

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

L.P.A. No.1567 of 2016 (O&M) in
Civil Writ Petition No.11587 of 2012
Reserved on : October 30, 2019
Date of decision: September 03, 2020

Maruti Suzuki India Limited, Gurgaon ...Appellant

Versus

Inderjeet Kumar and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.D.S.Patwalia, Senior Advocate assisted by
Mr.Harsh Mehla and Mr.Kanan Malik, Advocates
for the appellant.

Mr.Ashwani Bakhshi, Advocate for respondent No.1.

HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 13.05.2016 in CWP No.11587 of 2012 titled 'Inderjeet Kumar vs. M/s Maruti Suzuki India Limited and another' whereby, the writ petition filed by respondent No.1 - Inderjeet Kumar was allowed.
2. Respondent No.1 had filed the writ petition seeking quashing of the order dated 20.07.2009 and the award dated 22.9.2011 of the Ld. Industrial Tribunal-cum-Labour Court -I Gurgaon.
3. Respondent No.1 was appointed as Technician L-3 in the establishment of the petitioner vide order dated 29.11.1990. His services

were confirmed as such w.e.f., 04.06.1991. He was promoted to L-4 vide order dated 29.04.1994 and further promoted to L-5 vide order dated 01.07.1998.

4. It was the case of respondent No. 1 that the recognized Union of the workers of Maruti Udyog gave a demand notice to the management on 20.03.2000 raising certain demands. When the demands were not met and even no discussion was held with the Union by the Management the Union resorted to a Satyagraha outside the factory gate. The Management retaliated by resorting to victimization of the workers. Many workers were suspended. Some were dismissed. Eventually the Union called for a three hours tool down strike in the factory w.e.f., 03.10.2000. The confrontation between the management and the Union even figured in the Parliament. Ultimately, under the auspices of the Hon'ble Minister for Heavy Industries a Settlement dated 08.01.2001 was reached between the Management and the Union and work was resumed w.e.f., 09.01.2001. It was further the case of respondent No. 1 that the Settlement did not result in any change in the attitude of the management towards the workers. As part of a design to reduce the strength of the workers the petitioner was transferred to a new department on 09.01.2001. On 17.01.2001 he was given a warning letter that he was not completing his work. Respondent No.1 submitted reply denying the allegations. He was then transferred to another department where the nature of the work was completely different. He was issued another warning letter dated 01.03.2001 on the same lines as the previous letter. Respondent No.1 submitted reply denying the allegations. He was

suspended w.e.f., 13.03.2001 and subsequently issued charge-sheet dated 23.03.2001 on the charge that he did not complete the assigned work and was not respecting his superiors in the transferred unit. Without considering his reply dated 23.04.2001 to the charge sheet, the Management decided to hold domestic inquiry against him. Inquiry Officer was appointed on 26.05.2001 who submitted his report on 24.02.2002 that the charges against him had been proved. Respondent No. 1 was issued show cause notice. He submitted his reply on 10.07.2002. He was dismissed from service on 7.8.2002. Respondent No. 1 filed appeal before the Managing Director. When his grievance was not redressed he raised an Industrial Dispute by serving demand notice. The matter was referred to the Industrial Tribunal for adjudication.

5. The issue regarding fairness of the enquiry was treated as a preliminary issue by the Ld. Tribunal. Respondent No. 1 examined himself as PW 1 and closed his evidence. The management only submitted certain documents. No witness was examined. The Tribunal vide order dated 27.07.2009 decided the preliminary issue against respondent No.1. It passed final award dated 22.09.2011 answering the reference against respondent No. 1. Respondent No. 1 then filed the writ petition impugning the aforesaid two orders which has been allowed by the judgment under appeal.

6. The primary contention of respondent No. 1 before the Ld. Single Judge was that the domestic enquiry was not fair and proper. The principles of natural justice were not followed. It was also argued that the

findings recorded by the enquiry officer were not supported by any cogent evidence.

7. The arguments were particularly advanced with reference to Clause 21.4 of the Certified Standing Orders. Relevant extract of which is as under:

“A chargesheet will be served upon the workman against whom the enquiry is to be held wherein the circumstances against him will be mentioned clearly and he will be asked to give clarification. He will be given opportunity to reply to the charges and he will be allowed to be defended by any worker working in the same department where he is working or by the representative of the recognized union. Except for the reasons recorded by the Enquiry Officer in writing, the workman will have the liberty to produce witnesses in his defence and to cross-examine such a witness on whose evidence the charge is based. The short crux of the evidence will be provided to the opposite party and the argument of the workman will be recorded.”

