

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7286 of 2017

Date of Decision: 21.4.2017

Ms DCM Engineering Products

... Petitioner

Versus

The Presiding Officer, Industrial Tribunal,
Jalandhar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pawan Kumar Mutneja, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. Proceedings under Section 33 of the Industrial Disputes Act, 1947 ("ID Act") are not adjudicatory of rights of parties and its scope is limited to grant or withhold permission to discharge or dismiss a workman from service during pendency of conciliation proceedings etc. The Industrial Tribunal does not act as a reviewing Tribunal against the decision of the management but to see that before it lifts the ban against discharge or punishment of the workman, the employer makes out a prima facie case. An order passed under Section 33 does not bar the raising of an industrial dispute when as a result of permission the industrial worker is dismissed.

2. The Presiding Officer, Industrial Tribunal, Jalandhar in his order dated February 16, 2017 relied on M/s. G. Mckenzie and Co. Ltd. v. Workmen and others, AIR 1959 SC 389 to hold that the reference was neither barred on the principle of res judicata nor on estoppel. There was no need for the workman to challenge the findings of the Industrial Tribunal,

Punjab that prima facie a proper inquiry has been held and there is no intention of victimization or unfair labour practice in dismissing the 2nd respondent from service. The findings of the Tribunal in its order granting permission have to be read in the context of the nature of the jurisdiction exercised by it to consider in summary manner whether permission should be granted or not to the management to give effect to the dismissal order. During approval/permission proceedings the dismissal order lies dormant to await the outcome. The request for permission was made by the management on the day the order was passed proposing to dismiss the workman from service on grounds of misconduct on the basis of a domestic inquiry conducted where the charge/s were proven.

3. Against the dismissal order taking effect from the date permission was granted by the Labour Court the workman raised a dispute by serving a demand notice on May 20, 2008 which led to conciliation proceedings and on failure to reach an amicable settlement the appropriate Government on the basis of failure report made Ref. No.246 of 2008 which was registered before the Tribunal at Jalandhar on November 14, 2008. In the Labour Court a preliminary issue was framed as to whether the inquiry was fair and proper.

4. A word on the imputations of misconduct contained in the charge-sheet dated August 28, 2003 may be necessary. Briefly put, the charge was that the respondent had participated in an illegal and unjustified strike w.e.f. June 24, 2003, instigating and preaching violence in a meeting of workers on August 15, 2003 and had committed violation of injunction order passed by the Civil Court at Balachour issued on July 30, 2003. The workman led

the strike and made other workman sit on dharna at factory gate No.1 by blocking the ingress and egress from 3.30 to 8 PM thus blocking movement of the men, material and vehicles. FIRs were lodged in which the respondent has been acquitted. It is not necessary to dilate on facts other than briefly noticing the above as a background of the case. This is because of the nature of the directions issued in the impugned award dated February 16, 2017. That direction reads as follows:-

"14. In view of above discussion, the reference is partly accepted setting aside the termination order and remitting the matter to the competent authority to issue fresh show cause notice and conduct fresh proceedings and pass an order as per the law within two months from the receipt of copy of award. No order as to cost. File be consigned to the record room."

5. The Labour Court returned a finding that the inquiry was fair and proper and the same is not open to challenge on merits since the findings are approved on the procedural aspects of the enquiry proceeding. Nevertheless, the authorized representative of the workman contended that the termination order is illegal as it is not been preceded by a show cause notice and consequently the order has not been passed by the competent authority. The Labour Court has found merit in the first contention, reasoning from perusal of Exs.MW-1/6 and Ex.MW-1/7 which are dated March 25, 2004 that there is no mention of proposed punishment in the show cause notice. The Labour Court appreciated the evidence and reached the conclusion that there was not an iota of evidence that this document was served upon the workman whereby he was called upon to furnish his comments. Secondly, the written statement revealed in para.11 that after charges were proved

management issued letter dated April 27, 2004 to the workman proposing dismissal but the management failed to prove on record any such show cause notice/letter dated April 27, 2004 was served. This fact was admitted by the authorized representative of the management at the time of arguments. Para.11 of the written statement filed by the management before the Labour Court and adverted to by the Presiding Officer reads as follows:-

"11. That after the enquiry was conducted and report was submitted by the Enquiry Officer holding that the charges stand proved the respondent proposed to dismiss the workman vide letter dated 27.4.2004. Since there was pendency of an industrial dispute before Industrial Tribunal Punjab, Chandigarh, the management applied for permission under section 33 (1) (b) of the Industrial Disputes Act-1947. The application was contested by the workman but the permission was granted to the management to dismiss the workman. There is no requirement of payment of one month wages in case of permission under Section 33 (1) (b). Copy of award of Industrial Tribunal is enclosed as Annexure"

