

(1986) 10 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 383 of 1986

Kuldip Singh

APPELLANT

Vs

Presiding Officer Labour Court and Others

RESPONDENT

Date of Decision : 07-10-1986

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 311(2)
Industrial Disputes Act, 1947 — Section 10(1), 11A, 2, 25F

Citation : (1987) 2 ILR (P&H) 310

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : V.P. Sharma, for the Appellant; N.K. Sodhi and R.N. Raina, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The Petitioner was appointed as Field Officer in the employment of the Punjab State Co-operative Supply and Marketing, Federation Limited, Respondent No. 3 (for short "the MARKFED") in September 1967. He was on probation for a period of one year which he successfully completed. He claims to be a permanent employee of the MARKFED governed by the Punjab State Supply and Marketing Co-operatives Services (Common Cadre) Rules, 1967 (hereinafter called the Common Cadre Rules"). He was elected President of the MARKFED Employees, Union, and in that capacity he espoused the causes of the employees of Respondent No. 3 and also claims to have exposed serious lapses and financial defalcations on the part of his higher authorities On 21st December, 1979 under the directions of the MARKFED Employees, Co-ordination Committee, he in his capacity as the President of the Union, served a notice Annexure P. 1 on the then Managing Director of the MARKFED bringing to his notice the illegal appointments of the Law Officer, the Training Officer and some others Certain demands were also made therein and it was stated that in case the same were not met with the members of the Union would take resort to mass casual leave, sit, in strike general strike, demonstrations, hunger strike etc. He contends that instead of

accepting the demands of the employees contained in Annexure P. 1, his services as Field Officer were hurriedly terminated, on 2nd January, 1980 by taking resort to provision (a), to Rule 2.10 of the Common Cadre Rules,--vide order Annexing P. 2 which was delivered to him through a special messenger Reputed from Chandigarh to Patiala where he was posted.

2. Aggrieved against the order Annexure P. 2, he filed an appeal dated 8th January, 1980 Annexure P. 3 before the Registrar Cooperative Societies, Respondent No. 2, who at that time was functioning as Administrator of the MARKFED because it had no Board of Directors at the relevant time. Respondent No. 2 refused to stay operation of the order of termination Annexure P. 2. The said appeal was in fact, never heard by Respondent No. 2. It was instead transferred to the Board of Directors, after its constitution, for its decision. Even the Board of Directors did not hear the appeal. He therefore filed a petition dated 4th March, 1982 under Rule 217(e) read with Rule 1.9 of the Common Cadre Rules before Respondent No 2 who simply directed that the Board of Directors should decide the Petitioner's appeal within one month. In spite of the fact that the matter was brought on the agenda Annexure P. 4 for a meeting before the Board of Directors for consideration, no final decision was taken.

3. The Petitioner thereon approached the Labour Commissioner, Punjab, for reference of the dispute for adjudication u/s 10(1)(c) of the industrial Disputes Act, 1947 (hereinafter called "the Act") Thereupon, the following dispute was referred to the Labour Court:

Whether termination of services of Shri Kuldip Singh workman is justified and in order? If not, to what relief/exact amount of compensation is he entitled?

4. He filed his claim application Annexure P. 6 before the Presiding Officer, Labour Court, Patiala, Respondent No. 1 Respondent No. 3 filed its written statement Annexure P7 thereto. Both the parties produced their evidence. Respondent No. 1 made his award dated 18th March, 1985 Annexure P. 13 holding that, the order terminating the services of the Petitioner was justified and in order. Consequently, his claim was rejected. The award Annexure P. 13 has been impugned through the present writ petition. A prayer has been made that the same should be quashed and the order of termination of the services of the Petitioner Annexure P, 2 being void he should be held to be in continuous service of the MARKFED and he should be declared entitled to all the consequential relief? s including full backwages and other benefits attached to the post he was holding at the time of termination of his services, A prayer has also been made that the relevant part of the Rule 2.10 of the Common Cadre Rules which has been impugned being arbitrary and unconstitutional should be held ultra vires. A prayer has also been made that Respondent No. 3 should be directed to pay salary to the Petitioner from 2nd January, 1980 to 18th March, 1985 in case it is found that the Petitioner is not entitled to reinstatement with continuity of service and full backwages.

5. The petition has been opposed by Respondent No. 3. Written statement has been filed on its behalf. The, impugned order Annexure P. 2 has been justified. It has been contended that, the Petitioner was guilty of misconduct and, as, such, he was removed from service by taking resort to provision (a) to Rule 2.10 of the Common Cadre. Rules. It has been, stated that when, the matter, came up for adjudication before Respondent No 1, the MARKFED. established that the removal of the Petitioner from, service was justified. The victimization and unfair labour practices, alluded to by the Petitioner have been denied. It has been, further, contended that the MARKFED is a co-operative organization. It is not an authority" and thus "the State" within the meaning of Article 12 of the Constitution and, therefore, not amenable to the writ jurisdiction of this Court. Proviso (a) to Rule 2.10 of the Common Cadre Rules has been defended and it has been maintained that it was rightly made applicable to the case of the Petitioner. It has been further submitted that the award has been made by Respondent No. 1 after fully appreciating the evidence adduced before him. No case has been made out for interference with the same in the present writ petition.

