

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. LPA No.2157 of 2014 (O&M)

Date of decision:20.7.2015

Jasbir Singh

.... Appellant

Versus

Pepsu Road Transport Corp. & Ors.

..... Respondents

2. LPA No.238 of 2015 (O&M)

Date of decision:20.7.2015

Pepsu Road Transport Corp & Ors.

.... Appellants

Versus

Jasbir Singh

.... Respondent

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mr. Justice Ramendra Jain.

Present: Mr. Harpal Singh Sirohi, Advocate for the appellant in
LPA No.2157 of 2014.

Mr. Anupam Singla, Advocate for the appellants in LPA
No.238 of 2015.

S.S. Saron, J

This order will dispose of LPA No.2157 of 2014 titled
Jasbir Singh v. Pepsu Road Transport Corporation and others and
LPA No.238 of 2015 titled Pepsu Road Transport Corporation and
others v. Jasbir Singh, as these arise out of the same judgment and

order dated 8.7.2014 passed by the learned Single Judge in CWP No.7009 of 1992.

The workman Jasbir Singh was employed with the Pepsu Road Transport Corporation ('PRTC' – for short) as a Helper in 1982-83. He was drawing monthly wages of Rs.550/-. The workman applied for one week's leave from 1.12.1982. However, according to him due to unavoidable circumstances he could not resume duty and sent leave applications through registered posts. He remained under the impression that his leave had been sanctioned but when he went to join duty he was not allowed to join. His services had been terminated by Depot Manager, PRTC, Patiala vide order dated 2.5.1983. The workman filed an appeal against the said order of his termination, which was rejected by the Deputy General Manager, PRTC, Patiala. An industrial dispute was raised by him stating that his services had been illegally terminated. The said dispute as to whether the termination of services of the workman was justified and in order and if not, to what relief/exact amount of compensation was he entitled to, was referred by the State Government vide reference dated 19.9.1989 to the Labour Court, Patiala.

According to the statement of claim filed by the workman, he had put in 12 years of service as a Helper and was drawing Rs.550/- per month as wages when his services were terminated on 2.5.1983 without any notice, charge sheet, enquiry or compensation. He claimed reinstatement in service with continuity of services and back wages.

Written statement was filed by the PRTC stating that earlier a similar reference was received from the Labour

Commissioner on the same ground, was withdrawn by the workman. Therefore, a second reference sent by the Labour Commissioner for adjudication was not maintainable. The workman, it was stated, in fact had given a demand notice on 12.1.1984 on the basis of which a reference was made for adjudication. Thereafter, a second demand notice was given by the workman on 16.2.1988. On merits it was stated that the services of the workman were terminated on the ground that he was absent from duty w.e.f. 1.12.1982 and in spite of writing letters to him to report for duty, he did not join duty till 14.2.1983. On the charge sheet that was served upon the workman, he did not submit any reply. Accordingly, a show cause notice was issued to him as to why his services be not terminated. Ultimately, finding no justifiable reasons regarding absence of the workman, his services were terminated on 2.5.1984.

The learned Labour Court, Patiala framed the following issues:

1. Whether the reference is bad in law as alleged?
2. Whether the order of termination of the services of the workman is justified and in order?
3. Relief.

After consideration, the learned Labour Court held that the second reference cannot be said to be barred by limitation or *res judicata* and it could be adjudicated upon on merits.

On behalf of the workman, it was contended that in respect of the allegation of absence from duty for more than ten days being a major misconduct, it was the duty of the PRTC to have conducted a regular departmental enquiry but the same was not

done and the termination of his services was illegal besides, being null and void.

The learned Labour Court, however, found no force in the said contention. It was observed that the charge sheet was duly sent to the workman through registered post but he did not submit any reply to it. The non-submission of reply to the charge sheet showed that he accepted the allegations against him. Therefore, by not denying the allegations to be correct, there was no need to conduct a regular enquiry. The only procedure thereafter left was to issue a show cause notice to him for taking action. The show cause notice was duly served on the workman but he did not file any reply in response.

