

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.18481 of 2014 (O&M)
Date of Decision: 11.03.2019**

Punjab State Power Corporation Ltd.
and another

... Petitioners

Versus

Presiding Officer, Industrial Tribunal,
Ludhiana and another

... Respondents

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

Present: Mr. S.S. Gurna, Advocate,
for the petitioner.

Mr. Sharwan Sehgal, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.

1. The power Corporation has approached this Court under Article 226 of the Constitution praying for a writ of certiorari to quash the impugned award dated March 28, 2014 passed by the Industrial Tribunal, Ludhiana. The respondent No.2 has been reinstated to service without back wages. The brief facts as noticed from the award which are necessary for adjudicating the case are as follows:-

2. The workman-Ashwani Kumar was appointed as a Sub Station Attendant by the Power Corporation in September 1989. He was dismissed from service on December 01, 2005 following an inquiry into misconduct of absence from duty without leave or prior intimation for a long period of about one and half years from June 2000 to December 2001. Charge-sheet was issued on December 06, 2001 which led to minor penalty of censure.

On return to work in the year 2002 he remained intermittently absent from

work for many days of the month ahead but he somehow managed to draw full salary for the period in connivance with employees, assert the management.

3. He again went absent in November 2002 when he was asked by a memo dated March 31, 2003 to join duty but he failed to do so. He did not produce any medical certificate to explain absence on medical grounds. He was again charge-sheeted on October 28, 2003. He filed the reply which was considered and an Inquiry Officer was appointed to hold a regular inquiry. His statement was recorded. He was given full opportunity to cross-examine the departmental witnesses and on conclusion a copy of inquiry report was sent to him at his residence to submit his objections, if any, but he refused to receive the docket posted to him. The punishing authority dismissed him on December 01, 2005. He raised a dispute which was remitted to the Labour Court for adjudication. Parties led their evidence. The Labour Court has held on the evidence that the inquiry was not conducted in a fair and proper manner. To the mind of the Labour Court, the record revealed that on September 14, 2004 the statement of management witness Jasvir Singh was recorded but the workman was not allowed to cross-examine this witness on the charge against him of absence. The Inquiry Officer simply asked the workman if he wanted to see any further record to which he answered in the negative stating that he had already seen the requisite record. He refused assistance of a co-employee during the inquiry. The Labour Court took the view that failure by the Inquiry Officer to give opportunity to cross-examine witness has caused great prejudice to the workman. The observations in the inquiry report are to the effect that the

workman was satisfied during the recording of evidence but does not meet the requirements of a proper and valid inquiry. The Labour Court records in the award that what questions were asked and what were its answers during the course of cross-examination are not on record. There was no evidence if the inquiry report Ex.M-10 was received by the workman or not. In these circumstances, the inquiry was faulted as improper and unfair. It is settled proposition that if an inquiry is neither fair nor proper it is no inquiry in the eyes of law. Once the inquiry was faulted the Labour Court was of opinion that it was not necessary to go into the guilt of absence. Therefore, no finding was called for because the procedure adopted during the inquiry proceedings is illegal for establishing the charge. The Labour Court has also refrained from giving a clean chit to the workman regarding his absence. On technical grounds, the dismissal order has been set aside and the workman has been reinstated to service. He has been denied back wages by the award dated March 28, 2014. When back wages are denied it would no longer be necessary to go into the question whether the workman is gainfully employed after dismissal and during the litigation.

4. I asked the learned counsel for the petitioners whether any request had been made by the management that in case the inquiry is held to be neither fair nor proper then it should be given an opportunity to establish the guilt of the workman for the first time before the Labour Court. The answer is in the negative and I, therefore, assume that neither an application was made in this behalf at any stage nor was a plea taken in the written statement or by way of any another pleading that such an opportunity should be given to the Power Corporation. Prayer for fresh inquiry is request based

in the Labour Court and the Labour Court would not *suo motu* call upon parties to lead further evidence to establish guilt or innocence of the workman. In the first and longer spell of absence which formed basis of charge-sheet dated December 06, 2001 led only to minor award of penalty of censure.

5. I have heard counsel and find no merit in the case set up by the petitioning management for the first time in the writ petition regarding publication of notices in newspapers i.e. in Ajit Jalandhar issue dated March 03, 2005 and in Indian Express dated March 04, 2005 as there is no evidence of refusal at any stage prior to these public notices of appearance in the inquiry. The workman may have been a habitual absentee or had disregarded his work and duty but that does not absolve the management of holding a fair inquiry while dealing with a regular employee.

6. I have no reason to disbelieve or disagree with the findings of the Tribunal after it has paid attention to the evidence on record and appreciated its evidentiary value and attached due weight to the relevant facts. If the inquiry was bad, the end product which has been fashioned by the Tribunal is natural fallout and reinstatement would be the just remedy to correct a wrong done. The Labour Court in its judicious discretion has denied back wages altogether which suitably balances out the interest of both the parties in a fair, just and reasonable manner. It is not for this Court in writ jurisdiction to substitute opinion from the one taken by the Labour Court unless the findings are perverse or irrational. This Court does not sit in appeal over the tribunal and its jurisdiction is limited within the scope of Article 226 of the Constitution of India to mend errors apparent on the face

of the record. I find no legal infirmity in exercise of discretion by the tribunal.

7. As a result of the above discussion, I find no ground warranting interference in the award.

8. Accordingly, the petition is dismissed. No costs.

(RAJIV NARAIN RAINA)
JUDGE

11.03.2019
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Whether speaking/reasoned	Yes
Whether reportable	Yes/No