

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.02.2019****CWP No.6309 of 2016**

Jagdish Singh

...Petitioner

Vs.

The Divisional Manager, CTU, Chandigarh & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.D.S.Bal, Advocate, for the petitioner.

Mr. Raghav Goel, Advocate, for
Mr. Harkesh Manuja, Advocate, for respondents No.1 & 2.**RAJIV NARAIN RAINA, J. (ORAL)**

1. The petitioner raised an industrial dispute without availing remedy of statutory appeal against the punishment order as per the provisions of the Punjab Civil Services Rules, as applicable to the employees of UT Administration. If any official/employee/workman is aggrieved by the orders of the punishing authority/appointing authority, in that case he may file an appeal against the punishment order. However, in case the workman had not availed the opportunity to file a statutory appeal against the punishment order and instead served a demand notice directly under the Industrial Disputes Act, 1947, the reference is liable to answered in the negative and the workman left free to exhaust his remedy in the first instance. It is only then the Appellate Authority will be within its power to rescind, vary or maintain the punishment order. Therefore, industrial

disputes under Section 2(k) will not come into existence till such time as the last remedy provided by Rules is not resorted to and exhausted. This objection was taken by the UT Administration before the Presiding Officer, Industrial Tribunal -cum- Labour Court, Chandigarh in Ref.No.137/2010. A bare reading of the award discloses that the objection was not pressed by the UT Administration. However, since the matter coming into existence of a industrial dispute, the issue goes to the route of jurisdiction. Accordingly, the proceedings before the Labour will be only be seen as a sheer waste of time.

2. I had occasion to deal with such a situation where remedy of statutory appeal against the punishment order was not availed and workman approached Labour Court on a reference directly and the effect of by-passing the remedy of appeal on the award in Gurbachan Singh Vs. Presiding Officer, Industrial Tribunal, Bathinda, CWP 26214 of 2012 decided on 22.1.2013 and later in Jarnail Singh Vs. Presiding Officer, Industrial Tribunal, 2017 (3) S.C.T. 462 (CWP 8468 of 2017). Court while setting aside the awards relegated the workman to statutory appeal held as follows:

“2. I could have dismissed the petition by a short order but what I wish to emphasise in this case before parting, is that persons like the petitioner when assailing orders of punishment where statutory remedy is available in the department against the penalty orders before the competent appellate authority either in the Corporation [as in the present case] or the State Government but to which legal recourse is not availed in the first instance and the Labour Court is approached in a rush and hurry then what might be the effect on the proceedings and the award. Supposing remedy available in rules was resorted to in prescribed time as per rules that would have offered an opportunity to the authority above the punishing authority to revisit the order and make a suitable final decision thereon in mitigation or otherwise of the penalty. There may have been a sea change in the

result if the course was adopted given that there would have still been room left for; say, reduction in punishment. But that chapter is shut by the petitioner rushing to Court while smarting under the penalty order without appealing to higher authority. Presiding Officers know that once in court the stance of the defendant against an action is always defensive and hard. I have pondered over this issue for some time and wish to say a few things which have crossed my mind and I wish to share them with the Presiding Officers as they might profit from it in contain litigation pending in their hands and those yet to be filed, in the small area contemplated for guidance in this order so that they may improve upon the theme with their rich practical experience which I may not have.

3. To wit, even if reference proceedings are at the initial stages or the award has been pronounced, could it still be terminated or the award not given effect to by the High Court, since statutory remedy was bypassed in search of protection of the provisions of the Industrial Disputes Act, 1947. There is a theory that delayed gratification is often more satisfactory than instant gratification.

