HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.3014 of 2013
Reserved on 03.03.2020
Date of Decision: 23.3.2020

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Surinder Singh ... Petitioner

VS.

General Manager, Personnel and Administration,
Escorts Mahle Ltd. Bahadurgarh & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

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Present: Mr. Ashok Bhardwaj, Advocate for the petitioner

Mr. Gurdeep Singh, Advocate for respondents No.1 to 3

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GIRISH AGNIHOTRI, J. (Oral)

(1) The petitioner – Surinder Singh *inter alia* seeks quashing of the order dated 31.10.1998 and also the award dated 01.11.2012 (P1 & P2 respectively). Vide order dated 31.10.1998, the General Manager, P&A – respondent No.1 had ordered the dismissal of the services of the petitioner. Vide order dated 01.11.2012, reference No.373 of 1999 has been decided by the Industrial Tribunal by answering the award against the petitioner-workman.

(2) Learned counsel for the petitioner based upon the pleadings in the writ petition submits that the petitioner-workman had joined the respondent-management on 25.07.1978 as unskilled worker. Vide order dated 31.10.1998, services of the petitioner-workman were terminated/he was dismissed from service.

(3) This Court for the reasons mentioned hereunder is inclined to accept the prayer made by the petitioner-workman and accordingly allow the writ petition.

(4) The records of the case clearly show that there has been gross violation of the principles of natural justice. In the memo dated 01.09.1998, it had been mentioned that following are the charges against the workman:-

> *"You are in the habit of absenting yourself without any intimation, authority or sanction. During the period 10th Oct. 97 to July, 98, the following is your attendance record..."*

(5) In the charge memo, it has been alleged that from 10.10.1997 to July, 1998, the workman had allegedly absented himself for the days mentioned therein and in some cases half days and even few hours distributed in various months between October, 1997 to July, 1998. Thereafter vide memo dated 10.09.1998, the management ordered that the explanation dated 07.09.1998 in response to the charge-sheet dated 01.09.1998 has been found to be unsatisfactory and it was considered desirable and necessary to conduct an enquiry.

(6) The Enquiry Officer Mr. RS Sehgal submitted his report on 24.10.1998 wherein he summarily concluded that that charges contained in the charge-sheet stands established. On 26.10.1998 a letter was issued whereby the petitioner was informed that the Enquiry Officer has submitted his report dated 24.10.1998 and that he may submit his representation on or before 29.10.1998. Thereafter vide order dated 31.10.1998, respondent No.1 passed the order dismissing the workman/petitioner from service.

(7) Heard learned counsel for the parties and gone through the records with the able assistance of learned counsel for the parties.

(8) This Court finds that there are numerous violations in the conduct of the enquiry. This has the effect of denial of reasonable opportunity to the petitioner-workman to defend his case and also amounts to violation of principles of natural justice. Firstly, in the charge-sheet, no

documents or list of witnesses have been mentioned. Secondly, it has been vaguely pointed out in the charge-sheet that by remaining 'habitually absent' constitute gross misconduct under the Standing Order No.22. A perusal of the Standing Order No.22, however, shows that there is no sub-clause which provides for habitual absence to be gross misconduct within the meaning of Standing Order No.22. This Court, however, finds that 'continuous absence' has been provided in one of the clauses but there is no charge against the workman in specific alleging that he was continuously absent which amounted to gross misconduct. Thirdly, the management examined Mr.Vinod Malhotra as Management Witness as at no stage prior to the enquiry proceedings, the petitioner-workman was informed through any intimation regarding the list of witnesses to be examined by the management. It is apparent that the Enquiry Officer in its report has placed reliance on the oral averments of Mr. Vinod Malhotra to the effect that the petitioner-workman was advised verbally number of times not to remain absent. Fourthly, it has also been noticed that the Enquiry Officer has relied upon the management's Exhibits 1, 2, 3 etc. but at no stage prior to the enquiry proceedings itself, the petitioner-workman was handed over a list of documents to be relied upon by the management. At this stage, it also needs to be noticed that the plea of learned counsel for the petitioner-workman was also that on 13.10.1998, the petitioner-workman had made a written request to change the Enquiry Officer as not only that he was an employee of the management but was also that he was proceeding in a biased manner and had been contacting the management for management's advice from time to time. This request also however was not accepted by the management.

