

(2013) 11 P&H CK 0153

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 24659 of 2013

Deputy General Manager

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 2 SCT 412

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the impugned award dated 27.12.2012 (Annexure P-13), passed by the learned Labour Court, accepting the reference in favour of the respondent-workman, thereby directing his reinstatement in service with full back wages, petitioner-management has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned award. To unravel the controversy involved between the parties, a brief narration of essential facts would be required. Respondent Civil workman joined services of the petitioner-bank on 20.12.1978 in Clerical Cadre. While serving as Special Assistant at Budhakhera Branch of the petitioner-bank, respondent-workman claimed to have rendered excellent service resulting in the growth of business of the bank during his stay at the abovesaid Branch. However, the respondent-workman was placed under suspension on 16.7.2009, so as to curb his alleged trade union activities, because he was the State Secretary of the UCO Bank Employees Association, Punjab, Haryana and Chandigarh Unit and also the Joint Secretary of Bank Employees Federation of India, besides being Member of its Central Committee. Respondent-workman was served with a charge sheet to which, he filed his reply. Enquiry was conducted. Based on the enquiry report, show cause notice was issued to the respondent workman, who filed his reply which was not found satisfactory. Consequently, the disciplinary

authority, vide its order dated 25.5.2010 (Annexure P-7), ordered compulsory retirement of respondent-workman with superannuation benefits. He filed his appeal dated 11.6.2010 (Annexure P-8), which was dismissed vide order dated 9.9.2010 (Annexure P-9). Respondent-workman raised the industrial dispute. Conciliation proceedings failed and the industrial dispute was referred to the learned Labour Court for its adjudication.

2. After completion of the pleadings, parties led their respective evidence before the learned Labour Court. After hearing the parties and going through the evidence brought on record, the learned Labour Court came to the conclusion that the domestic enquiry was not conducted against the respondent-workman in fair and proper manner. Respondent-workman was directed to be reinstated with full back wages and all consequential benefits of service vide award dated 27.12.2012 (Annexure P-13). Hence this writ petition.

3. Learned counsel for the petitioner strenuously argued that the learned Labour Court exceeded its jurisdiction while passing the impugned award. Serious charges were duly proved against the respondent-workman. He further submits that while conducting the domestic enquiry, principles of natural justice were duly followed. Respondent-workman was granted due opportunity of being heard at every stage of proceedings, right from his suspension till passing of the final order. He also submits that despite the fact that the respondent-workman was found guilty of serious charges, the disciplinary authority took a lenient view while not dismissing him from service, but ordered compulsory retirement and that too, with all superannuation benefits. His appeal was also duly considered by the appellate authority and a speaking and well reasoned order was passed. Hardly any scope was left for indulgence by the learned Labour Court, who proceeded on an erroneous approach while passing the impugned award. He next contended that the case of the petitioner-management was based on the documentary evidence, but the learned Labour Court failed to appreciate the evidence led by the petitioner-management in the right perspective. To buttress his arguments, learned counsel relies upon the judgments of the Hon"ble Supreme Court in Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others, , Union of India (UOI) and Others Vs. Alok Kumar, and Burdwan Central Cooperative Bank Ltd. and Another Vs. Asim Chatterjee and Others, . He prays for setting aside the impugned award by allowing the present writ petition.

4. Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its writ jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

5. It is a matter of record that the respondent-workman joined service of the

petitioner-management as far back as on 20.12.1978. It is also not in dispute that respondent-workman was the State Secretary of the UCO Bank Employees Association, Punjab, Haryana and Chandigarh Unit, besides being the Joint Secretary of Bank Employees Federation of India and its Central Committee Member. During this period, the bank-management issued letters dated 13.2.1989, 25.8.2009, 22.9.2009, 19.3.2010 and 31.3.2010, appreciating the work and conduct of the respondent-workman.

6. However, all of a sudden, respondent-workman was placed under suspension on 16.7.2009, without issuing any show cause notice. Later on, show cause notice was issued to the respondent-workman on 14.8.2009, seeking his explanation, which he submitted. However, the disciplinary authority as well as appellate authority did not consider the abovesaid material aspect of the matter, while passing their respective impugned orders. Having said that, this court feels no hesitation to conclude that the learned Labour Court committed no error of law, while passing the impugned award and the same deserves to be upheld.

7. During the course of enquiry, petitioner-management produced only one witness namely Sh. S.K. Gupta, Branch Manager, Budhakhhera Branch as MW-1. However, interestingly, when the respondent-workman submitted his list of witnesses and list of documents, seeking permission to produce his defence evidence, the same was not allowed by the Enquiry Officer. The relevant observations made in this regard by the learned Labour Court, read as under:-

On perusal of the departmental enquiry file it reveals that workman submitted a list of witnesses and list of documents seeking, permission to file in workman's defence but the same was not allowed by the enquiry officer.

Once the respondent workman was not even allowed to produce his defence witnesses, the irresistible conclusion would be that the enquiry would stand vitiated for this reason alone.

