

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

Civil Writ Petition No.9889 of 2013

Date of decision: 28.9.2015

Surinder Singh

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr.Puneet Kaur Sekhon, Advocate,
for the petitioner.

Mr.G.S.Sidhu, 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. (Oral)

The main argument advanced by Ms.Sekhon appearing for the workman in challenge to the award dated 2nd January, 2013 passed by the learned Presiding Officer, Labour Court, Patiala is that the Labour Court has failed to exercise its jurisdiction under Section 11A of the Industrial Disputes Act, 1947 to examine in the light of evidence on record the quantum of punishment and consider award of lesser penalty than the extreme one of dismissal from service.

2. The facts are that the petitioner had served the respondent Society from July, 1979 till 20th October, 1999 when his services were

terminated by the management on charges of embezzlement and negligence in performance of duty. There three charges of misconduct imputed against the petitioner. Charge No.1 was that being Secretary of the Society, he had committed a fraud involving cash in hand amounting to 1,42,832.55 during the year 1992-93. In the subsequent financial year, he was accused of not depositing cash in hand. The act was alleged to be repeated in the year 1995-96 when he was accused of committing fraud in the year 1995-96 to the tune of ₹ 90,900/- by not depositing the said amount obtained from selling out the rental funds. Charge No.2 was broken into four sub charges involving lack of control and negligence towards duty in the act of one Jasbir Singh, Ex-Salesman. The third charge was that FIR No.84 dated 20th November, 1997 was registered against the petitioner in Police Station Bassi Pathana on account of repeated frauds committed by him. The workman had explained that the disputed amount was deposited as loan of his own and his wife's loan account.

3. Dr.Sekhon submits that if there is a fundamental error in the inquiry proceedings as to the events of 30th June, 1999 and 16th July, 1999 when the petitioner was wrongly proceeded against *ex parte* on account of non-appearance on 16th July, 1999. The inquiry was concluded in haste on the same day. Therefore, the proceedings cannot be called fair and proper. The defence explanation was not solicited from the workman while it could easily have been since heavens would not have fallen is short notice was given to him to come forward to show sufficient cause of absence. Taking such an irrational decision caused prejudice to the charged employee.

4. Thus, the petitioner was not permitted to lead his defence evidence to prove his innocence of the charges. In order to understand the proceedings on these two material dates, the same need to be read as recorded by the inquiry officer. They are placed at Annexure P-10 at page 71 of the writ paper book. The zimni orders read : -

“Today 30.6.99 as Inquiry Officer against Sh.Surinder Singh Secretary Under Suspension The Anandpur Kalaur Service Society Ltd. have come present. The above employee was issued the Charge Sheet Sh.Surinder Singh, Secretary, under suspension the reply given by him is incomplete. Many documents have not been enclosed as a evidence. Keeping in view his request the last date in the office of the society has been fixed for 16.7.99. Thereafter no opportunity will be given. Reply be submitted alongwith the evidence, so that inquiry report can be completed and the same can be handed over to the Administrative Committee.

Sd/-	sd/-	sd/-
Kulwant Singh	30.6.99	Surjit Singh
30.6.99		30.6.99

Inquiry Officer

Today dated 16.7.99 with regard to the Charge Sheet I have come present in the office of society. Sh.Surinder Singh (Secretary Under Suspension) has not come present. After perusing the record of the society Ex-parte decision is taken.

Sd/-	sd/-
Kulwant Singh	Surjit Singh
16.7.99	16.7.99

Inquiry Officer

Statement of Sh.Kulwant Singh, Salesman the Nandpur Kalaur, Co-Operative Agriculture Service Society Ltd.

Sh.Kulwant Singh Salesman the Anandpur Kalaur Co-Operative Agriculture Service Society Ltd. For proving the charges leveled in the list of charges submitted the

record. In which for the year 1992-93 he submitted the Special Audit Report, Audit done for the year 93-94, Special Audit Report for the year 95-96 and submitted the copy of FIR against Sh.Surinder Singh, Secretary, under Suspension.

After scrutiny of all the record I will submit my report to the society.

Sd/-
Surjit Singh
16.7.99 Inquiry Officer.”

5. The petitioner was placed under suspension when the charge sheet was issued and the inquiry was commenced when the workman appeared on 30th June, 1999. He was expected to submit his reply to the charge along with his evidence so that the inquiry report could be completed and the report handed over to the Administrative Committee acting as the disciplinary authority. It was recorded in the zimni that no opportunity will be given other than the date fixed on request of the workman. What the Inquiry Officer meant was that the reply to the charge sheet was incomplete and several documents were not enclosed as “evidence”. The charge sheet Ex.M8 was issued on 20th March, 1999 and the inquiry was concluded on 16th July, 1999 and the order of termination/dismissal was passed on 20th October, 1999. This was after the workman had submitted his reply to the show cause notice proposing termination. The inquiry report has been made on the basis of “perusal of the record of the society” *ex parte* workman with workman not present to explain them. The documents against the workman were special audit reports for the years 1993-94 and 1995-96 and the FIR against the workman who was at the time working as Secretary of the

Society.

6. The moot issue is whether there was fairness in the Inquiry Officer to proceed against the workman *ex parte* by default of appearance on 16th July, 1999. Having proceeded *ex parte* on 16th July, 1999 and the report submitted on the same day, it is difficult to believe that justice was done to him as he had lost opportunity even to explain his non-appearance before the Inquiry Officer on 16th July, 1999 forget about the charge for the time being.

