

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

Civil Writ Petition No.8890 of 2012

Date of decision: 3.11.2015

Bhupinder Kumar Goyal

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjiv Gupta, Advocate,
for the petitioner.

Mr.Rakesh Nagpal, Advocate,
for respondent No.2.

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

RAJIV NARAIN RAINA, J.

Heard Mr.Sanjiv Gupta for the petitioner and Mr.Rakesh Nagpal appearing for respondent No.2 at length.

2. After the debate in court on the issue involved, this Court is *prima facie* of the view that the impugned award is not sustainable and deserves to be set aside and the case remanded for passing a fresh award in accordance with law.

3. The facts need not be gone into as anything said on them by this Court may prejudice either of the parties. Therefore, it is not necessary

to go into the history of the case which is long and chequered. All that can

be said is that the petitioner was dismissed from service after holding an inquiry into the charge of misconduct. The criminal proceedings launched against the petitioner for the same misconduct i.e. of misappropriation of funds of the school on an allegation of showing fictitious payments to teachers under forged signatures have resulted in acquittal. The Judicial Magistrate, 1st Class, Sirsa in his judgment dated April 9, 2010 has held that the prosecution has miserably failed to prove its case against the accused [petitioner Goyal] beyond shadow of all reasonable doubts and has acquitted the accused, though the Judicial Magistrate has given the benefit of doubt but that would not mean that the petitioner is not innocent of the crime.

4. The Labour Court has declined the reference vide impugned award dated February 28, 2011 but in so doing, has failed to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act, 1947. The right under Section 11-A of the I.D. Act is a very valuable right and Mr. Sanjiv Gupta is correct in placing reliance on the judgment of the Supreme Court in **Mavji C Lakum v. Central Bank of India**; 2008(5) SCR 1001 : (2008) 12 SCC 726.

5. In **Geeta Ram v. Presiding Officer, Labour Court, Bathinda**; 1998 (4) SLR 581 : 1998 (2) RSJ 526, this Court held that if the Labour Court fails to exercise its jurisdiction under Section 11-A of the Act, then it amounts to failure to exercise jurisdiction vested in it and the award is not capable of being sustained. The argument is re-enforced by another Division Bench of this Court in **Swaran Singh v. Punjab State Electricity Board, Patiala**; 2000 (2) SCT 558 : 2000 (2) SLR 263 to the same effect where the

law has been elaborately stated on the point. Therefore, there is no gainsaying that the award suffers from a lacuna which is incurable if the award is left untouched the defect will result in miscarriage of justice. The error is apparent on the face of the record and, therefore, this writ petition has to be allowed and the impugned award has to be set aside. It is so ordered. The case is remanded to the Labour Court to pass a fresh award after considering all aspects of the case including the legal position flowing from Section 11-A of the Act not only on the merits of the case but also with respect to quantum of compensation and award of lesser punishment than the one inflicted after the labour court weighs all the pros and cons in the balance of evidence on record. There is no gainsaying that the facts and circumstances as were subject matter of the inquiry were also the subject matter of the criminal proceedings and it would not be enough to separate the two; one on standards of probabilities while the other on standards beyond a shadow of reasonable doubt. The swing between the two sets of principles will be the effort of the labour court to set right to restore justice in a balance. In case parties wish to lead further evidence the labour court will consider the request in its wisdom.

6. Parties to appear before the Presiding Officer, Labour Court, Industrial Tribunal-cum-Labour Court, Hisar on 11.1.2016.

(RAJIV NARAIN RAINA)
JUDGE

November 3, 2015

Paritosh Kumar