

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

Date of decision: 18.03.2019

CWP No.3094 of 2013 (O&M)

Chamiara Cooperative Agricultural Service Society Limited

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal, Jalandhar & another

...Respondents

CWP No.6209 of 2012 (O&M)

Chamiara Cooperative Agricultural Service Society Limited

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal, Jalandhar & another

...Respondents

CWP No.19771 of 2013

Jaswant Singh

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Jalandhar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jyoti Sareen, Advocate,
 for the petitioner in CWP Nos.3094 of 2013 & 6209 of 2012;
 and for respondent No.2 in CWP No.19771 of 2013.

Mr. R.K.Arora, Advocate,
 for the petitioner in CWP No.19771 of 2013; and
 for respondent No.2 in CWP Nos.3094 of 2013 & 6209 of
 2012.

RAJIV NARAIN RAINA, J.

1. This order will dispose of the above captioned three writ petitions, as common questions of law and facts are involved in them which can conveniently be decided by a common order.

2. Chamiara Cooperative Agricultural Service Society Limited (hereinafter to be referred as 'the Management') preferred CWP No.3094 of 2013 assailing the Award of the Industrial Tribunal, Jalandhar dated 07.11.2012 forwarded for publication on 19.11.2012, which sets aside illegal termination and grants reinstatement with continuity of service to respondent No.2-workman as well as 50% back wages from the date of termination till the date of award and from the date of award, he is held entitled to full wages. The Management also preferred CWP No.6209 of 2012 challenging the award dated 22.12.2011, whereby respondent No.2-workman has been ordered to be reinstated with continuity of service with full back wages with simple interest at the rate of 8% p.a. Workman is also before this Court by way of CWP No.19771 of 2013, challenging the award dated 07.11.2012 claiming full back wages along with interest at the rate of 8% p.a. in terms of award dated 22.12.2011 passed in Reference No.613 of 2000 between the same parties.

3. In CWP No.3094 of 2013, notice was issued on the contention of the petitioner-management that a request was made for leading evidence in defence of the termination order and, therefore, the Industrial Tribunal

should have permitted the petitioner to lead evidence in terms of Section 11-A of the Industrial Disputes Act, 1947 (for short 'the Act') to justify the termination. On this contention, notice re: stay was also issued and in the meanwhile, operation of the award was stayed subject to the provisions of Section 17-B of the Act. It is inherent in the contention that the termination was not lawful and, therefore, opportunity should be given to the management to cure the defects. It is mostly from this narrow angle that I have heard arguments presented on behalf of the management and the workman but keeping in view the entire case and the multifarious litigations that termination/retrenchment four times over has generated and raised concerns.

4. To answer the question(s), it is important I think to go through the broad pleadings presented by the parties before the Industrial Tribunal at Jalandhar in the reference proceedings in challenge to and in defence of a resolution dated 01.08.1998 of the Cooperative society, which brought about termination without holding inquiry. The charge against the workman was that he did not submit the surety bond as required by law and; secondly, for absence from duty without authorization. That it was a case of no inquiry is the admitted position. The specific challenge by the workman in his claim statement dated 01.10.2007 in Reference No.654 of 2007 decided by the Industrial Tribunal by the impugned awarded dated 07.11.2012 published on 19.11.2012 was pleaded in Para 9, which reads:

“9. xx xx xx

- (a) That no inquiry was held before passing the impugned order.
- (b) That the order in question was passed by the respondent against the settlement and the undertaking given before this Hon'ble Court on 20.07.1998.

