

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

Civil Writ Petition No.13364 of 2014 (O&M)

Date of decision: 18.9.2015

M/s S.B. Packagings Limited

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

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

RAJIV NARAIN RAINA, J.

CM No.12155 of 2015

1. Allowed as prayed for and Annexure A-1 is taken on record.

CM No.12156 of 2015 and CWP No.13364 of 2014.

2. This is an application for advancing the date of hearing from 18th December, 2015. The application has been filed in the background that the executing court has taken steps in implementation of the impugned award dated 10th January, 2014 passed by the learned Presiding Officer, Labour Court, Rohtak and called upon the management to pay the awarded amount by 19th September, 2015. The application has come up for hearing

one day short of the date fixed before the executing court. The Labour Court has set aside the illegal termination order and granted reinstatement to the previous post with continuity of service and 50% back wages from the date of demand notice i.e. 9th November, 1998 in favour of the respondent workman.

3. The workman has appeared in the present case on notice and is contesting it by filing written statement. While hearing the counsel for the petitioner applicant pressing for an order of stay of the execution proceedings went into the merits of the case and came to the conclusion that the main case presents no interference with the award and therefore heard counsel at length on the main case today itself by advancing the date of hearing without notice to the respondent workman whose presence was not felt necessary and after hearing the learned counsel for the petitioner, this Court is of the view that the impugned award is sound in law and the petition deserves to be dismissed. The reasons which have impelled me to dismiss the petition are recorded below. Towards this, noticing the essential facts is felt necessary for adjudication. The facts are like this:

4. The workman was employed as a Printing Operator on a consolidated salary of ₹ 2850/- per month. The Presiding Officer, Labour Court in the reference made by the appropriate Government to adjudicate the validity of the order of dismissal after an inquiry following a charge sheet dated 21st November, 1998 issued to the respondent-workman alleging absence from duty without prior permission on 18th June, 1998. In the inquiry the charges were proven and report was submitted for consideration of the management. The management had served a show cause notice dated

25th January, 1999 proposing extreme punishment of dismissal from service.

The charge was of absence from duty for a single day which the management imputed had adversely affected its production. The workman filed reply to the show cause notice on 11th February, 1999. The show cause notice dated 25th January, 1999 referred to a charge sheet dated 7th July, 1998 for the same occurrence which was not served on the workman. He stated in his defence reply that he had no knowledge about the enquiry instituted against him.

5. In the meanwhile, the workman raised an industrial dispute by serving the demand notice before the Conciliation Officer, Rohtak claiming that he was being wronged by the proposed action. The proceedings before the Conciliation Officer were fixed for 8th February, 1999. The reply was addressed to the Inquiry Officer appointed by the petitioner management. The inquiry report dated 7th July, 1998 [prepared ex parte] records that the workman did not appear before the Inquiry Officer. The notice of inquiry proceeding initiated by the management was sent to the permanent address of the workman and was received back by the Inquiry Officer with the comments of the postal staff, "*prapatkarta naukri Delhi Mein, Lihaja*". A copy of the notice sent to the temporary address which was received back unserved.

6. The management representative informed the Inquiry Officer that no other contact particulars of the delinquent workman were available on the records of the company. A fresh attempt was made to serve the workman but without success as neither the notice was received back served nor the acknowledgement due receipt returned. The inquiry was adjourned

for an hour on the day fixed and the Inquiry Officer issued instructions to the Security Supervisor on duty at the factory gate to inform him in case the workman turns up. On failure, another attempt was made to serve the workman but the letter was again received back by the Inquiry Officer with the comments, "*Prapatkarta Delhi Main Rehta Hai*". Having waited for a few hours, the Inquiry Officer proceeded to record the statement of the Security Officer who stated that the workman had not turned up for the inquiry. The Inquiry Officer adjourned the inquiry to 6th January, 1999 and intimation of the new date was also sent under registered AD and UPC cover. The workman still failed to appear.

7. The Inquiry Officer has filled a number of pages of his report narrating the history of attempts made to serve the workman time and again but the workman failed to turn up and ultimately substituted service was ordered by publication in the newspapers on two different dates in obscure publications, namely, Dainik Hari Bhoomi on 29th January, 1999 and in Veer Arjun on 3rd February, 1999.

