

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

CWP-17525-2023 (O&M)
Date of Decision: 20.10.2023

M/S ABBOTT HEALTHCARE PRIVATE LIMITED

...Petitioner

Versus

PRESIDING OFFICER AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Saurab Munjal, Advocate
for the petitioner.

Mr. D.R. Punia, Advocate
for respondent No.2.

HARSH BUNGER, J. (ORAL)

Petitioner-company (M/s Abbott Healthcare Private Limited) has filed the instant writ petition under Article 226 of the Constitution of India, seeking quashing of order dated 08.02.2023 (Annexure P-1) as well as order dated 30.05.2023 (Annexure P-2) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Ludhiana (here-in-after referred to as 'the Tribunal') in reference No.17 of 2017, respectively.

2. Briefly, respondent No.2-Bhawandeep Singh raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. Before the Tribunal, the respondent No.2 submitted his statement of claim (Annexure P-8), which was contested by the petitioner-Management by filing its reply (Annexure P-9).

3. It appears that from the pleadings of the parties, the following

issues were framed :-

“1. Whether dismissal order dated 23.01.2016 against the workman was passed by the Management after conducted the fair and proper enquiry? OPM.

2. Whether the Respondent No.1 comes under the definition of workman as defined under the Industrial Disputes Act, 1947? OPM.

3. Whether dismissal of services of the workman was illegal and unjustified? If yes, to what relief and benefit the workman is entitled to? OPW.

4. Relief.”

4. The onus to prove Issue no.1 with regard to fairness of the enquiry was cast on the petitioner-Management. It appears that the petitioner-Management filed an application for reframing of issues, which came to be decided by the Tribunal below, vide order dated 08.02.2023 (Annexure P-1) by observing as under :-

“9. Since the workman did not file any rejoinder, therefore, issues were struck from the pleadings of the parties on the same day on 1.12.2022. Issue no.1 pertains to the enquiry, therefore, the same was treated as preliminary issue. Thereafter, the case was adjourned to 5.12.2022 for the evidence of the management and then to 09.1.2023. However, on 09.1.2023, present application for reframing the issues were filed. Reply to the said application was filed only on 19.01.2023. Thereafter, the case was adjourned to 23.01.2023, 25.01.2023, 27.01.2023 and 31.01.2023 for the arguments on the said application. However, A/R for the management failed to turn up in the court and to advance the arguments on the said dates. Thereafter, the said case was adjourned on 2.2.2023 and none appeared on behalf of the management and it was proceeded against exparte and the case was adjourned to 10.2.2023

for exparte consideration as testimony of the workman was already recorded on the file. The application was moved for setting aside the exparte proceedings against the management. The said application was allowed on the statement of the A/R for the workman and case was adjourned further.

10. Perusal of the file reveals that the management absented during the proceedings of the present case and was proceeded against exparte twice. Neither at the time of framing of issues nor on 15.2.2023 first date of evidence of the management, any objection was raised regarding framing of issues and shifting of the onus of issue No.1 on the workman instead of management. Though, the workman has alleged in the statement of claim that on the basis of one false and frivolous complaint, the management issued the charge sheet to him on 28.07.2014 and thereafter, conducted the enquiry in violation of rules and principle of natural justice and dismissed his services on 23.01.2016 on the basis of the said enquiry. However, the respondent has alleged that fair and proper enquiry was conducted against the workman and he was provided ample opportunities to defend himself. The workman however participated in the proceedings held by the enquiry officer and after the completion of the enquiry proceedings, he submitted the enquiry report. Thereafter, show cause notice was served upon the workman on 3.3.2015 and he furnished the explanation/representation to the said show cause notice, which was received on 15.6.2015. After considering the said reply, the workman was dismissed from the service on 23.01.2016. From the pleadings of both the parties, it transpires that categorical version of the management is that fair, proper and just enquiry was conducted against the workman after serving the charge sheet on him. Thus, onus lies on

the management to prove that fair, proper, just and valid enquiry was conducted by the enquiry officer according to the provisions of law and natural justice on the basis of which services of the workman were dismissed. Initially onus to prove the validity and legality of the domestic enquiry lies on the management. The said onus cannot be shifted on the workman.”

Thereafter, Issue no.1, which was treated as a preliminary issue, came to be decided by the Tribunal below vide order dated 30.05.2023 (Annexure P-2) in favour of the workman and against the petitioner-Management.

5. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

6. Notice of motion in the case was issued on 11.08.2023, when the following order was passed :-

“Learned counsel for the petitioner, inter alia, contends that the Industrial Tribunal, Ludhiana, has erred in placing the onus of proving the issue No.1 upon the Management, whereas same should have been placed upon the workman as he had filed the claim petition, challenging the inquiry proceedings. Learned counsel places reliance upon judgment rendered by the Delhi High Court in case of UCO Bank Versus Presiding Officer and another (decided on 30.08.1999), ILR 1999 Delhi 331.

Notice of motion for 18.08.2023.

Notice regarding stay as well.”

7. Today, Mr. D.R. Punia, Advocate has appeared on behalf of respondent No.2-workman and has fairly conceded that the onus of proving Issue no.1 was wrongly placed upon the petitioner-Management and further submitted that he would have no objection, if the impugned order dated

08.02.2023 (Annexure P-1) as well as order dated 30.05.2023 (Annexure P-2) passed by the Tribunal, are quashed and the onus to prove Issue no.1 regarding fairness of the enquiry, is cast upon respondent No.2-workman.

8. In view of the aforesaid position, the instant writ petition is allowed and impugned order dated 08.02.2023 (Annexure P-1) as well as order dated 30.05.2023 (Annexure P-2) passed by the Tribunal, are quashed. Accordingly, the onus to prove Issue no.1, which was ordered to be treated as a preliminary issue, shall be upon respondent No.2-workman.

9. The instant writ petition is disposed of in the afore-stated terms.

10. All pending application/s, if any, shall stand closed.

October 20th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No