The case of the workman was that he had proceeded on leave on 1.12.1982 after getting the necessary leave sanctioned from the Service Engineer Shri Kaura. However, he did not produce him (Shri Kaura) before the Labour Court and neither did he summon the leave applications submitted by him to Shri Kaura, Service Engineer for proceeding on leave. It was, therefore, held that there was no evidence on the part of the workman to accept that he had proceeded on leave after getting it duly sanctioned. It was held that the workman had failed to prove that he actually proceeded on leave from 1.12.1982 onwards. The PRTC in fact had proved that he absented himself from duty from 1.12.1982 and there was no need to conduct a regular departmental enquiry when the workman himself did not submit any reply to the charge sheet or to the show cause notice.

Accordingly, the learned Labour Court vide order dated 8.1.1992 found nothing wrong with the termination of the service of the workman and he was held not entitled to any relief.

The workman aggrieved by the order dated 8.1.1992 of the learned Labour Court filed a writ petition i.e. CWP No.7099 of 1992 in this Court. The learned Single Judge of this Court vide order dated 8.7.2014 did not interfere with the order of termination but superimposed it by an order directing the PRTC to pay compensation to the extent of 25% of back wages to the workman. In awarding this compensation the learned Single Judge followed the procedure adopted by the Hon'ble Supreme Court in **State of Maharashtra and anr. v. Sarva Shramik Sangh, Sangli and others**, 2014 (1) SCT 273. The calculation was ordered to be made till the date of superannuation if the employee had reached the age of superannuation or date of judgment, if he had not reached the said age.

The workman aggrieved against the order of the learned Single Judge has filed LPA No.2157 of 2014 praying for quashing the award of the Labour Court dated 8.1.1992 and for setting aside the order of the learned Single to the extent that the workman had not been reinstated in service. Along with the appeal, CMs No.4512 & 4513-LPA of 2014 have been filed seeking condonation of 60 days delay in refiling and 23 days' delay in filing the appeal respectively.

The PRTC aggrieved against the order of the learned Single Judge to the extent that back wages have been awarded to the workman by the learned Single Judge has filed LPA No.238 of 2015. Along with the LPA, CM No.456-LPA of 2015 has been filed seeking condonation of 139 days' delay in filing the appeal.

Sh. Harpal Singh Sirohi, Advocate learned counsel for the workman has contended that Clause (c) of Rule 22 of the Industrial Employment Standing Order framed in 1981 under the Industrial Employment Standing Order Act, 1966 relating to Conditions of Appointment and Service Regulation of the PRTC provides the procedure in case a workman fails to submit explanation. The said procedure, it is submitted, enjoins the conducting of an enquiry which had admittedly not been conducted. Therefore, for violation of the statutory provisions according to learned Counsel for the workman, the workman is entitled for reinstatement in service with full back wages.

Sh. Anupam Singla, Advocate learned counsel for the PRTC has in support of his appeal submitted that the workman had voluntarily left the services of PRTC and had failed to join duty despite repeated letters being sent to him. Therefore, he cannot take the benefit of his own wrong and the PRTC is not liable to be penalized by making payment of 25% back wages to him. In fact the workman had failed to respond to the charge sheet and also to the show cause notice of the proposed action which amounts to admission on his part regarding his guilt. Therefore, no regular enquiry was required to be conducted as the workman had himself voluntarily left the job. It is further submitted that the services of the workman were terminated on 2.5.1983 while the industrial dispute was raised by him on 26.9.1989 after a delay of more than six years. Therefore, the workman was not entitled for any wages and in any case is not entitled for wages for the said period of about six years.

We have given our thoughtful considerations to the contentions raised by the learned Counsel in support of their respective appeals.

The contention of the learned counsel for the appellant is based on Rule 22 (c) of the Industrial Employment Standing Order framed in 1981 under the Industrial Employment Standing Order Act, 1966 ('Standing Order' – for short) relating to Conditions of Appointment and Service Regulation of the PRTC providing for the procedure to be carried out in the event of the workman failing to submit an explanation to his allegation of misconduct. The said Rule 22 (c) reads as under:-

“c) In case the workman fails to submit his explanation within the prescribed time or extended time allowed to him or where the explanation submitted by him is not found satisfactory, the employer or the manager or the person authorized by the employer or by the manager shall appoint a person to hold an enquiry and issue a notice containing the name of the enquiry officer and the date, time and place of the enquiry.

Provided that in a case where the workman admits in writing the charges levelled against him and the employer is satisfied that such an admission is voluntary, it shall be open to the employer or the manager to award anyone of the punishments provided in Clause 24 without holding any enquiry.”

