

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

CWP No.17029 of 2014

Date of Decision:15.01.2018

Girwar Mal

... Petitioner

Vs.

The Presiding Officer and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sandeep Singal, Advocate for the petitioner.

Mr. Anurag Goyal, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged the award passed by the Labour Court dated 24.7.2014 (Annexure P-7).

Petitioner while working as a account clerk, he was subjected to disciplinary inquiry on certain misdeeds relating to handling of cash. Inquiry committee was constituted. Perusal of the inquiry report vide Annexure P-1, it is evident that petitioner has not co-operated in the inquiry. Inquiry committee while submitting report recommended for imposition of penalty of termination. Based on the recommendation of the inquiry officer report, President of Working Committee under Vaish Education Society (Regd) Rohtak proceeded to terminate the services of the petitioner on 01.03.2005. Thus, petitioner raised an industrial dispute. Labour Court upheld the inquiry committee report as well as order of termination. Hence, the present petition.

Perusal of Annexure P-2 i.e. Order of termination dated 1.3.2005, it is evident that President of Working Committee after receipt of the inquiry committee report as well as recommendation, no opportunity has been given to the petitioner to the extent of seeking his explanation on the inquiry committee's report and its recommendation for termination. This

issue has not been apprised by the Labour Court.

Accordingly, award passed by the Labour Court dated 24.07.2014 and order of termination dated 1.3.2005 are hereby set aside. The President of Working Committee is hereby directed to furnish copy of the inquiry committee's report as well as its recommendation and seek petitioner's explanation. After receipt of the petitioner's explanation, President of Working Committee of the Vaish Education Society (Regd) Rohtak were directed to pass a detailed order while considering each of the contention to be raised by the petitioner on the inquiry committee's report. The above exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. Since order of termination as well as award of the Labour Court dated 24.07.2014 are set aside on technical ground, therefore, respondents are hereby directed that petitioner is deemed to be under suspension in view of the decision of the Supreme Court in the case of **Managing Director Ecil v. B. Karunakar**; AIR 1994 SC 1074 wherein in para nos. 29 and 30, it is held as under:-

“29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be

answered as follows:

(i) Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to

receive the enquiry officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases

the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

Concerned respondent is hereby directed to pay subsistence allowance for the period from 01.03.2005 till passing of final order. Respondents are hereby directed to calculate subsistence allowance as on this day and disburse within a period of three months from the date of receipt of this order.

With these observations, petition stands disposed of.

15.01.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**