

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

Civil Writ Petition No.6335 of 2015

Date of Decision: April 06, 2015

District Primary Co-operative Agriculture and Rural Development Bank
Ltd. Kaithal and another

...Petitioners

Versus

Presiding Officer, Labour Court, Ambala & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Arun Sharma, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

The Management has approached this Court challenging the award of the Labour Court dated 28.8.2014 (Annexure P-1), whereby the workman has been ordered to be reinstated with continuity of service along with 50% back wages.

Learned counsel appearing for the petitioners contended that the award of the Labour Court is vitiated in law, much less, erroneous and perverse as it has failed to establish that there was no relationship of employer and employee as the workman was appointed as a part time Sweeper. It is a matter of record that the part time Sweeper continued to work with the Management from 1985 to 2007. It has further been contended that the workman had himself left the job and was not ready to

work as a part time Sweeper. The workman had filed a suit in the year 1998 for seeking regularisation of his services, which was dismissed vide judgment and decree dated 5.6.2003.

I have heard the learned counsel for the petitioner, appraised the paper book and the impugned award.

The Management had taken a plea that the workman had abandoned the job and did not report for duty. It was incumbent upon the Management to serve a show cause notice and charge sheet and hold an enquiry. It is only thereafter the services of the workman could have been retrenched after complying with the provisions of Section 25-F of the Industrial Disputes Act. For aforementioned observation, I draw support from the judgment of the Hon'ble Constitutional Bench of the Supreme Court in **D.K.Yadav versus J.M.A.Industries Ltd., (1993) 3 Supreme Court Cases 259**, where it has been held that the principles of natural justice and to act in just, fair and reasonable manner, the Management had to serve a show cause notice and charge sheet. The relevant portion of the judgment is extracted herein below:-

“9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill v. Chief Election Commissioner, the Constitution Bench held that ‘civil consequences’ covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation

every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights are such as belong to every citizen of the state or country...they include.... rights capable of being enforced or redressed in a civil action...In State of Orissa v. (Miss) Binapani Dei this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.”

Had this process been initiated and in case the workman had not responded to the show cause notice, much less, charge sheet, the department was within its right to proceed/hold a departmental enquiry ex-parte and thereafter retrench the service of the workman as per the provisions of Section 25-F of the Act. In the instant case, no such exercise has been done.

Learned counsel appearing for the petitioner, during the course of arguments, had apprised that in place of the workman, some other part time Sweeper had also been appointed. The contention that since the case of the workman for seeking regularisation had been dismissed, would be no ground to set-aside the award as the reference before the Labour Court was with regard to the alleged termination and not the regularisation.

In view of what has been observed above, the Management has failed to comply with the provisions/ratio decidendi culled out in D.K.Yadav's case (supra), the alleged termination of the workman is vitiated

in law, much less, in violation of the provisions of Section 25-F of the Act.

There is no error, much less, illegality and perversity in the order of the Labour Court for ordering the reinstatement w.e.f. March, 2007 with continuity of service and 50% back wages.

The petition is accordingly dismissed.

April 06, 2015
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(AMIT RAWAL)
JUDGE