

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

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**Civil Writ Petition No.25077 of 2012
Date of Decision:27.07.2015**

Sukhbir Singh

....petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad
and another

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1. Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Surinder Dagar, Advocate
for the petitioner

Mr.R.N.Lohan, Advocate
for respondent No.2

ARUN PALLI, J.(ORAL):-

A writ in the nature of certiorari is prayed for, so as to quash the order dated 29.08.2012(Annexure P4), as also an award dated 05.09.2012 (Annexure P5), rendered by the Labour Court, vide which the claim of the petitioner was rejected.

Petitioner was employed as Centre In charge (Seasonal) and was charge sheeted on 17.01.1995(Annexure P1), for having caused shortage of sugarcane valuing ₹ 1,54,818/-. And thus, purportedly guilty of misconduct under the Certified Standing orders of the Mill in para No.21(2), 21(4) and 21(8). The alleged misconduct of the petitioner was proved in a domestic inquiry that was conducted by Sh.N.P.Garg, Chief Accounts Officer. As a result, the disciplinary

authority, vide order dated 30.01.2001, dismissed the petitioner from service. Pursuant to an industrial dispute raised by the petitioner, vide a separate order dated 29.08.2012(Annexure P4), issue as regards the validity and fairness of the domestic inquiry was tried as preliminary issue and decided in favour of the management. And vide an award dated 05.09.2012 (Annexure P5), Labour Court concluded that the evidence on record duly proved the misconduct alleged against the petitioner. Further, as no interference under Section 11-A of the Industrial Disputes Act, 1947, with the punishment awarded to the petitioner, was warranted, the claim of the workman was rejected.

Learned counsel for the petitioner submits that the award rendered by the Labour Court dated 05.09.2012(Annexure P5) is judicially perverse and erroneous, as while analysing the dispute, the Labour Court has indeed referred to the facts of another matter. As in para No.12 of the Award, it was observed:

On appreciation of evidence produced on record, it is revealed that the workman Sukhbir Singh was not doing his work properly. It is also pertinent to mention here that the claimant committed disobedience, misbehaviour by disobeying the supervisor namely Sh.A.K.Sachdeva, Accountant on 30.08.1999 in the office. The claimant slapped Shri. A.K.Sachdeva, Accountant, in the office on 30.08.1999 and for the same the claimant was issued a charge sheet vide letter No.2649 dated 25.09.1999 and the claimant submitted his reply on 04.10.1999 which was considered and found unsatisfactory. Later on

Shri R.S.Rathi, purchase officer was appointed as Enquiry Officer and the claimant was asked to appear before the Enquiry Officer. The Enquiry officer gave full and fair opportunities to the claimant to defend himself and to produce his witness in support of his case but the claimant failed to produce any evidence in his support and the enquiry officer conducted the enquiry after giving the ample opportunities to the claimant and submitted his enquiry report on the basis of material available on record. And the claimant was dismissed from his services after adopting the due process of law. That the claimant produced its evidence but he failed to prove that he was illegally terminated without giving any cogent reason and without being heard. On the other hand the respondent produced their evidence along with the documents which clearly shows that ample opportunities were given to the claimant for appearing before the enquiry officer but he could not produce any evidence regarding his charge sheet and adopting the legal process his services were terminated and dismissed. In the wake of the situation, it is succinctly stated that the workman was suspended from his service as he has committed gross misconduct by abusing his superior officers/Accountant by slapping him and by insulting him. As per law laid down by Punjab and Haryana High Court titled as "Jernail Singh versus Presiding Officer Labour Court 2007-LLR-0-245 that this Court cannot interfere in the quantum of punishment thereby unjustifying the dismissal of workman. Also in the case of New Shorooock Millss Versus Mahesh

Bhai T.Rao 1997(74) FLR 2749 (SC) the Hon'ble Supreme Court considered the case of workman who had abused his superiors and threatened them. Hon'ble Supreme Court further held that Labour Court came to the conclusion that finding of departmental enquiry was legal and proper, the order of discharge was not by way of victimization by the respondent workman had seriously misbehaved and was thus guilty of misconduct. Labour Court cannot interfere with the punishment which was awarded by the respondent-Management. Similarly as per law laid down by Hon'ble Supreme Court in the case titled as "General Secretary, South Cashew Factory Workers Union Limited versus Kerala State Cashew Development Corporation Limited AIR 2006 SC 2208 it has been held if the enquiry is properly conducted and principles of natural justice were complied with the enquiry is proper and cannot be interfered by the Labour Court, if the evidence was adduced by both the parties and they were allowed to cross-examine the witness of opposite party then the finding cannot be held to be perverse and Labour Court has no power to interfere with the punishment imposed by the management since Section 11-A is not applicable and Labour Court has no powers to reappraise the evidence to find out whether the findings of enquiry officer are correct or not or whether the punishment imposed is adequate or not.

Learned counsel for the petitioner submits that what the Labour Court deals with, is an issue as regards disobedience, misbehaviour and slapping a superior officer namely

Sh.A.K.Sachdeva, Accountant on 30.08.1999 in the office. And for which charge sheet was issued, vide letter No.2649 dated 25.09.1999. And Sh.R.S.Rathi, Purchase Officer was appointed as Inquiry Officer. Whereas that was not the case. Concededly, he was neither purported to be guilty of any such charge, nor Sh.A.K.Sachdeva was ever appointed as an Inquiry Officer to hold a domestic enquiry. Thus, the Award is liable to be struck down on this score alone.

Learned counsel for respondent No.2 does not dispute the infirmity the award dated 05.09.2012 (Annexure P5) suffers from. Ex facie, what the Labour Court examined was never the matter in issue. The findings recorded by the Labour Court are contrary to the record. Thus, the matter needs to be re-adjudicated. That being so, the petition is allowed. Award dated 05.09.2012 (Annexure P5) is set aside. The matter is remitted to the Industrial Tribunal-cum-Labour Court-II, Faridabad, to be decided, afresh. As the petitioner has also assailed the order dated 29.08.2012 (Annexure P4), vide which the issue as regards the fairness of domestic inquiry was decided against him, counsel for the parties are ad idem that it would be open to the petitioner to assail the said order, if necessitated, post decision of the Labour Court, on merits. Parties are directed to appear before the Labour Court, Faridabad, on 24.08.2015. Records of the Labour Court be returned.

27.07.2015

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(ARUN PALLI)
JUDGE