

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11587 of 2012 (O&M)

Date of decision : 13.5.2016

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Inderjeet Kumar

.....Petitioner

vs.

M/s Maruti Suzuki India Ltd. and another

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Ashwani Bakshi, Advocate for the petitioner.

Mr. Harsh Aggarwal, Advocate for the respondents.

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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?*

P.B. Bajanthri, J.

In the instant writ petition, the petitioner has questioned the order dated 20.7.2009 (Annexure P-16) and award dated 22.9.2011 (Annexure P-17), passed by the Industrial Tribunal-cum-Labour Court-I, Gurgaon.

2) The petitioner was appointed as Technician L-3 in the respondent-establishment on 29.11.1990. He has earned promotion to the Level of 4 and 5 on 29.4.1994 and 1.7.1998, respectively.

(3) The Union of workers of Maruti Suzuki India Ltd., sent a demand notice to the management on 20.3.2000 raising various demands. Since their demands were not met by the management, consequently, Union started *satyagraha* outside the factory gate. This led to victimization of workers at the hands of management at large

scale. The workers were subjected to suspension and dismissal. In view of the arbitrary action of the management, workers union gave a notice of tool down strike w.e.f. 3.10.2000. The rift between the workers union and the management was one of the issue raised in the Parliament. The Hon'ble Minister for Heavy Industries interfered and the matter was settled on 8.1.2001. In this background, the learned counsel for the petitioner submitted that petitioner was transferred from one unit to another unit. On 12.3.2001, the petitioner was charge sheeted for refusal to accept letter dated 8.3.2001 in the presence of other staff members whereby petitioner has set a bad precedent for others (Annexure P-1). The petitioner was placed under suspension and one more charge sheet was issued on 23.3.2001, on the charge that the petitioner did not complete the assigned work and he was not respecting his superiors in the transferred unit. In this regard, before issuance of charge sheet the petitioner was warned by communication dated 1.3.2001 etc. On 7.3.2001 petitioner submitted his reply denying the allegations and he has been victimized as he was involved in strike etc.

4) The management dissatisfied with reply to the charge memo proceeded to hold enquiry by appointing Inquiry Officer on 26.5.2001. Inquiring Officer submitted report on 24.2.2002 holding that the charges levelled against the petitioner were proved. Thereafter, show cause notice/letter was issued alongwith Inquiring Officer's report. Petitioner submitted his reply on 10.7.2002 and he was dismissed from service on 7.8.2002. Matter was referred under

Section 10 (1) of the Industrial Disputes Act, 1947, under Reference No. 374 of 2003. The same was disposed of on 20.7.2009. The petitioner set up a demand notice. Thereafter, the Industrial Tribunal-cum-Labour Court-I, Gurgaon, upheld the order of dismissal from service passed against the petitioner. Thus the petitioner has presented this petition.

5) Learned counsel for the petitioner submitted that the petitioner has been denied opportunity under Clause 21.4 of the certified standing orders. Extract of Clause 21.4 reads as follows:-

“A chargesheet will be served upon the workman against whom the enquiry is to be held wherein the circumstances against him will be mentioned clearly and he will be asked to give clarification. He will be given opportunity to reply to the charges and he will be allowed to be defended by any worker working in the same department where he is working or by the representative of the recognized union. Except for the reasons recorded by the Enquiry Officer in writing, the workman will have the liberty to produce witnesses in his defence and to cross-examine such a witness on whose evidence the charge is based. The short crux of the evidence will be provided to the opposite party and the argument of the workman will be recorded.”

6) In this regard, petitioner pointed out various communications with the Inquiring Officer. Somehow, Inquiring Officer was not in a position to accept the assistance of a co-worker or a member of the union to plead in the enquiry on behalf of the petitioner as is evident from the order sheet maintained by the Inquiring Officer. The same was supported by the Presenting Officer also. Since he was opposing each and every time when the petitioner placed name of the person of his choice who would assist in the enquiry on behalf of the petitioner. Thus the matter was prolonged on this issue for quite some time. However, management witnesses No. 1 to 4 were examined on 19.9.2001, 3.10.2001 and 10.10.2001, while ignoring the plea of the petitioner for taking assistance of a co-worker/member of the workers union. Inquiring Officer realised error that the petitioner has not been given proper opportunity to take assistance of a co-worker/member of the workers union, reopened the enquiry proceedings on 25.1.2002 after the examination of the management witnesses in the month of September 2001 and October 2001, asking the petitioner to engage services of co-worker/member of the workers union. Inquiring Officer instead of commencing enquiry afresh, i.e. recording evidence of the management witnesses once again in the presence of the petitioner and his co-worker or a member of the workers union, it was made clear that only cross examination is permissible. In view of this, the co-worker who was assisting the petitioner withdrew his assistance in the matter on the ground that the Inquiring Officer is asking him to only cross examine

the management witnesses. Thereafter, the petitioner requested for two weeks on 13.2.2002. The same was refused. Inquiring Officer proceeded to pass orders stating that the enquiry is closed on 16.2.2002. Thus, counsel for the petitioner submitted that whole enquiry proceedings and consequential dismissal order are vitiated on the ground of violation of principles of natural justice.

