

CWP No.17241 of 2015 & 3 connected petitions.

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

**I.**

**Civil Writ Petition No.17241 of 2015**

**Date of decision: 20.8.2015**

The Meham Cooperative Sugar Mills Limited

**... Petitioner**

**Versus**

The Presiding Officer, Industrial-cum-Labour Court, Rohtak and another

**... Respondents**

**II.**

**Civil Writ Petition No.17242 of 2015**

The Meham Cooperative Sugar Mills Limited

**... Petitioner**

**Versus**

The Presiding Officer, Industrial-cum-Labour Court, Rohtak and another

**... Respondents**

**III.**

**Civil Writ Petition No.17271 of 2015**

The Meham Cooperative Sugar Mills Limited

**... Petitioner**

**Versus**

The Presiding Officer, Industrial-cum-Labour Court, Rohtak and another

**... Respondents**

**IV.**

**Civil Writ Petition No.17285 of 2015**

The Meham Cooperative Sugar Mills Limited

**... Petitioner**

**Versus**

The Presiding Officer, Industrial-cum-Labour Court, Rohtak and another

**... Respondents**

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

**Present:** Mr.S.K.Verma, Advocate,  
for the petitioners.

Mr.Sandeep Singal, Advocate,  
for the caveators.

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

**RAJIV NARAIN RAINA, J.**

This order will dispose of the the above cited four writ petitions  
as common questions of law and fact are involved in them : -

2. The facts are taken from CWP No.17241 of 2015 for  
convenience.

3. The Meham Cooperative Sugar Mills Limited has approached  
this Court under Articles 226 and 227 of the Constitution of India praying  
that the impugned award of reinstatement of the workman to the previous  
post of Tubewell Attendant with continuity of service with 50% back wages  
computed from the date of filing the claim statement on 29<sup>th</sup> August, 2011  
deserves to be set aside and the order of termination dated 4<sup>th</sup> November,  
2000 passed by the Managing Director of the Sugar Mills be held legal and  
valid.

4. The brief facts are that the workman was appointed as a direct  
recruit to the post of Tubewell Attendant on 19<sup>th</sup> January, 1993. The post

was advertised on 4<sup>th</sup> December, 1992 and the requisite qualification prescribed for the post was middle pass. Since the post fell in the semi-skilled category of workers, the applicant also had to possess an experience certificate in the shape of the Trade Test Certificate to be considered eligible for appointment. After selection and appointment to the post of Tubewell Attendant, the management received complaints regarding genuineness of the documents furnished by the respondent-workman and some other selected candidates. In this exercise, the experience certificate relied upon by the workman was checked and it was found that the experience certificate was bogus. The workman had relied on his experience gained in a brick-kiln by the name of M/s Rajdhani Brick Kiln, Mandothi, Jhajjar. It appears that the record of M/s Rajdhani Brick Kiln, Mandothi, Jhajjar was checked from where it was found that he never worked in the Brick Kiln. Therefore, the experience certificate was branded false. Relying upon the findings arrived at in association with the Cane Development Officer, the 2<sup>nd</sup> respondent-workman Suresh Kumar was served with a show cause notice dated 12<sup>th</sup> September, 2000 calling upon him to submit proof of authenticity of the experience certificate failing which his job was at serious risk. The workman submitted a reply to the show cause notice. The reply was I would say in pound sterling and deserves to be reproduced to take the case forward : -

“Because, when you visited at the Brick Kiln neither Owner nor Munshi of Brick Kiln found there rather you made enquiry from the junior Munshi of the Brick Kiln, who is new. You made enquiry from the village Sarpanch, whereas Sarpanch has no concerned with that Brick Kiln. Neither brick kiln is installed in his field nor the Umed Singh

Sarpanch is owner of the brick kiln. The experience certificate given by me is absolutely correct. If want, then you may enquire about it from the Munshi Kartar Singh and Prem Singh and the owner of the brick kiln. My clarification may kindly be taken.”

5. It appears quite clear that the on spot visit to the Brick Kiln to verify the experience certificate, the verifiers had met only with the Junior Munshi of the Brick Kiln who was a new hand and knew nothing first hand of the past events and faces that worked in the Brick Kiln once upon a time. It was the pleaded case in defence to the action proposed that the checking party neither met the owner nor the Munshi of the brick kiln. He named Munshi Kartar Singh and Prem Singh from whom enquiries could be made and from the owner of the Kiln to unravel the truth. These were verifiable facts but were not gone into just as a fair investigation might warrant. The answer to the show cause notice was sufficient to necessitate a regular departmental enquiry where witnesses could be produced and cross-examined to find out the truth of the experience certificate. In any case, the workman had put in 7 years of service as a Tubewell Attendant by then and his work and conduct was not commented upon as unsatisfactory. Instead of ordering a regular enquiry, the Managing Director of the Sugar Mills unfortunately in a knee jerk reaction limited his consideration to the following matters irrelevant matters without paying due regard to verifiable claims in the reply to the show cause notice which are best read verbatim : -

“The Meham Co-op. Mills Ltd., Meham, Distt. Rohtak.

