

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

Date of decision: 10.05.2017

CWP No.698 of 1996 (O&M)

Kehar Singh

...Petitioner

Vs.

Presiding Officer & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ajay Pathak, Advocate, for the petitioner.

Mr. Arun Gosain, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

1. When this matter came up for hearing on 30.03.2017, the Court passed in the presence of learned counsel for the parties the following order:

“The issue boils down to whether a request was made by the management before the Labour Court in its written statement or by a separate application, that in case the inquiry is found to be defective an opportunity should be given to the management to lead evidence in support of the charge for the first time before the Labour Court, for the Labour Court to apply Section 11A of the Industrial Disputes Act, 1947. It seems quite apparent that in the written statement at Annex P-2 no such request was made. The finding of the Labour Court is that the inquiry was defective and yet it has upheld termination.

List again on 06.04.2017.”

2. On the next date of hearing, counsel for respondent 2 sought further time to verify from his client; whether any such request was made before the Labour Court in writing. The query was; whether there was any

writing other than what had been placed on the writ paper-book. Today Mr. Gosain states that no one has come present from the school to assist him in order to satisfy the query of Court that whether there exists a request in writing from any of the parties pleaded in the beginning of the trial, that in case the Labour Court comes to the conclusion that the enquiry was neither fair nor proper, then adequate opportunity should be given to the management to lead further evidence to prove the guilt of the workman for the first time before the Labour Court. In the absence of such request, jurisdiction under Section 11A of the Industrial Disputes Act, 1947 (for short 'the Act') cannot be invoked by the management for the first time in writ proceedings, even if such an argument was raised as a ground of relief.

3. I have in the above scenario assumed for the purposes of final disposal of this case that no such request was made under Section 11A of the Act, when there is no obligation in the Labour Court to act *suo motu* to conduct an enquiry before it by permitting the parties to adduce evidence aliunde then none can be granted.

4. The learned Presiding Officer, Labour Court, Ludhiana in his award dated November 08, 1995 has returned a categorical finding that an enquiry was conducted. The charge-sheet (Ex.R/13) was served on the claimant and he submitted his reply (Ex.R/14). Mr. Sardari Lal Kapoor, a member of the Managing Committee, was appointed as enquiry officer. After holding an enquiry, the enquiry officer submitted his report (Ex.R/12). There upon the report was considered by the disciplinary/appointing authority and services of the claimant were terminated. This was the case of the management set up before the learned Labour Court.

5. The learned Labour Court found in evidence adduced before him that the proceedings recorded by the enquiry officer were not placed on

the file of the Court and as such it cannot be said that the enquiry was conducted in accordance with law. The basic raw material was missing. If the enquiry was not conducted in accordance with law, it was a defective enquiry standing in the same position as no enquiry in the eyes of law. The logical conclusion from these facts which can safely be drawn is that the termination was not the result of an enquiry. If that is so, the termination was illegal and void and, therefore, the termination order is *non est* and not binding on the rights of the claimant. The workman is deemed to have continued in service.

6. On merits, the allegation against the petitioner in the charge-sheet was that he did not pick up Mrs. Kapila, Principal from the house of Mrs. I. Kumar after school hours despite message sent. The charge as I see it that the Principal was irked and over-reacted to snub the petitioner and thereby the management issued the charge-sheet dated 26.11.1986/02.12.1986 against the petitioner for exhibiting obnoxious and questionable conduct and thus committing misbehavior by violating the conduct and service Rules. The petitioner should have been temperate, sober and showed proper restraint while appearing before his superior authority. He criticized the action of the Principal adversely. He did not work in a disciplined manner.

7. Another charge was that he permitted his relatives to stay in the quarter provided to him in the school complex. The next charge was even more interesting. It goes like this. On 05.11.1986, the petitioner came to the office of the Principal and in the presence of Mr. Khanna, Office Superintendent and Mr. Malhotra, P.A., presented an application personally stating that he needed ₹70/- to be paid to the Motor Vehicle Inspector in connection with the passing of the school van. On being asked the reason

for payment of ₹70/-, the petitioner is alleged to have flared up and used intemperate language indulging in grave misconduct and insubordination.

8. I asked, was it the duty of the driver of a school van for the management bound to get clearances for the school van and it is quite possible that the Motor Vehicle Inspector may have demanded money which the driver would not pay from his own pocket. The request was not out of sync with the times where such demands of money are not unknown and have been the bane in public life.

9. The charges apparently look trumped up or far in excess of proportionality and in any case may not be such as would invite dismissal or termination from service. The learned Labour Court while holding the enquiry defective, did not grant relief and has without recording any reason held that the “termination has been justified” and therefore, operates from the date the order was passed by the management dismissing the petitioner on 01.01.1987. No relief has been granted whatsoever by the learned Labour Court and without assigning any reason while at the same time holding that the enquiry was not conducted in accordance with law. The Labour Court failed to address itself to the core issues and by a perfunctory judgment left an irreconcilable contradiction in the award and as a result of which the award is vitiated by error apparent on the face of record. The flaw is fundamental, the lack of legal reasoning critical to the work.

10. As a result of the above discussion, the award in the final analysis has to be set aside as erroneous and non-speaking and the petitioner reinstated to service with all consequential benefits including back wages. It may be recorded once again that no request was made by the management before the learned Labour Court craving leave to defend action pleading that in case the enquiry is held to be defective, it should be given a reasonable

and adequate opportunity to lead evidence in support of the charge for the first time before the Labour Court. The enquiry report was withheld by the management and it would be fair to conclude that the entire episode was hatched to throw the driver willy-nilly out of service and leave him to litigate. The saving hour has come to strike down injustice for a small man wronged by the management.

11. The petition is accordingly allowed.

10.05.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>