is not for this Court in writ jurisdiction for the first time to start measuring quantum unless the Labour Court had assigned reasons to uphold the dismissal order and to deny consideration on award of any lesser punishment and then to have assessed the work of the court *a quo*.

22 Even the ingredients of Section 11-A have not been noticed while they should have been because after all the Labour Court has devoted some pages on Section 11-A but without reaching any conclusions and is only seen as meandering. Therefore, I have no other option but to set aside the award and remand the case for passing fresh award limited to the examination of quantum of punishment and in the scale available in the Certified or Model Standing Orders, as the case may be.

23. In the fresh exercise, the Labour Court would also carefully evaluate the previous record of service and whether all the supporting documents and evidence forming part of the charge sheet and the inquiry proceedings speak which way, before taking the final call on both the charge sheets and the previous record relied upon in the charge sheet dated 8th December, 1994 and how it impacts the present decision.

24. In sum total, the two charges really are about absence from duty for 1½ hours on 5th December, 1994 and thereafter use of unparliamentary

language and the second for breakage of part of machine on 19th June, 1995 where even the word, 'deliberate' or 'wilful' does not find a pride of place in the charge memo. The Labour Court would also re-examine the case from the angle of victimization and unfair labour practice by maintaining the position that the petitioner was not a protected workman but only was a trade union leader. The Labour Court would also *inter alia* read the judgments in *Bharat Bank*, *Firestone*, *Indian Iron* and **Mangat Rai v. Pepsu Road Transport Corporation**; 1998(1) SCT 771 : 1998 (2) RSJ 125 cases to come to grips with the law on the subject and other precedents which may enlighten the court. This is research based effort which may take time which is nothing compared to what justice does without being rationed. The Labour Court would also take a look at **page 409** of the LCR where Ex.M10 is a exhibited document marked 'XY' and see what effect it has on the question of relief. The Labour Court would also take a fresh look at charge sheet 2 in the context of the statement of Mr.Sanjay Yadav WW3, Senior Executive Officer [Production] as testified in the witness box during the cross-examination and what it adds up to. The labour court will not be influenced by and observation made in this order which is not intended to be an expression of opinion on the merits or the question of quantum of punishment.

25. The petition is allowed. It follows sequitur that the award has necessarily to be set aside to make way for the remand proceeding and it is accordingly ordered with the above directions. Since the remand is on the limited point of proper exercise of power provided by Section 11-A of the ID Act, and the case is an old one relating to a dismissal effected in the year

1995, the labour court will endeavour to conclude the proceedings within 4 months when the order is received and placed on its file. Consequently, the reference is restored to its original number. Parties to appear before the labour court on November 16, 2015 for further proceedings.

(RAJIV NARAIN RAINA)
JUDGE

September 28, 2015
Paritosh Kumar