

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

CWP No.10020 of 2019 (O&M)

Date of decision: 28.05.2019

**The Punjab Agro Industries Corporation
Limited & another**

.....Petitioners

Versus

Nirmal Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

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

Mr. Ravi Gakhar, Advocate for respondent No.1.

B.S. WALIA, J (ORAL)

1. Challenge in the writ petition is to Award, Annexure P-2 dated 14.01.2019 passed by the learned Industrial Tribunal, SAS Nagar, Mohali (hereinafter referred to as the Tribunal) on the ground that the Tribunal did not frame preliminary issue for deciding the legality of the domestic enquiry nor having found fault with the domestic enquiry gave opportunity to the petitioner to lead independent evidence to prove the misconduct/charges on merit and straightway proceeded hold the termination of the respondent workman to be bad in the eyes of law.

2. Brief facts of the case leading to the filing of the writ petition are that the respondent workman while serving in the petitioner-Corporation as plinth in charge, was on account of damage to wheat, shortage of stock, excess use of baradana and liability of interest incurred due to late submission

of bills to the FCI and consequential deductions made by the FCI from the bills, issued a charge-sheet on allegation's of negligence in performance of duties, thereby causing loss of Rs.1,02,31,081/- to the petitioner-Corporation. No reply was filed by respondent No.1 to the charge-sheet. Shri G.S. Bhatia, Chief Manager (Retired), MARKFED was appointed as Enquiry Officer who conducted enquiry and submitted report holding all charges leveled against the respondent workman to have been fully proved. Thereafter, show cause notice was issued to the respondent workman proposing punishment of major penalty along with recovery of loss caused. Reply to the show cause notice was submitted by the respondent workman which was considered by the competent Authority and found to be unsatisfactory. Thereafter, an opportunity of personal hearing was offered to the respondent workman on 30.01.2014 and on the basis of the proceedings conducted, order Annexure P-1 dated 05.02.2014 was passed dismissing the respondent workman from service while simultaneously ordering recovery of Rs.1,02,31,081/-. Industrial dispute was raised by the respondent workman and the Tribunal, vide award Annexure P-2 dated 14.01.2019 answered the reference in favour of the respondent workman, consequentially reinstatement with full back wages and other service benefits like seniority, increments etc. plus interest @ 6% per annum on the ground that the enquiry proceedings were unsustainable.

3. Sole grievance of the petitioner is that the reference was answered in favour of the respondent workman on the ground that the enquiry officer had failed to follow the principles of natural justice while conducting the enquiry proceedings. Learned Counsel contends that it was incumbent upon the Tribunal firstly to have framed a preliminary issue with

regard to the validity of the domestic enquiry and to have given an opportunity to the Management to lead independent evidence to prove the misconduct/charges on merits against the respondent-workman in case of returning a finding against the petitioner on the preliminary issue.

4. Per contra, learned counsel for the respondent-workman contended that the enquiry having been vitiated on account of non-compliance with the principles of natural justice, the impugned award was in accordance with law, therefore, immune from challenge.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, the Tribunal returned a finding that the domestic enquiry as conducted was unsustainable as proper procedure had not been followed by the enquiry officer. However, as per the decision of Hon'ble the Supreme Court in **Kurukshetra University versus Prithvi Singh, 2018(4) SCC 483**, it was incumbent upon the Tribunal to have framed a preliminary issue for deciding the legality of the domestic enquiry and in the eventuality of fault having been found in the domestic enquiry, to have allowed the petitioner opportunity to lead independent evidence to prove the misconduct/charge on merits. Relevant extract of the decision of Hon'ble the Supreme Court in Kurukshetra University's case (supra) is reproduced as under :-

“24. We are constrained to observe that first, the Labour Court committed an error in not framing a “preliminary issue” for deciding the legality of domestic enquiry and second, having found fault in the domestic inquiry committed another error when it did not allow the appellant to lead independent evidence to prove the

misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence, the respondents' termination is bad in law.

“29. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable.

31. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.”

7. Since, despite holding that the domestic enquiry was vitiated, opportunity to lead independent evidence to prove the misconduct/charge on merits against the respondent workman was admittedly not given, the writ petition is allowed. Award of the Tribunal is set aside to the extent that pursuant to the finding of the domestic enquiry being vitiated on account of non-compliance with the principles of natural justice, the learned Tribunal would from that stage grant an opportunity to the petitioner-management to lead independent evidence to prove the misconduct/charge against the respondent workman on merits as also the respondent workman an opportunity to rebut the same, thereafter record its findings on the issue of misconduct, consequentially termination. Since the matter pertains to charge-sheet dated 18.07.2010, therefore, while setting aside the award, and remanding the matter to the Tribunal, parties through counsel are directed to

put in appearance before the learned Tribunal on 03.07.2019 for proceedings in accordance with law. The learned Tribunal would endeavour to conclude the proceedings as expeditiously as possible, preferably within a period of three months from the date parties put in appearance before it.

8. At this stage, learned counsel for the respondent-workman states that during the pendency of the award before this Court, the respondent-workman is entitled to wages last drawn in terms of Section 17-B of the Industrial Disputes Act, 1947. No reply has been filed to the application u/s 17 B despite notice due to learned counsel for the parties agreeing to hearing of the main case. However, learned counsel for the petitioner fairly concedes that wages last drawn as per entitlement would be paid to the respondent workman for the relevant period within two weeks. CM No.7145 of 2019 disposed of in above terms.

May 28, 2019
ps

(B.S. WALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No