6. I have heard the Learned Counsel for the parties at sufficient length. The question whether the MARKFED is an authority" and thus "the State" within the meaning of Article 12 of the constitution should not detain me as I have answered the same in the affirmative in my judgment K.N. Chopra v. Punjab State CW 3969/84 decided on 26th August, 1986, I, therefore, hold that Respondent No. 3 is amenable to the writ jurisdiction of this Court.

7. It is also worth mentioning here that a Full Bench of this Court in Bhupinder Singh and others v. The State of Punjab and Ors. ILR (1986) 1 P&H 164, has held that the Common Cadre Rules, which govern the services of the Petitioner as an employee of the MARKFED, are statutory in character and any person affected adversely by their enforcement can invoke the jurisdiction of this Court under Article 226 of the Constitution.

8. The Learned Counsel for the Petitioner while challenging the vires of proviso (a) to Rule 2.10 ibid has highlighted the fact that Rule 2.13 provides for discipline and appeal. It lays down that notwithstanding anything contained in any other regulation and without prejudice to such action to which an employee becomes liable under any other law or regulation for the time being in force any and all of the penalties mentioned therein may be imposed for good and sufficient reason on any member of the service. The punishment so mentioned include dismissal from service and compulsory retirement Rule 2.14 lays down that no penalty shall be imposed on any employee, unless the charge or charges on which it is proposed to take disciplinary action against him have been communicated to him in writing and he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him-The authority competent to impose the penalty may, if circumstances permit, held an enquiry into the charge or charges or cause such an enquiry to be held by an

officer superior to the person against whom the action is proposed to be taken for the purpose of ascertaining the truth or otherwise of the charge or charges. If it is decided to hold an enquiry, the employee concerned shall be permitted to cite witnesses on his behalf and examine the relevant documents but shall not be permitted to engage a lawyer at the enquiry. In view of this (sic) procedure for disciplinary action, thus proceeds the argument the unbridled and unguided power vested in the competent authority by proviso (a) to Rule 2.10 to remove an employee from service on misconduct established on record without his being entitled to a notice or pay in lieu thereof is arbitrary. It is contended that this power can be used at the whim of the authorities disregarding the right to equality before law. This provision is, therefore, stated to be ultra vires Article 14 of the Constitution. I have given thoughtful consideration to this submission and find it to be quite valid.

9. The matter is fully covered by the ratio of the judgment in *Workmen of Hindustan Steel Ltd. and Another Vs. Hindustan Steel Ltd. and Others*, . It has been held that when the decision of the employer to dispense with the enquiry is questioned; the employer must be in a position to satisfy the Court that holding of the enquiry will be either counter productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered. The minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving the slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct. Referring to the situations contemplated by proviso to Article 311(2) of the Constitution, it has been held that where a power to dispense with the enquiry is conferred on an authority to impose penalty of dismissal or removal or reduction in rank, before it can dispense with the enquiry, it must be satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such an enquiry. Power to dispense with enquiry is conferred for a purpose and to effectuate the purpose power can be exercised. But power is hedged in with a condition of setting down reasons in writing why power is exercised. Obviously, therefore, the reasons which would permit exercise of power must be such as would clearly spell out that the enquiry if held would be counter productive. The duty to specify by reasons the satisfaction for holding that the enquiry was not reasonably practicable cannot be dispensed with. The reasons must be germane to the issue and would be subject to a limited judicial review.

10. As rightly pointed out by the Learned Counsel for the Petitioner, the alleged misconduct on the basis of which the Petitioner was removed from service,--vide order Annexure P.2 relates to the month of September, 1977, while he has been removed from service by taking resort to provision (a) to Rule 2.10 on 2nd January, 1980. This speaks volumes of the unguided use of the power vested, by the impugned provision in the Common Cadre Rules. No reason has been put forward nor is there any requirement in proviso (a) to Rule 2.10 that reasons are

required to be recorded to the effect that if an enquiry into the misconduct of the employee was held: the same would have been counter productive and had to be dispensed with. This provision arms the appointing authority with an arbitrary power to resort to removal of an employee without notice by not choosing to take appropriate disciplinary proceedings against him as laid down in Rules 2.13 and 2.14 *ibid*. I, therefore, held that proviso (a) to Rule 2.10 of the Common Cadre Rules is violative of Article 14, and is, therefore, *ultra vires* the Constitution.