- (c) That the agenda specifying date, time and place was issued by the Managing Committee of the Society for 01.08.1998.
- (d) That the order in question was passed in hasty manner as the time was going to expire on 04.08.1998 and the order in question was passed on 01.08.1998 and sent to the petitioner/workman on 03.08.1998 by post, which was received on 06.08.1998.
- (e) That the petitioner/workman has been giving applications to allow him to mark presence and to purchase the essential commodities but inspite of repeated requests of the petitioner/workman the Managing Committee with mala fide intention neither allowed the petitioner/workman to mark presence in the register nor purchase the material nor gave the salary to the petitioner/workman.
- (f) That in spite of the application sent by the petitioner/workman under postal certificate with a copy of the authorities of the department, he was not allowed to join the service.
- (g) That before the settlement dated 20.07.1998, a settlement between the petitioner/workman and the President of the society was also arrived at in a complaint on 20.10.1997 filed by the petitioner/workman, but all the times the Managing Committee of the society ran away from the settlement.”

5. In the corresponding Para 9 of the written statement of the management, it was pleaded in counter as under:

“9. That the contents of para no.9 are vague and baseless. The plea taken in this para is incorrect therefore denied. The claimant be put to strict proof of his plea taken in this para. The order passed by the Society is legal and in accordance with law and plea taken in sub-para (a) to (g) are incorrect, therefore, denied for the reasons mentioned in the foregoing paras. The allegations made are false

and baseless. The claimant be put to strict proof of his plea taken in the sub-para.”

6. A bare reading of the defense statement of claim of the Management reveals that no request was made by them that in case the termination is held to be illegal when not accompanied by a regular inquiry into the allegations of misconduct, then they should have opportunity to prove the case before the Industrial Tribunal by leading evidence in support of the termination.

7. It is long settled since Firestone that in cases where domestic inquiries have been conducted against workmen and, they do not ultimately stand the test of judicial scrutiny and are declared illegal either procedurally flawed or substantively unfair, then management can always reserve its right and enforce it by leading evidence empowered by Section 11-A of the Act. In case the inquiry is faulted by the Industrial Tribunal/Labour Court and the termination is grossly suspect and liable to be set aside as null and void, then the request must be carried forward by the Labour Court itself holding the inquiry by permitting parties to lead their evidence for or against the termination. In the absence of such a request made at any stage before the award is passed, the management cannot complain that such an opportunity should have been given. They forget that this is a request jurisdiction. Labour Court or Tribunal is not to act *suo motu* to come in aid of those who do not seek such an opportunity. The only two issues, which were put to trial, were: (i) Whether the applicant falls within the definition of ‘workman’ under Section 2(s) of the Act? and (ii) Whether his services were illegally terminated? If so, then for what relief workman is entitled to? The onus of the first issue was on the management and of the second on the workman. While deciding Issue No.2, the Industrial Tribunal toward the end of Para 7

considered this aspect and was of the view that in the written statement no plea has been taken that inquiry was held and the management claimed right to prove charges on merit before that Court. The management did not claim a preliminary issue to justify its action for the first time before the tribunal.

8. Before this Court, Ms. Jyoti Sareen, learned counsel appearing for the petitioner-Management relies on a judgment of the Supreme Court reported as Divyash Pandit Vs. Management N.C.C.B.M., AIR 2006 SC 92 to contend that even if Management did not make a prayer for additional evidence in its written statement, this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of documents at any stage of the proceedings before they were concluded. Once the Labour Court came to the finding that the inquiry was *non est* then the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an Award in favour of the workman. In the Supreme Court case, there was a specific issue framed by the Tribunal (Issue No.4); whether the domestic inquiry held by the management is improper and invalid and whether the finding is perverse? The Labour Court had surprisingly failed to decide Issue No.4. The High Court in the writ appeal/petition was of the view that the Labour Court should adjudicate 'all' the issues afresh. The matter was accordingly remanded back to the Labour Court for deciding all the issues afresh. When the matter came back on remand, the Labour Court still refused to re-determine Issue No.4. This led to filing of an application before the High Court in which proceeding it was clarified that the Court had meant that all four issues be re-decided and had thus directed to give only one opportunity to the Management to lead

