IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.11987 of 2010
Date of decision: 8.10.2015

Bhupinder Singh

... Petitioner

Versus

Presiding Officer, Labour Court and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagbir Malik, Advocate, for the petitioner.

Mr.Rajiv Sharma, Advocate, for respondent No.2.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

Heard the learned counsel for the parties.

2. The petitioner was dismissed from service after holding an *ex parte* inquiry behind his back without notice of the proceedings. The factory run by the management where the petitioner worked was located in Maruti Industrial Complex, Gurgaon. The charge was of absence from duty for 13 days at a stretch. The management did not take action under Model Standing Orders to terminate the services of the petitioner but instead ordered an inquiry into the alleged misconduct.

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3. The Labour Court vide an interim order passed in 2009 held on the preliminary objection that the inquiry conducted by the management was fair and proper and procedurally correct in its conduct. The court *a quo* then proceeded to decide the main case on merits and made the award which is impugned by the workman in the present petition filed under Article 226 and 227 of the Constitution.

4. On merits, the Labour Court-I, Gurgaon has upheld the termination on the ground that since the inquiry held was fair and proper therefore virtually nothing remains to be decided. On this facile assumption court has denied relief altogether to the workman without examining the issue on the anvil of quantum of punishment by applying standards allowed by Section 11A of the Industrial Disputes Act, 1947 for labour courts to gauge and weigh the entire evidence on record whether a case for lesser punishment is made out or not. This power is inherent in the labour court and is to be exercised by reasons recorded in writing.

5. The only question which arises for consideration is whether the workman was served with the charge sheet itself upon which the fate of the case apart from quantum would hinge. The Labour Court record was requisitioned by this Court from where after inspection Mr.Jagbir Malik affirms that the petitioner was not served notice either in the inquiry, in the appointment of the inquiry officer who was an Advocate appointed by the management and higher standards of fairness were expected of him and thus the inquiry proceedings were conducted behind his back for which reason the proceedings stand vitiated. He refers to Annexure P-16 which is part of the record of the labour court where it is revealed that the workman has

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been served at the address “Bhupinder Singh son of Bhim Singh, Gurgaon...Sender Anil Singhal, Advocate, Y-29, New Delhi”. Anil Singhal was the inquiry officer appointed by the management to conduct inquiry against the workman. The next effort of the Inquiry Officer to serve the workman is by the similar mode except that the notice is addressed to “Bhupinder Singh, Panipat” which is Annexure P-17 which is part of the order sheet and the inquiry file in the domestic proceedings. The inquiry file was exhibited before the Labour Court. The position remains the same in next Annexure P-18 for the same purpose of notifying the delinquent workman to come forward to defend himself. He points out to Annexure P-19 as well where the following has been recorded : -

> “The charge-sheet dated 19.04.2001 and 21.08.2001 was sent to Ash. Bhupender Singh son of Sh.Bhim Singh on permanent and temporary address. Due to non receipt of reply the management took a decision of domestic enquiry and Sh.Anil Singhal Advocate was appointed as Enquiry Officer. The Enquiry Officer has written you to appear in enquiry by registered letters but you remained absent on all the dates. You are hereby informed to appear for domestic enquiry in the office of inquiry officer situated at Chamber No.Y-29, Civil Wing, Tis Hazari Court, Delhi on 14.12.2001 at 3 PM and participate in the enquiry proceedings otherwise proceedings will be finalized ex-parte.”

6. These documents leave no manner of doubt that the petitioner was not actually served at any stage of the inquiry proceedings and therefore, the inquiry held against him is a nullity and the Labour Court has fallen in grave error in upholding the dismissal based on defective service of notices and only on the slim account that the predecessor Labour Court had

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upheld the inquiry as fair and proper which was improper exercise of jurisdiction. It is well settled that an inquiry which is neither fair nor proper is no inquiry in the eye of law. A defective inquiry is as good as a case of no inquiry. An inquiry without service of notice and summons on the delinquent vitiates the proceedings from the beginning as it causes serious prejudice to a charged person by depriving him of an opportunity to lead his defence evidence in support of his innocence in the alleged misconduct and to vindicate his honour and prove that he is not guilty.

7. Even before the Labour Court no evidence whatsoever was adduced by the management on the record in addition to what was preserved in the inquiry file that the workman was guilty or was served in a fair and proper manner in terms of rule 18 of the Industrial Disputes (Central) Rules, 1947 which require notice and summons to be served in the manner provided. Service by registered post is an accepted mode of service but presumption of service can only drawn if the workman is actually served at the address known to the management as informed by the employee while in service. Even in case of refusal by party it would be again sent by certificate of posting. Though rule 18 deals with procedure to be adopted before the labour court but the principles are salutary to be applied in domestic inquiries or what may be stated in the procedure in the Model Standing Orders of the company. It is not enough to address a registered notice to a nondescript person in the name of a city where he will never be found. This is not like posting as letter to Amitabh Bachchan without writing his address on the envelope and yet it would reach destination.