11. The next question that comes up for consideration is that when the order Annexure P. 2 removing the Petitioner from service had been passed without affording reasonable opportunity to him as provided under Rule 2.14 *ibid*, could Respondent No. 3 justify the same by adducing evidence before Respondent No. 1 so as to prove misconduct on the part of the Petitioner. The Learned Counsel for the Petitioner has contended that the order Annexure P. 2 is a ample, order of termination from service. Once proviso (a) to Rule 2.10 of the Common Cadre Rules is held *ultra vires* the Constitution, reference to the same in the impugned order stands obliterated. The result is that the impugned order of termination would come to fall within the scope of "retrenchment" as contemplated by Section 2(oo) of, the Act. I am not one with this argument. Reference to proviso (a) to Rule 2.10 of the Common Cadre Rules in the impugned order makes it abundantly clear that the Petitioner has been removed from service on account of misconduct. The mere fact that the aforesaid provision in the Common Cadre Rules is *ultra vires* the Constitution would not change the character of the impugned order. The position of law has been, well explained in *Mohan Lal Vs. Management of Bharat Electronics Ltd.,* . It has been held that termination by the employer of the service of a workman for airy reason whatsoever would constitute retrenchment except in cases excepted in Section 2(00) of the Act itself. The excepted or excluded case are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, and termination of service of a workman on the ground of ill-health. So, termination of service of a workman by way of disciplinary action, as has been done in the present case, is excepted. That being so, the contention of the Learned Counsel for the Petitioner that for reasons of non-compliance with the provisions of Section 25-F of the Act the impugned order is non est has to be repelled.

12. It was then contended by the Learned Counsel for the Petitioner that the impugned order Annexure P. 2 passed on the basis of alleged misconduct without affording reasonable opportunity to him as provided by Rule 3.14 *ibid* is void and that Respondent No. 1 could not resuscitate the same by allowing the MARKFED to establish the misconduct by leading evidence before him. His contention, therefore, is that the award Annexure P. 13 holding that the order of termination of services of the Petitioner is justified and in order is without jurisdiction. The

law on this aspect of the case is by now well settled and as such this contention is without merit. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , it has been held that the mere fact that no enquiry or defective enquiry has been held by the employer does not by itself render the dismissal of the workman illegal. The right of the employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to Section 11-A of the Act. Legal position" as existing prior, to coming into force of Section 11-A of the Act and changes effected thereby were discussed and explained elaborately. This position of law was reaffirmed in *The East India Hotels Vs. Their Workmen and Others*, . It was observed that even if no enquiry has been held by an employer or if the enquiry held by him found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action. Once misconduct is proved either in the enquiry conducted by the employer or by the evidence placed before the Tribunal, the punishment imposed cannot be interfered with by the Tribunal: except in cases where the punishment is harsh and oppressive. It is to be noted that in its written statement Annexure P. 7 filed by the MARKFED before Respondent" No. 1, it was categorically stated that the services of the Petitioner were terminated on account of acts of misconduct and that it, shall prove all the facts constituting misconduct before the Labour Court. Therefore, no exception can be taken to the procedure adopted by Respondent No. 1 in allowing opportunity to the MARKFED to establish misconduct on the part of the Petitioner particularly when he was also provided with the right to defend himself.

13. The Learned Counsel for the Petitioner then proceeded to assail the award Annexure P. 13 on the ground that Respondent No. 1 did not fully appreciate the evidence on the record and had wrongly held that the Petitioner had not been able to prove mala fides on the, part of Respondent No. 3 and his victimisation at the hands of its authorities. In his support he cited *Om Parkash Sharma and Anr. v. The Presiding Officer industrial Tribunal and Anr.* 1963 Lab. I.C. 173 , Before this submission is considered, it is necessary to notice that this Court while adjudicating upon the validity of an award of a Labour Court is not sitting as a Court of appeal. It is not within its jurisdiction to appreciate the evidence adduced before the Labour Court and to find out whether or not the findings of fact recorded in the award are based on, sufficient and adequate evidence Reference here may be made to *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , wherein it was observed thus--

The jurisdiction High Court to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not assail error of fact however grave it may appear to be. In regard to a finding of fact record by me Tribunal, a writ of

certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence, that would, be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ, Court,

14. In his award, Respondent No. 1 by reference to the evidence adduced before him has negated the assertion of Petitioner that he was victimized or that disciplinary action taken against him was mala fide. There is no "reason" to sustain this finding.

