

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

Civil Writ Petition No.11005 of 2012

Date of decision: 21.8.2015

The Transport Commissioner and another

... Petitioners

Versus

Karambir Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms.Vibha Dhiman, AAG, Haryana,
for the petitioners.

Mr.R.S.Sangwan, 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.

Heard Ms.Vibha Dhiman, learned Assistant Advocate General,
Haryana on this petition filed under Articles 226 and 227 of the Constitution
of India by the Government of Haryana in the Department of Transport.

2. The writ petition is directed against the award of the Labour
Court dated 21st October, 2011 passed by the Presiding Officer, Labour
Court, Hisar directing reinstatement of respondent No.1-workman to service
but back wages have been denied altogether. The legal fiction of continuity
of service and seniority from the back date has also been denied. His period
of absence has been ordered to be considered without pay and it will be
counted for the purpose of completion of service but no monetary benefits

or subsistence allowance has been allowed from 28th March, 2001 till the passing of the award. Needless to say that reinstatement will be treated as fresh appointment.

3. The State is aggrieved by the order of reinstatement to service awarded by the labour court. The workman has not approached this Court for variation of the award to the best of the knowledge of the State. Therefore, what has been denied to the workman by the Labour Court has become final.

4. The case of the State before the Labour Court was that the workman was appointed as a Driver on contract basis by the General Manager, Haryana Roadways, Bhiwani Depot, Bhiwani for a period of one month by order dated 2nd November, 1998 Ex.M1. He was to be paid salary @ ₹ 1800/- per month if the offer was accepted and it was accepted by submitting joining report. The General Manager and the workman executed a contractual agreement defining the terms and conditions off employment which document is placed on the file marked Ex.M2. After the expiry of period contract of one month, the workman's services were not discontinued and he remained on the steering wheel.

5. The incident of imputed misconduct which led to termination occurred in the following circumstances: On the afternoon of 7th December, 2000, the workman while on duty drove the empty bus to the main exit gate of the depot's workshop where he was signaled by the man on duty to stop the bus at the gate but the workman paid no heed. The Yardmaster chased the vehicle on his scooter, stopped the bus and when it was came to a standstill on checking he found iron strips weighing 22.100 Kgs carried in the bus without due authority. The Yardmaster assumed an attempt to steal

for which the driver was prima facie in the act of theiving government property. The matter was reported to the General Manager.

6. A preliminary inquiry was conducted by the Workshop Manager who submitted his report the very next day, i.e., on 8th December, 2000 Ex.M4 and the workman was found guilty of attempting inveigle iron strips outside the workshop for personal gain. He was issued a show cause notice on 21st December, 2000 Ex.M5 asking him to explain as to why his services be not terminated for gross misconduct. No reply was filed to the show cause notice. An opportunity of personal hearing was afforded to the workman on 27th March, 2011 whereon his services were terminated vide order dated 28th March, 2001. His appeal against the termination order failed before the Transport Commissioner, Haryana on 5th February, 2002 and the order was conveyed to the workman vide letter dated 21st October, 2003.

7. Aggrieved by the termination order, the workman raised an industrial dispute by serving a demand notice dated 8th April, 2005 on the management. The matter went in conciliation proceedings under Section 12 (2) of the Industrial Disputes Act, 1947 [“the Act”] for a settlement but the dispute could not be resolved and a failure report was submitted by the Conciliation Officer of the results of the investigation and reasons for failure to the appropriate government which has led to Reference 72 of 2006 to the labour court for adjudication.

8. The challenge to the termination order was based on it being illegal and that it was passed hurriedly in breach of the principles of natural justice without observing procedural safeguards as not even a charge sheet was served on the workman informing him of the charges and imputations of misconduct. Even no regular departmental inquiry was conducted into the

charge which according to the workman was mandatory procedure laid down in rules framed by the Haryana Government for conduct of inquiries to be followed before concluding a proper inquiry, furnishing the inquiry report for reply and terminating services on the criminal charge of stealing iron strips. He sought reinstatement to service with continuity and payment of arrears of full back wages and all other consequential benefits.

9. On notice, the respondents appeared and pleaded that a fair and proper inquiry was held and proved, the misconduct committed being serious in nature, his services were accordingly terminated. The respondents further pleaded that the workman was appointed on contract basis and thus, his services were governed by contract and no regular inquiry was required to be conducted in the case of a contractual employee.

10. The workman filed a replication denying allegations of the respondents and reiterated his version in the claim statement. The Labour Court framed as many as four issues, the last of which was on point of relief. The workman appeared as his own witness and led no further evidence. In his testimony, he supported his version in the claim statement. On the other hand, the management examined two witnesses in support of their case and also tendered documentary evidence on the file.

11. The Labour Court found that though the workman was appointed as a driver for one month on contract basis but the contract was nor renewed after expiry of the period stipulated in the agreement and his services were continuously utilized by the Transport Department as a bus driver without further contract/s till his services were terminated on 28th March, 2001. The Labour Court noted that the recruitment of the workman as a driver was made after following the procedure due for direct

recruitment of drivers appointed on regular basis.