8. From a reading of the inquiry report it bears out that no order seems to have been passed proceeding ex parte against the workman and the evidence recorded was ex parte on the specific charge of absence from duty on a single day i.e. on 18th June, 1998. The Inquiry Officer held him guilty of willful absence from work "since 18th March, 1998". The Inquiry Officer has held the workman guilty of "absenteeism" which means recurring failure or habitual absence over substantial period of time whereas the charge was failure to attend work on a single day. In this clumsy fashion, the charge was said to have been proved. The absence from duty was likely to

affect the factory business due to lack of prior intimation for remaining away from work so that the management could reorganize its work for the day. The workman's absence was assumed to have led to “adjustment of the labour force”.

9. In the aftermath of the inquiry proceedings the workman was dismissed from service on 13th July, 1999 after the inquiry report is said to have been examined by the Managing Committee of the establishment and accepted.

10. The case of the workman is that he met with an accident on 20th August, 1997 which resulted in dismemberment of a part of his index finger of his right hand in an accidental employment injury which resulted in amputation of the body part. This was the beginning of the trouble that lay ahead for him.

11. When dispute arose between the parties, the conciliation proceedings were initiated by the Conciliation Officer and a compromise was reached between the parties on 12th October, 1998, the record of which is placed on file as P-1/A to P-1/C being the proceedings of the Conciliation Officer. The management made a statement before the Conciliation Officer that they were ready to take the workman back on duty and the workman made a statement that he was ready to do so. The Labour Officer, who held the conciliation proceedings, asked the workman to join duty on 13th October, 1998 with information to the labour department.

12. The workman was taken back but no work was assigned to him till 29th October, 1998. He was not allowed to mingle with other employees in the factory premises. He was kept aloof in a corner of the factory and was

denied performance of duties as a Printing Operator. Of this the workman complained to the Labour Officer on 30th October, 1998. When he reported for duty on 31st October, 1998, he was not allowed to enter the premises of the factory. He was not paid wages for the period 13th October, 1998 to 31st October, 1998. The compromise made before the Conciliation Officer was honoured in the breach. He was not paid his dues.

13. The conciliation proceedings failed and the reference was made to the Labour Court by the appropriate government. He complained that the management had violated Sections 25G and 25 H of the Industrial Disputes Act, 1947. The workman's case was that the story on a trumped up charge laid by the management was false and baseless.

14. On notice, the management contested the case pleading that the reference could not have been made as the demand notice dated 1st September, 1998 stood disposed of in terms of the settlement between the parties to return to work and therefore the reference was rendered infructuous as the dispute had been settled in the conciliation proceedings. They denied that the workman's services were terminated on 18th June, 1998. A fresh dispute was not raised by serving a fresh demand notice and therefore an industrial dispute had not come into existence for it to be referred to the Labour Court. They pleaded that the services of the workman were terminated by following due procedure. The dismissal order had come into existence even during the conciliation proceedings and no fresh dispute was raised regarding dismissal on 13th July, 1999. Per contra the workman pleaded that the dismissal was an act of unfair labour practice visited by victimization.

15. The Labour Court framed a preliminary issue to determine whether the inquiry was fair and proper. The Court passed order on 10th December, 2009 on the issue holding that the inquiry had not been conducted in a fair manner. It is trite that a defective inquiry is no inquiry in the eye of law.

16. In the written statement filed by the management before the Labour Court, it did not make a request under Section 11A of the Industrial Disputes Act, 1947 that permission be granted to the management to support the dismissal order by bringing fresh materials on record in support of guilt on the charge of absence without leave. Therefore, there was no occasion for the Labour Court to conduct an inquiry by itself into the misconduct. The management depended on its inquiry. But which was held not to have been conducted in a fair and proper manner by the earlier orders of the Labour Court which were not questioned by recourse to further remedy.

17. The Labour Court in deciding the other issues read the evidence on record of the inquiry file which were only the testimonies of the management witnesses since the workman was *ex parte*. It was admitted by the management that Model Standing Orders under the Industrial Employment Standing Orders are applicable to the management and govern the terms and conditions of the employees.

18. Automatic termination resulting from Model Standing Orders is not occasioned by absence for one day but for 9 days continuously. Model Standing Orders are statutory in nature and are the governing rules of the terms and conditions of service in the establishment covered by the Industrial Employment (Standing Orders) Act, 1946 and the Central rules

framed thereunder. These orders prescribe 10 days of absence as habitual, see Rule 14 of the Act. Rule 17 of the Act deals with disciplinary action for misconduct and enumerates prescribed misconduct. Rule 17 (1) (n) defines continuous absence without permission and without sufficient cause for more than 10 days. Rule 17 (iv) lays down that “In awarding punishment under this Standing Order, the authority awarding punishment shall take into account the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority awarding punishment shall be supplied to the workman concerned.”