evidence on Issue No.4. The appeal to the division Bench proceeded on the basis that the challenge was to the clarification order and not the main order dated 02.12.2002 resulting in dismissal of the appeal. Against this, the workman went to the Supreme Court. The appeal was dismissed as both the orders did not need any interference. It is in that background that the Supreme Court adjudicated the matter and discountenanced the argument based on additional evidence which was still required to be permitted on record even though no specific prayer was made for additional evidence. The Supreme Court applied its earlier law in Karnataka Road Transport Corporation Vs. Laxmi Dev Amma, AIR 2001 SCW 1981. The distinguishing feature in the present case is that neither is there request in writing by the management to conduct an *ab initio* inquiry in the pleadings nor is there a specific issue framed. The second issue framed in the case in hand is whether termination is illegal. This was broad enough for the management to have adduced every piece of evidence it had to prove the termination legal and valid. Nothing stopped them from discharging the burden which fell on them. They failed to do so. As a matter of fact, the facts of this case are entirely differently from those revealed in the judgment in *Divyash Pandit's* case, as the management is a Cooperative Society registered under the Punjab Cooperative Societies Act, 1961 and is governed by a constitution which prescribes the procedure as to how resolutions have to be passed. The procedure followed has been seriously faulted by the Tribunal/Labour Court after weighing the evidence on record and returning findings of fact after appreciating it. Take a look at these events: the Managing Committee's term was to expire on 04.08.1998. Show cause notice was issued to the workman on 16.07.1998 regarding his absence and

non-furnishing of surety bond. The resolution of termination was dispatched to the workman on 03.08.1998. Thus, the Industrial Tribunal concluded that the Managing Committee was apparently in a hurry to call off the services of the workman before the expiry of its term. There was no time left to conduct a full fledged inquiry. Even the surety bond sought by the employer and which was a charge of misconduct was furnished by the workman and placed on file before the Managing Committee and even before the Deputy Registrar, who referred the same to the Managing Committee for action. Surety bond was furnished by the workman's father of immoveable property. The short coming was satisfied. But it failed to be considered by the management on a flimsy pretext.

9. More telling is the fact that the dispute regarding joining duty and furnishing surety bond was settled before the Deputy Registrar, Cooperative Societies on 20.07.1998 in the presence of Darshan Singh and Atma Singh (Ex.W-195). Darshan Singh was the President of the Society, while Atma Singh was its Vice President. That matter was adjourned to 11.08.1998. However, before the next date, the impugned resolution dated 01.08.1998 was passed by the Managing Committee terminating the services of the workman on the ground that surety has not been furnished and the workman was absent from duty. The proceedings before the Deputy Registrar, Cooperative Societies were evidently aborted. The management did act in a hurry in the view of the tribunal. The outgoing committee got rid of the respondent-workman.

10. Not only this, the Board had shortly earlier constituted a three Member Sub Committee consisting of Darshan Singh, President; Atma Singh, Vice President and Gurbachan Singh, Member, who resolved to

recommend the termination of the petitioner, but they also participated and approved the resolution dated 01.08.1998 becoming judges in their own cause. For this meeting, the Tribunal has held that 15 days' notice as required under the Rules of the Society for calling a meeting was not given.

11. The workman relies on the decision of the Supreme Court in Cantonment Executive Officer & others Vs. Vijay D. Wani & others, AIR 2008 SC 2953: (2008) 12 SCC 230 holding that participation of the Members of a Committee who found the incumbent employee guilty in the decision-making process to dismiss the incumbent from service was biased. Once the disciplinary committee finds the incumbent guilty, its members cannot be allowed to sit in the Managing Committee to punish the workman on the basis of their alleged findings. The Managing Committee had assigned the duty to a Sub Committee to make an inquiry, but they permitted the three Members to deliberate in the final decision. Therefore, the decision making process was biased.

12. It may be mentioned that the workman had gone in appeal before the authority under the Punjab Cooperative Societies Act, but had thereafter withdrawn the appeal to approach the Labour Court.

