

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

Civil Writ Petition No.5208 of 2012 (O&M)

Date of decision: 29.9.2015

Raj Kumar

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Manmeet Singh Rana, Advocate,
for the petitioner.
Mr.Nikhil K. Chopra, DAG, Punjab

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

RAJIV NARAIN RAINA, J. (Oral)

1. The workman [now represented by LRs] has approached this Court against the impugned award dated November 3, 2011 passed by the Presiding Officer, Labour Court,

2. The inquiry conducted against the late petitioner was *ex parte*. The charge was of embezzlement of ₹ 50/- received from the passengers without issuing tickets while on duty on a Pathankot bound bus. As a result of the *ex parte* inquiry and the report submitted by the inquiry officer wherein the charge was proven, the disciplinary authority dismissed the petitioner from service on 10th April, 2000. He felt aggrieved by the extreme punishment inflicted. He filed a statutory appeal against the dismissal order on 3rd May, 2000 which was returned to him to be presented to the new appellate authority appointed by the Government. On 15th August, 2000, the

appeal was filed before the appropriate appellate authority where it remained pending without any consideration or communication to the petitioner as to the result of the statutory appeal.

3. After a lapse of three years, he was informed on a request made by him to know the fate of the appeal that his appeal had been rejected as time barred the result of which was that the case of the petitioner was not decided on merits.

4. Aggrieved by the dismissal order and communication of rejection of the appeal without proper orders being passed at both stages the petitioner raised an industrial dispute by serving demand notice on the Department of State Transport seeking justice. The conciliation proceedings did not result in settlement and the failure report was submitted to the appropriate Government under section 12 (4) of the Industrial Disputes Act, 1947 which referred the dispute under Section 10(1)(c) read with S.2A to the Labour Court for adjudication.

5. The Labour Court has rejected the reference by the impugned award dated November 3, 2011 maintaining the dismissal was as per law and inflicted after conducting regular inquiry, though ex parte, and therefore the workman had no claim to relief of reinstatement etc. The date of dismissal of the appeal revealed in the award is August 14, 2003 and the demand notice was served on the management on January 14, 2004 i.e. without much delay.

6. The Labour Court has reasoned in the award that though the appeal was dismissed on wrong grounds being barred by limitation but when the Tribunal itself reached the conclusion that the inquiry was

conducted as per law and the order of termination of the services has been passed as per law, then the decision in appeal loses importance.

7. This approach to my mind is wholly fallacious and an incorrect view of law and is not sustainable. The Tribunal is not a substitute for the appellate authority designated by the statutory rules whose view on the merits of the findings recorded in the inquiry remains unknown for an effective judicial review of the appellate authority in re-evaluation of the evidence on file and on that hypothesis whether guilt is established on record in all probabilities.

8. If the Tribunal had come to the conclusion that the appellate authority could not have dismissed the appeal as barred by limitation, it had no other option except to answer the award by remanding the case to the appellate authority for a decision on merits. Nothing more was to be done when a positive finding was returned that the appeal should not have been dismissed as time barred. The statutory remedies available to the workman under the rules framed under proviso to Article 309 of the Constitution of India are to be regarded as mandatory and when the statutory remedy is not availed or is availed and rejected for wrong reasons, then the statutory remedy itself serves as an alternative remedy to Section 10(1)(c) of the Industrial Disputes Act, 1947 and the dispute cannot be said to be concluded one way or the other till the last appellate authority has opined on the merits of the order of termination/dismissal finally and leaving no further administrative remedy available except for the aggrieved party to take recourse to law.

9. It is for this reason that the finding of the Tribunal that though

the appeal was dismissed for wrong reasons, yet the Tribunal has considered and exercised its power under Section 11A of the Industrial Disputes Act, 1947 and therefore there is nothing remiss in the exercise of jurisdiction vested in the Tribunal is not sustainable in the eye of law. Exercise of jurisdiction under Section 11A of the Industrial Disputes Act is subject to final decisions as may be taken on the dismissal order in appeal, revision etc. and the dispute cannot be said to be concluded till the final order is not passed in the State Government in relation to a government servant and communicated to him. In the absence of findings by the appellate authority in primary review on the merits of the misconduct arising from an ex parte inquiry it cannot be said that this case falls in the category of cases of proved misconduct which might shy away the writ court to exercise premature jurisdiction guarding itself against acting as an appellate authority which is impermissible. Had the disciplinary and appellate authority assigned reasons for action taken and in choosing punishment from the range available to the manager of penalty, the axis of the case would have changed. But which lies in the realm of uncertainty. For these reasons, in the considered opinion of this Court, the impugned award suffers from a fundamental flaw in law in its building a thesis and then scuttling it with anti-thesis which two lines of reasoning are judicially incompatible and irreconcilable and therefore cannot be sustained in the eye of law and has thus to be set aside.

