

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CWP No. 17364 of 2012
Date of decision May 6, 2015

Ganga Prasad

..... Petitioners

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Faridabat and another**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The challenge in the present writ petition is to the award dated 5.5.2009 whereby reference has been decided against the petitioner-workman in favour of the respondent-Management.

Ms. Abha Rathore, learned counsel for the petitioner submits that services of the petitioner were earlier terminated on 10.12.1998. However, in pursuance to raising of reference a settlement dated 10.3.1999, was arrived at and thereafter the petitioner reported back for duty on 11.3.1999 but he was not

permitted to join. Thereafter another demand notice dated 9.4.1999 was raised but conciliation proceedings failed in the month of December, 1999 and the matter was referred to the Labour Court. In support of her contentions she has relied upon the judgment of the Hon'ble Supreme Court in **Union of India and others Vs. Dinanath shantaram Karekar and others 1998 LLR 1097 SC** to contend that the stand taken by the Management before the Labour Court could not be established on the ground that the petitioner was never served with the charge sheet dated 8.6.1999 and therefore the petitioner could not present his case before the enquiry officer. She further submits that the enquiry officer and the representative of the Management who appeared before the Labour Court is the same.

Mr. Adarsh Jain, learned counsel appearing on behalf of the Management submits that before the conciliation officer the Management had clearly submitted that the workman himself absented and did not report for duty which necessitated the Management to serve charge sheet dated 8.6.1999 and as per the report of the postal authorities the workman was not available at the address and intentionally awarded service, the presumption under Section 27 of the General Clauses Act is liable to be drawn in favour of the Management and thereafter even the Management caused publication in the newspaper which had wide circulation in the area where the workman resides.

It is a matter of record that the Management has held an enquiry and intended to serve a charge sheet upon the workman which was alleged to be served and the enquiry officer R.

K. Sharma was appointed to conduct the enquiry ex-parte and on that basis recommended the Management for dismissal by stating that the charges against the workman stood proved and accordingly the Management dismissed the workman from services.

I have heard learned counsel for the parties and perused the paper book and gone through the record of the Labour Court.

From perusal of the record, it is borne out that the enquiry officer R. K. Sharma and the representative of the Management are the same. Though, the reply on behalf of the Management has been filed by Pradeep Sharma and R. K. Sharma but the fact remains that in all the zimni orders and in the impugned award the name of R. K. Sharma appears.

Since the petitioner has not been served with charge sheet, the workman has been deprived the right to put his defence, thus in all fairness and in compliance of principles of natural justice, I deem it appropriate to set aside the award of the Labour Court and remit the matter back to the Labour Court with a direction to the Labour Court to initiate the enquiry by calling upon the Management to serve the charge sheet upon the workman so that the enquiry can be conducted by the Labour Court in accordance with law.

It is expected that the Labour Court shall conduct the enquiry as expeditiously as possible preferably within a period of six months from the date of receipt of certified copy of this order.

The parties through their counsel are directed to

appear before the Labour Court on 28.5.2015.

With the aforementioned observations the writ
petition stands disposed of.

(AMIT RAWAL)
JUDGE

May 6, 2015
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