

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

CWP No.22282 of 2015

Date of decision:16.10 2015

Chandigarh Administration & anr.

... Petitioners

Versus

The Presiding Officer, Labour Court,
U.T. Chandigarh & anr.

... Respondents

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

Present: Mr. IPS Doabia, Advocate,
for the petitioners.

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 short but interesting question raised by Mr. Doabia in this writ petition he says in challenge to the award dated October 20, 2014 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh is that departmental proceedings on a charge of misconduct can be conducted and be made to depend on secondary evidence, by way of photostat copies when the original file is lost. It cannot be said that the case is of no evidence.

The facts in brief are that respondent No.2 was a Conductor in the Chandigarh Transport Undertaking. While journeying from Chandigarh to Delhi, the bus he was on duty carrying passengers was stopped by checking party near Karna Lake, Karnal and the Conductor was found with fake way bills and cash in pocket amounting to a sum of Rs.3120/- and excess cash of Rs.7506/-. He was charge sheeted and associated in the inquiry proceedings. He had full opportunity to defend himself. He examined and cross-examined witnesses. The inquiry report

was submitted to the disciplinary authority. The charge was proven on the basis of secondary evidence i.e. photocopy of some parts of the original lost file. The disciplinary authority supplied him a copy of report and he filed his reply. The reply was not found satisfactory. Aggrieved by the order, the petitioner filed an appeal before the appellate authority in the U.T. Administration. The appellate authority heard the workman and reduced the punishment awarded by the disciplinary authority.

3. Dissatisfied with the order in appeal, the Conductor served a demand notice for justice praying that the punishment order be set aside on the ground that the money found in his pocket was his and not collected from the passengers and pocketed by him. There was no corroborative evidence to support defalcation of money and in any case, the original file has been lost and the Conductor not being responsible for the loss and not being charged with loss of the original file could not be adversely dealt with and punished on the basis of Xerox copies of the documents incomplete as there were. Though the Labour Court is not bound by the stick to the letter of the law and the Evidence Act but the underlying principles have been held to be applicable to the Labour Court proceedings as the principles of the Evidence Act are of universal application and represent every corner in the inquiry proceedings in the search of truth and justice. When the dispute was raised, conciliation proceedings were held attempting settlement or a compromise but the efforts failed to bear any fruitful results. The failure report was submitted to the appropriate Government explaining reasons why settlement could not be arrived at. The appropriate government being the designated officer in the U.T. Administration made a reference of the dispute under

the Industrial Disputes Act, 1947 for adjudication before the Labour Chandigarh.

4. The U.T. Administration entered appearance and contested the reference and supported their order of dismissal that it was justified in the circumstances when the checking party waylaid the Bus and found the driver caught red handed. After all, the checking party had raided the Bus and found things amiss and this was sufficient reason and cause of grave suspicion that the conductor was making a fast buck. The workman had committed a major misconduct for which he deserved no leniency, sufficient to merit any further reduction in punishment.

5. The Labour Court has applied the principle that the Court cannot depend on secondary evidence while venturing to do justice to do more than just look at evidence to examine the proportionality of the punishment with respect to the gravity of the charge levelled against the delinquent.

6. In **Workmen of Balmadies Estates v. Management Balmadies Estate and Ors.**, 2008(3) SCT 264, the Supreme Court examined such an issue in domestic inquiry settings and held that standard and yardsticks applicable to acceptance of evidence before the civil courts do not apply in Labour Courts and the provisions of the Evidence Act are not applicable and all materials which are logically probative including hearsay evidence can be acted upon. Mr. Doabia relies on the said judgment to urge that even though the Evidence Act, 1882 does not apply yet the photocopy of part of the record qualified as material on record which was logically probative and secondary evidence could not be completely ruled out of consideration.

7. I may have gone into this question with all seriousness but find that this is not a fit case to substitute the opinion of the Labour Court by another possible view since this Court does not sit in appeal over the work of the labour court when it exercises supervisory jurisdiction provided by Articles 226 & 227 of the Constitution while examining work of the Labour Court or a Tribunal in making an award. I would rather go by lack of direct evidence and the explanation of the Conductor that the money he was carrying was his. This was not improbable. A conductor could as any person can, carry personal money in his pocket for his own use. This is a matter of accountability. It is well settled that suspicion howsoever grave is not a substitute of proof. Applying the principle of preponderance of probabilities that appears from paper book placed before this Court no certainty to excuse the award. A view taken by the Labour Court was a possible one and if he did not rely on the secondary evidence then it committed nothing wrong when the photocopies were themselves were only parts of the whole file, the remaining cannot be left to the imagination, nor can it be said that the left out part would not contain exculpatory evidence and facts in favour of the conductor. This lack of availability of the original file complete in all respects casts doubt on the view taken by the disciplinary authority in imposing major punishment withholding of 4 increments with cumulative effect and the appellate authority reducing it to 3 increments with cumulative effect. It is not safe to hang a man on photocopies.

8. Even assuming that secondary evidence was of legal value even then the Labour Court remained within its jurisdiction to exercise its power under Section 11A and reduce the punishment to a lesser degree or

to completely obliterate it to zero. Be that as it may, I would not readily accept the argument of Mr. Doabia on secondary evidence however attractive it may seem urging that interference is called for in the impugned award when such secondary evidence should not have been ruled out of consideration completely.

9. For the aforestated reasons, this case is not found fit for intervention. There is no fundamental flaw in the award. Nor is it perverse or irrational. Scope of interference in writ jurisdiction is narrow since it is not an appeal. Hence I would dismiss the writ petition in limine.

10. At the end Mr. Doabia prays that since compliance period in the award stands exceeded to make challenge to the award, which challenge has failed, the implementation of the award may be postponed till about 3 months for the U.T. Administration to calculate the arrears of difference of salary with the quashing of the punishment order by the Labour Court. His request is reasonable and is accepted and the monetary benefits under the award be calculated and paid within three months from the date of receipt of a certified copy of this order.

16.10.2015
monika

(RAJIV NARAIN RAINA)
JUDGE