6. Neither has the show cause notice dated April 27, 2004 seen the light of the day as an exhibited document on record nor is there proof of service of the same on the delinquent other than placing it on the record of this petition at Annex P-5. It is mentioned in the letter dated April 27, 2004 that management has considered the reply of the workman dated April 11, 2004 but has found explanation unsatisfactory. The so-called reply dated April 11, 2004 is not placed on the file of this case nor is it an exhibited document before the Labour Court. Stranger still, it is found from a perusal of contents of this letter Annex P-5 that the inquiry report was said to have been sent by Registered post vide letter dated March 25, 2004 but the letter dated March 23, 2004 is one which merely hands over the inquiry report but

makes no mention of any proposed punishment except to say that in case reply is not received management would proceed further in accordance with the provisions of the Certified Standing Orders.

7. In the reply, the workman did not admit his guilt. He said he never went on strike. He stated that he was present on duty from June 25, 2003 to June 30, 2003. He was not allowed to enter the company premises by the Company Secretary in the presence of the Punjab Police. He stated that on September 16, 2003, he along with Union leaders and around 1100 workers came to the gate of the factory. He did not make any speech and neither prevented any worker to enter or restrain anyone not to come out of the premises of the factory. The allegations levelled were false and baseless. Even these facts may not be actually necessary to enter upon the legal issue which falls for consideration, whether the findings in para.10 of the award state the correct position in law or not. When the letter dated April 27, 2004 Annex P-5 is non-existent document then nothing on earth can help the management to prima facie show or prove that a show cause notice proposing dismissal from service was served on the worker and he was asked to make a reply failing which he would be dismissed. The worker has a very valuable right at the stage of the second show cause notice to plead innocence or mitigating circumstances for reduction in punishment or to be absolved altogether of the charges.

8. The Labour Court reached the correct conclusion but only did not support it with the leading case in Union of India and others v. Mohd. Ramzan Khan, AIR 1991 SC 471 which caps the dismissal order. The ruling in *Mohd. Ramzan Khan* applies to both public and private sector

employment because it contains a constitutional value of a procedural safeguard in the second show cause notice which is a valuable right in defence of the punishment to be inflicted. It was obligatory on the management after permission was granted by the Labour Court to issue second show cause notice at that stage after permission was granted by the Labour Court on April 11, 2008 but the management denied that opportunity and give effect to the dismissal order straightaway by passing a fresh one on April 21, 2008. The dismissal order is with immediate effect i.e. from April 21, 2008 and was not sought to be given retrospective effect from the date of the original proposal to dismiss which formed subject matter of proceedings under Section 33 (1) (b) of the ID Act.

9. Manifest error was committed by the management at the stage set after permission was granted. That error is not irreversible and requires to be corrected from the stage where the mistake occurred and the flaw left in the proceedings cured by due process of law. Here, one is to apply the law in Managing Director, ECIL, Hyderabad v. B. Karunakar, 1994 (1) SCT 319 (SC) and return the parties to where the fault occurred and grant opportunity to the management to cure the defect and concomitant right to the workman to defend himself. This a priceless facet of the rules of natural justice requiring obedience by those bound by law. The defect can only be cured if the dismissal order is set aside. Otherwise, the result cannot be achieved for giving fair opportunity to the delinquent workman to plead his case against the extreme punishment of dismissal.

10. This is in sum and substance what the Labour Court has done and rightly so, in partly accepting the reference and setting aside the termination

order and remitting the matter to the competent authority to issue fresh show cause notice proposing the punishment which it proposes to inflict on the workman and to call for a reply; consider it in the proper prospective and then pass a fresh order. These are the natural consequences of law-in-action and fairness-in-action. The words "conduct fresh proceedings" in the impugned order means only consideration of the reply to the show cause notice and does not mean that a fresh departmental inquiry has to be conducted as Mr. Mutneja fears. No one can have fear of that on this circumstance since the Labour Court has held that the inquiry conducted by the management was procedurally fair and proper.

11. The argument of the management pressed through an application dated August 29, 2016 whereby it was claimed that since the issues were identical to the issues in the proceedings under Section 33 (1) (b) so therefore the proceedings in the present reference cannot be continued as there was no new cause of action has been rightly rejected by the Labour Court and I endorse that view and uphold the order with a clarification that fresh proceedings will be limited to protections in second show cause notice as explained in *Mohd. Ramzan Khan* to be logically concluded in accordance with law for fair observance of procedural safeguards against arbitrary or vindictive action in labour setting which is a sensitive area of industrial law. It is for the management to take further steps.

