

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17406 of 2015

Date of Decision: 21.8.2015

Vidya Rattan Sharma ...Petitioner

Versus

The Tribune Trust and another ...Respondents

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

Present: Ms.Sonia G.Singh, Advocate for the petitioner.

- 1.To be referred to the Reporter or not? **Yes.**
- 2.Whether the judgment should be reported in the Digest? **Yes.**

...

RAJIV NARAIN RAINA, J.

1. The industrial disputes referred for adjudication before the Industrial Tribunal-cum-Labour Court, Chandigarh by the appropriate Government under Section 2 (k) of the Industrial Disputes Act, 1947 ("the Act") raised by the Union on pending unresolved disputes and differences with the management was registered as Reference No.46/2008. The main reference is still pending adjudication.

2. The brief facts necessary for adjudication of the present petition arising out of an interlocutory order dated 12th March, 2015 passed by the Presiding Officer, Labour Court, UT, Chandigarh are that the management sought approval under the provisions of Section 33(2)(b)

of the Act of action taken against the petitioner dismissing him from service on grounds of misconduct vide respondent-Management order dated 3rd June, 2009 (P-7). This order resulted from a charge-sheet dated 10th July, 2007 served on the delinquent workman. An inquiry was conducted on the charge of committing major misconduct in petitioner submitting 8 false bills towards Travelling Allowance without approval from the competent authority and by misrepresenting the facts that the journeys undertaken to collect news at different places had the approval of the Editor-in-Chief of the respondent-Tribune, a daily newspaper. The charges were proven at the inquiry. The Editor-in-Chief vide his order dated 3rd June, 2009 considered the inquiry report and accepted the findings of guilt. He examined the past record of the workman and awarded him the punishment of dismissal from service with immediate effect for committing gross misconduct covered under Clause II (C) of the Standing Orders applicable to the delinquent, being the competent disciplinary authority of the workman. However, since the Industrial Reference was pending, the Editor-in-Chief could not give effect to the order except by applying for approval of action taken by invoking provisions of Section 33(2) (b) of the Act. The dismissal could take effect only if approval was granted.

3. Consequently, an application under Section 33 (2) (b) of the Act was filed before the learned labour court which was contested by the workman. By an elaborate order, the learned labour court has granted approval of the dismissal order dated 3rd June, 2009 from which this

petition arises. He prays that the findings are erroneous and the order is illegal and deserves to be set aside and he be reinstated to service.

4. It may not be necessary to go into any the detail to review the reasoning adopted by the court *a quo* to grant approval and suffice it to say that the learned labour court considered the pleadings and evidence produced by the parties and upon which it formed *prima facie* opinion on the three issues framed by it for trial to opine on the limited issue involved in proceedings under Section 33(2) (b) of the Act that a case was made out for granting approval. To reach its conclusion within the limited jurisdiction it exercised in approval proceedings, the learned labour court relied on the restrictions placed in law while dealing with the present stage of the proceedings and especially with reference to the Supreme Court ruling in **Punjab National Bank Limited vs. Their Workmen**, 1959 II LLJ 666: AIR 1960 SC 160 where the severe limitations have been recognized that the Tribunal while dealing with an application under Section 33 of the Act then its consideration is only *prima facie* to grant the permission or refuse it in the facts and circumstances of the case. The Supreme Court guided courts that in a proceeding under Section 33 (b) (2) of the Act, it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity. In passing an order, the Tribunal cannot impose conditions as it may either accept or refuse the application. It has no third thing to do. The learned labour court has applied the law and *prima facie* found that the order dismissing the delinquent working journalist, the present petitioner,

does not appear to be by way of victimization or was inflicted by way of an unfair labour practice. The court thought that the procedure followed in the enquiry was *ex facie* commensurate with the standards required in the procedure laid down for fair and proper inquiries and the same abided by the principles of natural justice and the rule of affording fair, proper and adequate opportunity to the workman to prove his innocence. The court *a quo* felt that the conclusion of the disciplinary authority in dismissing the delinquent workman was bona fide. The workman had been paid wages for one month in lieu of notice and wages/subsistence allowance earned till the date of dismissal. Approval was sought by the Management of action taken from the date when the order was passed on 3rd June, 2009 and it was granted. The result is that the petitioner is no longer in service of the Tribune Trust. But this does not mean that the petitioner cannot call in question the validity of the adverse order imposing the extreme punishment of dismissal on him by resort to legal remedies either in the pending reference or in separate proceedings in a court of law.

