

(1999) 04 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2552 of 1996

Kanwal Singh

APPELLANT

Vs

Presiding Officer, Labour Court
and Another

RESPONDENT

Date of Decision: April 27, 1999

Citation: (1999) 122 PLR 498

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: Ramesh Chopra, for the Appellant; Rajbir Sehrawat, for the Respondent

Final Decision: Allowed

Judgement

V.S. Aggarwal, J.

Kanwal Singh (hereinafter described as the petitioner) was employed as a clerk by the Haryana State Cooperative Housing Federation Limited (for short the Federation) on 3rd November, 1981. He is alleged to have been given the additional charge by the Board of Directors on 12th June, 1985 as a cashier. The petitioner had been issued a charge-sheet dated 12th June, 1989 on the ground that he got released the instalment of loan money to the society member for the construction of the house. In this process, the petitioner is stated to have violated condition No. 10 for the grant of loan. The petitioner had replied to the charge-sheet and denied all the charges levelled against him. According to him the release of the instalment was made on the resolution passed by the Federation and the recommendation had been made by the A.D.O. and D.O. The release of the amount was sanctioned by the Managing Director. The release order was passed by the Managing Director, who was the only competent person to grant and release the loan money for disbursement of the loan to the member.

2. The reply of the petitioner was not accepted and domestic enquiry was held. The petitioner contends that domestic enquiry had been held in utter disregard of principles of natural justice. The petitioner was not given opportunity to

cross-examine the witness of the management. He was not supplied the documents which were demanded by him. He was not afforded the assistance of a co-worker. The principles of natural justice were violated. The report of the enquiry held the petitioner guilty of the charges. He was served a show cause notice dated 11th September, 1990, to which a reply was filed. Without considering the reply as per the petitioner, he was removed from the service of the Federation. Aggrieved by the removal order, the petitioner served a demand notice dated 19th March, 1991. The matter was referred to the Labour Court for adjudication. The Presiding Officer, Labour Court vide the impugned award concluded that during the period of suspension, the petitioner was entitled to full pay and allowances. However, as regards the removal of the petitioner from service, the answer was in the negative. It was held that the services of the petitioner were rightly terminated by the Federation. Hence the present writ petition.

3. Notice had been issued and the same has been contested by respondent-Federation. It is denied that the petitioner had been given the additional charge of the cashier. It was denied that there has been any violation of principles of natural justice, which may vitiate the domestic enquiry or the one conducted by the Labour Court.

4. The main argument advanced on behalf of the petitioner was that when domestic enquiry was conducted only one witness had been examined, but opportunity to cross-examine the said witness had not been granted to the petitioner. In other words what had been pleaded was reiterated that principles of natural justice had been violated.

5. During the course of arguments the original file of the enquiry had been called. Perusal of it revealed that only one witness had been examined, who only produced the file of the department and the petitioner had not been afforded any opportunity to cross-examine the witness. Amongst others the first and foremost question arose as to whether when such a right is denied to the person, if principles of natural justice are violated or not. The answer necessarily has to be in the affirmative.

6. The Supreme Court in the well known decision rendered in the case of [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), held:-

"If the purposes of the rules, of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries."

The said principle was reiterated in the subsequent decision in the case of [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), . In paragraph 58 in this

regard, the Supreme Court held:-

"We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action."

The attention of the court has also drawn towards the decision of the Supreme Court in the case of *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 SC 1623. The question once again was as to the effect of the violation of principles of natural justice including the right to cross-examine the witness. It was held that any violation of principles of natural justice would vitiate the enquiry of department. The Supreme Court observed:-

"In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Article 226 it is for the High Court to consider whether the constitutional requirements of Article 311(2) have been satisfied or not."

7. Similar was the view expressed by this Court in the case of *Om Parkash Sharma v. The General Manager, Haryana Roadways, Rohtak* 1980(1) SLR 166.

8. Reverting back to the facts of the present case as already pointed out above, the petitioner Was not afforded any opportunity to cross-examine the witness, who had been produced. Thus principles of natural justice were violated. In fact, the witness did not prove any fact. He simply produced the file. In the absence of proving of the fact, file as such should not have to be allowed to be read in evidence. Keeping in view these important facts, it is obvious that the enquiry so conducted could not be sustained. Therefore, the award of the Labour Court approving the same even cannot be sustained.

9. For these reasons the writ petition is allowed and the impugned award is set aside. However, nothing said herein would restrain the respondent-Federation from proceeding further with the departmental enquiry from the stage, the witnesses of the department were being produced.