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8. Mr.Malik submits that the petitioner is a permanent resident of village Bandh, District Panipat and through S.N.Dahiya, General Secretary, INTUC, 909/3, Gali No.2, Rajiv Nagar, Mata Road, Gurgaon, Haryana which is the address of the cause title of the file of the labour court and was to the knowledge of the management.

9. This Court has read the demand notice sent by registered post placed at P-1 where the petitioner has given his address as resident of VPO Bandh, District Panipat [Haryana]. The demand notice is dated 13th September, 2002. The dismissal order was passed on 24th January, 2002. It can thus safely be concluded that there was no service on the petitioner. The argument canvassed by Mr. Malik on defective service is factually correct on the basis of record shown to this Court with both the learned counsel present and addressing arguments after inspecting the LCR.

10. It is even worse that the Inquiry Officer proceeded *ex parte* after the management resorted to substituted service by publication in the local newspaper Amar Ujala at Ballabhgarh.

11. Mr. Jagbir Malik submits that Ballabhgarh and Gurgaon are distant apart and Amar Ujala is not a newspaper which circulates commonly in Gurgaon region. Therefore, the attempt of the management to serve the workman through the newspaper was a defective process aimed at getting rid of the workman without serving him the charge sheet,the basic thing. As a natural result of remissness to serve the workman the rest of the proceedings will fall to the ground like a house of cards. If the charge sheet itself is not served and reply received, considered and decision taken whether a regular inquiry ought to be held or not the inquiry is illegal. Had

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the petitioner been served, he would have been put in a position to explain his absence for 13 days [the charge] but he was not given that opportunity and thereby the principles of natural justice were deliberately breached.

12. Mr.Malik submits that in the 5 years of service rendered by the petitioner with the management, there was no other lapse except what was raked up by the charge sheet to victimize the petitioner and visit him with untold harm. The manner in which the management has proceeded against the workman amounts to unfair labour practice and therefore this Court is not in a position to maintain the award passed by the Labour Court based on wrong premise and presumption of service which is far from truth. Besides, dismissal based on absence of 13 days in 5 years of service without getting the workman's side of the story is totally disproportionate to the alleged misconduct or the gravity of the charge. The punishment is one such which disturbs the conscience of the court. There has been abject failure in the labour court to examine the serious issues arising on point of service of notices and on quantum of punishment and apply section 11A of the Act which vitiates the award. These flaws in the work of the lower court are fundamental in nature and errors in judicial reasoning are apparent on the face of the record. The evidence has not been appreciated and the labour court appears to be fixated by the earlier order passed in the year 2009 on the preliminary objection tried as a preliminary issue holding that the inquiry conducted was fair and proper. That order too suffers from the grave infirmities pointed out by the learned counsel for the workman.

13. As a result, this petition is allowed. The impugned award dated 7.9.2009 is set aside. The inquiry proceedings are declared illegal. The dismissal order is held to be nullity. The petitioner is reinstated to service

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with full back wages with continuity of service. This order be implemented in so far as reinstatement is concerned forthwith. As far as monetary dues are concerned, they are directed to be calculated and handed over to the workman within two months from the date of receipt of a certified copy of this order. Full back wages in the case are justified in view of the fraudulent proceedings held against the workman only with a view to dismiss him. The dismissal was not in good faith, but in the colourable exercise of the employer's rights and in abuse of the powers to dismiss.

14. This Court has examined the case from the angle of **Managing Director, ECIL** v. **B. Karunakar**, (1993) 4 SCC 727 whether the management should be granted the liberty to hold a fresh inquiry from the stage it was flawed but refrain from doing so at this distance of time and especially when the charge was absence from duty for 13 days in 5 years of service which is not so grave. The management may at best propose punishment substantially lesser than removal, dismissal, discharge or termination in terms of the Model Standing Orders but keep the dispensation at a moderate level. The rule is against Wednesbury arbitrariness. Reasonableness is a vital part of the guarantee in Article 14 of the Constitution and this applies to disciplinary action in equal measure. The misconduct must be seen to fit the punishment, the punishment the misconduct and not disproportionate to the cause meant to be served.

(RAJIV NARAIN RAINA)
JUDGE

October 8, 2015
Paritosh Kumar

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