(9) Sixthly, learned counsel for the petitioner submits that the punishment of dismissal is totally unwarranted as it is a matter of fact that at no stage the petitioner-workman was made aware before the punishment order that there was a proposal to dismiss him from service. Had he been informed of the proposed punishment, he would have given reasonable explanation and as such, the petitioner-workman has been put to great prejudice. Additionally, it also goes to the root of the matter that a bare perusal of the punishment order dated 31.10.1998 clearly shows that the punishing authority has traveled beyond the charges leveled against the petitioner-workman. At the sake of repetition, it is observed that in fact the charge against the petitioner-workman vide memo dated 01.09.1998 had been of alleged 'absence' for some period between 10.10.1997 to July, 1998 only whereas the punishing authority proceeds to notice periods between 1981 to 1989. Therefore, this Court is of the view that if the punishing authority actually intended to take into consideration the periods prior to the alleged period i.e. 10.10.1997 to July, 1998 as mentioned in the charge-sheet then it ought to have given reasonable opportunity to the petitioner to represent against the same. This Court also finds merit in the submission of the learned counsel for the petitioner that the petitioner had actually served the respondent-management for more than 20 years i.e. from 1978 to 1998. He therefore submits that in any case in view of 20 years' length of service of the petitioner-workman, the punishment of dismissal is too harsh.

(10) In Standing Order No.23, it has been provided that the employee is to be given punishment after he had been given full opportunity to defend himself in a domestic inquiry in accordance with the standing

orders. Standing Order No.24 provides for the procedure for dealing with cases of misconduct. Standing Order No.24(iv) provides as under:-

> *"If during the enquiry it is found that the employee is guilty of misconduct other than that stated in the order of suspension, the employee shall none-the-less be liable to punishment for misconduct provided by order 23, but before any punishment is awarded to him, he shall be afforded a reasonable opportunity of explaining and defending his notions in respect of such act of misconduct as provided by sub-clause (i)."*

(11) A bare perusal of the above would show that even as per their own Standing Orders of the management, the emphasis is on 'reasonable opportunity of explaining and defending his actions'.

(12) With the able assistance of counsel for the parties, this Court has also examined the award dated 01.11.2012. The Labour Court has erred in law in holding that the enquiry against the petitioner-workman was not vitiated.

(13) Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in ***Mohd. Yunus Khan vs. State of UP and others (2010) 10 SCC 539*** to contend that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet would contain such an article or he should be informed of the same at the stage of show cause notice for imposing punishment. Paras 33 & 34 of the said judgment as reproduced as under:-

> *"33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he*

should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in Union of India & Ors. v. Bishamber Das Dogra, (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612; India Marine Service (P) Ltd. v. Their Workmen, AIR 1963 SC 528; State of Mysore v. K. Manche Gowda, AIR 1964 SC 506; Colour-Chem Ltd. v. A.L. Alaspurkar & Ors., AIR 1998 SC 948; Director General, RPF v. Ch. Sai Babu, (2003) 4 SCC 331, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, (2005) 2 SCC 489; and Govt. of A.P. & Ors. v. Mohd. Taher Ali, (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

(14) Counsel for the petitioner further submits that nothing prevents the punishing authority from taking the past record of the delinquent employee into consideration provided the employee should have be given a reasonable opportunity to know that fact and meet the same. Reliance in this regard is placed on the judgment of Hon'ble Apex Court in ***Nicholas Piramal India Ltd. vs. Harisingh (2015) 8 SCC 272***. The relevant extract of the said judgment reads as under:-

"Further, in the case of State of Mysore v. K. Manche Gowda (supra), this Court has held thus:-

"8.....It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same." Further, the Labour Court after adverting to the judgments of this Court referred to supra has rightly held that the punishment of dismissal is disproportionate and interfered with the same by imposing the lesser punishment of denial of 50% back wages with reinstatement and the same has been examined and rightly upheld by the Appellate Court and the High Court in exercise of its judicial review power under Article 227 of the Constitution of India.

