

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

CWP No. 9747 of 2017

Date of decision: 8.5.2017

The PWD (B&R) Construction
Division No.2, Ludhiana

... Petitioner

Versus

Lal Bahadur & anr.

... Respondents

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

Present: Mr. BM Vinayak, D.A.G., Punjab.
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

Having regard to the findings recorded in paragraph 19 of the award of the Presiding Officer, Industrial Tribunal, Ludhiana, dated 4.10.2016, I have no doubt left in mind that the inquiry proceedings which led to dismissal were vitiated by unfairness and violation of principles of natural justice at each stage of the proceedings as found by the Tribunal. The Tribunal has concluded that the inquiry conducted into the alleged misconduct was neither fair nor proper. All the legal infirmities that an inquiry can suffer from has been attributed by the Tribunal on the findings in the procedure leading up to the report after appreciating the evidence on record. The inquiry was held to be vitiated in fact and in law.

The disciplinary authority did worse still when he breached the principles of natural justice in imposing punishment of dismissal without effective hearing as found by the Tribunal. In the face of a

defective inquiry in the eyes of law, the Tribunal has set aside the penalty order for good and sufficient reasons. The dismissal order was passed on 28.6.2016 while the respondent-workman superannuated from service on 31.8.2007 and, therefore, the total relief granted by the Tribunal is deemed to be in the service till superannuation. The Presiding Officer, Industrial Tribunal in his discretion wisely exercised has denied entitlement to back-wages from the date of the order of dismissal till retirement because of unexplained delay in raising the dispute in demand notice dated 29.7.2009. This is I must say is very good thinking of the Labour Court to deny monetary benefit for this period for good and sufficient reason. The dismissal order has been set aside.

It may be noted that when the department was faced with a defective inquiry which is as good as no inquiry in the eyes of law, it did not make a request in writing to the Tribunal to prove the guilt of the workman before the Court by asking the Tribunal to hold the inquiry itself and permit the party to lead further evidence in terms of Section 11-A of the Act. That valuable opportunity was squandered by the department. The right is irretrievably lost even when the request is not made in this petition as a ground of challenge. There is sufficient law that introduction of a new plea is impermissible in writ proceedings. Hence, the dismissal in law is deemed to be without inquiry.

I find nothing legally wrong in awarding the substantial relief of continuity in service in the face of a defective inquiry which will bring home pension and pensionary benefits to the respondent-workman.

For these reasons, I find no legal infirmity, perversity or irrationality in the award of the Tribunal to warrant interference in writ

jurisdiction. The petition filed by the state of Punjab is found devoid of merit and is dismissed. The award dated 4.10.2016 is upheld.

(RAJIV NARAIN RAINA)
JUDGE

8.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>