

CWP No. 10914 of 2013 (O&M)

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

CWP-10914-2013 (O&M)

(arising out of the award dated 27.02.2013, passed by the Industrial Tribunal -cum-Labour Court-II,
Faridabad, in Reference No. R/976/02)

Judgement Reserved on: February 12, 2024

Judgement Pronounced on: February 20, 2024

**BCH Electric Limited (Formerly known as Bhartia Industries
Limited/Bhartia Cutler Hammer Limited)**

...Petitioner

Versus

Presiding Officer, Labour Court-II, Faridabad and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Adarsh Jain, Advocate,
for the petitioner – management.

Mr. Ashwani Bakshi, Advocate,
for respondent No. 2 – Workman.

SANJAY VASHISTH, J.

1. Petitioner - BCH Electric Limited, formerly known as Bhartia Industries Limited/Bhartia Cutler Hammer Limited (here-after referred to as, 'the petitioner-management), has preferred this petition, under Article 226 of the Constitution of India, for quashing of award dated 27.02.2013, passed by the Industrial Tribunal-cum-Labour Court-II, Faridabad (for short, 'the Tribunal'), whereby reference, under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act'), has been answered in favour of the workman. For ready reference, conclusions recorded and the relief granted by the Tribunal, are summarized hereunder:

a) Charges levelled against the workman were fake and bogus;

- b) Domestic enquiry was not fair & proper;
- c) Termination of services of workman is not justified;
- d) Workman is ordered to be reinstated in service, with continuity and 50% back wages; and
- e) Management to pay arrears of wages within two months from the date of award.

It is also relevant to notice that operation of the impugned award, was ordered to be stayed by a Co-ordinate Bench of this Court, at the time of issuance of notice of motion, vide order dated 20.05.2013.

2. Facts pleaded by respondent No. 2 – Jeevat Singh (workman) are that he was appointed by the petitioner-management on 15.02.1973, as a Sheet Metal Fitter. Vide order dated 26.09.2001, he was placed under suspension, and charge-sheet dated 04.10.2001 was issued against him, levelling bogus allegations. On 31.10.2001, when the said workman came to the factory gate and marked his attendance, he was asked to appear before Shri N.S. Rajput, Enquiry Officer in the enquiry, in the factory office premises, where some of the officials were sitting. The workman was informed that inquiry against him is being conducted and his signatures are required. Thereupon, on 4-5 papers, on which something was already written, signatures of the workman were obtained. He was assured that all the papers would be sent at his residence and he was asked to go out. No time was given to him to read those papers. Smelling some foul play by the officials acting on behalf of the management, a general strike was declared in the factory by the workers, w.e.f. 05.11.2001. The workman was neither

paid suspension allowance nor supplied any documents. Finally, said strike was called off on 10.01.2002. Thereafter, the workman was never allowed to join his duty in the factory. In January 2002, the workman was informed by the management and the Union leaders that his services were dismissed. Finally, he was handed over copy of the dismissal order dated 27/29.11.2001 (wrongly typed as '27/29.11.2002' in the impugned award), alongwith a copy of the enquiry report dated 02.11.2001, and two pages of enquiry proceedings dated 31.10.2001.

3. Case set up by the management is that on account of misconduct of the workman, he was charge-sheeted and enquiry was conducted on 31.10.2001. The workman confessed his guilt during enquiry, and confessional statement was also signed by him.

4. After completion of pleadings, the Tribunal vide order dated 23.05.2005, framed the following issues:-

- “1. Whether the termination of services of workman is justified or not, if not, what relief he is entitled to? OPA*
- 2. Whether the reference is bad in law? OPR*
- 3. Whether the enquiry conducted by the management has not been fair and proper? OPA*
- 4. Relief.”*

5. Though, it is not happily worded, however, while considering Issue No. 3, after noticing the arguments advanced by the Authorised Representative of the workman in detail, and without referring or discussing the evidence led by respective parties or assigning any reasons, the Tribunal straight away rushed to the conclusion that the charges levelled against

respondent No. 2 – workman are fake and bogus. Hence, it has been held by the Tribunal that the domestic enquiry conducted by the petitioner-management was not fair and proper. Thereafter, without giving any specific reason, the Tribunal has held that termination of the workman is bad in law, thus, ordered for reinstatement of the workman, with continuity of service and 50% back wages.

6. This Court has gone through the documents appended with the writ petition, perused the impugned award and also heard the submissions advanced by learned counsel for the parties.