12. This view is based on observance of rules of natural justice. Non-furnishing of the report amounts to violation of rules of natural justice and makes the final order liable to challenge thereafter. Supply of report and calling for reply indicating the maximum punishment to be imposed before

calling for a defence statement is a guarantee against prejudice likely to be caused and reasonable opportunity to defend. The management is expected to consider that reply and pass final orders. It is well to remember that the law does not afford right of hearing at the last stage when the disciplinary authority decides to impose a particular punishment. *Mohd. Ramzan Khan* does not go that far afield.

13. As a result of the foregoing discussion, the petition is an overreaction and is found devoid of merit and the same is hereby dismissed in limine.

14. Before parting with the order I wish to share a lament that Labour Courts try proceedings under Section 33) (1) (b) and 33 (2) (b) like full-fledged trials which go on for years even when the jurisdiction is only prima facie and summary in nature to review whether the permission should be granted or denied. There is no need to frame issues and ask parties to lead evidence as though it were proceeding under Section 10 (1) (c) of the Act. In this case, four years were wasted only to tell both the parties waiting expectantly for the end that permission is granted or refused. There is great de-merit in expressing opinion on the issues on the basis of evidence recorded in proceedings under Section 33 of the Act as it tends to cause serious prejudice to the parties in the event of actual litigation under Section 2-A read with Section 10 (1) (c) of the ID Act. It may become very difficult to extract the relevant from the irrelevant part of the record and the order itself when the findings have no legal value in the eyes of law except for what they are intended to do [actually speaking to grant stay or not]. Nor are the findings binding on the parties in view of the nature and character of the

jurisdiction exercised by the Tribunal under Section 33 of the ID Act which is not plenary unlike reference proceedings. Besides, it is such a colossal waste of effort on a mistrial.

15. I had occasion to express my anguish against conduct of protracted trials by labour Courts under Section 33 of the ID Act in Vidya Rattan Sharma v. The Tribune Trust & Another, 2015 (12) SCT 864 : 2015

(4) PLR 252 where I observed as follows:-

“9. Before parting with this order this court expresses its serious reservations and concern of the manner in which the labour court has conducted virtually a mini trial by framing issues and allowing parties to adduce evidence on a stay matter as though it were trying a civil suit thereby wasting 6 precious years of both the parties only to examine an issue prima facie whether approval should be granted or denied in the special jurisdiction bestowed by Section 33 (2) (b) of the Act which I dare say could easily have been decided summarily on affidavits. The question really was whether there should be a stay or not of the order of dismissal for which no elaborate proceedings or evidence was required to be neither undertaken nor any long winded arguments were needed to express a prima facie opinion. The labour court is not even a court but has only the trappings of a court. It has a right to follow such procedure as it thinks fit. However, I leave the matter at rest presently for this Court to consider the issue at length in an appropriate case and to devise ways and means to save judicial time on an application for approval of action taken and not be seen to frustrate parties by allowing them to lock their horns on the judicial mat leading to such colossal waste of time at the phenomenal expense both the parties may have suffered by needlessly long drawn out litigation spanning over six years. We have seen quite the same thing happening in protracted proceedings under Section 34 of the Arbitration and Conciliation Act, 1995 (A&CA) when courts casually allowed parties to lead evidence after framing issues against arbitration awards. But the tide has now been turned by the

good sense of superior Judges and intervention at the highest judicial level, woefully after much damage had already been done to arbitration cases by the subordinate courts sitting in Section 34 A&CA unable to grasp the true meaning of their jurisdiction and letting cases pass on as if they were in civil appeals.

10. However, the debate on the moot point is left open for future reconciliation and for rationalizing the procedure in some other case when occasion demands with respect to subject matter approval proceedings so that it might be abridged judiciously; the relief or its denial coming expeditiously so that both the parties can take recourse to further remedies if they feel aggrieved which is their basic right to speedy justice. I can hardly contain myself in blurting that I am really aghast that a dismissal order passed in the year 2009 and the application under Section 33 (2) (b) of the ID Act, 1947 filed in the same year has been decided in the year 2015 leaving both parties in a limbo, both suffering the anguish of law's delays in their own quiet ways."

**(RAJIV NARAIN RAINA)
JUDGE**

21.4.2017

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Whether speaking/reasoned

Yes

Whether reportable

Yes