10. The question remains as to what relief the petitioner is entitled to. Normally, the matter should have been remitted to the State Government to decide the appeal on merits due to the declaration of law in the impugned

award of the Labour Court that the appeal was dismissed on wrong grounds of limitation by late presentation of the appeal. The dismissal order was passed on 10th April, 2000 and the appeal was filed on 3rd May, 2000 only to be returned back for presentation before the newly designated appellate authority. Then it may be asked what fault could be attributed to Raj Kumar for his appeal to be turned down as barred by time when e was sent from pillar to post. This was the raw deal handed down to the petitioner which has kept the dispute simmering in the melting pot of litigation for fifteen years which sadly saw the death of the petitioner and impleading of his LRs left to claim only the monetary benefits as may accrue. Since the petitioner died during the pendency of these proceedings and his LRs have been brought on record to maintain the writ, it may not be prudent to follow the course of action in remanding the matter only to get the statutory appeal decided on merits which would have to be prosecuted by the LRs before the administrator and they may not be in a position to effectively vindicate the grievances left behind by the dismissed conductor or to have any inkling of the facts of the case which were special and personal to the knowledge of the departed soul. Nevertheless, their right to sue survives since the cause of action has not abated so far as claims to monetary benefits are concerned and would still be available to them in case the dismissal order is set aside or the quantum of punishment is reduced which may be the desired relief to their pockets and to the wife, family pension. It is not disputed that at the time of dismissal the late petitioner had put in pensionable service

11. In **Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee**, (1980) 3 SCC 459, at page 467 [para. 18] the Supreme

Court explained the distinction between service law and labour law in the following words with respect to relief in disciplinary cases which are reproduced without any comment since they are self explicit in promoting the cause of the petitioner:-

“18. There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an Appellate Tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order of the impugned illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. Thus, in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi-judicial proceeding of an administrative authority — not being a proceeding under the Industrial/Labour Law before an Industrial/Labour Tribunal — culminating in dismissal of the employee, the High Court should *ordinarily*, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored); such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/ Labour Law. The respondent employee never raised any industrial dispute, nor invoked the jurisdiction of the Labour Court or the

Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public employment *with or without full back wages*, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/ employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these twofold reasons, we are of opinion that the High Court was in error in directing payment to the employee *full back wages*." [emphasized]

12. Therefore, in order to serve the ends of justice this Court is of the view that *ex facie* extreme punishment of dismissal for the alleged misconduct was wholly unreasonable and grossly disproportionate to the gravity of the charge even if proved and some lesser punishment could have been imposed short of dismissal from service without depriving the late Conductor and his family of pension/family pension in exercise of jurisdiction under Section 11A of the Act. The late petitioner had served as a Conductor in the Punjab Roadways for 30 years before the dismissal order was visited upon him and he would have been entitled to pension in case the dismissal order had not been passed and instead dismissal could have been reduced to compulsory or premature retirement from service and awarded

any major punishment short of dismissal.

13 In these circumstances and in the special facts of the case in order to do justice, fairly and equitably, especially keeping in view the future of the innocent family left behind, the respondent government is directed to consider imposing any other punishment which is short of extreme and disproportionate penalty of dismissal from service which may include compulsory retirement.

14. Learned counsel for the petitioner informs that the General Provident Fund amount which had been withheld for 14 years have been paid to the LR's of the petitioner together with interest in the light of the interim order passed by this Court.

15. As a result, the writ petition is allowed. The award of the Labour Court is set aside so also the order of dismissal. The labour court would re-examine the case on quantum and may convert the punishment into one of compulsory retirement or as deemed fit by any other scaling down, both major and minor as per rules. The natural consequences will follow in monetary terms entitling family pension to be counted with effect from April 10, 2000 when the order of dismissal was passed till realization and the same in future be paid every month in order to balance the conflicting interests of the State and the family that late Raj Kumar left behind.

(RAJIV NARAIN RAINA)
JUDGE

September 29, 2015

Paritosh Kumar