19. The Labour Court read the evidence but did not correctly appreciate the charge sheet. The absence was not in the plural. It was in the singular, for one day. The Inquiry Officer went beyond the charge sheet and held the workman guilty of “absenteeism” which was not the charge laid upon the workman. No supplementary charge sheet was issued and the inquiry proceedings could only be confined to an isolated instance of absence on a single day i.e. on 18th June, 1998. If there was absence from duty from 18th June, 1998 onwards as deposed to by the management witness Rajinder Sharma, it did not form part of the charge sheet. Rajinder Sharma admitted that he had not given in writing regarding the workman's “absenteeism”. It is significant to read the charge sheet in extenso to understand its contents. The same is reproduced below:

The charge sheet reads as follows : -

1. On 18.6.98 you are absent without information to Management and such type of persons, it is clear that you are not interesting in your work.

2. That due to such type of absent of the institute other employee of the institution, affected wrong upon the other employee and due to this type of absent, the other employees are being motivated.

3. Due to this type of absent, the production of the institute has been effected.

4. That regarding the absent, you sent letter and asked for join work but the sending there is no impact upon you and you are continuously absent.

5. That your absent is a serious misconduct and this misconduct fall in the serious misconduct as per the definition of the Industry.”

20. The witness feigned ignorance of the accident injury sustained by the workman which had led to crushing of the index finger of the right hand while operating the machine. The workman had placed on record Ex.WX which showed that he had filed a case for compensation under the Workmen's Compensation Act, 1923, Circle Rohtak and the Commissioner awarded him compensation of ₹ 56,218/- for the employment injury and resulting physical handicap. These proceedings were conclusive proof of accident on the floor of the factory. The Labour Court preferred to hold on to the view that the punishment of dismissal is not sustainable after appreciating the evidence on record, to which, no further reference is necessary in the face of this fair and proper understanding of the case. Hence, the inquiry proceedings could not be relied upon to warrant affirmation of the dismissal order.

21. The dismissal order to the mind of this Court was clearly a case of victimization and unfair labour practice. The Labour Court was correct in its findings on the issues on merits and exercised its discretion judicially in holding the workman was entitled to reinstatement to the previous post with

continuity of service and 50% back wages. The workman has not approached this Court to claim enhancement of back wages and in case he feels aggrieved by this part of the award, it is open to him to take recourse to law, in which event, the issue of full back wages is left open to be determined on merits as no opinion can be expressed on the point not being called upon to.

22. Notice of motion in this case was issued on 17th October, 2014 on the argument raised by the management that the reference itself was not maintainable as the demand notice was served on 1st September, 1998 and in pursuance thereto, a settlement had been arrived at and the workman had been called upon to join duties which he accepted by joining work. Thereafter, the services of the workman were again terminated by the dismissal order passed on 13th July, 1999 and after which the workman did not raise a fresh demand notice. This preliminary objection was noticed in para. 4 of the award but the same has not been dealt with. This is true. But what is the effect?

23. The argument raised on 17th October, 2014 before this Court which led to issuance of notice of motion to the respondent-workman appears to be attractive at first sight. The argument was that when the dismissal order dated 13th July, 1999 was passed after conciliation proceedings stood terminated by settlement, then an industrial dispute within the meaning of Section 2A read with Section 2(k) of the ID Act could come into existence only if the dispute as to dismissal is raised in writing by serving a demand notice on the management with copy to the Conciliation Officer etc. Therefore, the reference made in 2001 was infructuous and still

born and for this reason the reference was not maintainable and deserves to be terminated. This issue needs to be analyzed in depth.

24. The factual matrix to understand the jurisdictional issue is that the services of the petitioner were terminated on 18th June, 1998. He was taken back in service on 13th October, 1998 and worked till 31st October, 1999 when his services were terminated by dismissal. These are facts that this Court finds recorded in the order dated 10th December, 2009 by which the inquiry proceedings were set aside as illegal and held to be neither fair nor proper. The conciliation proceedings appear to have begun at least on 9th October, 1998 [with no pleaded point of time] when the following entry was made by the Conciliation Officer : -

“The Manager says that the workman is going willfully absent and he left his duty willfully and the management has not dismissed the service and he is ready to take on the duty and regarding absence, he gave R.O. show cause and its enquiry would be conducted and the labour demand notice may be consigned and the labour workman waste his time.