12. The workman was amongst seven persons engaged as drivers in one lot on contractual basis and all of them for a period of one month. MW1 Dharambir, Clerk deposed in his cross-examination that after the year 1998 drivers, conductors and helpers engaged in the Depot were being appointed purely on contract basis as per the prevailing instructions of the Government but the remaining recruits were made regular with the passage of time but the posts against which the drivers were appointed on contract basis for one month were filled after advertising the posts in the newspapers and calling applications from eligible candidates competing on merit. A driving test was conducted of the eligible candidates and only then were they appointed on contract basis after the usual background check and medical fitness determined by Government doctors at a Government Hospital. It was this procedure which was adopted while employing respondent workman. It could not then be said that the entry of the workman to service was irregular or illegal since the formalities required for direct recruitment were followed. It was also the deposed case of the department that the services of such recruits are regularized after about 2 or 3 years. Had the services of the petitioner been not terminated, he may have become a regular hand in about a year or so from the date of termination. It was open to the General Manager, Haryana Roadways, Bhiwani to have terminated the contract on the expiry of one month but respondent workman's services were continued which meant that his work and conduct was found satisfactory, except the moot misconduct based termination of service. His continuance in service beyond the period of contract is an affirmation that his case would have been considered for regularization but for the incident which truncated it.

13. The Labour Court noted that the only material on record to justify the termination was the preliminary inquiry and the report submitted for necessary action. The preliminary inquiry report was the only foundation of the termination. The motive was admittedly an attempt to steal iron strips which was the property of the management.

14. The Labour Court applied the ruling of the Supreme Court in **Managing Director, U.P. Warehousing Corporation and others v. Vijay Narayan Vajpayee**; AIR 1980 SC 840 that even in cases not covered by Article 311 of the Constitution of India and there is neither the presence of statutory rules of service which regulate holding of departmental inquiry, the employer is still duty bound to comply with the minimal requirements of taking action by applying the principles of natural justice which require serving of a charge sheet, giving opportunity to the employee to file reply to the said charge sheet, opportunity to produce evidence in support of innocence or an explanation of the circumstances of the alleged misconduct. The delinquent has a valuable right to cross-examine the witnesses produced in support of the charge and to be given a fair and reasonable opportunity to the delinquent to produce defence evidence.

15. The Labour Court applied and followed two judgments of this Court in **Vidya Rani v. The State of Haryana and others**; 1996 (7) SLR 79 and **Guru Nanak Dev University, Amritsar v. Jaspal Singh**; 2011 (2) SCT 584 where the aforesaid view has been re-emphasized. The Court also took help from the decision of the Madhya Pradesh High Court in **Tilakram Laluwa v. State of Madhya Pradesh**; AIR 1966 MP 154 to arrive at the conclusion that even in case of temporary service, an inquiry is necessary if the termination of service is on a charge imputing stigma and comment on

charged person's work and conduct. The Labour Court did not accept the preliminary inquiry or the report made on a single day as sufficient procedure to meet the standards of regular departmental inquiry. The workman was not offered an opportunity by the preliminary inquiry officer to cross-examine the witnesses produced against him in the fact finding inquiry. A show cause notice could never be read as a substitute of a charge sheet. The starting point of any inquiry is service of charge sheet. It was the view of the Labour Court that if the workman did not file reply to the show cause notice then an inference cannot be readily be drawn that guilt is necessarily admitted.

16. This Court would support the findings of the Labour Court on this issue. A defective inquiry is no inquiry in the eyes of law and a defective preliminary inquiry is no better if adverse action rests on it. The test to be applied in such cases is the test of reasonableness, the principles of which have been discussed by the Supreme Court and this Court in numerous decisions which are not necessary to be cited as the position is too well embedded in law. However, the broader principles in deciding cases of defective administrative action in different situations is the predominant test of reasonableness to be applied fairly which test was first expounded by the Supreme Court in a service matter is the ruling in **E. P. Royappa v State Of Tamil Nadu & Anr** (1974) 4 SCC 3 and thereafter in the chain of landmark judgments of the Supreme Court the test began to permeate in all branches of law of which the fine examples are found in leading case in **Maneka Gandhi v Union Of India**, 1978 (1) SCC 248; **Ramana Dayaram Shetty v. International Airport Authority of India & Ors.**, (1979) 3 SCC 489; **Ajay Hasia Etc v Khalid Mujib Sehravardi & Ors.**, (1981) 1 SCC 722;

Dwarkadas Marfatia & Sons v Board of Trustees of The Port of Bombay, (1989) 3 SCC 293 and then exponentially in judgment after judgment hammering the niceties of fairness-in-action, reasonableness and proportionality in what the administrator may do which all have to be born in mind while making a just order that binds and visits adverse civil consequences.

