

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

**CWP No. 13390 of 2012
Date of Decision: 15.11.2018**

The Abohar Cooperative Spinning Mills Ltd

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal Punjab and another

...Respondents

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

Present: Mr. Puneet Kansal, Advocate
for the petitioner.

Mr. G.C. Shahpuri, Advocate
for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

The respondent-Workman was employed by the petitioner- Abohar Cooperative Spinning Mills Ltd. His services were dismissed after holding enquiry on charges of misconduct. The dismissal was subject matter of the reference before Industrial Tribunal, Bhatinda. An award dated 11.01.2012 came to be passed by the Tribunal in terms of which dismissal was held bad and the workman was ordered to be reinstated with continuity of service and also held entitled to back wages to the extent of 50%. The said award is subject matter of challenge in the present writ petition filed through liquidator as the mill came under winding up during pendency of reference in terms of order dated 19.05.2003 of Registrar Cooperative Societies Punjab and placed on record as Annex. P-1. This Court vide orders dated 19.12.2016 has

already held that implementation of the award has become impracticable in view of closure of the mill. Therefore, the only question surviving for decision is the direction qua 50% back wages. The counsel for the petitioner has referred to the judgments in Ashok Bhatia Vs. The State of Punjab and others 1996 (2) SLR 388 and Indra Bhanu Gaur Vs. Committee Management of MM Degree College (2004) 1 SCC 281 to contend that non-payment of subsistence allowance does not render the inquiry proceedings vitiated *ipso facto* and to the judgment in Indian Express Employees Union Vs. Management of Indian Express Newspapers 1998 (3) SCT 606 to contend that appointment of a lawyer contesting cases of the management does not bar his appointment as enquiry officer. Further reference is made to judgment in U.P. State Road Transport Corporation Vs. Vinod Kumar (2008) 1 SCC 115 to contend that in the absence of challenge to the correctness, legality or validity of the enquiry conducted, it was not open to the labour Court to go into the findings recorded by the enquiry officer regarding the misconduct.

After hearing counsel for the parties, this Court is of the opinion that in the peculiar facts and circumstances of the present case where reinstatement of the workman is not possible and back wages also have to be restricted up to the date of winding up as also the finding of fact having been recorded by the Industrial Tribunal that the enquiry officer was just waiting that the workman should discontinue

appearing in enquiry proceedings, the challenge to the direction *qua* grant of 50%of the back wages to the respondent-workman up to the date of winding up within six weeks of the respondent-workman presenting certified copy of the judgment of this Court.

The impugned award is modified to this extent and the writ petition is disposed of in above terms.

(RAJIV NARAIN RAINA)
JUDGE

15.11.2018
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*