7. During the course of hearing of the writ petition, learned counsel representing the petitioner-management forwarded a photostate copy of the statement of respondent No. 2 – Jeevat Singh, recorded by the Tribunal on 25.07.2006. When he appeared as WW-2, in the cross-examination, he deposes that *“I was asked to accept my mistake and then to be taken on duty and on this pretext my signatures were obtained.”* He clearly admitted his signatures by submitting that *“Ex. M-5 is the proceedings of enquiry, in which at Point ‘A’ and ‘B’, my signatures are there.”* Respondent No. 2 – workman also stated that *“it was told that I will be taken back on duty, if I affix my signatures, thereupon I signed immediately.”*

8. By reading out the statement during cross-examination of the workman, it is also found that the reliance placed by the petitioner-management upon the signature affixed by the workman during the course of enquiry, shows that some enquiry proceedings were conducted and he was

asked to plead guilty for the mistake committed by him. However, assurance was given to take back the workman in service. As per the document of proceeding of domestic enquiry, read out by the counsel for the parties before this Court (appended as Annexure P-7), workman had received the charge-sheet dated 04.10.2001, bearing Memo. No. BCH-HRD-145/274/2001, and thereupon he accepted the charges levelled against him. He also expressed regret for the same. He further gave assurance to the company/management, not to repeat such mistake in future, as also prayed to conclude the enquiry at that stage. Therefore, the signatures have been affixed by the workman. Just beneath the signatures of the workman, Enquiry Officer prepared a note by recording the factum of pleading of guilt and closed the enquiry proceedings.

9. Though this Court is exercising its jurisdiction under Article 226 of the Constitution of India, yet looking at the aspect that the findings recorded in the impugned award is not well reasoned and justifiable, this Court felt it necessary to go through the proceedings conducted during the course of enquiry, i.e. statement of both the sides, wherein enquiry is closed due to the confession made by the workman. On reading of the statement of the workman, which was recorded during domestic enquiry (Annexure P-7) and the cross-examination of the workman before the Tribunal, copy of which is produced during the course of hearing, this Court reaches to the conclusion that on account of the allegations levelled in the charge-sheet, i.e. threatening, intimidating and misbehaving the senior officers of the management on 26.09.2001, at 9.30a.m., the workman was charge-sheeted.

And, on realizing the conduct as mistake, the workman pleaded pardon during the course of domestic enquiry, by putting his signatures on the statement (Annexure P-7). This fact has also been accepted by the workman in the cross-examination recorded before the Tribunal, while appearing as WW-2. This also makes it clear that such a confession was made by the workman, due to the assurance given to him that he would be taken back on duty/service. Therefore, the observation made by the Tribunal requires to be modified.

10. This Court finds that the mistake might have been committed by the workman, but that was solitary in the long tenure of his service period of about 28 years. Therefore, for committing of one fault and then pleading pardon for it by giving of an undertaking, not to commit such a fault in future, would not warrant ousting him from service, thereby depriving him to earn livelihood and bread for his family and himself.

11. This Court is also informed that respondent No. 2-workman has already attained the age of superannuation and the order of reinstatement had been passed by the Tribunal long time back. Therefore, the relief of reinstatement in service, would not serve any purpose for respondent No. 2-workman.

12. Taking into consideration, the totality of circumstances, reading out the documents appended with the writ petition, and copy the evidence produced before this Court, I find that the order of dismissal from service is not in consonance to the charges levelled against respondent No. 2-workman and that too despite pleading pardon on account of giving assurance by the

management to take back the workman in service. Long time has elapsed when respondent No. 2-workman was dismissed from service and has even crossed the age of superannuation.

13. In such a situation, this Court holds that the order of dismissal passed by the petitioner-management, is bad in law. However, instead of reinstatement with continuity in service and 50% back wages, this Court finds it just and reasonable to grant one time alternative relief, i.e. payment of lump-sum amount of compensation, in favour of respondent No. 2-workman.

For coming to this conclusion, this Court is guided by the Division Bench judgement of this Court (Punjab and Haryana High Court), rendered in the case of **Deputy General Manager (Telecom), Bharat Sanchar Nigam Limited, Sangrur v. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another** (LPA No. 1334 of 2009, decided on 30.01.2014).

14. As a result of above discussion, impugned award dated 27.02.2013, passed by the Tribunal is modified to the extent that respondent No. 2 – workman Jeevat Singh, shall be entitled to receive lump-sum compensation amount of Rs. 2,00,000/- (Rupees Two lacs only), and same shall be paid by the petitioner-management within two months from the date of passing of this judgement. In case of default/non-compliance to pay said amount within the prescribed time period, the petitioner-management would also be liable to pay interest @ 6% per annum over the amount of Rs.2,00,000/-, with effect from the date of this judgement till the date of

actual payment.

15. With the above observations and modification, this writ petition, including pending miscellaneous applications, if any, stand **disposed of.**

(SANJAY VASHISTH)
JUDGE

February 20, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes/No
Whether reportable?	✓ Yes/No