17. The charge of attempt to theft was not established as a fact held the labour court and I would not disagree. It could not be said that the workman was guilty of misconduct involving a criminal charge when not proven by procedure established by law. It is also not the case of the State that a criminal case was registered against the workman on the alleged occurrence. It can then be safely assumed that the workman was dealt with shoddily, unfairly, unreasonably and in a highly discriminatory manner leaving him with stigma. The gravity of the charge was serious which required a regular departmental inquiry or something akin to it to prove the charge and if termination took place on account of the alleged incident, it was an act of victimization and an unfair labour practice resorted to even though the workman was a contractual employee to start with and then holding tenure not curtailed by time. It is also not the case set up by the petitioner State either before the Labour Court or before this Court that a fresh contract was entered into after the expiry of the first period of contract of 30 days. In these facts and circumstances the termination is patently bad and unconstitutional. Therefore, denial of back wages by the Labour Court would by itself amount to a punishment and appear to look as though it was acting under the provisions of Section 11-A of the Industrial Disputes Act,

1947. This part was wrong.

18. Learned State counsel lastly submits that admission of guilt should be inferred in the facts and circumstances of the case as the petitioner was caught red handed on the spot but this argument does not appeal to me since the grave charge is not proved by acceptable evidence and besides the minimal standards of the rule *audi alteram partem*, principles of natural justice and natural law have been thrown to the winds which are far greater protections under Art. 21 so as to guard against the possibility of planting evidence all of which reasons by and large dissuade me from even thinking of upsetting the impugned award which is based on sound legal reasoning.

19. Before parting I wish to record a postscript. In cases of departmental inquiries based on a criminal charge a regular full fledged inquiry has to be conducted to prove mens rea and the chain of unbroken facts proved only then can guilt can be established. Judging evidence on standards of preponderance of probabilities attaching to domestic inquiries are not sufficient. The disciplinary action by inflicting punishment of the severest kind in such cases is not backed by law and has to be set aside to promote the rule of law and not to demote it. In this cherished ideal individuals hardly matter, the law does. When the action of the administrator acting as the disciplinary authority is faulted by court it would necessarily be followed by reinstatement and award of full back wages and to put the person injured to the same position as though the order was not passed. The Full Bench dicta of this Court in **Radha Ram v. Municipal Committee, Barnala**; 1983 PLR 21 is a case in point. The Full Bench held that once the relief of setting aside or quashing the order of termination has been granted it necessarily follows that the employee in the eye of law

continues to be in service and as a necessary consequence thereof would be entitled to all the emoluments flowing from declaration of that status. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination. But as the workman has not challenged the award in a court of law the monetary benefits or continuity of service denied by the labour court cannot be decreed. If guilt is not established lesser punishment cannot be awarded under Section 11-A of the Act. If benefits were denied then the labour court still had reservations and doubts which to my mind was not good thinking while administering labour laws in a labour court.

20. In such a situation as presented in this case from the stand point of relief, there would arise another aspect the court may have to consider and deal with so as not to leave the picture incomplete. If preliminary inquiry is not a substitute of a regular inquiry and drastic action could not be taken on a mere show cause notice then no inquiry has been held call it regular, preliminary or fact finding. When inquiry is flawed and seriously impaired then the employer retains the right to hold an inquiry from where it was sent to be flawed. This right ordinarily cannot be taken away. The prescription for the malady lies in the principle evolved in **Managing Director ECIL v. B. Karunakar**, AIR 1994 SC 1074 which is to put the parties back to the position where the fault occurred by affording an opportunity to the employer to conduct an inquiry into the original charge by permitting retracing of steps. The decision in **Managing Director ECIL** case was rendered in the aftermath of the turning point decision of the Supreme Court in the second show cause case in **Union of India v. Mohd.**

Ramzan Khan, AIR 1991 SC 471 rendered in the background of a constitutional amendment applicable to service law.

21. This legal position may be true to service law; however, the principles in **Managing Director ECIL** case cannot readily or automatically be applied to adjudication of disputes by labour courts which are empowered to hold inquiries themselves into misconduct of a workman in a reference on a request made by the employer under Section 11-A of the Industrial Disputes Act, 1947 with special powers vested in them. The amenders of the Industrial Disputes Act, 1947 wisely vested powers on labour courts through Section 11A to be and act as appellate authorities against disciplinary action of employers and consider lesser punishment than dismissal and termination. The jurisdiction under Section 11-A is, however, request based and the labour court is under no bounden duty to embark upon the adventure all by itself and in a cavalier fashion. In the present case no request was made by the management that since no regular inquiry was held by it, it was still prepared to prove the guilt of the workman by leading evidence and bringing fresh materials on record to substantiate its case in support of the order of dismissal or termination. Once the precious opportunity in Section 11-A is not availed the right to hold an inquiry is lost. I am inclined to think that principles in **Managing Director ECIL** would not strictly apply to labour courts while exercising powers under Section 11-A of the Act. This is one of the many vital differences in service jurisprudence and labour laws. It is, therefore, no longer competent to the petitioner to hold an inquiry against the workman, *de hors* the argument that it is too late to do so when evidence must have vanished or lost forever and the exercise becoming futile by passage of

time.

22. For the foregoing reasons, I find no merit in this petition and the same is ordered to be dismissed. The petitioner is directed to be reinstated to service forthwith, if still willing, in terms of the impugned award.

(RAJIV NARAIN RAINA)
JUDGE

August 21, 2015
Paritosh Kumar