7. A reading of the work of the Labour Court and especially the operative para. 21 leaves much to be desired. There appears to be no discussion on the question of default of appearance on 16th July, 1999 or that the absence raises presumption that the plaintiff abstained from inquiry proceedings to avoid them willfully and deliberately. On the basis of the skeletal facts noticed in the award, no application of mind is visible when all that the Labour Court had to say in concluding the case was a cryptic half baked offering in the name of reasons recorded. They are best quoted verbatim in the operative part found: -

“Thus, he was rightly held guilty of the charges served upon him vide charge-sheet dt.20.03.1999 Ex.M8 in the enquiry report Ex.M6 and was legally terminated vide termination order Ex.M10 dt.20.10.1999, as he failed to send reply to the show cause notice Ex.M9 dt.21.09.1999 received by him on 27.09.1999. The enquiry against him is fair and legal, since he was granted opportunity on 30.06.1999 to present/produce the documents which were in his favour on 16.07.1999, but on 16.07.1999, he failed to appear before the Enquiry Officer. Accordingly, issue No.1 & 3 is answered in favour of the respondent and against the workman and as issue No.1 is proved there is no need to give findings on issue No.2 and the same has become redundant.”

8. For these reasons, the termination of service of the workman has held to be proper and justified and the reference has been answered against the workman.

9. It has come in the oral evidence of MW1 Kulwant Singh appearing before the Labour Court that no list of documents or list witnesses to support the charge along with the charge sheet docket was ever served on the workman. To which I would add, for him to properly defend himself. An inquiry held on a defective charge sheet/docket cannot be sustained since a fair inquiry postulates not only the charge/s but how the management proposes to establish guilt for the delinquent to answer in defence. This aspect has not been considered by the Labour Court and was of great importance as to what would the legal effect be when this state of affairs was admitted by the management witness, would it then vitiate the inquiry. It may be remembered that in the written statement filed by the management before the Labour Court, they took preliminary objection No.2 relying on the inquiry findings in the first instance and in case the Court finds any infirmity in the inquiry, then the management had reserved its rights to prove the misconduct before the Court by leading evidence under section 11A of the Act. It was also prayed by the management that the issue whether the inquiry was fair and proper deserves to be treated as a preliminary issue. It appears that further material on record produced before the inquiry by the management and the workman has not been dealt with in a fair and proper manner by returning reasoned findings on the triable issue which renders the award unsustainable in the eye of law as the award itself

bereft of original reasoning of the Labour Court which incapacitates this Court from exercising judicial review of the award as it is not known what has exactly weighed in the mind of the Labour Court to decline the reference and uphold the order except by a perfunctory approach to the dispute resolution.

10. On a reading of the award, this Court is more than convinced that the work of the Labour Court is wholly unsatisfactory even by judicial or quasi judicial standards expected of a Tribunal empowered with vast powers provided by Section 11A of the Industrial Disputes Act to go into the question of lesser punishment. Even the charges levelled have not been crystallized in their gravity, truth or otherwise by lending original reasoning by the Labour Court which if it had come on record, would have helped this Court to take a final decision either way in the matter. This Court feels virtually handicapped in how to deal with the award which is bereft of original thinking or cogent reasons to support its conclusions with respect to each charge laid. The matter gets compounded when the workman was *ex parte*.

11. I have, therefore, formed opinion that the matter deserves to be remanded to the Labour Court for passing a fresh award. The inquiry held against the petitioner appears to this Court to be defective and a defective inquiry is as good as no inquiry in the eye of law. Therefore, the management's request to lead additional evidence to support the finding of guilt and imposition of the extreme punishment of termination/dismissal from service should be put back into motion and both the parties deserve to be given an effective opportunity to adduce further evidence and place such

other materials on record as they have for the Labour Court to dwell on the charge to establish guilt or innocence. Even if guilt is established the question still would remain whether dismissal was justified or any other punishment would do.

12. The Labour Court is duty bound in cases of dismissal, discharge, termination and removal from service to record its findings in exercise of jurisdiction under Section 11A of the I.D. Act after going through the evidence on the inquiry file. Even if the departmental inquiry is found to be fair and proper, still the Labour Court has to record its own findings on the basis of the evidence available on the inquiry file and record its conclusion regarding proportionality and quantum of punishment awarded by the employer. The Labour Court has jurisdiction under Section 11A of the I.D. Act to reduce or substitute the punishment. Where the Labour Court has neither discussed the evidence on the enquiry file to hold whether the charge is proved or not, nor has considered the quantum of punishment awarded, then the Labour Court will be seen as having failed to exercise the jurisdiction vested in it under the special provisions of Section 11-A. For this legal proposition, one might apply the Division Bench decision of this Court in **Mangat Rai v. Pepsu Road Transport Corporation**; 1998 (1) SCT 771 : 1998 (2) RSJ 125.

13. In the wake of the above, the writ petition is allowed, the award of the Labour Court is set aside. The matter is remanded to the Presiding Officer, Labour Court, Patiala by restoring reference No.282 of 2000 on the Board of the Labour Court for fresh adjudication on merits. Nothing said in the order would influence the Labour Court in the remand proceedings as

they are not meant to be an expression on the merits of the case and this Court may not be seen as approving any misconduct.

14. Parties are directed to appear before the Labour Court on November 2, 2015 for further remand proceedings.

15. Order dasti.

(RAJIV NARAIN RAINA)
JUDGE

September 28, 2015
Paritosh Kumar