

A PEPSU ROAD TRANSPORT CORP.

v.

RAWEL SINGH

(Civil Appeal No. 1664 of 2008)

FEBRUARY 29, 2008

B [C.K. THAKKER AND D.K. JAIN, JJ]

Industrial Disputes Act, 1947 – s.11A – Dismissal – Unauthorised absence of workman from duty – Challenge to, C on the ground that enquiry was unfair – Reinstatement with back wages by courts below – On appeal held: Enquiry could not be said to be contrary to law or in violation of principles of natural justice and fair play – It is not a case of not extending opportunity to employee but not availing of opportunity by employee – It was the duty of workman to co-operate with the enquiry and participate in disciplinary proceedings but he failed to do so – Thus, Labour court erred in holding that enquiry was violative of natural justice – However, it rightly recorded the finding that dismissal of workman on the ground of absence for few days was grossly disproportionate and excessively high – Therefore, order of reinstatement calls for no interference, however, award of back wages set aside.

The respondent-workman remained absent from duty for few days without sanction of leave. He was served F with a notice but he did not join duty. Charge sheet was issued. Enquiry was instituted. Respondent did not appear before the Enquiry Officer though he was aware of the same. Enquiry was held ex parte and the Enquiry Officer proved the charges. Respondent submitted his G reply but did not remain present. The Disciplinary Authority passed termination order of workman. Respondent filed a suit challenging the termination order. Trial court set aside the termination order since it was violative of the principles of natural justice and passed

the order of reinstatement. It granted liberty to the Corporation to hold fresh inquiry on the same charges. Appellate Court upheld the order and the respondent was reinstated with all the benefits. Subsequently, fresh inquiry was instituted. Respondent was issued notice but he did not participate in the enquiry and the enquiry was held ex-parte. Respondent also did not co-operate with the second enquiry and it was proceeded ex-parte. Thereafter, respondent was dismissed from service. Respondent-workman raised a Reference. The Labour Court passed an award in favour of respondent. High Court upheld the award. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. It is true that the respondent-workman approached Civil Court against the termination order and the suit filed by him came to be allowed and the decree was confirmed in appeal. But it is equally true that liberty was granted to the Corporation to initiate proceedings afresh on the same charges and hence initiation of proceedings could not be said to be illegal or contrary to law. From the record, it is clear that notice was issued to the respondent and it was received by him, he filed his reply, he also appeared before the Enquiry Officer but subsequently he did not remain present and absented himself. If, in the light of the above facts, Enquiry Officer was obliged to proceed with the enquiry ex parte, it could not be said that by doing so, the Enquiry Officer had committed an error either of fact or of law and the enquiry proceedings were liable to be quashed. [Para 12] [659-F-H; 660-A]

1.2 With regard to supply of documents, record reveals that the documents had been supplied to the workman and the said fact had been admitted by him. His case, however, was that due to heavy rain, all the documents were destroyed which necessitated supply

A of fresh documents. But as observed by the Enquiry Officer, the workman was asked as to whether he required any document but the workman replied in the negative. He could have continued to appear before the Enquiry Officer, got the documents, if he wanted, and participated

B in the enquiry. However, he deliberately did not do so. Inspite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent. [Para 13] [660-A-E]

C 1.3. The charge as to unauthorized absence of the respondent is duly established from the record. All the charges can be said to have been proved against the respondent. The Labour Court was wholly wrong in holding that enquiry was not fair. It is not a case of not

D extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside. [Para 14] [660-E-H]

E 1.4. It is clear that the respondent- workman remained absent for few days unauthorisedly without his leave being sanctioned. Charges were consequential even according to the finding recorded by the Enquiry Officer to the effect that he failed to take interest in work and he

F did not obey the Rules framed by the Corporation. In the light of the above 'misconduct', the Labour Court thought that it was a fit case to invoke Section 11A of the Act. The High Court also, in exercise of supervisory jurisdiction did not interfere with that part of the order. This Court

G while exercising power under Article 136 of the Constitution may not interfere with that part of the order. The dismissal of workman on the ground of absence for few days, according to the Labour Court, was grossly disproportionate and excessively high. The Labour Court

H had not committed error of law in recording such finding.

Therefore, reinstatement granted to the respondent-workman, needs no interference. [Para 15] [661-A, B, C, D]

1.5. The enquiry could not be said to be contrary to law or in violation of principles of natural justice and fair play. It was the duty of the respondent-workman to cooperate with such enquiry and participate in disciplinary proceedings. The workman failed to do so. In the circumstances, Corporation should not be asked to pay back wages to the workman. Had the respondent remained present at the enquiry proceedings, an appropriate order could have been passed by Enquiry Officer after considering his case and after hearing him. There was default and failure on the part of the workman himself which resulted in the situation which has arisen. Thus, the Labour Court was not right in awarding back wages with interest thereon. Therefore, to that extent, the order could not be said to be in consonance with law. The High Court, in upholding the said award and confirming the direction, committed the same error. Therefore, that part of the direction is set aside. The award passed by the Labour Court and confirmed by the High Court so far as reinstatement of the respondent-workman is not disturbed. The respondent-workman would be treated in continuous service. He will also be entitled to consequential benefits on setting aside of dismissal order. [Paras 16 and 17] [661-E-H; 662-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1664 of 2008

From the final Judgment and Order dated 10.11.2006 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 11570 of 2006.

