**(2010) 04 P&H CK 0084**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** None

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| The Punjab Dairy Development Corporation Ltd. | | APPELLANT |
| | Vs | |
| R.K.Shir | | RESPONDENT |

**Date of Decision:** April 26, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 12

**Hon'ble Judges:** Ranjit Singh, J

**Bench:** Single Bench

**Judgement**

Ranjit Singh, J.

Punjab Dairy Development Corporation has filed this appeal to impugn the judgment passed by the District Judge, Chandigarh. The appellant-Corporation has now become Milk Federation, which is pursuing the present case.

2. Respondent-plaintiff had joined the service of National Dairy Research Institute, Karnal on 28.5.1959. In 1961, he was promoted as Farm Engineer. He was posted as Shift Engineer at Verka Milk Plant where he joined on 5.9.1963. On Punjab Dairy Development Corporation being formed, the services of the respondent-plaintiff were transferred to the said Corporation. The respondent-plaintiff was placed under suspension on 23.9.1977 and was asked to give his explanation in respect of the following two charges:

During the tenure as Plant Superintendent at Cattle Feed Plant, Bhattian the receipt record and consumption of material for production were not properly maintained with the result that consumption of certain materials was shown either less or more then what were actually received from the stores department.

(ii) Molasses were accepted at the Cattle Feed Plant Bhatian without proper checking of the Specification and the same were stored in the molasses tank resulting into sullage accumulation at the bottom of the tank which prevented the adequate flow

of molasses to the molasses mixer. The molasses tank was also not got cleaned. Inadequate supply of the molasses into the cattle Feed resulted into considerable loss to the Corporation.

3. After considering the reply filed by the respondent-plaintiff, Enquiry Officer was appointed and on the basis of the finding returned by the Enquiry Officer, he was dismissed. Respondent- plaintiff accordingly challenged the enquiry and the order of his dismissal on the ground that the Enquiry Officer was appointed by the Managing Director, who was not his appointing authority. Further plea was that the documents attached to the charge sheet were not supplied to him and he was not allowed to examine the documents. As per the respondent-plaintiff, he was not given opportunity to cross-examine the witnesses and no show cause notice was served to him before directing his dismissal. Plea is that copy of the enquiry report was also not supplied to the respondent-plaintiff. He had accordingly filed a suit to challenge the order of his termination.

4. Defendants had filed a written statement. It was pleaded that Corporation was not a State and as such, the suit for declaration alone would not lie. It was pleaded that the enquiry conducted in this case was valid. It was, however, conceded that the enquiry report was not supplied alongwith the show cause notice before passing the order of dismissal.

5. The parties to the suit went to trial on the following issues:

1. Whether there was relationship of master and servant in between the parties? OPD

2. Whether the plaintiff is entitled to the declaration as prayed for? OPP

3. If issue No. 2 is not proved whether plaintiff is entitled to any damages? If so, to what amount? OPP

4. Relief.

6. The Court found that the appellant-Corporation was a State within the meaning of Article 12 of the Constitution of India and, thus, the suit for declaration was maintainable. The Trial Court further held that the order of dismissal was void as the respondent-plaintiff was not allowed proper opportunity to defend himself. The suit was accordingly decreed. The appeal filed by the Corporation against this order was dismissed. Hence, this Regular Second Appeal.

7. The learned Counsel for the appellant has not challenged the finding of the Courts below, holding appellant-Corporation to be a State within the meaning of Article 12 of the Constitution of India. The counsel, however, would seriously challenge the order of the Courts below that the order of dismissal was void due to violation of the requirement of the procedure or principles of natural justice. He would also challenge the finding returned by the first Appellate Court, where it is

held that the Board of Directors is the appointing authority and the Managing Director, who had suspended the respondent- plaintiff was not competent to punish him. The counsel would further contend that even if it is assumed that copy of the enquiry report was not supplied to the respondent-plaintiff before passing the order of his dismissal, then this procedural defect could be cured by giving liberty to the appellant to supply the copy of the enquiry report and then proceed with the case from the stage this defect was noticed. In support of this submission, the counsel has placed reliance on Managing Director, ECIL, Hyderabad etc. etc. v. B.Karunakar etc. etc. AIR 1994 Sc 107. The counsel would also refer to State of Haryana and Anr. v. Jagdish Chander 1995 (1) SLR 696, where the Hon''ble Supreme Court had set-aside the order passed by the High Court by observing that the High Court was not justified in straightway setting-aside the order of dismissal and directing reinstatement in view of the ratio of law laid down in ECIL, Hyderabad'' s case (supra). Accordingly, the High Court order was set-aside and the appellant-State of Haryana in Jagdish Chander''s case (supra) was given opportunity to show cause and to pass a fresh order.

8. Learned Counsel for the respondent-plaintiff, however, will seriously oppose the prayer being made by the counsel for the appellant. He would contend that where the order is such, which violates the mandatory requirement of law, the same will be vitiated being punitive order. The counsel would submit that there was a serious prejudice caused to the respondent-plaintiff inasmuch as he was not allowed to inspect the record; he was not permitted to cross- examine the witnesses and the copy of the enquiry report was also not supplied to him.

9. I have considered the submissions made by learned Counsel for the parties.

10. Firstly, the plea made by counsel for the respondent- plaintiff that he was not allowed to cross-examine the witnesses is not borne out from the record. I have perused the enquiry proceedings and have seen that the respondent-plaintiff had cross- examined each and every witness and was given adequate opportunity to make his defence. The submission on this line, thus, is not made out from the record.

11. Apart from pleading that the enquiry report was not supplied to the respondent-plaintiff before passing the order of dismissal, no plea of substance is raised to show either the prejudice or to indicate that any rule or procedure were violated. Even if it be conceded that the enquiry report was not supplied to the respondent-plaintiff, it may not be appropriate to set-aside the order of dismissal merely on this ground in view of law laid down in ECIL, Hyderabad'' s case (supra). It would be apt to notice the following observations made by the Hon''ble Supreme Court in this regard:

(v) The next question to be answered is what is the effect Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to

this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice, which in itself is antithetical to justice."

Hence, in all cases where the Inquiry Officer''s report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunal should cause the copy of the report to be furnished the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that non supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunal find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Courts/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably

be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

12. The Courts have set-aside the order of dismissal merely on the ground that the copy of the enquiry report was not supplied. The other points taken into consideration are not factually made out. It may need a notice that the order of dismissal in this case was passed by the Board of Directors, which was the competent authority in this regard and the Managing Director had only communicated the same. This position would emerge from the record, which was placed before this Court and which was perused.

13. Substantial question of law in regard to violation of principles of natural justice, violation of the procedural safeguards would arise in this case.

14. Apparently, this substantial question of law has not been appropriately decided in terms of the law laid down by the Hon''ble Supreme Court. As per the ratio of law laid down in ECIL, Hyderabad'' s case (supra), merely because the enquiry report was not supplied would not be a justifiable ground to interfere in the order of dismissal. The liberty is required to be given to the appellant to proceed with the enquiry from the stage where this defect on account of non supply of enquiry proceedings is noticed.

15. The Regular Second Appeal is accordingly disposed off. The impugned order is set-aside. The appellant would be at liberty to proceed with the enquiry from the stage where the enquiry report and proceedings are to be made available to the respondent-plaintiff alongwith the show cause notice of the proposed punishment. The appellant would be at liberty pass a fresh order in accordance with law. Fresh decree sheet be accordingly prepared by the Registry of this Court.