Having regard to the nature of judicial review power conferred upon the High Court, it has rightly accepted the impugned Award passed by the Labour Court which is affirmed by the Appellate Court by recording valid and cogent reasons in the impugned Award/judgment. The same can neither be termed as erroneous nor error in law.

The workman's wilful disobedience of lawful or reasonable order under Clause 12(1)(d) of the SSO and the wilful slowing down of the work performance by him has been held to be partially proved. Therefore, the Labour Court has imposed a lesser punishment as against the order of dismissal in exercise of its original jurisdiction and power under Section 107 of the M.P.I.R. Act as the Disciplinary Authority has failed to give any valid reasons for not imposing any one of the lesser punishments as provided under Clause 12 (3)(b)(i) to (v) of SSO. Hence, the denial of 50% back wages to the workman by the Labour Court is itself a punishment imposed upon the workman as held by this Court in the case of Jitendra Singh Rathor (supra), upon which reliance has been rightly placed by the learned counsel for the respondent- workman.

(15) Learned counsel for the respondent-management has also relied upon the judgment of the Hon'ble Supreme Court in ***Govt. of AP & Ors. vs. Mohd. Taher Ali, 2007 AIR SCW 7054*** to urge that the earlier lapses of the delinquent can be considered though not mentioned in the charge-sheet and that there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet, it cannot be taken into consideration by the punishing authority.

(16) Having given thoughtful consideration, this Court is inclined to follow the law laid down by the Hon'ble Apex Court in ***Nicholas Piramal India Ltd.*** (supra). The management may consider the past record of a

petitioner-workman in the first stage of the enquiry itself and, if it was not so done, it does not lie in the mouth of the management to have relied upon the past record of the workman after the enquiry is closed and the report is submitted to the authority. Moreover, ***Govt. of AP & Ors. vs. Mohd. Taher Ali*** case (supra) was a case where the petitioner, being a member of disciplined force, absented himself from election duty and as such the nature of duties *vis-a-vis* the present petitioner is completely distinct.

(17) For the reasons mentioned above, this Court finds that there has been gross violation of the principles of natural justice. The petitioner-workman has not been afforded reasonable opportunity to defend his case. The issue which goes to the root of the matter is that the punishing authority has relied upon such charges which pertained to the period prior to 1997-1998 (period alleged in the charge-sheet was 1997-1998) and before taking adverse view regarding the aforementioned prior periods, no opportunity was given to the petitioner-workman as required in law as per the Constitution Bench decision of the Hon'ble Apex Court in ***State of Mysore vs Manche Gowda, AIR 1964 SC 506***. This Court also finds merit in the submission of learned counsel for the petitioner that in fact no show cause notice was issued nor vide any letter at any stage before the punishment order, the petitioner-workman was informed regarding the proposed punishment. This Court also finds that there has been violation by the management of its own Standing Orders wherein also the reliance has been to afford a reasonable opportunity of explaining and defending his actions by the workman.

(18) Accordingly, the writ petition is allowed with the following directions:-

(i) the award dated 01.11.2012 is set aside. Considering the fact that the petitioner had joined the service in 1978, this Court does not deems it appropriate to refer the matter back to the Labour Court as the workman has attained the age of superannuation in June, 2019 or prior thereto.

(ii) this Court deems it appropriate to award 50% of the backwages (to be calculated from the date of termination till the date of superannuation of the petitioner-workman). The said amount be released to the petitioner within a period of *2 months* from the date of receipt of certified copy of this order.

(ii) As a consequence to the setting aside of the dismissal order, the petitioner shall be entitled to other retiral benefits as payable to similarly situated employees which shall be admissible from the date of retirement.

(19) So ordered.

23.3.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*