

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

CWP No.22553 of 2019

Date of decision: 07.11.2019

Punjab Agro Industries Corporation Ltd.
and another

.... Petitioners

Versus

Kuldeep Singh and another

.... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Anupam Singla, Advocate for the petitioners.
 Mr. Ravi Gakhar, Advocate for respondent No.1.

B.S. Walia, J.

[1] Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award, Annexure P/2 dated 14.05.2019 passed by the learned Industrial Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal').

[2] Brief facts of the case leading to the filing of the writ petition are that respondent No.1 (hereinafter referred to as the workman) was working with the petitioners as Weaver w.e.f. 08.06.1979. A charge-sheet dated 18.07.2012 was issued to him on the allegation that due to his negligence, 21907 quintals of wheat pertaining to the crop year 2009-10 and 38305 quintals wheat pertaining to the crop year 2010-11 was damaged and the same having been supplied to the Food Corporation of India (FCI) was declared by the FCI as non-issuable as a result of which the FCI made

deductions in interest due to late submission of documents. Accordingly, the petitioners/Corporation suffered a loss of Rs.11,93,03,250/-.

[3] That the Enquiry Officer submitted his report dated 07.10.2013 holding all the charges levelled against the workman to be proved whereupon show-cause notice dated 19.11.2013 was issued to the workman and after giving opportunity of hearing to the workman on 31.01.2014, his services were terminated vide order, Annexure P/1 dated 31.01.2014 while ordering recovery of Rs.11,93,03,250/-.

[4] That the order, Annexure P/1 dated 31.01.2014 was challenged by the workman before the Tribunal which vide award, Annexure P/2 dated 14.05.2019 answered the reference in favour of the workman and ordered his reinstatement with full back-wages and other service benefits.

[5] Learned counsel for the petitioners contended that a perusal of the award revealed that the Tribunal had passed the award solely on the ground that the enquiry officer had failed to follow the proper procedure and also failed to comply with the principles of natural justice while conducting the enquiry proceedings, whereas as per decision of Hon'ble the Supreme Court in **Kurukshetra University vs Prithvi Singh, 2018 (4) SCC 483** it was incumbent upon the Tribunal to frame a preliminary issue for deciding the legality of the domestic enquiry and in the eventuality of fault being found in the domestic enquiry, to allow the management to lead independent evidence to prove the misconduct/charge on merits. Relevant extract of the decision of Hon'ble the Supreme Court 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."

[6] Learned counsel for the petitioners has also relied upon the decision of Hon'ble the Supreme Court in **Neeta Kaplish vs Presiding Officer, Labour Court, 1999 (1) SCC 517**. On the basis of the aforementioned decision, learned counsel contends that the Tribunal could have granted liberty to the petitioners/Corporation to hold a fresh enquiry against the workman in case the Enquiry Officer had failed to follow the proper procedure during the enquiry proceedings and in case there was a technical defect in the enquiry proceedings, then in that circumstances, since the workman had caused a loss of Rs.11.93,03,250/- it was essential to safeguard the interest of the public exchequer by granting an opportunity to hold a fresh enquiry and/or to lead fresh evidence before the Tribunal against the workman.

[7] Per contra, learned counsel for the workman contended that no demand whatsoever was made by the petitioners/Corporation for permission to lead evidence before the Tribunal in the eventuality of finding being recorded that the enquiry was vitiated and in the circumstances, in view of the decision of Hon'ble the Constitution Bench of the Supreme Court in **Karnataka State Road Transport Corporation vs Smt. Lakshmiddevamma, 2001 (5) SCC 433**, the award passed was immune from challenge and did not warrant any interference.

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

[9] Admittedly preliminary issue was not framed as to whether the enquiry was fair or proper and the issues framed on the basis of pleadings of the parties were as under :-

“(1) Whether the services of the workman were terminated illegally and unlawfully by the respondent?

OPW

(2) Whether the workman is entitled to get any relief from the respondent in the present reference. If so, to what extent? OPW

(3) Relief.”

