

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

Date of decision:14.9.2015

1.

LPA No.125 of 2015(O&M)

Tota Ram

....Appellant

VERSUS

The Presiding Officer, Industrial Tribunal and another

.....Respondents

2.

LPA No.124 of 2015(O&M)

Tota Ram

....Appellant

VERSUS

The Presiding Officer, Industrial Tribunal and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Abha Rathore, Advocate for the appellant.

HEMANT GUPTA, J.

This order shall dispose of LPA No.124 & 125 of 2015 filed by the workman arising out of writ petitions filed by the workman and the Management decided by the learned Single Bench of this Court on 23.03.2011 and also order passed in review dated 03.07.2013, whereby the order of reinstatement with 50% back wages granted by the Learned Labour Court was set-aside and the reference decided against the workman.

The facts in brief are that the workman was appointed as a Fitter in Blade Shop of the Management on 21.12.1979. He was served with a charge-sheet dated 27.02.1993. The charge-sheet was that the workman threatened the Assistant Manager that if advance payment by the Works Manager is not given he would not let the Works Manager or any officer to leave the factory after duty hours and the workman abused and instigated the other co-workmen; further on the next day when the Works Manager continued to work in Bay III in spite of threats and attempted stoppage of work by the other co-workman, then the workman physically stopped the Works Manager from working and thus the workman has mis-conducted. Pursuant to the said charge-sheet, an inquiry report was submitted. The workman was served with second show-cause notice dated 08.07.1994 communicating the inquiry report. Thereafter, the Management passed an order of dismissal on 11.07.1994.

The workman raised an industrial dispute. On reference, the learned Labour Court framed the following issues:-

1. As per reference.
2. Whether reference is bad on account of preliminary objections?
3. Relief.

On 04.11.1999, learned Labour Court returned a finding that fair and impartial inquiry was conducted and thereafter proceeded to interfere with the order of punishment to order reinstatement with continuity of service but with 50% of back-wages. Against such award of the Labour Court, the workman as well as the Management filed separate writ petitions. The writ petitions filed by the Management were accepted

and that of workman were dismissed. Learned Single Bench returned the following finding:-

“The Tribunal was also obliged to see the gravity of the circumstances in which the disciplinary proceedings were initiated against the respondent-workman. All the workman were facing charges of indiscipline and of having verbally assaulted their superiors. The employer can never be expected to be a passing spectator to the activities of an employee or employees, which has the effect of creating unrest and indiscipline and set in the process of demoralization and degeneration.

It is also settled principle of law that observation of principle of natural justice and violation thereof should be decided only in the backdrop of the facts and the factum of any prejudice being shown and mere non-compliance of or deviation from principle of procedure will not ipso facto vitiate the proceedings on account of such a deviation.”

The workman filed a review petition, inter alia, on the ground that the workman was not heard before the Management's writ petition was allowed, as such order was passed in the absence of representative/counsel for the workman. Such review petition has been dismissed on 03.07.2013 and still aggrieved the present Letters Patent Appeal has been filed.

The primary grievance of the workman is that learned Single Judge has taken note of charge-sheet which is different in the case of workman. The charges against the workman were not serious enough and have no parity with the allegations levelled against the other workman. There is no allegation of any abusive behaviour. Therefore, learned Single Judge has erred in law in not examining the claim of the workman separately.

It is contended that the charge-sheet was served by the Works Manager whereas the Competent Authority to issue charge-sheet was

General Manager. It is also contended that the ex-parte proceedings in the disciplinary proceedings were initiated against the workman without any justifiable reason and that the Labour Court is within its jurisdiction to pass an order of substituting the order of punishment to that of reinstatement with 50% back-wages. Therefore, learned Single Judge should not have interfered in the order of punishment in fact, the workman should have been granted full back wages.

We have heard learned counsel for the appellant and find no merit in the present appeal.

The issue raised by the workman that proper opportunity was not given by the Inquiry Officer has been examined by learned Labour Court in its order dated 04.11.1999 (Annexure P-7). Learned Labour Court found that the workman participated in the inquiry up to 23.06.1993 and absented from proceedings thereafter. The workman has produced his defence witnesses and also cross-examined the witnesses produced by the Management. But he refused to participate further in the proceedings and absented himself despite knowledge of the inquiry and thus he was aware of the inquiry proceedings pending against him. The Labour Court has taken into consideration the subsequent notices as well to return a finding that workman himself did not turn up to participate further in the inquiry. In view of the said facts, learned Labour Court returned a finding that the workman has failed to justify whether any prejudice has been caused against him or that he has not been given any opportunity to defend himself. After such finding was recorded, a reference was decided on 09.10.2000 granting reinstatement of services with 50% back-wages.

The argument that Inquiry Officer has not acted fairly against the workman is not made out from the reading of the order passed by learned Labour Court on 04.11.2009. Once the workman has intentionally refused to participate in the inquiry proceedings, the workman cannot be permitted to raise a grievance that he was not given opportunity to defend himself. Therefore, it cannot be said that the inquiry proceedings initiated against the workman are not fair or reasonable.

The stand of the workman is that the order of dismissal is against the provisions of standing order of the Company as all notices have been signed by incompetent officer of the company but the standing orders have not been produced. The stand of the Management in the written statement is that the charge-sheet and the order of dismissal has been issued by competent officer of the Management. Since, the standing orders are not on record, the argument raised that the charge-sheet and the order of punishment has been passed by incompetent officer is not sustainable.

Learned Labour Court substituted punishment purportedly in exercise of the power conferred under Section 11A of the Industrial Disputes Act, 1947. The learned Single Judge has set aside the order that the workman was facing charges of in-discipline, therefore, the employer can never be expected to be passive spectator. Therefore, the award granting reinstatement of service with 50% back-wages was found to be not tenable.

The argument is that the workman was not abusive, therefore, punishment awarded by the Labour Court cannot be said to be unjustified. The workman was charge-sheeted of indiscipline at the workplace. In

respect of proved misconduct of indiscipline, the order of reinstatement and that of 50% back-wages cannot be said to be justified.

In view of the findings recorded, learned Single Bench was perfectly justified in setting aside the order of reinstatement passed by learned Labour Court. The learned Single Judge has exercised judicial discretion in proper perspective and therefore, merely another view may be possible is not a ground to interfere in the Letters Patent Appeal.

Consequently, both the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 14, 2015
'D. Gulati'

(HARI PAL VERMA)
JUDGE