

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

**CWP No.3212 of 2013 (O&M)
Date of Decision : 23rd March, 2017**

Executive Engineer (Civil), Punjab Mandi Board, Anaj Mandi (Grain
Market) Sangrur

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Harsh Bunker, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner-Management cannot come out of the fact that the dismissal order was based on incorrect information. The Senior Superintendent of Police, Sangrur informed the Management, Mandi Board that in Criminal Case FIR Nos.182 dated 20.12.1990 and FIR No.188 dated 31.12.1990, the respondent-Workman had been convicted by the trial Court on 12.02.1993 under Sections 382/34 IPC and Sections 382/307/148/149 IPC and Section 25 of the Arms Act respectively. The Punjab Mandi Board proceeded on the assumption that a conviction had taken place and proceeded to dismiss the respondent without verifying from the Court the actual status of the criminal cases. The fact was that in both these FIRs the respondent was discharged in the year 1993.

2. Against the impugned order of dismissal, the respondent-Workman assailed it before the Labour Court in a reference made by the

labour office. The Board narrates its side of events stating that after issuing show cause notice on 08.05.1998 the respondent did not file reply. Board then resorted to substituted service by publication in the newspaper which also did not bring the respondent forward. Be that as it may, learned counsel for the respondent points out that parties were already in litigation before the Labour Court in proceedings under Section 33 C (2) of the Industrial Disputes Act, 1947 where the Workman in his application claimed salary, pay difference of subsistence allowance during the period of suspension from service and could easily serve the respondent which makes the story as though the respondent was avoiding submitting reply to the notice highly improbable.

3. When parties were already locked in litigation, the officials of the Mandi Board in charge of defending the application would be assumed to know that the Workman could be easily reached on any of the dates of hearing for service of the show cause notice of dismissal. Mandi Board took no fair and proper steps to serve the show cause notice on the Workman before passing the order of dismissal behind the respondent's back. On both these counts, the dismissal order suffers from procedural error which has caused grave prejudice to the respondent as he had no knowledge of the show cause notice.

4. The foundation of the dismissal order is based on a misinformation supplied by the police who created a false notion of conviction of the respondent in the mind of the disciplinary authority which has resulted in serious miscarriage of justice. The false information is refuted by the judicial record of the criminal trial which was easily accessible and to the knowledge of the Board. In the case of an

administrative order which has passed on non-existent facts adverse to the interest of an employee has no value attached and the order can be ignored and is not binding being void ab initio and as a result cannot survive and has to be quashed. That this is for the simple reason that an administrative order is unlike a judicial order where the superior Court can substitute reasoning and come to either the same or a different conclusion. If an administrative order is defective it has to fall and no other reason can be supplied other than what is recorded in writing on the face of the order. This law has been properly understood by the Labour Court in the impugned award dated 12.10.2012 in reference No.144 of 2000.

5. Hence, the dismissal order has to be treated as per se bad in the eyes of law and dealt with as though it was never passed and the petitioner continued in service by legal fiction. If the dismissal order was legally and factually bad being based on wrong reason as rightly held to be illegal by the Labour Court then the Court will justified in awarding reinstatement and back wages with continuity of service as a natural consequence of declaration by court and I therefore I do not find any fundamental of law in the reasoning of the Labour Court or any error apparent on the face of record in answering the reference in favour of Workman and against the Management.

6. There is another way to look at the case as the matter does not rest there. The dismissal order being ex facie defective and unsupportable in law being based on irrelevant facts and wrong inputs, the question still is whether it should have been withdrawn by the Management and a fresh order passed after following the due procedure. But the Management did not exercise such option against the defective dismissal order dated

25.08.1999 and continued with its defence of the order on the pretext that the shown cause notice was in avoidance of right to file reply to contest the previous proceedings by proof of innocence before the Labour Court on discharge in the criminal cases removing the base of the order. Board faced with embarrassment prays for remand of the case to the disciplinary authority to cure the defect. Should this last ditch argument be accepted? Not to my mind. It is too late to remand the matter back to the competent authority giving an opportunity to correct its error by passing a fresh order after passage of eighteen years. A defective order remains a defective order lying dormant which has no legal effect. The defect could be cured within reasonable time and at least before conciliation proceedings or early in the life of the reference under adjudication, but not after the award is rendered on merits after contest.

7. Even if such permission were granted, the fresh order would not relate back to the date of decision and the intervening period would still have to be treated as in service. Either way, the Management must lose the litigation. At this distance of time, I would not like to disturb the workman to be returned to the authorities in the Board or to the Labour Court. In the present background the Board cannot win on a subtle technicality of law of remittance of the case to the disciplinary authority to cure the defect by invoking the principles in the Supreme Court judgment in Managing Director ECIL, Hyderabad v. B. Karunakar etc., AIR 1994 SC 1074. A point not even addressed or set up in the writ petition is not open in writ proceedings while judicially reviewing an award of the Tribunal.

8. Cases which fall in the bracket of *B. Karunakar* are cases involving enquiry into misconduct and disciplinary proceedings leading to

punishment. The dismissal in this case has taken place on false information unfortunately supplied by the Senior Superintendent of Police, Sangrur that the respondent had been convicted on a criminal charge and without cross-checking facts and blindly accepting wrong information given as the truth, grave injustice was wreaked on the employee by a flash of the pen, throwing due care and caution to the winds.

9. In view of the above facts and circumstances, this Court is constrained to dismiss the petition and approve the award.

23rd March, 2017
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned *Yes*

Whether Reportable : *No*