

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

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CWP No.1387 of 2016 (O&M)

Date of Decision : 04.04.2019

M/S TALBROS ENGINEERING LIMITED.

...PETITIONER

V/S

BHIM SINGH AND ANOTHER.

....RESPONDENTS

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

Present: Mr. Ravinder Singh Randhawa, Advocate and
Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Anil Shukla, Advocate for respondent No.1.

B.S. WALIA, J. (ORAL)

[1] Challenge is to award Annexure P-3 dated 03.09.2015, passed by the learned Industrial Tribunal-cum-Labour Court III, Faridabad (hereinafter referred to as 'the Tribunal'), answering the reference in favour of the respondent-workman by holding him entitled to reinstatement in service with continuity of service and full back wages along with 9% interest on the arrears from the date of dismissal along with costs assessed at Rs.5100/-.

[2] Learned counsel for the petitioner contends that award (Annexure P-3) was passed on the ground that the inquiry conducted against the respondent-workman was not fair and proper, therefore, his termination of service was not justified.

[3] Learned counsel contends that the following issues were framed by the learned Tribunal:-

1. *Whether the enquiry proceedings conducted against the workman were in violation of principles of natural justice and liable to be set aside as prayed for on the grounds as averred in demand notice? OPW*
2. *Whether the termination of services of claimant Shri Bhim Singh is not proper and justified, if so its effect? OPA*
3. *Relief.*

[4] Learned counsel contends that although issue No.1 was treated as a preliminary issue and despite holding that the inquiry conducted was not fair and proper, the learned Tribunal did not grant opportunity to the petitioner-management to lead evidence to prove the misconduct alleged against the respondent-workman as per its stand in the written statement.

[5] Learned counsel contends that once it was held that the domestic inquiry was not in accordance with law, opportunity was required to be granted to the petitioner-management to lead independent evidence to prove the misconduct/charge on merits in view of its prayer to said effect in the written statement to the demand notice as well as decision of Hon'ble the Supreme Court in 'Kurukshetra University versus Prithvi Singh', 2018(4) SCC 483 and 'Neeta Kaplish versus Presiding Officer, Labour Court', 1999(1) SCC 517.

[6] Learned counsel for the respondent-workman has not been able to dispute the aforementioned factual position as well as proposition of law except to contend that the learned Tribunal had held that the charges leveled against the respondent-workmen were false and frivolous.

[7] I have considered the submissions of learned counsel for the parties.

[8] Admittedly, the preliminary issue was whether the inquiry proceedings were in violation of the principles of natural justice. Aforementioned preliminary issue was answered in favour of the respondent-workman and it was held that the inquiry was in violation of the principles of natural justice. Once said conclusion was arrived at opportunity was required to be granted to the petitioner-management to lead independent evidence to prove the misconduct/charge on merits in view of its prayer to said effect in the written statement to the demand notice as also the decision of Hon'ble the Supreme Court in 'Kurukshetra University's case (supra) as well as 'Neeta Kaplish's case (supra). Relevant extract of the decision 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.”

Likewise, extract of decision in ‘Neeta Kaplish’s case (supra), where similar view point was taken by Hon’ble the Supreme Court is reproduced as under:-

18. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

22. Having regard to the findings recorded by the Labour Court that the domestic enquiry was not properly and fairly held and an effective opportunity of hearing was not given to the appellant, the Labour Court was right in calling upon the Management to lead fresh evidence. Since the Management did not lead any fresh evidence on merits, the appellant was well within her right to say that she, too, would not lead any fresh evidence. But, for that reason, her claim could not be rejected- Rather, she was entitled to be

granted relief then and there. However, having regard to the entire circumstances of the case particularly when the Labour Court had itself found that the enquiry was not fairly and properly held, we allow the appeal, set aside the judgement of the High Court and that of the Labour Court and remand the case back to the Labour Court to decide the case afresh after requiring the parties to lead fresh evidence on merits in pursuance of its order dated 21.11.1995. Having regard to the fact that the appellant was removed from service on 04.04.1987, we direct that the Labour Court shall dispose of the whole matter within three months from this date on which the certified copy of this Judgment is produced before it. There will be no order as to costs.”

[9] Apparently, in the circumstances, the learned Tribunal erred in answering the reference in favour of the respondent-workman without first giving an opportunity to the petitioner-management to lead evidence to substantiate the charges leveled against the respondent-workman.

[10] In the circumstances, the writ petition is **allowed**. Award (Annexure P-3) dated 03.09.2015 passed by the learned Tribunal is **set aside** to the extent that pursuant to the stage of the learned Tribunal holding the inquiry to have been vitiated, opportunity shall be granted to the petitioner-management to lead evidence to substantiate the charges leveled against the respondent-workman. Thereafter, depending upon the findings recorded by the learned Tribunal on the issue of misconduct in accordance with law, issue of termination would be decided. Since the matter pertains to charge sheet dated 05.12.2006, therefore while setting aside the award and remanding the matter to the learned Tribunal, parties through counsel are directed to put in appearance before the learned Tribunal on 03.06.2019 for proceedings in accordance with law. The learned Tribunal would endeavor to conclude the

proceedings within a period of three months. Needless to mention, parties would be granted opportunity to lead evidence *qua* their respective claims, in accordance with law.

(B.S. WALIA)
JUDGE

April 04, 2019
'Rajneesh'

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