15. The last submission of the Learned Counsel for the Petitioner is that since the order of termination of his service Annexure P. 2 had been passed without holding an enquiry as laid down by Rule 2.14 of the Common Cadre Rules and by taking resort to proviso (a) to Rule 2.10 which is ultra vires the Constitution the said order was non-existent in the eyes of law and it is only through the award Annexure P. 13 published on 16th August, 1985 that his termination from service has been held to be justified after the MARKFED and the Petitioner adduced their evidence before Respondent No. 1. He therefore submits that the Petitioner is entitled to the wages last drawn by him for the period 2nd January 1980 to 16th August, 1985. I find that this submission is well Merited. The position of law in this regard has been elaborately discussed in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, . It has been held that the award of the Labour Court wherein the termination of services of the workman is held to be justified for the first time cannot be related back to the date of termination orders, when such an order has been passed by way of disciplinary action either without holding an enquiry or on the basis of defective enquiry "proceedings by the employer. It has been held that a void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shell of the management's order, predating of the termination does not arise. Where the Management discharges a workman by an order which is void for want of an enquiry or for blatant violation of rules of natural justice the relation back doctrine cannot be invoked, The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo, and an order which may suffer from some defects but is not stillborn or void and all that is needed in the law to make it good is a subsequent approval by a Tribunal, which is granted, cannot be obfuscated.

16. I have therefore, no hesitation to hold that lawful termination of the Petitioner from service takes effect on 16th August, 1985 when the award Annexure P.13 was published and he is thus entitled to backwages from the date of the termination order passed by MARKFED Annexure P. 2, i.e., 2nd January, 1960. till 16th August, 1985.

17. At this stage, the Learned Counsel for Respondent No. 3 has who mentally contended that the, question whether or nor the petition was entitled, to backwages did not form the subject matter of an issue before Respondent No. 1, and as such the MARKFED had no opportunity to adduce evidence to the Petitioner was otherwise gainfully employed during the period intervening between 2nd January, 1980 to 16th August, 1985. He, thus, contends that the MARKFED would be burdened with financial liability of backwages for the period in question without its having an opportunity to prove that the Petitioner is not entitled to the same. I am not at all persuaded to agree with this submission. It is to be noted that in his statement Annexure P. 12 before the Labour Court the Petitioner had categorically stated that he was drawing Rs. 958.80 p.m., as his wages while employed as Field Inspector with the MARKFED. He further her stated that after termination of his services he had searched for work but could not find any. When cross-examined, by the representative of the MARKFED on this Employment Exchange. He owns 10 Bighas of cultivable land but that is in the name of his, father. He has no income from the said land. Hg has no property and has no income therefrom. He is married having three children who are all school. This statement leaves no scope for doubt that the Petitioner had positively put forward his case that he was not employed during the relevant period. He had been duly cross-examined on this aspect. It was, thus, for the MARKFED to, have led evidence to rebut this assertion and to show that the Petitioner was employed during the relevant period but it was not so done. A similar contention raised before the Supreme Court in Shambu Nath Goyal v. Bank of Baroda and Ors. 1984 (1) S.L.R. 212, was repelled. It was observed that the blame for not framing an issue on the question whether or not the workman was gainfully employed during, the intervening period cannot be laid on the Tribunal alone. It was equally the duty of the Management to have got that issue framed by the Tribunal and adduced the necessary evidence unless the object was to make up that question at some later stage to the disadvantage of the workman as in fact it has been done. There being no material on the record to show/that the workman was gainfully employed anywhere the workman was not expected to prove the negatively At the cost of repetition, it may be noted in the present case that the workman did categorically state that he was not gainfully employed and he Bad been duly cross-examined on this aspect by the representative of the MARKFED. The contention of the Learned Counsel for the MARK-FED, therefore, is without any substance.

The Learned Counsel for the parties debated before me the question whether the impugned order Annexure P. 2 had been passed, by an authority competent to do so under the Common Cadre Rules. Affidavits in support of the rival contentions

of the parties were also placed on the record on conclusion of the arguments by them. It is, however, not necessary to go, into this question as I have already held above that proviso (a) to Rule 2.10, taking resort to which the impugned order had been passed, is ultra vires the Constitution and the said order is even otherwise illegal for denial of due opportunity to the Petitioner before terminating his services by way of disciplinary action.

18. Consequently, I partly allow this petition. I hold that proviso (a) to Rule 2.10 of the Common Cadre Rules is ultra vires the Constitution. Order Annexure P. 2 terminating the services of the Petitioner by way of disciplinary action under the, said provision in the rules is also illegal and ultra vires. However, I uphold the award Annexure P. 13 made by Respondent No. 1 to the effect that termination of the services of the Petitioner is justified and in order. I, however, quash the finding under issue No. 3 in the award wherein it is held that the Petitioner is not entitled to any relief. I hold that he is entitled to payment of backwages with effect from 2nd January, 1980, i.e., the date of the termination order Annexure P. 2, to 16th August, 1985, when the award Annexure P. 13 was published and I direct Respondent No. 3 to make payment of these wages to the Petitioner within three months from today. The Petitioner shall also be entitled to the costs of this writ petition which, in view of its partial success, are assessed at Rs. 500 only.