

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

CWP No.4570 of 2014
Date of decision: 17.04.2017

Chameli & ors.

.... Petitioners

vs

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Rohtak and anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioners.

Mr. Vinod S. Bhardwaj, Advocate with
Mr. Jagdeep Singh, Advocate
for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

1. This award has to be set aside because of a glaring error apparent on the face of the award. A preliminary issue was struck as to whether the enquiry conducted against the workman was fair and proper. The labour Court, Rohtak decided the preliminary issue vide order dated 19.04.2006 holding that the enquiry was not fair and proper. It was a defective enquiry which stands in the same place as no enquiry in the eyes of law. The principle is well established that a defective enquiry is not an enquiry and has no legal and binding effect.

2. That management did not challenge the interlocutory order in the High Court and it has attained finality. The remedy available to the management was under Section 11-A of the Industrial Disputes Act, 1947 for seeking leave of the Court to produce evidence aliunde to prove

misconduct for the first time before the Labour Court in support of the order of termination of service dated 11.07.2002. Had this course been adopted it would have provided an opportunity to the management and empowered the Labour Court to conduct an enquiry and sit virtually in appeal over the disciplinary authority by virtue of special power contained in Section 11-A of the Act. This opportunity was not sought in writing by the management in the written statement dated 29.9.2003 or by way of an application or at any time thereafter before the labour Court before the trial commenced after the order dated 19.04.2006 was passed. The jurisdiction under Section 11-A of the Act is a request jurisdiction and Labour Court has no power *suo motu* to trigger the jurisdiction under Section 11-A of the Act and, therefore, the management lost that valuable opportunity and its case stood foreclosed by the order dated 19.04.2006 declaring the enquiry bad.

3. Despite the order dated 19.04.2006 being present in the mind of Labour Court having noticed it in the award, still it went on to hold that the regular enquiry was a good one and the charges serious in nature. The Labour Court still thought that the workman was a proven embezzler who did not perform his duty satisfactorily and deserved the punishment of termination. The onus was on the management to prove issue No.1 as to whether the enquiry held was conducted in fair and proper manner. The Labour Court seems to have forgotten the order passed by her predecessor and went on to return findings on issue No.1 to arrive at a different conclusion without dealing with the earlier order and its effect.

4. The impugned award passed by the Labour Court, Rohtak dated 01.08.2013 suffers from a fundamental flaw and defect which is incurable

because the management did not make a request for leading further evidence to prove the guilt of the workman for the first time before the Labour Court whereas its enquiry was held to be vitiated.

5. I have therefore no option but to set aside the impugned award dated 01.08.2013. The temporal effect of the above discussion is that the termination order has to be declared illegal since it is based on an illegal enquiry albeit on serious charges, which cannot be said to be proven on the materials existing on record before the enquiry officer and confined to the faulty conduct of the proceedings where the principles of natural justice were flouted, leading to a defective enquiry. Nothing could save it in the face of the order dated 19.04.2006 which was accepted by the management when they failed to take recourse under Section 11A to justify its action.

6. An employer who wants to avail himself of the opportunity of adducing evidence for the first time before the tribunal to justify its action; should ask for it at the appropriate stage. If such an opportunity is asked for, the tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the tribunal is in the interest of both the management and the employee and to enable the tribunal itself to be satisfied about the alleged misconduct. A great opportunity was missed. No new material was brought on record by the Bank after 29.03.2003 justifying its action after seeking permission from Court. The management can only blame itself or its authorised representative for lack of proper guidance.

7. On this short point the present petition is allowed. The impugned award dated 01.08.2013 is set aside. The workman cannot be

reinstated because he died on 27.12.2013. However, his legal representatives who have brought this petition are held entitled to all consequential benefits flowing from the quashing of the termination order. The amounts found due be determined and given to the LRs within a period of three months from the date of receipt of certified copy of this order, either from the Court, or from the petitioner, whichever is earlier. In case of default, the outstanding dues will carry interest at the rate of 9% per annum till payment.

(RAJIV NARAIN RAINA)
JUDGE

17.04.2017

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| 1. <i>Whether speaking/non-speaking?</i> | <i>Yes</i> |
| 2. <i>Whether reportable/non-reportable?</i> | <i>Yes</i> |