The learned Single Judge considered the effect of the said Rule and held that the workman had put in 12 years of service and was drawing Rs.550/- per month when his services were

terminated. It was held that if the case had been taken up and disposed of immediately, it would have been possible to put the clock back and a full fledged enquiry could have been directed. However, it was a case of termination of service of a Clerk and reinstatement after gap of 22 years and it would not benefit either of the parties. Therefore, 25 per cent of back wages was awarded in accordance with the judgment of the Supreme Court in *State of Maharashtra and another v. Sarva Shramik Sangh Sangli and others* (supra).

The contention of the learned counsel for the workman is that notional reinstatement with full back wages was liable to be awarded as there has been a complete infraction of the aforesaid Rule 22 (c) of the Standing Order.

It may be noticed that the said Rule 22 (c) of the Standing Order is in the nature of complying with the principles of natural justice of holding a departmental inquiry even if there is a failure on the part of the workman to furnish an explanation to the alleged misconduct. However, the rigours of the principles of natural justice may be waived on admitted and undisputed facts.

In **S.L. Kapoor v. Jagmohan**, AIR 1981 SC 136, it was held that there on admitted or indisputable facts only one conclusion is possible and under the law only penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. The ratio of the said judgment was followed in **Aligarh Muslim University v. Mansur Ali Khan**, (2000) 7 SCC 529. In the said case, the respondent a Laboratory Assistant obtained two years leave to join a job in a

University in Libya. Before the expiry of leave, he applied for three years extension of leave but the University extended it by one year only and it clearly informed the respondent therein that no further extension of leave would be possible. Before the receipt of the said order of the University, the employee entered into a fresh contract for two years in Libya. Then he sought extension by one more year. The Aligarh Muslim University rejected his request and informed him that in case of overstay, he would be deemed to have vacated the post and ceased to be in the University service. The joining time was, however, extended for a brief period but the employee failed to join within time. Consequently, the University deemed him to have vacated the office. One of the contentions raised by the employee was that there had been a violation of the service rules applicable, which inter alia provided that if an employee absented himself from duty without having previously obtained leave or failed to return to his duty on the expiry of leave without having previously obtained further leave, the Head of the Department/Office concerned in case where he is the appointing authority, after waiting for three days, shall communicate with the person concerned asking for an explanation and shall consider the same. It was further provided that unless the appointing authority regards the explanation satisfactory, the employee concerned shall be deemed to have vacated the post, without notice, from the date of absence without leave. The said rule was applicable where the employee failed to return to his duty on the expiry of the leave without having previously obtained further leave. No notice in the said case was issued to Mansur Ali Khan respondent therein and it was alleged that there had been a

violation of the principles of natural justice. The Hon'ble Supreme Court referred to the judgment in **M.C. Mehta v. Union of India**, (1999) 6 SCC 237 wherein it was held that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. It was noticed that at one time, it was held in **Ridge v. Baldwin**, (1963) 2 All ER 66 (HL) that breach of principles of natural justice was in itself a prejudice and that no other "de facto" prejudice needed to be proved but since then the rigour had been relaxed not only in England but also in our country. A reference was made to the case of **S.L. Kapoor v. Jagmohan** (Supra) wherein two exceptions were laid down namely, if upon admitted or indisputable facts only one conclusion was possible, than in such a case, the principles that breach of natural justice was in itself prejudice would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order, which was passed in violation of natural justice. A note of caution was added that this being an exception great care is to be taken in applying it. It was held that it would be sufficient for the purpose of Mr. Mansur Ali Khan the respondent therein to show that his case fell within the exceptions carved out in **S.L. Kapoor v. Jagmohan** (supra) namely, that on admitted or indisputable facts, only one view was possible. In that event, no prejudice could be said to have been caused to Mr. Mansur Ali Khan the respondent therein though notice had not been issued. The said reasoning was based on the facts that the

respondent therein had himself not joined duty despite being asked to do so and this act had resulted in no prejudice to him.

Applying the ratio of the said judgment to the facts of the present case, it is to be noticed that the workman had admittedly not joined his duty after he had taken leave and merely because an inquiry officer was not appointed to hold an inquiry would not result in any prejudice to him.

In **Vijay S. Sathaye v. Indian Airlines Ltd.**, (2013) 10 SCC 253 it was held that an employee has a right to abandon service any time voluntarily by submitting his resignation and alternatively, not joining or reporting from duty for a long time and absence from duty in the beginning may be misconduct, when such absence is for long period, it may amount to voluntary abandonment of service resulting in termination of service automatically without necessitating any further action/order from the employer.