Sd/-
9.10.1998

Sd/-
LO.CO.
Rtk.”

25. The proceeding was passed in the presence of both the parties.

The next zimni sheet reads as follows : -

“ORDER

12.10.1998

Present : 1. Sh.Lal ji.

2. Management on behalf of Sh.Karan Singh
Yadav.

The defendant Management gave his statement that he is ready to join duty of workman.
Workman says that I am ready to join duty.

In this situation, the workman is ordered to join his duty on 13.10.1998 and in this regard inform to this office.”

26. The third decision is dated 30th October, 1998 which reads as follows : -

“ORDER

30.10.98

Sh.Lalji present in person.

Management present on behalf of Sh.Karam Singh Manager.

At this stage, the workman is ordered that he join his duty on his next day tomorrow.

Sd/-
Lalji

sd/-
Manager

sd/-
LOCO Rtk.”

27. All would have been well for the management had the workman refused to abide by the settlement but that was not the case. The case was the other way out as it was the management which blocked entry of the respondent workman at the factory gate and therefore the dispute kept simmering unresolved. The management had adopted unfair means to keep the workman out of service which was by itself an unfair labour practice. There is no evidence on record to support that the dispute had ended in terms of the compromise before the Conciliation Officer. In fact, the management tried to retract from its promised action by having assured the Conciliation Officer that a regular inquiry would be initiated after terminating the services of the workman and that too without passing an order in writing. This statement was suffered on 16th June, 1998 by the management. If the dispute remained unresolved by the management by

denying fair opportunity of re-induction while at the same time pleading willful absence or that it did not wish to dismiss him from service and were ready to take him back in service, then what really happened before the Conciliation Officer was a trick played to somehow terminate the conciliation proceedings by making an empty offer. Then proceeding to conduct an inquiry and dismiss the man from service thereafter which inquiry has been held to be neither fair nor proper by the Labour Court. A defective inquiry is as good as case of no inquiry.

28. At the end of the day, visiting the workman with the dismissal order on 13th July, 1999 was disproportionate to the gravity of the misconduct alleged which the Rules (supra) forbade for absence on a single day as was the charge laid. Then the dispute which had arisen on the date of the demand notice served on 1st September, 1998 remained on the front burner of the lis.

29. The case of the management as on 18th June, 1998 and on 13th July, 1999 was the same based on one day's absence for which the *ex parte* inquiry was held. In this way the sum and substance of the dispute remained the same and the demand notice dated 1st September, 1998 and the second demand notice dated 9th November, 1998 as recorded in para. 20 of the impugned award were sufficient to ignite the jurisdiction of the appropriate Government to make the reference to the Labour Court. If the conciliation proceedings were rendered infructuous and the management had deprived the workman of the fruit of the terms of the settlement in letter and spirit, then the management had deprived the workman to an adjudication of the dispute and delayed it by scuttling the settlement. Settlements in the ID Act

arrived at before the Conciliation Officer are sacrosanct and are meant to restore industrial peace and harmony. It thus does not lie in the mouth of the management to urge that a fresh demand notice was not raised by the workman on or after the date of dismissal on 13th July, 1999 after holding a defective inquiry to urge that the reference is bad.

30. The jurisdiction of the appropriate government under Section 10 of the I.D. Act in its opinion to refer disputes to Boards/Courts and Tribunals is open to be formed at either the stage of the industrial dispute when it exists or is apprehended. If this is the legal position then the appropriate government may at any time by order in writing refer the dispute or any matter appearing to be connected with or relevant to the dispute, if it relates to a matter specified in the Second Schedule of the ID Act to a Labour Court for adjudication under Section 10(1)(c). Entry 3 in the Second Schedule confers wide jurisdiction on Labour Courts in matters relating to discharge or dismissal from service including dispute as to reinstatement and grant of relief to the workman wrongfully dismissed which takes the matter back to Section 2A and Section 10(1)(c) of the ID Act. In the peculiar facts and circumstances of this case, it is not possible to hold that the reference was not maintainable.

31. Besides, the management did not claim an issue with regard to maintainability of the reference and it cannot be assumed that maintainability is a pure question of law which can be urged for the first time in the judicial review of the impugned award in supervisory writ jurisdiction. The question of maintainability would depend on its determination as a mixed question of law and fact. Moreover, when the

management depended solely on the inquiry conducted by it before the Labour Court and it was faulted in 2009 then the issue of service of notices in the inquiry recess into the wood work.