K.K. Mohan for the Appellant.

Rakesh K. Khanna, A.K. Pandey, Sunita Singh, Shefali Jain, K.D. Prasad, Ranjana Narayan and Rajesh Prasad Singh

A for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

B 2. This appeal is filed against an award passed by the Presiding Officer of Labour Court, Jallandhur on January 31, 2006 in Reference No. 608 of 2000 and confirmed by the High Court of Punjab and Haryana on November 10, 2006 in Civil Writ Petition No.11570 of 2006.

C 3. Shortly stated the facts of the case are that the respondent-workman was serving as a Driver with the Pepsu Road Transport Corporation ('the Corporation' for short). On September 8, 1988, the respondent sent a leave application from his home-town seeking leave upto September 30, 1988

D on medical ground. On expiry of the leave period, however, he did not join duties. A report was submitted by the Depot Manager to the Corporation and a notice was issued to the workman on December 5, 1988 seeking his explanation as to absence from duty. He was also asked to report within ten days. Though the

E said notice was duly served, the respondent failed to join duty. A charge sheet was, therefore, issued against the respondent wherein three allegations were levelled against him (i) knowingly and intentionally remaining absent without sanction of leave and without sending leave application, (ii) failure to take interest in work and (iii) disobedience of Rules of Corporation.

F 4. A reply was filed by the respondent denying allegations levelled against him and praying for withdrawal of notice. The Corporation was not satisfied with the explanation. An enquiry was instituted against the workman. Though the respondent was

G fully aware and had knowledge of date of hearing, he failed to appear before the Enquiry Officer and the enquiry was held *ex parte*. On the basis of evidence led by management, a finding was recorded by the Enquiry Officer that the charges levelled against the respondent-workman were proved. After the receipt of Enquiry Officer's report again show cause notice was issued

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to the respondent on June 20, 1989 and he was asked to submit his representation within fifteen days. He was also asked to remain present, if he wanted personal hearing, but the respondent failed to remain present. A

5. Considering the reply submitted by the respondent, the Disciplinary Authority passed an order of termination of services of the workman on July 13, 1989. B

6. Being aggrieved by the order of termination, the respondent instituted a suit in the Court of Sub-Judge Kapurthala. It was contended by him that the order of termination was illegal, cryptic, unfair and contrary to the principles of natural justice and fair play. Though the Corporation filed written statement, contested the matter and denied all the averments made and allegations levelled against the Corporation, the trial court, on June 3, 1993 decreed the suit holding that the order was not sustainable as it was violative of principles of natural justice as also inconsistent with the provisions of Service Rules of the Corporation. The Court, therefore, granted reinstatement of the plaintiff-employee granting liberty to the Corporation to hold fresh enquiry on the same charges. The Corporation preferred an appeal against the decree passed by the trial court but the appellate court confirmed the decree. The matter came to an end there; the workman was reinstated in service and granted all the benefits to which he was held entitled under the decree. C D E

7. In the light of the observations made and liberty granted by the Court, fresh enquiry was instituted against the respondent. A show cause notice was issued which was duly received by the respondent but he did not participate in the enquiry. Enquiry was, therefore, proceeded *ex parte*. According to the Corporation, it was the *modus operandi* of the workman not to remain present at the enquiry as he was working with private bus operators and thereafter to challenge *ex parte* orders. In the second enquiry also, he did not cooperate. He contended that he had not received necessary documents. He did not join the proceedings, remained absent and allowed the enquiry to G H

- A proceed *ex parte*. Finally, he was dismissed from service. Being aggrieved by the said action, he raised an Industrial Dispute and a reference was made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The Labour Court, Jallandhar, as stated above passed an award in
- B favour of the workman on January 31, 2006 which was confirmed by the High Court against which the present appeal is filed by the Corporation.

- 8. Notice was issued by this Court on February 23, 2007 and ad interim stay was also granted. The matter was thereafter
- C ordered to be placed for hearing and that is how the matter is before us.

9. We have heard learned counsel for the parties.

10. The learned counsel for the appellant -Corporation

- D contended that the Labour Court as well as the High Court have committed an error of law and of jurisdiction in passing the award in favour of the respondent-workman. It was submitted that the charges levelled against the respondent were proved. Though opportunity of hearing had been afforded to the respondent, he
- E did not avail of such opportunity and it could not be said that the enquiry was improper or unfair. So far as documents are concerned, it was submitted that the documents had already been supplied to the respondent and he had admitted the said fact. According to the report of the Enquiry Officer, all the three
- F charges levelled against the respondent were proved. If, in the light of the above report, the respondent was dismissed from service, it could not be said that no such order could have been passed and it was liable to be set aside. The Labour Court was wrong in holding that enquiry was not in consonance with law. It
- G was also wrong to exercise power under Section 11 A of the Act and to grant reinstatement. Serious grievance was made by the learned counsel against the direction to pay back wages. It was submitted that even if the Labour Court was satisfied that it was a fit case to exercise power under Section 11A of the Act, on the facts and in circumstances of the case, it could not have

awarded full back wages with interest @ 6%. This is particularly in view the consistent conduct of the respondent-workman in not cooperating with the disciplinary proceedings. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the award passed by the Labour Court and confirmed by the High Court. A