MSM/Inst./11574

Dated : 4.11.2000

ORDER

According to the letter memo no.MSM/Inst./10797

dated 12.9.2000 issued by the Mill, Show cause notice was given to Sh.Suresh Kumar s/o Sh.Bhim Singh that at the time he had given experience certificate issued by M/s Rajdhani Brick Kiln, Mandothi. On the basis of which, his appointment was made in the Mill on the post of tubewell attendant. For verification of the above experience certificate, record of M/s Rajdhani Brick Kiln, Mandothi was checked and found that he never worked on the above said brick kiln. If, he wants to say anything in this regard, then informed within three days of receipt of this notice.

In reference to the above notice employee submitted his written clarification which was not found satisfactory. According to the letter memo MSM/Inst./11129 dated 27.09.2000 of this office, employee was called for personal hearing on 09.10.2000. But the employee refused to receive the above letter. Thereafter, employee was again called on 02.11.2000 vide letter no.MSM/Inst./11464 dated 24.10.2000 and thereafter called on 04.11.2000 vide letter memo no.MSM/Inst./11552 dated 02.11.2000 for personal hearing. Employee came present personally. Employee was heard. No any such record/witness was produced by the employee at the time of personal hearing, which could discharge him.

So, after considering all aspects, I have reached at the conclusion that the experience certificate produced by the employee is fake and the employees has got employment in the Mill by committing fraud.

Therefore, I, Wazir Singh Goyat, HCS, Managing Director Sugar Mill Meham terminated services of Sh.Mahender Singh Tubewell Attendant while exercising powers provided under bye laws and service rules of the Mill.

Managing Director

CC : -

1. Sh.Suresh Kumar, Tubewell Attendant.
2. Chief Accounts Officer.
3. Chief Time Keeper.”

6. The Managing Director of the Sugar Mills records that the decision was taken to declare the experience certificate fake and “after considering all aspects”, the employment obtained in the Mill was an act of commission of fraud for which termination of services was the proper remedy. The conclusion adverse to the 2<sup>nd</sup> respondent was reached and to repeat “after considering all aspects”. What aspects have been considered is not known as they are not recorded in writing on the face of the order. There is not even a consideration of the defence of the workman to the show cause notice which was a blockbuster defence which could have been demolished only by a fair and proper regular enquiry was held. The the workman was a contract recruit servant appointed on regular post after following due procedure meant for temporary or regular candidates in direct recruitment. The facts disclosed in the show cause notice and the reply thereto could only be dispelled by an enquiry into the truth of the experience certificate.

7. Aggrieved by the termination of service at the hands of the Managing Director of the Sugar Mills, the workman preferred an appeal to the Board of Directors which was dismissed on 31<sup>st</sup> July, 2008.

8. Against the order passed by the Board of Directors, the workman took recourse under Section 115 of the Haryana Cooperative Societies Act, 1984 by preferring an appeal/revision petition No.80 of 2009 [jointly by the present workman and one Rambhaj Singh]. The Special Secretary to Government of Haryana, Cooperative Department, Chandigarh who heard the matter reproduced the eligibility criteria as published in pioneer issued on 4<sup>th</sup> December, 1992 on which the appointment came, which was “middle and preference will be given to matriculate” for the post

of Tubewell Attendant. However, there was a general term for all the jointly advertised posts which lay down that “preference will be given to persons having working experience and back ground of sugar industries”. On the reading of the eligibility criteria in the joint selection of various posts in the sugar mills, a Tubewell Attendant had to be middle pass but preference could be given to the higher qualification of Matriculation. Across board, a preferential criteria as published was not post specific as it was a general condition. The Special Secretary to the Government appeared not to have noticed the fine distinction of what alone was required from Tubewell Attendants and various other posts advertised for filling up. The full text of the advertisement has not been placed on record of this case by the petitioner-sugar mills. Therefore, its subtleties cannot be figured out and are not known but what is known is what has weighed in the mind of the Special Secretary in the sum total reasoning in rejecting the revision found in the order at page 24 of the paper book which read as follows : -

“After hearing both the parties and perusing the record, I do not find any merit in the case of petitioners. The advertisement published in the Pioneer newspaper on 4.12.1992 by the Meham Cooperative Sugar Mills, Meham, Rohtak in regard to preferential criteria stated that “preference will be given to persons having working experience and back ground of Sugar industries”. It is clear from advertisement that experience certificate should have been correctly give. In consequences, their service have rightly been terminated as experience certificate given was not genuine. Keeping in view the above position, the petition is hereby dismissed and the impugned orders issued vide date 30.7.2008 and 4.11.2000 are upheld. All concerned be informed. File be consigned to record room.”