(7) Learned counsel for the petitioner further submitted that reading of Inquiring Officer's report does not disclose any discussion of evidence and it is perverse decision. So also, the disciplinary authority, as well as Labour Court who have not appreciated the point that the petitioner has not been given fair opportunity in the enquiry proceedings. The Labour Court failed to analyze findings with reference to evidence so also there is non-compliance of Section 11 A of the Industrial Disputes Act, 1947.

(8) Learned counsel for the petitioner relied on decision of the Supreme Court reported in *The Workmen of M/s Firestone Tyre and Rubber Co. of India P. Ltd. vs. The Management and others* *AIR 1973 Supreme Court 1227*, to support the contention that Tribunal has power to examine finding of the misconduct recorded by employer and also differ from the finding if a proper case is made out. Since there is no finding of misconduct recorded by employer, by the Tribunal, the Tribunal has committed error in not apprising the evidence and finding of the misconduct.

9) Per contra, learned counsel for the respondent submitted that the petitioner has been provided ample opportunity. At his

instance only the enquiry was prolonged. The petitioner failed to avail opportunity of engaging a co-worker/member of the workers union who is not suspended and who is not engaged in too many cases. On the other hand, in order to prolong the proceedings the petitioner played delay tactics. Ultimately, Inquiring Authority, in order to give full opportunity to the petitioner, reopened the enquiry and sought cooperation in the enquiry proceedings from the stage of cross examination. However, the same has not been availed by the petitioner, therefore, there is no infirmity whatsoever in the enquiry proceedings as well as in the punishment order. At every stage principle of natural justice has been followed and complied. It was further submitted that even certain procedures have not been adhered, that does not vitiate enquiry proceedings. In support of this contention, the respondent relied on the decision of the Supreme Court reported in *Union of India vs. T.R. Varma AIR 1957 S.C. 882* (Paragraph 10). Learned counsel for the respondent also relied on decision of the Supreme Court reported in *Mahindra and Mahindra Ltd. vs. N.B. Naravade 2005 (3) SCC 134*, to point out use of abusive language against a superior officer in presence of subordinate cannot be termed as an indiscipline calling for lesser punishment than dismissal in absence of any extenuating factor. It was contended that behaviour of the petitioner towards his superior while discharging the duties of the post held by him, amounts to misconduct, therefore, imposing penalty of dismissal cannot be interfered by this Court.

10) Heard learned counsel for the parties and perused the

records.

11) Having regard to the dates and events in the enquiry proceedings, it was evident that Inquiring Officer was biased in not allowing petitioner to take assistance of a co-worker/member of the workers union of his choice. When petitioner opted to engage the services of one Mr. Mathew Abraham and Mr. Madan Lal Sharma, the Inquiring Officer at the instance of Presenting Officer, request of the petitioner was rejected on the score that both of them are busy in several domestic enquiries. Thereafter, Mr. Madan Lal Sharma, was permitted to assist the petitioner and he may join the proceedings from the point where management's evidence was closed and can produce petitioners defence witnesses and the evidence if any on 19.10.2001. Thereafter member of the workers union Mr. Madan Lal Sharma, refused to assist him for the reasons that the Inquiring Officer asked him to assist him from the cross examination stage. Since management witnesses No. 1 to 4 were examined in the month of September 2001 and October 2001, behind the back of the petitioner. Thereafter Inquiring Officer realised the mistake that the petitioner had not been given opportunity to take assistance of a co-worker/member of workers union, reopened the enquiry on 21.5.2002. The petitioner was permitted to avail the assistance of co-worker/member of workers union from the cross examination stage. When the enquiry proceedings were taken up on 13.2.2002, petitioner's co-employee (Mr. S.K. Nag) requested for two weeks to examine the enquiry records and to assist in the enquiry proceedings.

Instead of granting time, Inquiring Officer proceeded with the enquiry by closing the evidence on 16.2.2002 and submitted Inquiry Report. These events clearly establishes that petitioner has not been provided proper opportunity to defend in the enquiry proceedings. On this score only the entire enquiry proceedings are liable to be vitiated.

12) Inquiring Officer's report was perused. The Inquiring Officer nowhere analyzed and discussed the evidence adduced by the management witnesses. Therefore, it is a case of no evidence. The Labour Court did not appreciate the evidence on record, as well as findings of the Inquiring Officer, even findings of the Labour Court is without substance, since the Labour Court failed to appreciate fact that the petitioner has not been provided reasonable opportunity in the enquiry proceedings. So also not appreciated the evidence on record as well as quantum of penalty imposed on the petitioner. On all these counts, the Labour Court order is liable to be set aside. The decisions cited by the respondent counsel is not applicable having regard to the facts and circumstances of the present case. The procedure irregularities is different from not giving reasonable opportunity to defend case in the enquiry proceedings. That too in a case where major penalty is imposed. The Disciplinary Authority/Inquiring Authority are required to give full and reasonable opportunity in accordance with law. Therefore, cited decisions are not relevant to the present case. Examination of management witnesses behind the back of the petitioner and not permitting the petitioner to cross examine by giving reasonable opportunity is sufficient to hold

that the enquiry proceedings are liable to be set aside.

13) Accordingly, the punishment order dated 20.7.2009 (Annexure P-16), as well as Labour Court award dated 22.9.2011 (Annexure P-17) are set aside. The respondents are directed to reinstate the petitioner with all consequential service benefits, including 50% back wages. Direction shall be complied within a period of four months from today.

14) Civil writ petition stands allowed.

May 13, 2016
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(P.B. Bajanthri)
Judge