

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

201

**CWP-10451-2011 (O&M)
Date of decision:18.12.2017**

BCH Electric Limited

....Petitioner

Versus

Presiding Officer, Labour Court-II, Faridabad and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Ashwani Bakshi, Advocate for respondent no.2.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 24.11.2010 (Annexure P-1).

Respondent No.2 was subjected to parallel proceedings arising out of the assault on the petitioner-employees/officers while holding strike against the petitioners company. In the criminal proceedings respondent is stated to have been acquitted. In the disciplinary proceedings Inquiring Officer held that charges leveled against the respondent-workman were not proved. Thus inquiring officer has exonerated the respondent on the basis of benefit of doubt. Disciplinary authority while disagreeing with the Inquiring Officer's Report issued a show cause notice on 03.12.2002 (Annexure P4) for which respondent has filed his explanation on 06.12.2002 whereas the disciplinary authority/General Manager (Operations) passed the following order of dismissal:-

“December 09, 2002

*Mr. Nagendra Pandey
S/o Sh. Rama Kant Pandey
Token No.1513*

Dear Mr. Pandey,

Further to our show cause notice dated December 03, 2002 whereby the Factory Manager has disagreed with the findings of the Enquiry Officer and had held you guilty of the charges, finding sufficient evidence in the enquiry proceedings to hold you guilty of the charges detailed in the charge sheet dated January 16, 2002. We had received your reply to the above show cause notice and have carefully considered your reply.

We have also considered your past service record and we do not find anything in your past service record warranting a lenient view in the matter.

Accordingly, the proposed punishment of dismissal from the services as mentioned in the show cause notice dated December 03, 2002 is made final and is awarded to you. Accordingly, you are hereby dismissed from the services with immediate effect.

You may collect your final clearance.

For Bhartia Cutler-Hammer

(A Business unit of Bhartia Industries Limited)

L.V.Buan

General Manager (Operations)

P.S. Hindi translation enclosed

In case of dispute between Hindi and English version, then English version will be treated as authentic version.”

Feeling aggrieved by the order of dismissal respondent-workman raised an industrial dispute. The dispute was decided by the labour court on 24.11.2010. Award is in favour of the respondent-workman.

Thus, present petition by the management in questioning the award passed by the Labour Court.

Learned counsel for the petitioner submitted that there is no infirmity in the inquiry so also action of the disciplinary authority/General Manager. Evidence adduced by management witnesses 1,2 and 3 has been taken into consideration which was against the respondent-workman. Labour court failed to appreciate their evidence. Therefore, labour court award is liable to be set aside.

Per contra learned counsel for the respondents submitted that Inquiring Officer had exonerated respondent-workman for want of necessary evidence read with evidence adduced by the witnesses. The disciplinary authority even though disagreeing with the inquiring officer's report on certain issues to that extent show cause notice was issued for which respondent-workman has submitted his explanation. While passing the order of dismissal explanation submitted by the petitioner to the show cause notice on 06.12.2002 has not taken into consideration. It was further submitted that order of dismissal is not a speaking order. That apart extraneous material has been taken into consideration to the extent of imposing major penalty of dismissal namely past service records which is not part and parcel of the charge memo. Therefore, there is no infirmity in the award passed by the Labour Court.

Heard learned counsel for the parties.

Perusal of the records, it is evident that respondent-workman had been exonerated by the Inquiring Officer on the basis of benefit of doubt. Disciplinary authority while disagreeing with the Inquiring Officer's report relied on evidence like Ex. MW1 to MW3 read with the management

witnesses 1,2 3 and 5. Further while issuing show cause notice disciplinary authority has already determined his mind to dismiss the respondent-workman which is biased decision of the disciplinary authority. In other words, before receipt of the respondent-workman explanation to the show cause notice petitioner had already determined to impose the penalty of dismissal from service. In other words, disagreeing with the Inquiring Officer's Report and further issuance of show cause notice from the defective stage if any is an empty formality. Perusal of Annexure P6 cited (supra) it is evident that there is not even a single contention has been considered by the disciplinary authority while passing the order of dismissal. In other words, reply to show cause notice submitted on 06.12.2002 has not been considered. Further past service record has been taken into consideration which is not part and parcel of the charge memo. In other words extraneous material has been taken into consideration. Thus, dismissal order (Annexure P6) is not a speaking order. When the respondent-workman livelihood is involved it was bounden duty of the concerned authority to pass a detailed order if he is dismissing an employee to show principle of natural justice had been adhered. In view of these facts and circumstances, order dated 09.12.2002 (Annexure P6) as well as award passed by the Labour court dated 24.11.2010 (Annexure P1) are set aside. Matter is remanded to the disciplinary authority to pass fresh order from the stage of receipt of the petitioner's explanation to the show cause notice dated 03.12.2002. The disciplinary authority is hereby directed to pass a detailed order while considering the explanation of the respondent-workman vide Annexure P5. The respondent-workman is permitted to file his additional explanation if any to the disciplinary authority within a period of

8 weeks from today. Disciplinary authority is also directed to consider additional explanation of work man if he submits. Intervening period from the date of dismissal i.e. from 09.12.2002 till passing of afresh order by the disciplinary authority shall be treated as suspension. The respondent-workman is entitled to subsistence allowance for the intervening period in view of the decision of rendered by the Supreme Court in the case of ***Managing Director ECIL, Hyderabad Versus B.Karunakar*** reported in 1993(4) SSCC 727. The disciplinary authority/competent authority is hereby directed to calculate subsistence allowance for the intervening period and disburse the same within a period of 3 months from today.

With these observations, present CWP stands disposed off.

At this stage, learned counsel for the respondent-workman submitted that workman had he been in service he would have attained age of superannuation and retired from service. In view of these development, petitioners are permitted to go for amicable settlement with the respondent-workman if they are so advised.

18.12.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No