

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

CWP No.23914 of 2011 (O&M)
Date of Decision: - 11.8.2015

Om Parkash

...Petitioner

vs.

**Presiding Officer, Industrial Tribunal, Bathinda
and others**

...Respondents

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

Present: - Mr. Raj Kaushik, Advocate for the petitioner.

Mr. Puneet Kansal, Advocate for respondents Nos. 2 and 3.

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. Heard counsel at sufficient length. This court is of opinion that the petition deserves to be dismissed for the following reasons.

2. The learned counsel for the petitioning workman dwells on paragraph 13 of the award made by the Presiding Officer, Industrial Tribunal-cum Labour Court, Bathinda dated November 10, 2010 wherein the only contention raised by the workman before the labour court was that the order of dismissal was illegal as it was passed by a person lower in rank than the appointing authority of the workman and as a result the order is one without

jurisdiction. This argument has failed before the labour court. This was the only argument raised to assail the order of dismissal. The gravamen of the dismissal order was based on a charge of theft of Mill property.

3. I would have disagreed with the finding of the labour court upholding the dismissal order as passed by the proper authority had not the Chief Executive Officer of the respondent-Mill passed the order who was sufficient repository of authority to dismiss an employee of the rank of the workman when nothing to the contrary is shown in the rules of the Mill governing the powers of the designated authorities empowered to dismiss employees in their rank and file. The petitioner was working as an Electrician and could not have expected the order of dismissal to have been passed by a yet superior authority than his disciplinary authority without backing the argument on the strength of rules.

4. No other contention was raised other than the argument noticed by the labour court and the statement recorded that no other point was pressed before it except on the issue of lack of authority to dismiss. Therefore, none can else can be entertained. It is settled that the statement of the court can only be contradicted before the very Judge himself and not before any other forum including this Court in writ proceedings. Courts of law have consistently taken the view that the court is bound to accept the statement of the Judges recorded in their judgment as to what transpired in court. But the statement of the Judges recorded in judgments cannot be permitted to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that

has to be the last word on the subject. Such statements are conclusive of the facts so stated. If a party thinks that the happenings in court have been wrongly recorded in the judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily rest there. This is the view expressed by the Supreme Court in a catena of rulings including **State of Maharashtra vs. Ramdas Shrinivas Nayak and another**, AIR 1982 S C 1249. This view has been reiterated by the Supreme Court in **Central Bank of India vs. Vrajlal Kapurchand Gandhi and another**, AIR 2003 SC 3028: (2003) 6 SCC 573: 2003(2) RCR (Rent) 186 and two Single Judge decisions of this court applying the law in the aforesaid two Supreme Court cases i.e in **Milkha Singh and others vs. Nirmal Singh and others**, 2007(4) RCR (Civil) 842 & **Hardevinder Singh and another vs. Smt. Nirmal Kaur and another**, VOL.CLIV-(2009-2) The Punjab Law Reporter 537. On this well embedded legal position the writ petition deserves to be dismissed.

5. However, in order to satisfy this Court on facts, the merits have also been gone into. I find that the show cause notice was issued to the workman on June 29, 1994 and served upon the petitioner on July 5, 1994 calling upon him to give an explanation to the occurrence or theft in the Mill two days before i.e. June 27, 1994. The petitioner was caught red handed at the main gate of the Mill by the checking authority who found a Tarpaulin of

the size 10 'x 10' hidden in the petitioner's scooter from where the recovery was effected.

6. At first glance the show cause notice does appear to be a bit off center in its subject heading and one which does not look like a standard charge sheet normally seen in inquiry cases as argued by learned counsel for the petitioner. But then everything does not depend on form as past precedents inform us of wisdom of not being bound unnecessarily to the way a thing is clothed or presented so long its meaning is clear. One has always to discern prudently the wood from the trees and the substance of the matter in lis before the court forms a definitive opinion in its wisdom to hold either way. But on delving further into the correspondence and particularly the response to the show cause notice preferred by the petitioner on July 6, 1994 and the manner in which he described the show cause notice in his explanation to the show cause notice admitting it as a charge sheet, then I do not think that he has any clear right to contend that the show cause was not a charge sheet at all and thus its foundation was faulty to the hilt. The petitioner cannot reap the wheat without taking the chaff. After all it is on the basis of the incriminating material found at the Mill gate that an inquiry was instituted and conducted and the petitioner knew from the very beginning the case against him. Moreover, the petitioner participated in the inquiry proceedings without demur or objection. When the charges were proven and the procedure leading upto it was followed as per the rules of the Mill then it was inevitable that the findings would lead to dismissal from service on a charge of theft as any other employer would when faced with such a situation.

7. Due to the dismissal order and aggrieved by it the petitioner approached the labour court on a reference made by the appropriate government under Section 10(1) (c) of the Industrial Disputes Act, 1947 on which the impugned award has been passed and an enforceable award made against retention in service. I would, therefore, not make much of the argument raised by the petitioner that no formal charge sheet was issued to him by using the usual nomenclature so long as the workman knew what he was pitted up against and was also not prejudiced in his defence in the inquiry or the lack of knowledge of the clear charge of serious misconduct. The purpose of issuing a charge sheet is nothing more than to apprise the delinquent of the misconduct levelled against him and for him to dispel his guilt on a charge of crime and to give him an effective opportunity to prove his innocence at the domestic trial.

8. If the workman was dismissed after a fair and proper inquiry held he did not assert his right before the labour court, which he could have under Section 11 A of the Act seeking permission to lead further evidence to still prove his innocence by converting the labour court to act as an inquiry officer or the appellate authority itself which industrial law permits. This power is peculiar to the labour court and is unparalleled in any other jurisdiction exercised by any other court in the land. If the petitioner did not avail this valuable opportunity from the labour court then he cannot legitimately complain against the findings arrived at in the inquiry proceedings which are found fair and proper on the materials on record of the inquiry file. When those went against him, he cannot complain. I would therefore not like to

think this case to be either fit or appropriate to intercede in the inquiry file and upset the award passed by the court *a quo* as it is albeit a fair and proper determination of the reference on the points pressed and adjudged.

9 . For the foregoing reasons, I do not find any good and sufficient ground to interfere in the impugned award passed by the labour court on November 10, 2010 and would without any doubt and unhesitatingly dismiss the petition as one bereft of merit.

(RAJIV NARAIN RAINA)
JUDGE

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