8. Various communications with the Inquiring Officer were referred to. It was pointed out that the order sheet maintained by the Inquiry Officer revealed that the name of every co-worker or a member of the Union put forth by respondent No.1 to plead on his behalf was not accepted by the Inquiry Officer. Resultantly Management Witnesses 1 to 4 were examined on 19.09.2001, 3.10.2001 and 10.10.2001 in the absence of respondent No. 1 having the assistance of any co-worker/ member of the Union. Having realized the flaw, the enquiry officer reopened the enquiry proceedings on 25.01.2001. Respondent No. 1 was asked to engage the

services of a co-worker/ member of the Workers Union. However instead of commencing the enquiry afresh, he only permitted the cross examination of the management Witnesses examined earlier. In view of this the co-worker assisting respondent No. 1 withdrew his assistance. Respondent No. 1 asked for two weeks time on 13.2.2002. The Inquiry Officer refused and ordered the inquiry closed. It was thus argued that the violation of the principles of natural justice was patent vitiating the inquiry and the consequential orders of dismissal.

9. The Ld. Single Judge considering the matter concluded as under:

“ 11) Having regard to the dates and events in the enquiry proceedings, it was evident that Inquiring Officer was biased in not allowing petitioner to take assistance of a co-worker/member of the workers union of his choice. When petitioner opted to engage the services of one Mr. Mathew Abraham and Mr. Madan Lal Sharma, the Inquiring Officer at the instance of Presenting Officer, request of the petitioner was rejected on the score that both of them are busy in several domestic enquiries. Thereafter, Mr. Madan Lal Sharma, was permitted to assist the petitioner and he may join the proceedings from the point where management's evidence was closed and can produce petitioners defence witnesses and the evidence if any on 19.10.2001. Thereafter member of the workers union Mr. Madan Lal Sharma, refused to assist him for the reasons that the Inquiring Officer asked him to assist him from the cross examination stage. Since management witnesses No. 1 to 4 were examined in the month of September 2001 and October 2001, behind the back of the petitioner. Thereafter Inquiring Officer realised the mistake that the

petitioner had not been given opportunity to take assistance of a coworker/member of workers union, reopened the enquiry on 21.5.2002. The petitioner was permitted to avail the assistance of coworker/member of workers union from the cross examination stage. When the enquiry proceedings were taken up on 13.2.2002, petitioner's co-employee (Mr. S.K. Nag) requested for two weeks to examine the enquiry records and to assist in the enquiry proceedings. Instead of granting time, Inquiring Officer proceeded with the enquiry by closing the evidence on 16.2.2002 and submitted Inquiry Report. These events clearly establishes that petitioner has not been provided proper opportunity to defend in the enquiry proceedings. On this score only the entire enquiry proceedings are liable to be vitiated.

12) Inquiring Officer's report was perused. The Inquiring Officer nowhere analyzed and discussed the evidence adduced by the management witnesses. Therefore, it is a case of no evidence. The Labour Court did not appreciate the evidence on record, as well as findings of the Inquiring Officer, even findings of the Labour Court is without substance, since the Labour Court failed to appreciate fact that the petitioner has not been provided reasonable opportunity in the enquiry proceedings. So also not appreciated the evidence on record as well as quantum of penalty imposed on the petitioner. On all these counts, the Labour Court order is liable to be set aside. The decisions cited by the respondent counsel is not applicable having regard to the facts and circumstances of the present case. The procedure irregularities is different from not giving reasonable opportunity to defend case in the enquiry proceedings. That too in a case where major penalty is imposed. The Disciplinary Authority/Inquiring Authority are required to give full and reasonable opportunity in accordance

with law. Therefore, cited decisions are not relevant to the present case. Examination of management witnesses behind the back of the petitioner and not permitting the petitioner to cross examine by giving reasonable opportunity is sufficient to hold that the enquiry proceedings are liable to be set aside.”

10. Accordingly, the punishment order dated 20.07.2009 as well as the Award of the Labour Court were set aside. Petitioners herein were directed to re-instate Respondent No. 1 with all consequential service benefits including 50% back wages.

11. Mr. Patwalia has argued that the inquiry officer had valid reasons to not accept any of the co-workers whose names were supplied by respondent No. 1 to represent him. They were either dismissed employees or employees who were engaged in large number of inquiries which would necessarily result in delaying the proceedings. He argued that respondent No. 1 had adopted a totally adamant attitude with regard to choice of co-worker to represent him solely with a view to delay the proceedings. He argued that the conduct of the inquiry proceedings thus cannot be faulted for violation of the principles of natural justice.

12. The contention of the Ld. Counsel cannot be accepted. The Ld. Single Judge has considered in detail the entire record of the enquiry proceedings and rightly concluded that respondent No.1 has been denied proper opportunity to defend himself in the inquiry. Ld. Single Judge further concluded that the Inquiring Officer has not analyzed and discussed the evidence adduced by the management witnesses. Therefore, it is a case of no evidence. The Labour Court did not appreciate the evidence on

record, as well as findings of the Inquiring Officer.

13. We find no illegality or infirmity in the order of the Ld. Single Judge warranting interference.

14. The appeal is accordingly dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No