

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13180 of 2017 (O&M)
Date of Decision: 01.04.2019

Managing Director, CONFED

... Petitioner

Versus

Rampal and another

... Respondents

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

Present: Mr. Padamkant Dwivedi, Advocate,
for the petitioner.

Mr. K.B. Sharma, Advocate,
for Mr. P.M. Kansal, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.(Oral)

1. The impugned award is so utterly flawed on all the aspects of the case that in order to restore justice, only a remand will do by making way for a fresh determination of the referred dispute. It appears that the Labour Court has not even acquainted itself with the file and seems to have decided this case on the facts of some other case. There were two stages of the trial. One was a determination of the preliminary issue as to whether the inquiry held was fair and proper. The Labour Court reached the conclusion that the inquiry was neither fair nor proper on totally fallacious findings which are contrary to record and don't match them.

2. The Labour Court says that the inquiry conducted by the management is flawed. In para.13 of the interim award/order, the Labour Court misread the statement of O.P. Sharma, WW-2 twisting it to mean that this witness called by the workman has admitted in his deposition that

workman was made to depose first whereas the management should have adduced evidence to start with and then to have allowed workman to cross-examine that witness and after close of evidence by the management in the inquiry, only then statement of workman in defence should have been recorded. The Labour Court is convinced that no witness was examined by the Inquiry Officer in the first instance to prove the charges and no opportunity to cross-examine was given to the workman and therefore the inquiry is neither fair nor proper. Both these findings are completely erroneous, there being no admission in the testimony of O.P. Sharma, WW-2 as imagined by the Labour Court.

3. The Labour Court further says that no Presenting Officer was appointed. This is also far from the truth.

4. The Labour Court further says that the Inquiry report is wholly cryptic and is not supported by any reason. A look at the inquiry report would convince a reader that it is far from being cryptic or the findings are not supported by reason. The Labour Court has held that the Inquiry Officer himself became the prosecutor and thus the inquiry cannot be considered to be fair and proper and this lapse alone is sufficient to vitiate the inquiry. The Labour Court holds that the Inquiry Officer did not issue any notice for any particular date and this is the lapse which proves beyond doubt that the inquiry was not conducted in accordance with proper procedure this shows a biased mind. This is also an incorrect statement twisting facts. A large number of zimni orders etc. are available on record requisitioned from the Labour Court, which show to the contrary.

5. There is no such admission in the statement of WW-2. In short,

the Labour Court has held on the point in Para.15 that:-

“Without any Presenting Officer, without production of any record of witness, holding one man enquiry by the Enquiry Officer shows nothing but bias and ill-will of the disciplinary authority such a course adopted by the authority is complete violation of doctrine of natural justice and tantamount to a total miscarriage of justice which cannot be sustained.”

6. On these wrong premises, the Labour Court came to the conclusion that the inquiry was neither fair nor proper and proceeded to pass the impugned final award dated February 18, 2016 in Ref. No.456 of 2008 setting aside the dismissal order and awarding reinstatement with continuity of service and 50% back wages to the workman from the date of demand notice. It may be mentioned that of the seven charges, four were proven. I cannot see from where the Labour Court has introduced facts which are not on record and it is apparent that an entirely new case has been made out beyond the pleadings and the evidence. Since the interim award and final award are so patently erroneous, they cannot be legally sustained and, therefore, they deserve to be set aside.

7. Without going into the fairness of the inquiry or commenting on the nature of the dismissal order, the only cure for the slipshod order on the preliminary issue and the award is to invalidate both of them upon issuance of a writ of certiorari and remand the case back for fresh disposal in accordance with law.

8. The petitioner would be at liberty to produce the document before the labour court being the order dated December 11, 2002 passed by the Managing Director of the petitioning-Federation relied on as additional

evidence; and which forms part of CM No.8467-CWP of 2017 (Annex P-5).

- 9. LCR be returned to Labour Court, Panipat.
- 10. Parties are directed to appear before the Labour Court on 26.04.2019.
- 11. The petition stands partly allowed as above. Pending applications, if any, stand disposed of.

(RAJIV NARAIN RAINA)
JUDGE

01.04.2019
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes/No