

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

Civil Writ Petition No.16316 of 2015

Date of decision: 10.9.2015

Padam Chand

... Petitioner

Versus

Industrial Tribunal, Patiala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vikas Singh, 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. (Oral)

The petitioner had put in about a decade of service prior to August, 1982 as a Peon in the office of the PSEB before he was retrenched. According to the management, the petitioner's whereabouts were last known in August, 1982 after which the petitioner had lost touch with it. The petitioner approached the Board for the first time after 1982 in 2001 requesting them to permit him to join duty. This was refused.

The brief facts are : the petitioner was thereafter charge sheeted for willful absence from duty without information or prior sanction of leave. The petitioner made a complaint against the Inquiry Officer that he should be changed since he was asked inconvenient questions by the Inquiry Officer which showed bias. The request for change of the Inquiry Officer was not accepted by the Board and the enquiry proceedings continued in

which the workman remained *ex parte*. The *ex parte* enquiry report was submitted in which the charge of willful absence was proven. The disciplinary authority considered the report of the Inquiry Officer and after complying with the procedure the petitioner was dismissed from service on 5th May, 2003 with effect from 18th August, 1982. To the extent of retrospective dismissal, the Labour Court is correct that the order is not legally valid. However, the Labour Court has refused to exercise its discretion in awarding reinstatement and consequential benefits to the petitioner on the ground of inordinate delay and laches and has declined reference No.47 of 2004 on 3rd October, 2013 against which the present petition has been filed assailing the award in 2015. The Labour Court has returned a finding that though *ex parte*, the enquiry is fair and proper. An *ex parte* enquiry is also as good as a contested enquiry in the eye of law. So long as the petitioner has knowledge of the enquiry proceedings and has withdrawn himself from them, then he can blame no one except himself by failing to produce any evidence in support of his case that he is innocent of the charge of misconduct. The Labour Court has noticed a large number of decisions of different Courts to reach its conclusion on each of his points arising for consideration which do not appear to suffer from any fundamental flaw of law or fact, nor is there present any error apparent on the face of the record . Therefore, I do not think that this is a fit case for interference in the writ jurisdiction against the award of the Labour Court which judicial review is confined to examination of areas of interference indicated by the Constitution Bench of the Supreme Court in **Syed Yakoob v. K.S.Radhakrishnan and others**; AIR 1964 SC 477. None of these vitiates the award.

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For the foregoing reasons, there is no merit found in this
petition which is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

September 10, 2015
Paritosh Kumar