32. If the workman was employed elsewhere during the period of enforced idleness, the Labour Court has not granted the workman full back wages. Ordinarily, when in an inquiry case, the order of dismissal is held illegal, full back wages follow and the person has to be treated as though he was never dismissed from service and continued in his previous position by fiction of the order. The Labour Court in its order dated 10th December, 2009 in overruling the objection of the management as to maintainability of the reference has recorded the contention of the authorized representative of the management that the domestic inquiry was in continuation of the same demand notice and no fresh notice was served.

33. The predecessor Labour Court perused the reference papers and the case file which clearly revealed that the present reference has been filed on the basis of a demand notice dated 9th November, 1998, thus giving rise to a new cause of action. The Court noticed that the termination of an individual on the basis of an old demand notice has been rendered infructuous. Therefore, the Court held that the domestic inquiry which is based upon the old demand notice is a clear cut violation of the principles of natural justice. It is mostly for this reason that the inquiry proceedings have neither been held to be fair nor proper in their conduct. The Court also recorded that the management did not disclose that a case was pending before the Workmen's Compensation Commissioner between the parties.

Thus, the demand notice dated 1st September, 1998 had resulted in the

workman rejoining work only to be troubled again and revisited by harassment. The Management has not assailed the reasoning of the predecessor Labour Court recorded in paragraph 9 of the order dated 10th December, 2009 which is another well thought out reason to support the conclusion arrived at. I would commend the view taken as unexceptionable and hold that either of the two principles, one above and the other in the award of the Labour Court are twin roads that lead to the same destination.

34. For these reasons, I would not unsettle the award even when it did not specifically deal with the preliminary objection in para. 4 of the award, though it should have been. But that would not make any material difference to the result of the case. I would neither remand this case for the Labour Court to return a finding on this aspect since the legal position is clear when applied to the undisputed facts of the case nor would keep the matter pending any further. The only difference between what happened on 18th June, 1998 and 13th July, 1999 is that a formal order of dismissal came into existence in writing after the inquiry but on the same alleged misconduct of absence from duty for a single day. Visiting the workman with the punishment of dismissal for absence of one day is not justified and is far too excessive to the gravity of the misconduct even if it is taken to be proven. The charge was confined to a single day and the Inquiry Officer enlarged it to absenteeism and the Labour Court failed to remove the chaff from the wheat and discover the anomaly. It is well settled proposition of law that a charge sheet cannot be expanded beyond its imputations of misconduct on which the domestic inquiry proceeds to establish innocence or guilt. It is another matter that the inquiry in the first instance was ex

parte. The workman has been seriously prejudiced in his defence which vitiates the dismissal order and the inquiry proceedings.

35. However, the real issue was not present in the mind of the Labour Court with respect to the charge sheet and how it was transformed into absenteeism by sleight of hand of the Inquiry Officer in an *ex parte* inquiry. That is why I have reproduced the entire text of the charge sheet in this order so that the management can read the charge sheet and re-read it and see for itself the slipshod work of the inquiry officer in expanding his brief only to fix the workman for which he was appointed. Merely because he kept on trying to serve the workman at the available addresses does not per se make the inquiry any more credible or sacrosanct. The operative part of the work of the Inquiry Officer when read vitiates the proceedings. It is equally settled proposition of law that a person cannot be held guilty of a charge which is not laid against him for him to answer. I agree with the conclusion reached by the Labour Court that the reference was maintainable and deserves to have been answered in favour of the workman with the slight modification in reasoning as above.

36. For the foregoing reasons, I find no merit in this petition and as an admirable consequence would unflinchingly dismiss the writ petition triggered by an application hotly addressed before me today on the filed by the petitioning management praying for advancing the date of hearing and to stay the operation of the award to prevent its implementation. The bane of decrees lies in sluggish execution and the litigative stamina of the party which seeks to win by protraction and delay. It may be recorded that the workman has put in appearance and has filed his written statement but that

is not necessary to advert to. I have read the pleadings but they need not be referred to as it says nothing new or more than what the record speaks and can say no more. This is not a case for stay of the award much less for interference in supervisory writ jurisdiction in the main matter.

37. The counsel for the respondent workman and the executing court be notified of this order.

38. The impugned award becomes henceforth executable.

(RAJIV NARAIN RAINA)
JUDGE

September 18, 2015
Paritosh Kumar