9. At least the Special Secretary to the Government should have dispensed justice by ordering a fresh dispassionate enquiry detailing the checking team to visit the spot again to meet with the Munshi Kartar Singh and Prem Singh and the owner of the Brick Kiln by either remanding the case or deciding it himself by calling for a report by adjourning the case and the services of the Police Department could also have been enlisted to help in the investigation. That would have been fair and proper procedure when dismissal from service was under review.

10. Dissatisfied with the order of the Special Secretary exercising the powers of the Registrar Cooperative Societies, Haryana, the workman carried a revision petition before the Financial Commissioner and Principal Secretary to the Government of Haryana representing the authority of the State Government which was also dismissed in summary fashion on 14<sup>th</sup> January, 2011 without effective redress of the grievance.

11. It was in these circumstances that the workman invoked his remedies under the Industrial Disputes Act, 1947 (the I.D. Act) by raising a dispute by serving a demand notice for justice dated 2<sup>nd</sup> May, 2011 having exhausted his channel of redress in the Cooperative Department. The demand notice remained pending before the Labour-cum-Conciliation Officer, Rohtak for more than 45 days when the workman came before the Labour Court invoking newly added Section 2-A introduced in the Industrial Disputes Act, 1947 which came into force on 15<sup>th</sup> September, 2010. These provisions can be invoked notwithstanding anything contained in Section 10 of the Act and the workman can make an application to the Labour Court or the Tribunal for adjudication of the dispute after expiry of

45 days from the date an application is made to the appropriate Government for conciliation of the dispute. The dispute as to termination of services was referred to the Labour Court, Rohtak and registered upon which the trial started.

12. In the written statement filed by the management before the Labour Court, they objected that the application was barred in view of sub-section (2) of Section 2-A which requires the application to be filed before the expiry of 3 years from the date of discharge, dismissal, retrenchment or otherwise as specified in sub section (1) of section 2-A of the Act. Since the termination order was passed on 4<sup>th</sup> November, 2000, the application filed on 10<sup>th</sup> August, 2011 was barred. It was urged that unlike in the Limitation Act, 1963 there is no enabling provision in the I.D. Act to extend limitation on any ground in the added sub-section. Therefore, the application did not deserve a trial. It was the admitted position before the Labour Court that a charge sheet was not served on the workman. The Labour Court read the oral testimonies of the management witnesses. The court referred to the deposition of Kuldeep Singh Dhillon, Cane Manager of the Meham Sugar Mill where he testified that he neither recorded any statement of the workman nor enquired anything from him.

13. Nasib Singh, Ex-Superintendent, Meham Sugar Mill appeared as a management witness MW2. He deposed that the employees of the management are governed by the Haryana Cooperative Sugar Mill Employee Service Rules. He admitted that a Committee constituted to enquire into the experience certificate never called the workman for hearing.

However, it was the Managing Director who called the workman for

personal hearing, to which I would say was a perversion of justice and therefore the decision taken was ex post facto after the mind was pre determined to act in a particular direction to remove the workman from service on a charge not proved at an enquiry on evidence. But Wazir Singh Goyat, HCS, Managing Director of the Sugar Mills who passed the order expected the respondent-workman to come for personal hearing on 2<sup>nd</sup> November, 2000 and at the same time expected him to “bring record” and “witnesses” at the time of personal hearing which would exculpate him from the charge and establish his innocence in submitting a genuine experience certificate. This was no hearing in law in the eye of law. Courts have consistently held that cases of defective hearing fall in the category of cases where no hearing was afforded before making adverse orders affecting civil rights. The method adopted by the Managing Director was impromptu and contrary to all the canons of fair procedure and the principles of natural justice. When the basic order suffers from perversion, irrationality and unreasonableness, the entire superstructure built on an assumption of a fake inquiry conducted on the spot without due notice to gather whatever evidence fell in the hands of a surprise checking party must fall irrespective of the layers of litigation traversed afterward. None of the competent authorities have applied their mind to the reply to the show case notice in order to unearth the truth or otherwise of the experience certificate which was for the first time applied by the Presiding Officer, Labour Court, Rohtak. The respondent-Sugar Mills even gave a go-by to their own rule 26 of the Services Rules applicable to the workman by flagrantly breaching the procedure laid down for disciplinary action. The rules read [as noticed and

dealt with by the Labour Court] as follows : -

“If any report or complaint verbal or written is received and if disclosed on the fact of it that the accusation made against an employee constitute a major misconduct and disciplinary action is contemplated, the employee shall be given a charge-sheet in writing. The employee so charge-sheeted be given atleast 48 hours to enable to him to prepare and submit his explanation. The employee may at the discretion of the Managing Director, be granted extension of time for submission of the explanation, if the employee refused to accept the charge-sheet, it shall be sent to him by registered post and simultaneously displayed on the Notice Board. The charge-sheet so served will contain the statement of charge or charges setting out the alleged misconduct and also may contain suspension from duty. Where the employee who has been served with a charge-sheet has denied or controverted the charges leveled against him, his explanation shall be considered. In case the Managing Director/Competent Authority is satisfied with the explanation submitted by the employee he shall be absolved of all the charges. Otherwise, the employee will be issued an enquiry notice containing the name of the Enquiry Officer, date, time and place where the enquiry shall be held.