11. Learned counsel for the respondent, on the other hand, supported the orders. It was contended that the Labour Court, recorded a finding of fact that principles of natural justice had not been observed and hence enquiry could not be said to be fair and in consonance with law. The Labour Court was also right in exercising power under Section 11A of the Act and no fault can be found against such action. The High Court in exercise of supervisory jurisdiction did not think it proper to interfere with the award and this Court may not exercise discretionary and equitable jurisdiction under Article 136 of the Constitution. The counsel, therefore, submitted that the appeal may be dismissed. B

12. Having heard the learned counsel for the parties and considering the facts and circumstances in their entirety, in our opinion, the appeal deserves to be partly allowed. As already observed by us, even at an earlier occasion, when allegations were levelled against the respondent-workman, notice was issued and enquiry was instituted, he did not make himself available and the Enquiry Officer was constrained to proceed with the enquiry *ex parte* and an order of termination of services was passed. True it is that the respondent-workman approached Civil Court and the suit filed by him came to be allowed and the decree was confirmed in appeal. But it is equally true that liberty was granted to the Corporation to initiate proceedings afresh on the same charges and hence initiation of proceedings could not be said to be illegal or contrary to law. From the record, it is clear that notice was issued to the respondent and it was received by him, he filed his reply, he also appeared before the Enquiry Officer but subsequently he did not remain present and absented himself. If, in the light of the above facts, Enquiry Officer was obliged to proceed with the enquiry *ex parte*, it could not C

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A be said that by doing so, the Enquiry Officer had committed an error either of fact or of law and the enquiry proceedings were liable to be quashed.

13. With regard to supply of documents, record reveals that the documents had been supplied to the workman and the said fact had been admitted by him. His case, however, was that due to heavy rain, all the documents were destroyed which necessitated supply of fresh documents. But as observed by the Enquiry Officer, the workman was asked as to whether he required any document but the workman replied in the negative.

C In our opinion, he could have continued to appear before the Enquiry Officer, got the documents, if he wanted, and participated in the enquiry. He, however, deliberately did not do so. It is alleged by the Corporation that the respondent intentionally remained absent as he was working with private bus operators and wanted to take a chance if enquiry proceedings are quashed and set aside on the plea of violation of principles of natural justice. We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

14. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside.

15. But as far as the second question is concerned, the Labour Court exercised power under Section 11A of the Act. Taking allegations of the appellant Corporation on face value, it is clear that the respondent- workman remained absent for few days unauthorisedly without his leave being sanctioned. Charges (ii) and (iii) were consequential even according to the finding recorded by the Enquiry Officer to the effect that he failed to take interest in work and he did not obey the Rules framed by the Corporation. In the light of the above 'misconduct', the Labour Court thought that it was a fit case to invoke Section 11A of the Act. The High Court also, in exercise of supervisory jurisdiction did not interfere with that part of the order. In our considered opinion, submission of the learned counsel for the respondent- workman is well-founded that this Court while exercising power under Article 136 of the Constitution may not interfere with that part of the order. The dismissal of workman on the ground of absence for few days, according to the Labour Court, was grossly disproportionate and excessively high. In our judgment, the Labour Court had not committed error of law in recording such finding. Reinstatement granted to the respondent- workman, therefore, needs no interference.

16. The question then remains with regard to consequential benefits and payment of back wages. Once we hold, and we have already held, that the enquiry could not be said to be contrary to law or in violation of principles of natural justice and fair play, it was the duty of the respondent-workman to cooperate with such enquiry and participate in disciplinary proceedings. The workman failed to do so. In the circumstances, in our opinion, Corporation should not be asked to pay back wags to the workman. Had the respondent remained present at the enquiry proceedings, an appropriate order could have been passed by Enquiry Officer after considering his case and after hearing him. There was thus default and failure on the part of the workman himself which resulted in the situation which has arisen. In view of this, in our view, the Labour Court was not right in awarding back wages with interest thereon. To that extent, therefore, the

A order could not be said to be in consonance with law. The High Court, in upholding the said award and confirming the direction, committed the same error. That part of the direction, therefore, is required to be set aside.

B 17. For the foregoing reasons, the appeal is partly allowed. The award passed by the Labour Court and confirmed by the High Court so far as reinstatement of the respondent-workman is concerned, is not disturbed. But the direction issued by the Labour Court to the appellant- Corporation to pay back wages to the respondent workman with interest thereon as confirmed by the High Court is hereby set aside. The respondent-workman will be treated in continuous service. He will also be entitled to consequential benefits on setting aside of dismissal order but he is held not entitled to back wages for the period for which he has not worked.

D 18. Ordered accordingly.

N.J.

Appeal partly allowed.