13. It is argued by Ms. Sareen that no permission was sought or granted and, therefore, the proceedings before the Labour Court are *non est*. It is contended that the workman having appeared before the Deputy Registrar, Cooperative Societies is estopped from raising the present dispute by his act and conduct. The plea has been taken in the written statement filed before the Industrial Tribunal and deserves to be considered before parting.

14. On the point in issue it has been recorded in the award in the end of Para 7 while deciding Issue No.2 by the Tribunal that the appeal filed

against the order dated 01.08.1998 was withdrawn before the Deputy Registrar to raise an industrial dispute. I, therefore, asked for the order withdrawing appeal. The same has been produced together with application dated 20.03.2001. The head-note of the application reads that it is one for grant of permission to withdraw the appeal with permission to seek remedy under the Industrial Disputes Act, 1947. It is averred in the application that the case was pending for 19.03.2001 for arguments and the arguments were heard and the order was kept reserved. In Para (2) of the application, it has been averred that the Society has passed another order terminating the services of the workman and that matter is already pending before the Labour Court at Jalandhar and in case the present appeal is decided by the Court of the Deputy Registrar, Cooperative Societies, Jalandhar, it may cause conflicting judgments. So in order to avoid technicalities of law, the applicant wants to withdraw the appeal seeking permission to seek appropriate remedy under the Industrial Disputes Act. The prayer was for withdrawing the appeal with permission to seek remedy under the Act. Vide order dated 24.03.2001, the Deputy Registrar passed the following order on the application:

“Keeping in view the prayer of the appellant, he is allowed to withdraw his appeal.”

15. In view of the above narration of facts, the appeal was not withdrawn without a reason and the order made was based on the prayer made in the application. Therefore, there is strong indication that permission was deemed to be granted. Accordingly, the objection of the Management is devoid of substance and is overruled.

16. Thus, I have no doubt that the Industrial Tribunal had the jurisdiction to decide the dispute referred to it. The tribunal has appreciated the case in the correct perspective and returned proper findings of fact on both the issues, which are not open to be disturbed in the limited jurisdiction exercised by this Court under Article 226 of the Constitution reviewing the award/s of the Tribunals. There is neither any perversity nor any material irregularity in those findings as to the illegality of the resolution/order of termination/dismissal and that the respondent-claimant satisfied the test of “workman” under section 2(s) of the Act. It is a view which could well be taken on the evidence and the materials on record on record and I would, therefore, desist from interfering in the award and the relief granted by it. Accordingly, the award dated 07.11.2012 passed in Reference No.654 of 2007 is upheld as fair and just and CWP No.3094 of 2013 is dismissed as without merit.

Second Petition

17. In the connected writ petition filed by the Management i.e. CWP No.6209 of 2012, the impugned award has been passed by the same Industrial Tribunal earlier in December, 2011. The subject matter of that case is an earlier termination of the workman-Jaswant Singh in which a favourable order has been passed by the Labour Court by setting aside the order dated 07.09.1999, whereby his services were terminated w.e.f. 04.09.1999 as illegal and void. Relief of reinstatement has been awarded to the respondent with full back wages till reinstatement. The Tribunal has also held the workman entitled to continuity of service and all other service benefits along with compensation of Rs.10,000/- for the harassment caused to him as a result of the termination order passed on the basis of an illegal

inquiry. The arrears were ordered to be paid along with simple interest at the rate of 8% p.a. The workman has suffered four instances of terminations in the past, two of which are before this Court in this batch of cases, while other two went in favour of the workman. Those terminations were vide orders dated 10.09.1991 and 14.02.1994. Both the orders were set aside by the authorities under the Cooperative Societies Act. The 3rd was vide resolution dated 01.08.1998, which petition has failed today. The workman had also invoked the authority under the Payment of Wages Act for recovery of money. In this case, the petitioner was charge-sheeted on 10.04.1999 on the ground that he had disobeyed the orders of the Managing Committee and it was imputed that the sale of essential commodities was less and the business was running in loss for which the workman is responsible. The order of the Managing Committee, which was not obeyed by the workman, was not mentioned in the notice. He was suspended and a Sub Committee consisting of Balbir Singh, President; Pritam Singh and Ajaib Singh, Members was constituted to go into the allegations of charge-sheet. The Tribunal examined the papers and read the evidence and reached the conclusion that it was a case of no inquiry. The Inquiry Committee/Sub Committee had already made up its mind even on receipt of reply to the show cause notice and before conclusion of inquiry to terminate the services of the workman. No evidence was recorded to prove the charge. It was not mentioned as to which direction of the Managing Committee was not complied with. The workman was not given opportunity to defend himself. The inquiry was concluded on receiving of reply. The inquiry report recommended that the workman should not be retained in job, which could not be held by a delegate except by the Managing Committee being the