The enquiry will be conducted by the Managing Director/Competent Authority. The Enquiry Officer will hold enquiry proceedings and employee will be given full and fair opportunity to defend himself or to present his case. In case, the employee fails to participate or present himself in the enquiry proceedings, the Enquiry Officer will be within his right to proceed ex parte in the absence of the employee.

The Enquiry Officer after recording the evidence will submit his findings to the Managing Director. The Managing Director/Competent Authority will consider and examine all the records of the Enquiry will pass an order either of punishment or of withdrawing the charges as the case may be. The order of punishment shall be communicated to the concerned employee.”

14. In short, there has to be a charge sheet and fair and proper enquiry conducted in accordance with rules before a man can be thrown out on an unproven allegation as having furnished an experience certificate to secure employment dubbed as a fake and bogus document without an enquiry into the truth. The truth must always triumph. If the case was beyond doubt that the experience certificate was fake indeed, then the act of fraud in securing employment would certainly vitiate the appointment/s and no Court would come in aid of such person/s even if he/they were to be dismissed from service even after long lapse of time but even proper enquiry is mandated as per the rules. There is a sufficient judicial weight on this proposition. Now what has to be done in terms of the relief by the Court in case of a defective enquiry or in a case of defect found in the enquiry at a particular stage is to return the parties to the original position where the defect was found or discovered. This is the principle laid down by the Supreme Court in **Managing Director, ECIL, Hyderabad v. B.Karunakara**; (1993) 4 SCC 727. The following observations of the Supreme Court in *ECIL's* case are apt and are quoted : -

“The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority], there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the

order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position of law.”

15. The charge may be serious but it is not proved. The procedure required to be followed under rule 26 by the Sugar Mills was crumpled and thrown in the dustbin. The learned Labour Court retrieved the situation and rightly recorded that the so called enquiry Ex.M2 was conducted in a hurried manner. Even the statements of the witnesses were not recorded by the Enquiry Committee set up for the purpose. The Labour Court has doubted the authenticity of the enquiry report as “highly doubtful”. There was no evidence on the file of the Labour Court to reach the conclusion that the experience certificate was not genuine. The Labour Court has even doubted whether the enquiry officer ever went to the spot from where the

experience certificate was issued which appeared to be a paper transaction. Neither was it conducted in a fair and proper manner and the seriousness it deserved when the question of life, liberty and livelihood was involved. Nor any proper enquiry was made from the real persons concerned in the M/s Rajdani Brick Kiln, Mandothi, Jhajjar who would know the truth, which was not a fair thing to do. It is trite to say in law that a defective enquiry which is neither fair nor proper is no enquiry in the eyes of law and I have no reason to tinker with the award except to affirm it in all its conclusions and inferences drawn from the facts on record or the lack of it and the judicial discretion exercised by the labour court has been applied fairly and properly.

16. As a consequence of the reasons recorded above the writ petitions are dismissed. The orders of termination are nullified. The impugned awards of reinstatement with 50% back wages are upheld as they do not suffer from manifest injustice, fundamental flaw in law or perverse findings of facts. Exercise of Jurisdiction by the court *a quo* is neither afflicted by any vice of material irregularity, perversity, irrationality or misreading of the evidence or is found suffering from an error apparent on the face of the record. The impugned awards are endorsed.

17. However, this order will not preclude the respondent workmen from approaching this Court claiming full back wages, if advised. In case such a petition is filed, it will be decided on its own merits without being influenced by anything said in this order. This order will also not preclude the management from resorting to due process if they are still convinced that the experience certificate relied upon by the workmen at the time of

gaining employment were fake documents, then the law laid down in *Managing Director ECIL* case be scrupulously followed. But liberty to hold fair and proper regular domestic enquiries into the disputed experience certificates is denied unless the respondent workmen are reinstated to service and paid 50% back wages under the award, meaning thereby, only on implementation, the liberty can be availed as this appears to be the only way out to avoid iniquitous, harsh and arbitrary results on the rights of the workmen which presently outweigh the equitable balance of the employer's right to hold a fair and proper enquiry in accordance with law. The awards be complied with within one month. Amounts due be computed and paid to the respondent workmen within the next two months failing which arrears will carry 8 % interest till realization.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**August 20, 2015**

Paritosh Kumar