

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 28.11.2018****CWP No.14848 of 2002 (O&M)**

Pepsu Road Transport Corporation, Patiala

...Petitioner

Vs.

Presiding Officer, Labour Court, Patiala & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anupam Singla, Advocate, for the petitioner.

Mr. Vikas Chatrath, Ms. Anureet Budwal & Ms. Navjot Kaur,
Advocates, for respondent No.2.**RAJIV NARAIN RAINA, J. (ORAL)**

1. I have heard learned respective counsel at length. Find myself in agreement with the observations of the Division Bench made ad interim while admitting the petition on 16.09.2002 for regular hearing that findings of the learned Labour Court in para.19 of the impugned award do not make out a case for staying the award of reinstatement and for the same to be the conclusion of the case. Para.19 of the Award reads as follows:

“19. I have considered the aforesaid contentions of the learned authorized representative of the workman. Ajmer Singh, workman as WW-1 has also deposed that no fair and proper enquiry was conducted against him. The procedure of the enquiry was not told to him by the Enquiry Officer. List of witness and list of documents were not supplied to him by the Enquiry Officer. Copies of the enquiry proceedings were also not supplied to him by the Enquiry Officer. Copy of the enquiry report was also not given to him. Even Kashmiri Lal MW-2 has admitted that list of witnesses and list of documents were not given to the workman. He has also admitted that he submitted the report against the workman on the instructions

of the management. He has also admitted that the statements of the witnesses of the management were recorded in the presence of all the witnesses. He has also admitted that the management witnesses had admitted in the statements that the workman had not misbehaved with the checking staff. So, the findings of the Enquiry Officer are based on no evidence and are liable to be rejected as perverse. In this view of the matter, it must be held that the respondents have not conducted a fair and proper enquiry in this case. The respondents have not sought any opportunity to prove the misconduct on the part of the workman nor they have led any evidence on the point of misconduct in this case. In this view of the matter, it must be held that the respondents have not conducted a fair and proper enquiry and the services of the workman have not been validly terminated by the respondents. This issue is, therefore, decided against the management and in favour of the workman.”

2. The statement of Kashmiri Lal, Enquiry Officer, while appearing as MW-2 in his examination-in-chief and cross-examination reads as follows:

“I had conducted the enquiry against the workman as per order Ex.MW2/1. I sent letters to the workman. The workman attended the enquiry proceedings for the first time on 26.7.94. His preliminary statement was recorded vide Ex.MW2/2. The workman participated in the enquiry. The statements of the witnesses were recorded in the presence of the workman, who cross-examined the witnesses and received the copy of the statements under his signatures. I afforded full opportunity to the workman during the enquiry proceedings. The enquiry report Ex.MW2/3 bears my signature and the same is correct. It is in three pages.

xxxx xxxx xxxx

It is correct that list of witnesses and list of documents were not given to the workman on the first date of enquiry proceedings. It is correct that I did not know if charge sheet was supplied to the workman or not. It is correct that all the witnesses of the management were recorded by me as per the directions of the management. It is correct that I had submitted the enquiry report

against the workman at the instructions of the management. It is correct that all the statements of the witnesses of the management were recorded in the presence of all the witnesses. It is correct that the management witnesses had admitted in the statements that the workman had not misbehaved with the checking staff. It is wrong that I have deposed falsely.

RO&AC
Sd/- (Kashmiri Lal)

Sd/-
Presiding Officer,
17.1.2001”

3. The date of termination was 20.06.1996. He raised a dispute by serving demand notice dated 01.09.1997, which was referred to the Labour Court, Patiala. The reference was answered in favour of the respondent workman. The termination was held to be illegal.

4. Presently, the question of stay of reinstatement has lost its significance with the reinstatement of the workman to service in the year 2002. He continued to work till the age of superannuation because of refusal to stay the award of reinstatement by this Court. The respondent was a Conductor at the time when his services were terminated. Upon rejoining service he was promoted as Sub Inspector on 19.12.2003 and as Inspector on 30.11.2007. He retired on 31.01.2008.

5. To return to the first interim order of the Division, the second direction was regarding payment of full back wages awarded by the Labour Court. It was provided therein that in case the petition fails, back wages shall be paid with interest at the rate of 9% p.a.

6. Having gone through the record with the assistance of the learned counsel and on visiting the findings as regards reinstatement and back wages in the award, I find them unexceptionable being in accordance with the evidence. Those are affirmed and accordingly, the writ fails on principle. This means affirmation that the enquiry conducted against the

workman for the alleged misconduct was neither fair nor proper. Such a defective enquiry is no inquiry in the eyes of law and stands on the same footing. A request was not made by the Corporation that in case its enquiry is found not to be fair or proper, it should be permitted to hold it before the Labour Court by leading evidence.

7. The normal course in such a situation would be to remit the parties back where the error occurred in view of law in Managing Director ECIL Hyderabad Vs. B. Karunakar, AIR 1994 SC 1074: JT 1992 (3) SC 605. That would mean a fresh enquiry from the point it failed to meet the legal standards. If this course is adopted, it would keep the litigation going and in order to avoid that situation and to bring an end to the matter, Mr. Vikas Chatrath realizing the painful consequences is prepared to take half of the back wages awarded by the Labour Court from the date of demand notice till the petitioner was reinstated to service. But this would include consequential benefits of revision of pay and allowances during the period falling in between the date of demand notice and the award together with all consequential benefits by re-fixation. Therefore, interest at the rate of 9% p.a. in the interim order will accrue on half the back wages as receivable under this order by way of compromise.

8. The petitioner – Corporation is agreed to this dispensation to avoid further litigation and in any case it is gaining by reduction of 50% back wages. This order will be beneficial to the Corporation since the workman has agreed to sacrifice half of the back wages.

9. I may restate that otherwise on law, I find no infirmity in the impugned award and this order is designed to settle the dispute by keeping in view the supervening events in the totality of facts and circumstances of the

case. Consequently, the Corporation is directed to release the amounts to the workman within a period of three months from the date of receipt of certified copy of this order, failing which, interest shall run at the rate of 12% p.a. for the period in default till payment.

10. With these observations and directions, the petition stands disposed of and the award stands modified in terms of this order.

28.11.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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