In **State Bank of Patiala v. S.K. Sharma**, (1996) 3 SC 364, principles were laid down in case of an action in violation of rules, regulations and statutory provisions incorporating principles of natural justice. It was held that the several procedural provisions governing disciplinary inquiries are nothing but an elaboration of the principles of natural justice and there several facets. These are designed to provide an adequate opportunity to the delinquent employee to effectively defend themselves. In the case of violation of a procedural provision, it was held that these are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural

provisions cannot be said to automatically vitiate the inquiry held or order passed except cases falling under, "no notice," "no opportunity" and "no hearing" categorize. The complaint of violation of procedural provisions should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the inquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious no interference is called for. Therefore, in the case of procedural provision, which is not mandatory in character, the complaint of violation is to be examined from the stand point of substantial compliance. However, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. Besides, in case of violation of procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation, if on the other hand, it is found that the delinquent officer/employee has not waived it or that the provisions could not be waived by him, then the Court or Tribunal should make appropriate directions, including the setting aside the order of

punishment, keeping in mind the approach adopted in **Managing Director, ECIL v. B. Karunakar**, (1993) 4 SCC 727.

In the present case, the workman has waived his right, inasmuch as he on his own had abandoned his post and did not join his duty after his leave had expired. It is the case of the petitioner that he had to go to his house and, therefore, applied for one week's leave w.e.f. 01.12.1982. Thereafter, according to him he could not rejoin his duties due to unavoidable circumstances. Although he sent his leave application through registered post and he was under the impression that the leaves were sanctioned. His services were retrenched with vide order dated 02.05.1983, that is, after more than one year of his proceeding on leave and he having not rejoined service. In the proceedings before the learned Labour Court and in the writ petition filed in this Court, he has not given any explanation whatsoever as to what were the "unavoidable circumstances" due to which he did not rejoin his duties. Therefore, even if a departmental inquiry was to be conducted as contemplated by Rule 22 (c) of the Standing Order, the same would be quite inconsequential as he admittedly has no explanation whatsoever to offer, which he has not done so even at this stage. Therefore, it is a case where the workman had abandoned his job and had waived his right of compliance with the procedural provision providing for conducting a departmental inquiry. Even otherwise as held by the learned Single Judge, the clock cannot now be put back. Therefore, no ground is made out for interference with the order of the learned Single Judge.

The contention on behalf of the learned counsel for the PRTC is that even damages were not liable to be awarded as the

workman had admittedly abandoned the job. The learned Single Judge, however, relied on the judgment in the case of State of Maharashtra and anr. v. Sarva Shramik Sangh, Sangli and others (supra) and did not interfere with the order dated 8.7.2014 passed by the learned Labour Court but superimposed it by an order directing the PRTC to pay compensation to the extent of 25% of back wages to the workman.

The facts and circumstances of the case do show that the PRTC indeed did not conduct an enquiry into the allegation of absence of the workman from duty, although the same has been held would not result in any prejudice being caused to the workman as he had abandoned the job. However, a balancing process has been adopted by the learned Single Judge in giving 25% back wages to the workman, which cannot be said to be unjust or in any manner improper. There has been delay in considering the case of the workman and the learned Single Judge held that the clock cannot be put back. It was held by the learned Single Judge that if the case had been taken up and disposed of immediately, it would have been possible to put the clock back and a full fledged enquiry could have been directed. This would be in consonance with the law laid down in Managing Director, ECIL v. B. Karunakar (supra) wherein it has been held that where an enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits and the matter remitted back to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. However, at this stage, the same would be quite unnecessary and the award of 25% back wages as ordered by the learned Single

Judge would be just and equitable to put a quietus to the controversy and the litigation.

In the circumstances, both the appeals are dismissed and the order of the learned Single Judge is upheld.

The appeals have been dismissed on merit, therefore, the applications for condonation of delay in re-filing and filing the appeal by the workman and the application for delay in filing the appeal by the PRTC are only academic and the said applications seeking condonation of delay in refilling and filing the appeal by the workman and filing the appeal by the PRTC, are also dismissed.

(S.S.Saron)
Judge

(Ramendra Jain)
Judge

20.07.2015
A.Kaundal

Note: Whether to be referred to the reporter: Yes