

(2015) 09 P&H CK 0313

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 123 and 122 of 2015 (OandM)

Ram Naresh

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2015) 4 LLJ 271

Hon'ble Judges : Hemant Gupta and Hari Pal Verma, JJ.

Bench : Division Bench

Advocate : Abha Rathore, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This order shall dispose of LPA No. 123 & 122 of 2015 filed by the workman arising out of writ petitions filed by the workman and the Management decided by the learned Single Bench of this Court on 23.03.2011 and also order passed in review dated 03.07.2013, whereby the order of reinstatement with 50% back wages granted by the Learned Labour Court was set-aside and the reference decided against the workman. The facts in brief are that the workman was working as a Miller in Heavy Machine Shop of the Management. He was served with a charge-sheet dated 22.04.1993. The charge-sheet was that when the apprentices continued to work in Bay 3 in spite of threats and attempted stoppage of work by the other co-workman, then the workman physically stopped apprentices from working and thus the workman has misconducted. Pursuant to the said charge-sheet, an inquiry report was submitted. The workman was served with second show-cause notice dated 08.07.1994 communicating the inquiry report. Thereafter, the Management passed an order of dismissal on 11.07.1994.

The workman raised an industrial dispute. On reference, the learned Labour Court framed the following issues:

1. Whether the reference is bad-in-law?
2. Whether this Court has no jurisdiction?
3. Whether a fair and impartial enquiry was held?
4. As per reference.
5. Relief.

2. On 28.09.1999, learned Labour Court returned a finding that fair and impartial inquiry was conducted and thereafter proceeded to interfere with the order of punishment to order reinstatement with continuity of service but with 50% of back-wages. Against such award of the Labour Court, the workman as well as the Management filed separate writ petitions. The writ petitions filed by the Management were accepted and that of workman were dismissed. Learned Single Bench returned the following finding:

"The Tribunal was also obliged to see the gravity of the circumstances in which the disciplinary proceedings were initiated against the respondent-workman. All the workman were facing charges of indiscipline and of having verbally assaulted their superiors. The employer can never be expected to be a passing spectator to the activities of an employee or employees, which has the effect of creating unrest and indiscipline and set in the process of demoralization and degeneration.

It is also settled principle of law that observation of principle of natural justice and violation thereof should be decided only in the backdrop of the facts and the factum of any prejudice being shown and mere noncompliance of or deviation from principle of procedure will not ipso facto vitiate the proceedings on account of such a deviation."

3. The workman filed a review petition, inter alia, on the ground that the workman was not heard before the Management's writ petition was allowed, as such order was passed in the absence of representative/counsel for the workman. Such review petition has been dismissed on 03.07.2013 and still aggrieved the present Letters Patent Appeal has been filed.

4. The primary grievance of the workman is that learned Single Judge has taken note of charge-sheet which is different in the case of workman. The charges against the workman were not serious enough and have no parity with the allegations levelled against the other workman. There is no allegation of any abusive behaviour. Therefore, learned Single Judge has erred in law in not examining the claim of the workman separately.

5. It is contended that the charge-sheet was served by the Works Manager whereas the Competent Authority to issue charge-sheet was General Manager. It is also contended that the ex-parte proceedings in the disciplinary proceedings were initiated against the workman without any justifiable reason and that the Labour Court is within its jurisdiction to pass an order of substituting the order of punishment to that of reinstatement with 50% back-wages. Therefore, learned

Single Judge should not have interfered in the order of punishment in fact, the workman should have been granted full back wages.

6. We have heard learned counsel for the appellant and find no merit in the present appeal.

7. The issue raised by the workman that proper opportunity was not given by the Inquiry Officer has been examined by learned Labour Court in its order dated 28.09.1999 (Annexure P-9). In the said order, it has been found that a notice was sent under registered post to the workman which was received on 28.06.1993. Since, the workman did not appear, thereafter notice was published in the newspaper as well. Learned Labour Court found that the workman has replied to the notices vide Ex. W-14 on 02.08.1993 and thus he was aware of the inquiry proceedings pending against him. The Labour Court has taken into consideration the subsequent notices as well to return a finding that workman himself did not turn up to participate in the inquiry. In view of the said facts, learned Labour Court returned a finding that the workman has failed to justify whether any prejudice has been caused against him or that he has not been given any opportunity to defend himself. After such finding was recorded, a reference was decided on 09.10.2000 granting reinstatement of services with 50% back-wages.

8. The argument that Inquiry Officer has not acted fairly against the workman is not made out from the reading of the order passed by learned Labour Court on 28.09.1999. Once the workman has not participated in the inquiry proceedings, even though the registered notices were served upon the workman, the workman cannot be permitted to raise a grievance that he was not given opportunity to defend himself. In fact, the workman failed to appear in spite of notice in the newspaper. Therefore, it cannot be said that the ex-parte proceedings initiated against the workman are not tenable.

9. The stand of the workman is that the order of dismissal is against the provisions of standing order of the Company as all notices have been signed by incompetent officer of the company but the standing orders have not been produced. The stand of the Management in the written statement is that the charge-sheet and the order of dismissal has been issued by competent officer of the Management. Since, the standing orders are not on record, the argument raised that the charge-sheet and the order of punishment has been passed by incompetent officer is not sustainable.

10. Learned Labour Court substituted punishment purportedly in exercise of the power conferred under Section 11A of the Industrial Disputes Act, 1947. The learned Single Judge has set aside the order that the workman was facing charges of indiscipline, therefore, the employer can never be expected to be passive spectator. Therefore, the award granting reinstatement of service with 50% back-wages was found to be not tenable.

11. The argument is that the workman was not abusive, therefore, punishment

awarded by the Labour Court cannot be said to be unjustified. The workman was charge-sheeted of indiscipline at the workplace. In respect of proved misconduct of indiscipline, the order of reinstatement and that of 50% back-wages cannot be said to be justified.

12. In view of the findings recorded, learned Single Bench was perfectly justified in setting aside the order of reinstatement passed by learned Labour Court. The learned Single Judge has exercised judicial discretion in proper perspective and therefore, merely another view may be possible is not a ground to interfere in the Letters Patent Appeal. Consequently, both the appeals are dismissed.