8. Similarly, when the enquiry was being conducted at Ambala City, the respondent-workman made a request to conduct the enquiry at Budhakhhera Branch as it would be difficult for him to bring his witnesses at Ambala City. However, this genuine request of the workman was declined by the Enquiry Officer. The learned Labour Court, made the following observations in this regard:-

During enquiry workman requested that the inquiry be conducted at Budhakhhera Branch because place of enquiry i.e. Ambala City is far off from Budhakhhera Branch and it would be difficult for the workman to bring his witnesses at Ambala City. As stated above, enquiry officer denied the examination of defence witnesses also denied the filing of documents. Thus, the workman did not get fair and proper opportunity to explain his conduct and greatly prejudice in his defence.

9. Another equally important aspect of the matter was that although the

petitioner-management was placing heavy reliance upon the enquiry report and it had the opportunity to get the same treated as preliminary issue, yet the petitioner-management, for the reasons best known to it, did not avail this opportunity before the learned Labour Court. Further, the petitioner management did not adduce any evidence before the learned Labour Court in support of the enquiry proceedings, so as to show that enquiry was conducted in fair and proper manner. Once the respondent-workman was not allowed due opportunity by the Enquiry Officer to lead his defence evidence, the unassailable conclusion is and has to be that the respondent-workman was denied his valuable right to defend himself, thereby causing serious prejudice to him. Such a domestic enquiry cannot be considered to be a fair and proper one, by any stretch of imagination.

10. During the course of hearing, when a pointed question was put to the learned counsel for the petitioner as to why the Enquiry officer did not allow the respondent-workman opportunity to lead his defence evidence, he tried to justify the action of the Enquiry Officer saying that the respondent-workman submitted a long list of witnesses, who were not the relevant witnesses. Such a method and manner of conducting the domestic enquiry was totally unfair and unreasonable and result thereof was bound to vitiate the whole process and procedure of enquiry.

11. Again, on the issue of non availing of the opportunity to get the issue of fair and proper enquiry to be decided as preliminary issue before the learned Labour Court, learned counsel had no answer. In this view of the matter, it is unhesitatingly held the learned Labour Court proceeded on a factually correct and legally justified approach while passing the impugned order and the same deserves to be upheld.

12. So far as the charges stated to have been proved against the respondent-workman were concerned, own witness of the petitioner-management namely. Sh. S.K. Gupta recommended the name of the respondent-workman for appreciation letters. The relevant observations made by the learned Labour Court in this regard, are as under:-

So far the charges levelled against the workman are concerned, the management's witness Shri S.K. Gupta MW1 in his statement during enquiry stated that management witness has no power to sanction OD of Rs. 2,40,000/- to Haryana Co-operative Non-Agriculture Thrift Society Ltd. Management's witnesses in this context also replied that management witness granted OD to the society without any pressure from charge sheeted employee. In context of another charge, the management's witness has stated before the enquiry officer that to his knowledge, there was no such provision to seek permission from higher authorities to open and operate to society account by the staff member. To another question, MW stated that he does not remember whether any objection was raised by inspection/audit of the branch, Management's witness stated before the enquiry officer that he (MW) not noticed that charge sheeted employee canvassed society business while sitting in the branch. Besides this,

MW clearly stated that he (MW) recommended the name of the workman for appreciation letter.

13. Another issue, which has been altogether ignored by the disciplinary authority as well as appellate authority while passing their respective orders, was the record of their own bank, coupled with the letter dated 2.9.2010 written by the Chief Officer (Vigilance), who is none else but nominee of the Chief Vigilance Officer. The relevant observations made by the learned Labour Court in this regard, are as under:-

Bank management issued letters dated 13.2.1989, 25.8.2009, 22.9.2009, 19.3.2010, 31.3.2010 appreciating the work and conduct of the workman. Workman submitted that he was elected State Secretary of the UCO Bank Employees Association and General Secretary of the Employees Bank Federation Haryana and he used to pursue the right causes of the bank employees and that is why the management got annoyed and subjected the workman to this punishment. A letter sent by Chief Officer Vigilance to Deputy General Manager, Zonal Officer, Chandigarh bearing No. HO/Vig.ZO/Chan/1400/2010-11 dated 2.9.2010 has been placed on record. In this letter Chief Officer (Vigilance) mention as under:-

I do not concur with a view of the appellate authority.

14. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein, however, the same have been found to be distinguishable on facts. In none of the cases cited by the learned counsel for the petitioner, delinquent official was denied the opportunity to produce his defence evidence during the enquiry proceedings. This material factual difference makes the cited judgments distinguishable. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, .

15. In the present case, domestic enquiry was conducted in most arbitrary manner, glaringly violating the basic principles of natural justice. The above said view taken by this Court also finds support from three judgments of the Hon''ble Supreme Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, , State of Uttaranchal and Others Vs. Kharak Singh, Recent Apex Judgments (R.A.J.) 206 : 2008 (8) SCC 236 and State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, , two judgments of this High Court in State of Punjab v. Karam Chand, 1959 PLR 167 (FB) and S. Amarjit Singh Bhatnagar Vs. The State of Punjab and Another, ; and two judgments of Allahabad High Court in Rajya Krishi Utpadan Mandi Parishad and Another Vs. Public Services Tribunal and Others, and Luxco Electronics (Paper Cone) Vs. Presiding Officer, Industrial Tribunal (1) and Others, .