[10] The Tribunal on the basis of evidence concluded that the Enquiry officer had relied upon the statement of witnesses whose cross-examination was never allowed to be conducted by the workman and in the circumstances, the Tribunal held that the enquiry report submitted by the Enquiry Officer was not sustainable as proper procedure had not been followed by the Enquiry officer while conducting enquiry against the workman besides, the Enquiry Officer did not supply the statement of the witnesses to the workman facilitating the workman to cross-examine the witnesses as provided under Section 3 of the Indian Evidence Act. Therefore, the enquiry report was liable to be rejected. The Tribunal further held that non-consideration of the defence of the workman which was very much relevant and important in the case also amounted to violation of the principles of natural justice. *Besides, the Management in their written reply had neither requested for conducting enquiry again nor requested the Court to be allowed to lead evidence to prove the negligence of the workman in Court in case the enquiry was held to be vitiated, so, no order of re-enquiry could be made in the case.* The Tribunal further held that neither the

Enquiry Officer provided an opportunity to the workman to cross-examine the witnesses of the Management nor he supplied the statements of the Management witnesses to the workman facilitating him to cross-examine the witnesses nor he considered the material defence produced by the workman, therefore, enquiry conducted by the Enquiry Officer was against the principles of natural justice and was not sustainable. Accordingly, show-cause notice, Ex.R-4 dated 19.11.2013 and dismissal order, Ex.R6 dated 31.01.2004 on the basis of the enquiry report, Ex.R3 dated 07.10.2013 were not sustainable and liable to be set aside. In the light of the position as noted above, show-cause notice Ex.R4, dated 19.11.2013, enquiry report, Ex.R3 dated 07.10.2013 and dismissal order, Ex.R6 dated 31.01.2014 were set aside and the workman was held entitled to reinstatement in service with full back wages and other service benefits like seniority, increments etc. The Management was directed to reinstate the workman forthwith and pay him back-wages and other service benefits within a period of three months from the date of award failing which the workman was entitled to claim interest @ 6% per annum on the back-wages and other service benefits from the date of the award till actual realization and in case, the workman attained the age of superannuation during the pendency of the reference, then the Management was held liable to pay full back-wages and other service benefits considering the workman in service till the date of his retirement.

[11] A perusal of the decision in Kurukshetra University's case (Supra) reveals that Hon'ble the Supreme Court held that if the domestic enquiry was held illegal and improper then the next question which arose for consideration was whether to allow the employer to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the employee and the employer was entitled to

do so after praying for an opportunity to allow it to lead evidence and pleading the misconduct in the written statement. Relevant extract of the same is reproduced as under:-

“22. If the domestic enquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant (employer) to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent (employee). The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written statement. (see- also para 33 at page 1665/66 of Shankar’s case(supra)).

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.”

[12] Hon’ble the Supreme Court further observed that the Labour Court had committed an error in the said case 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 employer 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 employee’s termination bad in law and in the circumstances, set aside the award of the Labour Court as also the judgment

of this Court and remanded the case to the Labour Court to afford the employer an opportunity to lead evidence to prove the misconduct alleged by it in the written statement against the worker and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination was directed to be decided.

[13] However, the Constitution Bench of Hon'ble the Supreme Court in Karnataka State Road Transport Corporation's case (Supra) held that in **Shambhu Nath Goyal vs Bank of Baroda and others, 1984 (1) SCR 85**, the Management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the Management had to file to the reference made under Section 10 of the Act. In other words, the Management had to exercise its right to lead fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court. Hon'ble the Supreme Court held that since in Karnataka State Road Transport Corporation's case (Supra), the employer did not seek permission to lead evidence until after the Labour Court had held that the domestic enquiry was vitiated, it was of the opinion that the High Court had rightly dismissed the writ petition filed by the employer, therefore, the appeal had also to fail and was also dismissed with costs. Relevant extract of the same is reproduced as under :-

“16. While considering the decision in Shambhu Nath Goyal's case, we should bear in mind that the judgment of Vardarajan, J. therein does not refer to the case of Cooper Engineering (supra). However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in Goyal's case the management was given the right to adduce evidence to justify its domestic enquiry only if it had

reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.”