appointing authority. No inquiry report was sent to the workman to invite objections nor was any show cause notice issued before dismissal. The much litigations beforehand showed that the Society wanted to rid of him, as in the that case, even in this case, the Society did not claim in the written statement that it should be allowed to lead evidence to prove charge/s levelled in the charge-sheet.

18. As I have said earlier that this is a request jurisdiction and is not an automatic duty cast on the Industrial Tribunal/Labour Court to embark upon an inquiry afresh. Findings of fact have been recorded which I am unable to upset for want of any valid reason, there being no apparent or palpable error on the fact of the record.

19. The legal position has been culled out and explained by the Supreme Court in the leading case Delhi Cloth & General Mills Vs. Ludh Budh Singh, AIR 1972 SC 1031 in the following propositions:

“(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the- Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be

just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under s. 10 or by way of an application under s. 33 of the Act.”

Then again the Supreme Court in *Ludh Budh Singh* observed and held as under:

“The appellant did not ask for an opportunity to adduce evidence when the proceedings were pending; nor did it avail itself of the right given to it in law to adduce evidence before the Tribunal during the pendency of the proceedings. **If such an opportunity had been asked for and refused or if the Tribunal had declined to**

receive evidence, when it was sought to be tendered on behalf of the management, when the proceedings were still pending, the position would have been entirely different. In such a case, it can be held that the appellant had been deprived of the opportunity which should have been afforded to it, in law, of adducing evidence on merits before the Tribunal if the domestic enquiry was held to be defective. Having due regard to the fact that the appellant moved the Tribunal in that regard only after the proceedings had come to an end, it cannot be said, in this case, that such an opportunity had been denied to it."

20. In State Bank of India Vs. R.K.Jain & Others, AIR 1972 SC 136 the Supreme Court by a three-judge bench held as follows:

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

21. While on the proposition one may also profitably refer to the judgments in Indian Iron & Steel Co Ltd. Vs. Their Workmen, AIR 1958 SC 130; Karnataka State Road Transport Corp. Vs. Lakshmiddevamma (Smt) & Anr., (2001) 5 SCC 433 and Shankar Chakravarti Vs. Britannia Biscuit Co Ltd, AIR 1979 SC 1653.

22. Accordingly, this petition is also ordered to be dismissed.

Third Petition by Workman

23. Now coming to the petition filed by the workman i.e. CWP No.19771 of 2013, I have heard Mr. R.K.Arora at some length regarding

what relief should be granted keeping in view the 50% back wages granted in the impugned award dated 07.11.2012 and full back wages along with interest at the rate of 8% p.a. granted by award dated 22.12.2011 passed in Reference No.613 of 2000. In order to avoid any overlapping and to bring clarity and harmony to end the dispute, I have felt it reasonable and adequate that the workman be reinstated to service with effect from the date of termination with 50% back wages payable from the date of termination in 1998 till the date of the award. Post award, the workman will be entitled to full back wages after deducting payments made under Section 17-B of the Act, if any, for a just and equitable conclusion of the cases. Payment of full back wages is declined.

24. With these observations and directions, the writ petitions filed by the management stand dismissed, while the petition preferred by the workman stands disposed of in the above terms. The award dated 07.11.2012 stands modified accordingly.

18.03.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>