16. The relevant observations made by the Hon''ble Supreme Court in Delhi Cloth

Mill's case (supra), read as under:-

These were the allegations of misconduct in the charge sheet. But curiously, the Enquiry Officer proceeds on the basis that because the workman was in the crowd, that by itself is enough to find him guilty of the charges of obstructing the mill workers and destroying mill property. The Enquiry Officer has also committed another mistake when he proceeded on the basis that as the workman has not adduced any evidence in his defence, it is not open to him to contend that he was not responsible for the acts of destruction and damages. This observation clearly shows that the Enquiry Officer has missed the elementary principle of jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty.

The above aspects, in our opinion, have been rightly taken into account by the Industrial Tribunal when it characterised the finding recorded by the Enquiry Officer as being such that no reasonable person will come to, on the material on record. Therefore, the Industrial Tribunal was perfectly justified in coming to the conclusion that the enquiry proceedings are vitiated by violation of the principles of natural justice and that the appellant has not made out a prima facie case for grant of the permission to dismiss the respondent. Therefore the first contention of Mr. Anand will have to be rejected.

17. The Hon'ble Supreme Court in K.R. Erry's case, observed as under:-

The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice *audi alteram partem* applies. See *Province of Bombay Vs. Kusaldas S. Advani and Others*, and *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, . With the proliferation of administrative decisions in the welfare State it is now further recognised by courts both in England and in this country, (especially after the decision of House of Lords in *Ridge v. Baldwin* that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights of interests and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See: *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *In re.: H.K., An Infant* 1967 (2) Q.B.D. 617. In the former case it was observed at page 628 as follows.

An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty

to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of Our Constitutional set up that every, citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

18. In the case of Kharak Singh (supra), the Hon"ble Supreme Court made the following observations, which aptly apply in the present case:-

5. Before analyzing the correctness of the above submissions, it is useful to refer various principles laid down by this Court as to how enquiry is to be conducted and which procedures are to be followed. 6) The following observations and principles laid down by this Court in Associated Cement Co. Ltd. Vs. The Workmen and Another, are relevant:

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.. .. It is necessary to emphasis that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

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From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

19. The relevant observations made by the Full Bench of this Court in Karamchand's case (supra), which can be gainfully followed in the present case, read as under:-

Even if these proceedings cannot be regarded as judicial proceedings in the real sense of the word and even if they are not to be assimilated to a trial, even then it seems to me that they bear a close resemblance to a judicial decision and rules of natural justice apply to them with as much force as they apply to all judicial proceedings. *Shivnandan Sinha v. State of West Bengal* LIX C.W.N. 794, and *Joti Parshad Vs. Superintendent of Police and Others*, :

The expression "reasonable opportunity" has not been defined by the framers of the Constitution but there can be little doubt that the expression means opportunity, the vital elements of which are timely notice and full opportunity to the person concerned to present all the evidence and arguments which he deems important for the purpose of his case. The requirements of a reasonable opportunity are satisfied when the person affected is given personal notice of the charges he is called upon to answer; when he is informed of the place where and the time when he shall so answer; when he is afforded an opportunity, if he so chooses, to cross-examine the witnesses produced against him; when he is afforded an opportunity after all the evidence is produced and known to him to produce evidence and witnesses to refute it; when the decision is governed by and based upon the evidence at the hearing; when he is afforded an opportunity to make his representations as to why the proposed punishment should not be inflicted upon him and when the hearing is had before an unbiased and unprejudiced officer. (*Joti Prasad v. Superintendent of Police : State of U.P. v. Mohammad Nooh*) The enquiry officer must conduct the hearing with open mindedness, fairness and impartiality and must approach the hearing without

bias and without prejudgment of the issues. If the opportunity to be heard is afforded by a biased or prejudiced officer it cannot be regarded a reasonable opportunity (Joti Parshad v. Superintendent of Police) The opportunity must be a real and adequate opportunity and not merely a nominal or a sham one. If the enquiry officer conducts the proceedings before it in a manner which is contrary to the rules of natural justice or which offends the superior Court's sense of fair play the superior court would be perfectly justified in exercising the extraordinary powers vested in it by Article 226 of the Constitution (State of U.P. v. Mohammad Nooh).

20. Reverting back to the facts and circumstance of the cases and respectfully following the law laid down in the judgments, referred to hereinabove, it is held that the learned Labour Court has proceeded on a correct appreciation of facts and the impugned award deserves to upheld.

21. Learned counsel for the petitioner also failed to point out any jurisdictional error or patent illegality apparent on record in passing of the impugned award. No other substantive argument was put into service to convince this Court to take a different view than the one taken by the learned Labour Court. Further, no prejudice has been shown to have been caused to the petitioner by passing of the impugned award by the learned Labour Court. Thus, the impugned award deserves to be upheld for this reason as well.

22. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present writ petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, the instant writ petition stands dismissed, however, with no order as to costs.