

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

CWP No.21516 of 2014

Date of Decision:18.07.2017

Dev Parkash

... Petitioner

Vs.

Presiding Officer Industrial Tribunal Jalandhar and others

... Respondents

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

Present : Mr. Arvind Galav, Advocate for the petitioner.

Mr. A.P.S. Sandhu, Advocate for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, the petitioner has assailed the award passed by the Labour Court dated 3.6.2014 and sought for reinstatement with full back wages etc.

The petitioner while working as a Polishman under the Project Officer, Saw Mills, Punjab State Forest Development Corporation Limited was subjected to disciplinary proceedings. Consequently, his services were terminated. Petitioner raised industrial dispute. On 3.6.2014 award of the Industrial Tribunal was in favour of the respondents. Thus, the present petition.

Learned counsel for the petitioner submitted that on 17.8.2000, one Shri Ram Lubhaya who was Saw Mill Incharge directed the petitioner to shift the polished racks to a particular place. The said directions/orders of the Saw Mill Incharge was not obeyed by the petitioner. Arising out of these facts, charge-sheet was issued on 20.9.2000 on the allegations that petitioner refused to obey the directions of the Saw Mill Incharge. Further

petitioner has misbehaved with the Saw Mill Incharge. Learned counsel for the petitioner submitted that charge in respect of misbehaving with the Saw Mill Incharge is not forthcoming in specific terms to the extent of constituting charge and it is very vague. Further, Shri Ram Lubaya-Saw Mill Incharge was not one of the cited witnesses in the list of witnesses produced alongwith article of charge. It was also submitted that in the inquiry officer's report dated 19.4.2011, it is evident that there is no discussion or corroborative evidence to the extent that petitioner had disobeyed the order or directions of Saw Mill Incharge. In fact Saw Mill Incharge-Sh. Ram Lubaya has not been cited as a witness so also his evidence has not been taken into consideration for the purpose of holding that the charges levelled against the petitioner were got proved. It was further submitted that no doubt petitioner remained ex parte in the inquiry. At the same time, it was bounden duty of the inquiry officer even in the ex parte proceedings, he is required to examine the relevant witnesses in order to prove the charges levelled against an employee. In the inquiry officer's report, there is no discussion of evidence in support of proving the charge. Therefore, inquiry officer's report itself is not a report so as to rely on the same and to impose the penalty of termination on the petitioner. These issues have not been examined by the Labour Court while passing award dated 3.6.2014. Therefore, award passed by the Labour Court is liable to be set aside.

On the other hand, learned counsel for respondents No.2 and 3 vehemently contended that the petitioner remained ex parte in the inquiry proceedings. It was also submitted that disobeying orders of superior by an employee is a serious issue in order to maintain discipline in the respondent-

organization. Therefore, petitioner has not made out a case so as to interfere with the award passed by the Labour Court dated 3.6.2014.

Heard learned counsel for the parties.

Crux of the matter is whether petitioner's disobeying the order of Sh. Ram Lubaya-Saw Mill Incharge so also misbehaving and showing indiscipline against Ram Lubaya got proved or not?

Extract of Inquiry Officer's report reads as under:

“The Presenting Officer produced the following witnesses in support of the Management on 30.03.2001:-

- i. Sh. Jagtar Singh, Mistri, Saw Mill, Phillaur*
- ii. Sh. Chinder Pal, Worker, Saw Mill, Phillaur*
- iii. Sh. Avtar Singh, Worker, Saw Mill, Phillaur*
- iv. Sh. Sohan Singh, Worker, Saw Mill, Phillaur*
- v. Sh. Karnail Singh, Worker, Saw Mill, Phillaur*
- vi. Sh. Mangal Singh, Worker, Saw Mill, Phillaur*
- vii. Sh. Mukhtiar Singh, Worker, Saw Mill, Phillaur*
- viii. Sh. Gurchetan Singh, Worker, Saw Mill, Phillaur*

These workers in their statement stated that on 17.8.2000 Sh. Dev Parkash, worker was asked by Saw Mill Incharge Sh. Ram Lubaya that he should place the polished rack (wood) here and there with Sh. Ram Lal, Polishman but Sh. Dev Parkash flatly refused to work and misbehaved.

In view of the above it is clear that Sh. Dev Parkash, Worker has not complied with the orders of Saw Mill Incharge and misbehaved. Accordingly, the worker does not take interest in work and from this it is clear that the allegations levelled against the worker stand proved.”

Perusal of the inquiry officer's report dated 19.4.2001 (Annexure P-3), it is crystal clear that there is no evidence adduced by the witnesses. In fact prime witness is complainant-Ram Lubhaya who has not been cited as a witness so also he has not been examined. In the absence of

evidence adduced by the complainant and witnesses, inquiry officer cannot come to the conclusion that alleged charge of non-compliance of the order as well as misbehaviour and indiscipline by the petitioner were got proved. In fact there is no discussion of evidence by the inquiry officer so as to hold that charges levelled against the petitioner were got proved.

In view of the above facts and circumstances, Inquiry officer's report and order of termination are void. Consequently, issue wise finding given by the Labour Court are arbitrary and illegal. Thus, order of termination and award passed by the Labour Court dated 3.6.2014 are set aside. Petitioner is entitled for reinstatement with 50% back wages. The same shall be calculated and disbursed to the petitioner within a period of three months from today.

Petition stands allowed.

18.07.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**