5. I have heard Ms. Sonia G. Singh, learned counsel for the petitioner at some length on the points canvassed in support of her client. I am not inclined to interfere with the impugned order. She has, however, argued on the merits of the case as well contending that this is not a fit case for dismissal of the writ. She submits that though the TA bills were submitted, but they were neither cleared nor money was paid to the workman and no financial loss has been caused to the management by any of the actions of the workman with respect to submission of bills and management was free to disallow them. She

brings to my notice the order transferring the petitioner from the Proof Reading Section to perform field duties as a working journalist at Nahan, Himachal Pradesh where he was deputed to work under the directions of the Senior Associate Editor of the Management or any other Officer designated by him. She points out to Clause 4 of the Redeployment Order (Annexure P-1) making him eligible for Conveyance Allowance as admissible under the rules for Journalists performing field duties. She tries to persuade this Court that if the petitioner was entitled to Conveyance Allowance, then there is nothing wrong in submitting T.A bills for field jobs undertaken and performed. It may be mentioned that the petitioner had travelled a total distance of 1240 KMs during the 8 trips which were all journeyed by car. However, it was the view of the Editor-in-Chief on the basis of the findings in the enquiry that no supporting documents were presented to substantiate the performance of the so-called journeys together with the bills submitted for clearance. There was, therefore, an attempt to defraud the Tribune Trust upon which the gravamen of the charge sheet rested.

6. Without making any comment on the merits of the case, I would not intercede in the matter and would not set about faulting the *prima facie* view taken by the learned labour court as justifying, for the time being and subject to plenary challenge to the dismissal order in the appropriate forum, if presented, approval of the action taken in the narrow scope of review of the impugned order as conferred on the writ court under Articles 226 or 227 of the Constitution of India arising from approval proceedings. It cannot, however, be said *ex*

facie that the impugned order has been passed with material irregularity or that the Tribunal has exercised its discretionary jurisdiction in an arbitrary or capricious manner. I would, therefore, commend the dismissal of the petition presented at an interlocutory stage against approval proceedings on account of pendency of industrial reference and the protections afforded to workmen by Section 33 of the Act.

7. While parting with the case, Ms. Sonia G. Singh requested the Court to record in the order that the findings of the learned labour court in approval proceedings have not been made subject to final result of the Reference or to validity of the order of dismissal when it has not been so recorded in the impugned order, which normally ought to have been accompanying to caution itself that anything said in it would not be taken as an expression on the merits of the case or as the imprimatur of the court on the justification of the dismissal order or that the *prima facie* findings would in any way influence the final adjudication on whether the dismissal was justified or not and if not said it would seriously prejudice the petitioner's case. There is substance in this last submission and I would only say that it goes without saying that the impugned order dated 12th March, 2015 (Annexure P-10) will be read accordingly. Neither would anything said in the impugned approval order nor in the present order dismissing the petition ever influence the mind of the learned labour court while forming its final and fresh opinion in the matter which may be arrived at after hearing both the sides on the evidence yet to be adduced by the parties in support of or in castigation of the domestic

inquiry proceedings or the resultant order dismissing the petitioner from service of the management. It is always open to the petitioner to challenge the dismissal order on all grounds available in law. Dismissal of this petition lies in a narrow compass and the law in Section 33 (2) (b) of the Act.

8. With this caveat, this petition stands dismissed in limine.

9. Before parting with this order this court expresses its serious reservations and concern of the manner in which the labour court has conducted virtually a mini trial by framing issues and allowing parties to adduce evidence on a stay matter as though it were trying a civil suit thereby wasting 6 precious years of both the parties only to examine an issue *prima facie* whether approval should be granted or denied in the special jurisdiction bestowed by Section 33 (2) (b) of the Act which I dare say could easily have been decided summarily on affidavits. The question really was whether there should be a stay or not of the order of dismissal for which no elaborate proceedings or evidence was required to be neither undertaken nor any long winded arguments were needed to express a *prima facie* opinion. The labour court is not even a court but has only the trappings of a court. It has a right to follow such procedure as it thinks fit. However, I leave the matter at rest presently for this Court to consider the issue at length in an appropriate case and to devise ways and means to save judicial time on an application for approval of action taken and not be seen to frustrate parties by allowing them to lock their horns on the judicial mat leading to such colossal waste of time at the phenomenal expense both the parties may have suffered by needlessly long drawn out

litigation spanning over six years. We have seen quite the same thing happening in protracted proceedings under Section 34 of the Arbitration and Conciliation Act, 1995 (A&CA) when courts casually allowed parties to lead evidence after framing issues against arbitration awards. But the tide has now been turned by the good sense of superior Judges and intervention at the highest judicial level, woefully after much damage had already been done to arbitration cases by the subordinate courts sitting in Section 34 A&CA unable to grasp the true meaning of their jurisdiction and letting cases pass on as if they were in civil appeals.

10. However, the debate on the moot point is left open for future reconciliation and for rationalizing the procedure in some other case when occasion demands with respect to subject matter approval proceedings so that it might be abridged judiciously; the relief or its denial coming expeditiously so that both the parties can take recourse to further remedies if they feel aggrieved which is their basic right to speedy justice. I can hardly contain myself in blurting that I am really aghast that a dismissal order passed in the year 2009 and the application under Section 33 (2) (b) of the ID Act, 1947 filed in the same year has been decided in the year 2015 leaving both parties in a limbo, both suffering the anguish of law's delays in their own quiet ways.

(RAJIV NARAIN RAINA)

JUDGE

21.8.2015

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