[14] Hon’ble the Supreme Court further held that right of the management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court was not a statutory right and was actually a procedure laid down by the Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the Management and the workman and further by relying upon the decision in **Workmen of Motipur Sugar Factory (Pvt.) Ltd. vs Motipur Sugar Factory, 1965 (3) SCR 588** held that if the domestic enquiry was irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tried the merits itself. Relevant extract of the same is reproduced as under :-

“Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or Court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The genesis of this

*procedure can be traced by noticing the following observations of this Court in **Workmen of Motipur Sugar Factory (P)Ltd. Vs. Motipur Sugar Factory, 1965 (3) SCR 588 :***

“If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself....”

[15] In the instant case, no prayer whatsoever was made by the petitioners in the written statement or even for that matter by way of a separate application for permission to lead evidence before the Tribunal in the eventuality of the Tribunal coming to the finding that the enquiry was vitiated.

[16] In view of the decision of the Constitution Bench of Hon’ble the Supreme Court in Karnataka State Road Transport Corporation’s case (supra), the Management had the right to exercise its right to lead fresh evidence at the first available opportunity in the instant case by way of filing objections to the reference made under Section 10 of the Act and not at any

time thereafter during the proceedings before the Tribunal. However, the petitioners / Corporation neither claimed any right to lead fresh evidence in the objections to the reference under Section 10 of the Act or for that matter even thereafter though it is well-settled that the Management had to exercise its right to lead fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal. Therefore, since in the instant case the employer did not seek permission to lead evidence at any stage at the time of filing of objections to the reference under Section 10 of the Industrial Disputes Act, therefore, the plea that the Tribunal should have granted opportunity to the petitioners is misconceived and is accordingly rejected.

[17] The issue of non-framing of preliminary issue pales into insignificance since as per the decision of the Constitution Bench of Hon'ble the Supreme Court in Karnataka State Road Transport Corporation's case (Supra), in view of Shambhu Nath Goyal's case (Supra), the Management is to make a plea for leading evidence in support of the misconduct at the earliest. In other words, in case of a reference under Section 10 of the Industrial Disputes Act at the time of filing objections and not thereafter at any stage of the proceedings and since in the instant case, the Management did not make any claim for being allowed to lead evidence in support of misconduct, the question of the Tribunal affording an opportunity to the Management to lead evidence in support of the misconduct is mis-conceived as the Tribunal has noted in the award that no prayer at all either for leading evidence or for conducting re-enquiry was made by the Management at any stage whatsoever and it is settled position of law that the opportunity to lead evidence to prove the misconduct alleged by the Management against the workman is not to be granted by the Tribunal or Labour Court suo motu and

is to be granted only if the same is prayed for by the Management at the appropriate stage.

[18] Hon'ble the Supreme Court in **Shankar Chakravarti vs Britannia Biscuit Co. Ltd. and anr., 1979 (3) SCC 371** held that if no request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity.

Relevant extract of the same is reproduced as under :-

“When read in the context of the propositions culled out in Delhi Cloth & General Mills Co. case and the Firestone Tyre & Rubber Co. Of India (P) Ltd. case, the decision in Cooper Engineering Ltd. case merely indicates the stage at which an opportunity is to be given but it must not be overlooked that the opportunity has to be asked for. Earlier clear-cut pronouncements of the Court in R. K. Jain's case and Delhi Cloth & General Mills Co. case that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate stage and there is no duty in law cast on the Industrial Tribunal or the Labour Court suo motu to give such an opportunity notwithstanding the fact that none was ever asked for are not even departed from. When we examine the matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their rights more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, the application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity.”

[19] Therefore, making a prayer for leading evidence to prove the misconduct alleged against the workman in case of domestic enquiry being vitiated as not being fair and proper is a *sine qua non* and in the absence of any prayer in respect thereto, the Management cannot agitate or challenge the award on the ground that opportunity to lead evidence to prove the misconduct before the Tribunal/Labour Court was not granted.

[20] In view of the position as noted above, no circumstances have been pointed out warranting interference with the well-reasoned award passed by the Tribunal. Accordingly, finding no merit in the writ petition, the same is dismissed. However, there shall be no order as to costs.

(B.S. Walia)
Judge

07.11.2019
amit

- | | |
|--------------------------------|---------|
| 1. Whether speaking/reasoned : | Yes/No. |
| 2. Whether reportable : | Yes/No. |