

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**CWP No. 5257 of 2015
Date of Decision: March 23, 2015**

Haryana Women Development Corporation and others

..... Petitioners

Versus

Suresh Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G. S. Hooda, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The petitioner-Management has approached this Court challenging Annexure P-1 and Annexure P-2 i.e. order dated 20.11.2013 and 6.2.2014 respectively. As per Annexure P-2 the Labour Court has already held that respondents are entitled to reinstatement into service as well as 50% back wages. The workmen have alleged to have been served with a charge sheet. The charge against the workmen was that he consumed liquor on 13.5.2002 and misbehaved with his colleagues. In this regard complaint dated 14.5.2002 (Annexure P-6) was made to the District Manager and vide order dated 21.8.2002 D. D. Sharma was appointed as Inquiry Officer. The Inquiry Officer submitted his report on 14.3.2003 wherein it has been noticed that six witnesses did not come present

during the inquiry though they were informed in writing by the District Manager. It was also observed that one of the complainant Amritpal stated that there was no act of misbehaviour by Suresh and he behaved in a well mannered way. The Inquiry Officer after noticing the entire evidence brought on record, by respective parties to the *lis*, found that there were lot of contradictions in the statements of witnesses. The matter regarding the inquiry being initiated in law or not was referred to Labour Court. The Labour Court vide order dated 20.11.2013 answered the question in favour of the workman and against the Management. The operative part of the order dated 20.11.2013 (Annexure P-1) is extracted hereunder:-

“It is apparent on record that the workman was not given the opportunity to give evidence and the opportunity of cross examination of the witnesses was not given. Entire procedure of enquiry as adopted is faulty because when no opportunity was given to workman to adduce evidence, enquiry proceedings cannot be held as fair and proper. Enquiry is not a mere formality but procedure contains valuable right of workman which is necessary to be granted to workman and enquiry proceedings show that no such procedure was followed in conformity with principles of natural justice. This leads to conclusion that simply recording statement of witness of management is not sufficient to comply with principles of natural justice. This proves that enquiry was simply a formality and proper opportunity was not afforded.

The material placed on file, accordingly, shows that appointment of Enquiry Officer was not communicated and no notice was sent to the

*workman directly, thereby asking him to participate in the enquiry and to cross examine the witness of the respondent and also to bring his evidence. In the enquiry, the respondent has not mentioned that workman was given opportunity to cross examine the said witness. Furthermore, no date was fixed for the evidence of the workman. It is apparent that there was no enquiry proceedings conducted in accordance with law and he had not adopted due procedure, thereby, following the principles of natural justice. Hence, the material placed on file shows that the enquiry proceedings is shrouded in suspicion. The enquiry was not conducted in a fair and proper manner and on this aspect reliance can be placed on **Shireen Dubash Vs. Air India Ltd. And others 2000 LLR 716, K. Mohan Doss Vs. Tamil Nadu Civil Supplies Corporation, 1997 (2) LLN 892, Central Bank of India through its Chief Manager Vs. The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, 1996 LLR 1035 & Mohammad Abbas Vs. Settlement Officer, Consolidation and others 2000 LLR 326,***

In the light of fore-going discussion, it has to be held that there is nothing in the evidence on the record to establish that the enquiry against the workman had been conducted in a fair and proper manner. Resultantly, this preliminary issue is answered against the respondent and in favour of the workman.”

Thereafter the Labour Court proceeded to decide the question with regard to the alleged termination of the services of the workman being legal and justified or not. It is conceded position

that the Management did not lead any fresh evidence before the Labour Court but only relied upon the statement of witnesses examined during the inquiry. The Labour Court by relying upon the judgment of the Hon'ble Supreme Court and evidence lead by the Management held charge against the workman had not been proved as workman had not been given an adequate opportunity and the Management did not lead any fresh evidence during the pendency of the proceedings before the Labour Court, accordingly the order of termination was held bad in law and the workman was ordered to be reinstated back into service along with back wages.

From the extracted portion of the award of the Labour Court it is evident that the inquiry conducted by the Inquiry officer was not in accordance with law as no proper opportunity was given to the workman. Even the order of appointment of Inquiry officer was not communicated to the workman. The witnesses of the Management did not categorically state in favour of the management. This fact had been noticed by the Inquiry Officer in his report. The operative part of the report is extracted hereunder:-

“After taking perusal of the statements taken on record, during enquiry and complaints referred by District Manager, it was found that the complaints and statements recorded before the enquiry officer have lot of contradictions. As far as the fact it stated that on 13.5.2002 Sri Suresh Kumar, clerk was found in intoxication in office during office time. It is deemed to be true and is

confirmed by Medical Report and statements made by all.”

No fault can be found with the findings rendered by the Labour Court. The Management failed to prove the allegations of charge against the workman.

In view of what has been observed above, the impugned orders dated 20.11.2013 and 6.2.2014 of the Labour Court are upheld and the writ petition is accordingly dismissed.

**(AMIT RAWAL)
JUDGE**

March 23, 2015
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