4. On these lines I would advise the Presiding Officers that the Labour Court should remain vigilant to this jumping of administrative remedy when approached directly or by reference as it would seem far better to return claimant in the beginning to firstly exhaust the prescribed statutory remedy and then come back. Towards this end, I have followed the law enunciated by the Division Bench of the Karnataka High Court in Division Controller, Karnataka State Board Transport Corporation, Bangalore Central Division, Bangalore v. G.M.D. Murthy, 2002 (2) CLR 162 ruling that remedies under Section 10 of the ID Act can be invoked only after statutory remedy of appeal provided under service rules is exhausted in case titled Gurbachan Singh Vs. Presiding Officer, Industrial Tribunal, Bathinda and others, CWP 26214 of 2012 decided on 22.01.2103 which was rendered in a situation where the remedy of appeal prescribed against the punishment order was not invoked and Labour Court approached by raising industrial dispute bypassing the wholesome remedy where relief was capable of being had. I had observed in Gurbachan Singh case while accepting the dictum in G.M.D. Murthy on principle was eminently worth

application in this Court's jurisdiction for Labour Courts and Tribunals to emulate, quoting extensively from the judgment of the Karnataka High Court while setting aside an award on the short ground of remedy not availed, holding as follows:-

“It has been reasoned by the High Court [Karnataka] as follows:-

“22. An individual workman can take remedial measures under the provisions of the Industrial Disputes Act only in a case where an industrial dispute can be said to be existing within the meaning of Section 2-A of the said Act. This section reads as under:-

“2-A. Dismissal, etc. of an individual workman to be deemed to be an industrial dispute.-- Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute”.

“23. To our mind, the order of discharge, dismissal, retrenchment or termination cannot be said to be giving rise to an industrial dispute so long as management like the Corporation is duty-bound to entertain and resolve the grievance of the workman within the framework of its statutory regulations providing for appeals and revisions. As already noticed above, the workman has a statutory right to assail the order of disciplinary authority on all the grounds which can be raised before the Tribunal or Labour Court under the Industrial Disputes Act.

“24. Therefore, we are of the opinion that till the order of discharge, dismissal, retrenchment or

termination does not attain its finality up to revisional stage contemplated under Regulation 35 of the Regulations, the action of the Corporation taken against the workman cannot be said to have matured into an industrial dispute entitling the workman to invoke the provisions of reference and adjudication under the Industrial Disputes Act.

25. *Taking of the above view will avoid chances of conflicting orders and the Corporation will have full opportunity to rectify any error committed by its officers, may be disciplinary or appellate. This will also reduce the load on the dockets of the Labour Court which are already overburdened. By this process, the Labour Court will have the benefit of views of the appellate and revisional authorities who are duty-bound to take care of all the permissible grievance raised by the workmen in relation to their discharge, dismissal etc., may be regarding the procedure, finding or the quantum of punishment. Therefore, adopting of such a recourse cannot in any way prejudice the cause of the workman rather it will facilitate him to get his grievances properly ventilated before the authorities of the Corporation who will have full access to all the records and can better appreciate the facts and the related grievances.*

26. *For the aforesaid reasons, we hold that no industrial dispute can be raised or referred to Industrial Tribunal or the Labour Court relating to discharge, dismissal, retrenchment or termination of any individual workman employed in the Corporation unless it is shown and found that he has exhausted all his statutory remedies provided under the regulations. It is only if, even after the finality of such internal remedies the workman still feels dissatisfied with the action of the Corporation, then only he can seek for his remedy under Section 10 of the Industrial Disputes Act.”*

