

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

LPA No.1618 of 2015(O&M)

Date of decision:16.11.2015

The Meham Cooperative Sugar Mills Ltd.

....Appellant

VERSUS

**The Presiding Officer, Industrial Tribunal-cum Labour Court and
another**

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. S.K. Verma, Advocate for the appellant.

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 20.08.2015 whereby the writ petition filed by the appellant challenging the award of the Labour Court holding that the domestic inquiry conducted was not proper, consequently, the learned Labour Court ordered reinstatement with 50% back-wages. Such award of the Labour Court was not interfered with by the learned Single Bench.

Learned counsel for the appellant contended that the appellant has proved the inquiry conducted by producing the inquiry officer and the witnesses who were examined by the Management during the domestic inquiry, therefore, the Labour Court was required to appreciate their statement even after holding that the domestic inquiry conducted was vitiated.

The Management has a right to prove misconduct before the Labour Court after domestic inquiry conducted by the Management is found to be defective on any account but the Management has to take a plea in the written statement that it reserves a right to prove misconduct before the Labour Court but none was reserved in the written statement filed, a copy of which has been appended by the appellant as Annexure P-7.

A Constitutional Bench in a judgment reported as Karnataka State Road Transport Corpn. v. Smt. Lakshmiddevamma and another, AIR 2001 SC 2010, examined the question as to whether the employer must make a request when it file its statement of claim or written statement or make an application seeking either permission to certain action or seeking approval of the action taken by it under the provisions of The Industrial Disputes Act, 1947. The Court held that the Management has to exercise its right to leading fresh evidence at the first available opportunity and not at any time thereafter. The Court held to the following effect:-

“16. While considering the decision in Shambu Nath Goyal vs. Bank of Baroda & Others (AIR 1984 SC 289), we should bear in mind that the judgment of Vardarajan, J. therein does not refer to the case of Cooper Engineering Limited vs. Sri P.P.Mundhe (AIR 1995 SC 1900). However, the concurring judgment of D.A.Desai, J. specifically considers this case. By the judgment in Goyal’s case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambu

Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyal's case is just and fair."

A Division Bench in a judgment reported as Philadelphia Mission Hospital v. Presiding Officer, Labour Court, Ambala and another, 2005(1) SLJ 186, held to the following effect:-

".....Thus it is clear that management has a right to lead evidence before the Labour Court or the Industrial Tribunal to justify its decision under consideration before the Labour Court, but the aforesaid right has to be exercised by the management at the first available opportunity i.e. it has to reserve its right to do so in the application made by it under Section 33 of the Act itself or in the objection that the management has to file in the reference under Section 10 of the Act. The aforesaid right cannot be exercised at any subsequent stage, during the proceedings before the Tribunal/Labour Court."

The entire evidence of the Management before the Labour Court was that the inquiry conducted was fair and reasonable. Once a finding has been returned that the inquiry conducted was in violation of Rule 26 of the Service Rules for the Employees of the Cooperative Sugar Mills in the State of Haryana, the necessary consequences that either the Management should have proved the misconduct before the Labour Court or if it was satisfied with the inquiry conducted, to face consequences. The

appellant has chosen the second option to face the consequences on the basis of domestic inquiry conducted by the Management.

In view thereof, we do not find any illegality or irregularity in the order passed by learned Single Judge.

Dismissed.

(HEMANT GUPTA)
JUDGE

NOVEMBER 16, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE