



LPA-723-2011 (O&M)

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

LPA-723-2011 (O&M)

Reserved on : 16.07.2024

Date of pronouncement : 23.07.2024

Shishu Pal Verma

.....Appellant

Versus

The Presiding Officer, Labour Court, Patiala and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE VIKAS SURI

Present: Appellant in person.

Mr. P.K. Mutneja, Senior Advocate, with
Ms. Suverna Mutneja, Advocate,
for respondent No.2.

SHEEL NAGU, CHIEF JUSTICE

The instant Letters Patent Appeal assails the legality, validity and propriety of the order dated 02.08.2010 passed by the learned Single Judge in CWP No. 12222 of 2009, repelling challenge made to order dated 21.11.2008 rendered by the Presiding Officer, Labour Court, Patiala, in Reference No. 486 of 2000 rejecting an application preferred by the appellant – workman seeking shifting of onus upon respondent No.2 – Management to prove the validity of the departmental enquiry.

2. The appellant, appearing in person, and learned counsel for respondent No.2 – Management are heard at length.

3. The attending bare facts reveal that during pendency of proceedings of Reference made to the Labour Court qua dispute regarding unlawful termination of services of the appellant – workman after conducting enquiry, an application was moved by the appellant – workman invoking an



order from the Labour Court that the burden to prove validity of departmental enquiry, which culminated into the order of termination, ought to shift upon the Management, and thus workman should not be asked to discharge the said burden initially. The said application was dismissed vide order dated 21.11.2008 in the pending Reference before the Labour Court, which came to be assailed before the learned Single Judge in CWP No. 12222 of 2009. The said CWP was also dismissed on merits by relying upon Single Bench decision of this Court in **M/s Punjab Tractors Limited Vs. Presiding Officer, Labour Court and another**, Civil Revision No. 6337 of 2006 decided on 31.10.2007, wherein a three Judge Bench decision of Apex Court in **Shankar Chakarvarti Vs. Britannia Biscuit Co. Ltd. and another**, 1979 (2) LLJ 194 : (1979) 3 SCC 371, was relied upon. Further, reliance was placed on another decision of Apex Court in **State Bank of India Vs. R.K. Jain**, 1972 (4) SCC 304.

While rejecting the petition in question, the learned Single Judge primarily held that when the dispute relates to the termination of services of a workman, which is preceded by conduction of departmental enquiry, then the onus lies first upon the workman to prove that the enquiry is vitiated in law. Thereafter, the onus shifts upon the Management to establish the charges alleging misconduct.

4. The appellant, who appears in person, has relied upon Single Bench decision of Allahabad High Court in **U.P. State Road Transport Corporation Kanpur and another Vs. Sarfaraz Hussain and others**, 1994 SCC OnLine All. 903 and another Single Bench decision of Calcutta High Court in **A.B. Mitra Vs. Presiding Officer, Third Industrial Tribunal and others**, 1999 SCC OnLine Cal. 259. Further, reliance is made to the decision



of Apex Court in **Amar Chakravarty and others Vs. Maruti Suzuki India Limited**, (2010) 14 SCC 471, and to the Single Bench decision of Madhya Pradesh High Court in **Caparo Engineering India Ltd. Vs. Pradhanmantri Engineering Shramik Sanghthan**, 2018 (3) CLR 225 (paragraph 31).

5. Per contra, learned counsel for respondent No.2 – Management relied upon Single Bench decision of this Court in **M/s Punjab Tractors Limited's case** (supra) (paragraphs 16 to 19), a decision of the Apex Court in **The Workmen of M/s Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others**, (1973) 1 SCC 813 (paragraph 32) and a three Judge Bench decision of Apex Court in **Shankar Chakarvarti's case** (supra) (paragraph 32).

FINDINGS

6. The Single Bench decisions of Allahabad High Court and Calcutta High Court, relied upon by the appellant, are of no avail, since both these cases relate to termination of services without conduction of departmental enquiry. Further, reliance placed by the appellant on the decision of Apex Court in **Amar Chakravarty's case** (supra) does not assist him, since the said decision was founded on factual matrix, wherein the workman was dismissed without holding any enquiry, whereas the Single Bench decision of Madhya Pradesh High Court in **Caparo Engineering India Ltd.'s case** (supra) further does not help the appellant, since the same pertains to contractual employees, whose termination was not preceded by any departmental enquiry.

7. This Court, after hearing contentions of the rival parties, is of the considered view that no case for interference is made out for the following reasons :-



(i) The Labour Court for conduction of adjudicatory proceedings is governed by Industrial Disputes Act, 1947 read with Industrial Disputes (Punjab) Rules, 1958 (in short, 'the 1958 Rules'), which are *pari materia* to the Industrial Tribunal (Central Procedure) Rules, 1954. Rule 10-B of the 1958 Rules lays down the procedure for conducting proceedings before the Labour Court/Tribunal, which for ready reference and convenience is re-produced below :-

“10-B. Proceedings before the Labour Court or Tribunal –

(1) While referring an industrial dispute for adjudication to a Labour Court or Tribunal, the State Government shall direct the party raising the dispute to file a statement of claim, complete with relevant documents, list of reliance and witnesses with the Labour Court or Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.

(2) The Labour Court or Tribunal, as the case may be, after ascertaining the copies of statement of claim are furnished to the opposite party or parties as required under sub-rule (1), by the party, raising the dispute shall fix the first hearing on date not beyond one month from the date of receipt of the order of reference and the opposite party or parties as the case may be, shall file their written statement together with documents, list of reliance and witnesses within a period of fifteen days from the date of first hearing and simultaneously forward a copy thereof to the other party.

(3) Where the Labour Court or Tribunal, as the case may be, finds that the party raising the dispute though directed, did not forward the copy of the statement of claim to the opposite party or parties, it shall give direction to the



concerned party to furnish the copy of the statement to the opposite party or parties, as the case may be, and for the said purpose or for any other sufficient cause, extend the time-limit for filing the statement under sub-rule (1) or written statement under sub-rule (2) by an additional period of fifteen days.

(4) The party raising a dispute may submit a rejoinder, if it chooses to do so, to the written statement filed by the opposite party or parties within a period of fifteen days from the filing of written statement by the latter.

(5) The Labour Court, or Tribunal, as the case may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, the list of witnesses, etc. which shall ordinarily be within sixty days of the date on which the dispute was referred to for adjudication.

(6) Evidence shall be recorded either in Court or by affidavit but in the case of an affidavit the opposite party shall have the right to cross-examine each of the deponent filing the affidavit. As the oral examination of each witness proceeds, the Labour court or Tribunal as the case may be, shall make a memorandum of the substance of what is being deposed while recording the evidence, the Labour Court or Tribunal, as the case may be, shall follow the procedure laid down in rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908.

(7) On completion of evidence, either arguments shall be heard immediately or a date shall be fixed for arguments or oral hearing, which shall not be beyond a period of fifteen days from the close of evidence.

(8) The Labour Court or Tribunal, as the case may be, shall not ordinarily grant an adjournment for a period exceeding one week at a time, but in any case, not more



than three adjournments at the instance of the parties to the dispute :

Provided that the Labour Court or Tribunal, as the case may be, may for reasons to be recorded in writing, grant an adjournment for a period exceeding one week at a time.

(9) *In case any party defaults or fails to appear at any stage, the Labour Court or Tribunal, as the case may be, may proceed with the reference ex parte and decide the reference or application in the absence of the defaulting party :*

Provided that the Labour Court or Tribunal, as the case may be, may on the application of either party filed before the submission of the award, revoke the ex parte order if it is satisfied that the absence of the party was on justifiable grounds.

(10) *The Labour Court or Tribunal, as the case may be, shall submit its award to the State Government within a period of one month from the date of oral hearing/arguments or within the period mentioned in the order of reference, whichever is earlier.*

(11) *In respect of a reference under-section 2-A, a Labour Court or Tribunal, as the case may be, shall ordinarily submit its award within a period of three month :*

Provided that the Labour Court or Tribunal, as the case may be, may, for reasons to be recorded in writing, extend the period of three months for submission of the award for another specified period.”

A bare perusal of the aforesaid statutory provision reveals that after completion of pleadings in shape of statement of claim, written statement and rejoinder, if any, the Labour Court/Tribunal shall fix a date for adducing evidence within sixty days of the date of reference of dispute. Evidence shall



be recorded either in Court or by way of affidavit when the opposite party shall have right to cross-examine each of the deponents filing affidavit. For adducing evidence, the Tribunal will be guided by procedure laid down in Rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908. Thereafter, on completion of evidence, case would be fixed for passing of order/award.

A plain reading of sub-rule (6) of Rule 10-B of the 1958 Rules makes it clear that the mode of recording of evidence has been provided but the provision is silent as to which party is to discharge the burden of proof.

(ii) Since the principles enunciated in Code of Civil Procedure, 1908 are allowed to guide the Labour Court/Tribunal, it would be safe to draw inspiration from Part III, Chapter VII of the Indian Evidence Act, 1872, in particular Sections 101 and 102, which are re-produced below for ready reference and convenience :-

“101. Burden of proof – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

The said two provisions (Sections 101 and 102 of the Indian Evidence Act, 1872) lay down the time tested principle of burden of proof, that the person who asserts any fact is to prove the same and thus burden lies on him/her to do



so. Further, clarity is provided by Section 102 by stipulating that the burden of proof lies on a person who would fail in his/her claim, if no evidence at all were given on either side.

8. Taking cue from the aforesaid time tested principle in Code of Civil Procedure as well as Indian Evidence Act, this Court is required to decide as to whether burden of proving the fact of workman alleging termination of his services to be vitiated in law or not, lies upon the workman or the employer. In the case at hand, the dispute was initially raised by the workman alleging his termination to be vitiated for not following the procedure prescribed and being violative of the rules of natural justice. When the dispute came to the Labour Court to be adjudicated, the onus to prove the termination to be vitiated in law rested on the shoulder of the workman, obviously because he had alleged and asserted the termination to be vitiated in law and also that this dispute would have failed if no evidence was led on either side. Thus, it is obvious that to prove as to whether the proceedings were vitiated or not, initial burden was on the workman.

9. The three Judge Bench decision of the Apex Court in paragraphs 32 and 33 in **Shankar Chakarvarti's case** (supra) has held as follows :-

“32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence



*is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well-settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would be tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in **Tin Printers (Private) Ltd. v. Industrial Tribunal**, (1967) 2 LLJ 677, commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.*

33. *Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic ‘no’.*”

The aforesaid view has been followed by Single Bench of this Court in **M/s Punjab Tractors Limited’s case** (supra), while observing as under :-

“16. Reference is also made to a judgment of the Hon’ble Supreme Court of India, “Neeta Kaplish v. Presiding Officer, Labour Court MANU/SC/0762/1998 : (1999) 1 LLJ 275 SC”. However, that was a case where the domestic enquiry was found to be vitiated, but thereafter the Management had not led any evidence in proof of the



misconduct of the workman. Thus, the Court held that since the Management has failed to adduce fresh evidence, the order of termination cannot be said to be proper. The said judgment provide little assistance to the workman.

17. *Having perused various judgments cited at the Bar and the principles laid down therein, two situations can be envisaged. One when there is no domestic enquiry held, but the order of punishment is passed. There could cases where the Management does not hold any domestic enquiry or the infraction of the Rules applicable to the establishment are apparent from record, but still an order of removal is passed against the workman. In such a situation, the Management is required to prove the misconduct against the workman on the basis of evidence to be led before the Labour Court itself. In all such cases, the burden of proof of misconduct shall be on the Management only as the order of the Management on the face of the record is against the principles of natural justice.*

18. *However, in case where the domestic enquiry is held, but it is alleged by the workman that such enquiry is defective for one or the other reasons, the onus of proof of such preliminary issue would be on the workman to prove such domestic enquiry as vitiated. What kind of evidence will be sufficient to prove such Issue is upon the judicial wisdom of the Labour Court. If finding on such preliminary Issue is returned against the Management and the Management has sought opportunity to adduce evidence to prove misconduct before the Labour Court itself again, the learned Labour Court shall give an opportunity to adduce evidence to the Management in support of their allegations of misconduct. The onus of the proof of the preliminary Issue that the domestic enquiry is vitiated, shall lie on the person who has approached the Labour Court as the burden will lie on the person who would fail if no evidence is led.*



19. In the present case, the Management has conducted an enquiry after issuing a charge sheet. On conclusion of such enquiry, it is alleged that the order of punishment was passed after granting an opportunity of hearing to the workman. The said order of dismissal has the effect of cessation of relationship of employer and employee between the parties. The workman has sought reference under Section 10 of the Act to seek adjudication of a dispute in respect of his dismissal from the services of his employer. If the workman does not lead any evidence in respect of domestic enquiry as vitiated, for one or the other reason, it is the workman who would fail as the relationship of employer and employee between the parties has already come to an end. Therefore, it is for the workman to prove initially that the domestic enquiry is defective or is vitiated. Such finding alone would give an opportunity to the Management to prove misconduct afresh before the Labour Court, if sought, in accordance with law.”

10. In view of the above discussion, this Court sees no reason to interfere in this appeal.
11. Consequently, the impugned order dated 02.08.2010 passed by the learned Single Judge in CWP No. 12222 of 2009 is upheld.
12. Accordingly, the appeal stands dismissed.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

July 23, 2024
ndj

Whether speaking/reasoned	Yes
Whether reportable	Yes