The view of the Division Bench appears to this Court to be flawless rendition of the law and deserves to be followed. Following the thread of reasoning as above the reference itself is rendered incompetent and without jurisdiction. The Labour Court was thus not competent to decide the matter in the face of alternative remedy under rules framed under proviso to Article 309 of the Constitution of India, to wit the Punjab Civil Services (Punishment & Appeal) Rules, 1970 applicable to the Punjab Roadways. However, since the petitioner was pursuing a remedy in a wrong forum an allowance deserves to be given to him by affording him the protection under Section 14 of the Limitation Act, 1963 since the period of limitation for filing departmental/statutory appeal may have run out long ago. Learned counsel for the petitioner submits that in view of this legal position he now be relegated to his remedy of statutory appeal de hors the award of the Labour Court. There is merit in prayer no.1. The award is, therefore, liable to be set aside. The setting aside of the award without hearing the other party will not lead to any injustice to the Punjab Roadways which is a department of the Government bound by the rule of law. In fact adopting such course would subvert justice. The view of the appellate authority on the dismissal would emerge which it would have been bound to decide had an appeal been preferred. Therefore, it is not necessary to call upon the respondent – Punjab Roadways to respond to this petition. Neither they can be said to be aggrieved if a direction is issued by this Court that petitioner be permitted to avail his remedy of statutory appeal against the order of dismissal on pleas that may be available to him under the law and on facts which he may press in his defence. The award is therefore nullified. Resultantly, it is not necessary to examine the impugned award on merits and nothing said therein would be taken into consideration by the appellate authority in the Transport Department, Punjab nor would it impede its judgment in reexamination of the matter. A direction is, therefore, issued that the petitioner may file an appeal within 30 days of

receipt of certified copy of this order before the Appellate Authority. In case, such an appeal is filed, the same would be decided on merits without citing bar of limitation. In case, such an appeal is filed, a further direction is issued that the same be decided on merits by the authority within three months of the date of filing of the appeal. Needless to add, the Appellate Authority would afford opportunity of hearing to the petitioner and pass an order in appeal in accordance with law. In case the order in appeal is adverse to the petitioner he would be at liberty to challenge the same in accordance with law.”

5. On a consideration of the law in G.M.D. Murthy case on relegation to statutory remedy against adverse orders passed by the authorities to appellate forums even in the presence of award of Labour Court/Tribunal and on consideration of the fact that the punishment was imposed two decades ago on August 01, 1996, then at this distance of time it may not be prudent or pragmatic to set aside the award and remit the matter back to the appellate authority in anticipation of a decision in appeal against the punishment order, much that I would liked to have. But I would not on merits since the award is perfectly in order and switches off the relief.

6. Nevertheless, and for the future it appears to me that broad guidelines deserve to be laid down for Labour Courts and Tribunals to follow in situations prevailing where the available statutory remedy has not been applied for and exhausted, the Labour Courts and Tribunals in Punjab, Haryana and Chandigarh on receipt of reference or when approached directly under amended Section 2A of the ID Act are advised to terminate the reference by foreclosure of trial on merits of the dispute on proof of statutory remedy being available under the rules of service but not pursued. They should immediately relegate the workman in the first opportunity after IDR is registered where claimant qualifies as a civil servant-cum-workman under Section 2(s) of the Act or an employee of Corporations, Municipalities, or other statutory bodies etc. and service is regulated by statutory rules to show him or her the way to first avail his/her remedy in statutory appeal with liberty to approach the labour court again in case order is still adverse to his interest. If

the decision of the competent authority is still adverse then they may go ahead. This, if followed, would give an opportunity to the competent appellate authority to correct errors and omissions in the passing orders by the punishing authority by either affirming or varying them, as the case may be. This may go a long way in strengthening the framework of Section 11A of ID Act while considering proportionality and reasonableness of action taken within Labour Court's power to award lesser punishment will be realistic when the final decision on punishment by the appellate authority is known.”

3. In view thereof, the petitioner is relegated to his remedy before the appellate authority. So that the award does not come in the way of appeal or prejudices parties, it is set aside. The petitioner may file an appeal within 30 days from the receipt of certified copy of this order and the appellate authority will sympathetically consider the application for condoning delay in filing appeal, if any, in view of the period spent litigating bona fide in this Court. The appellate authority will take an independent decision without being influenced by anything said in the award.

4. It is expected that the appellate authority will decide upon the rights of the petitioner and the respondents on merits on the quantum of punishment being the only issue that was raised in this petition.

5. With these observations and the liberty, the petition stands disposed of.

07.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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