# Kurukshetra University vs Prithvi Singh on 15 February, 2018

## Equivalent citations: AIR 2018 SUPREME COURT 973, 2018 LAB IC 1437, AIR 2018 SC (CIVIL) 1163, 2018 (3) KCCR SN 219 (SC)

## Author: Abhay Manohar Sapre

## Bench: Abhay Manohar Sapre, R. K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3585 OF 2008

Kurukshetra University ….Appellant(s)

VERSUS

Prithvi Singh …Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. This appeal is directed against the final judgment and order dated 22.09.2006 passed by the High Court of Punjab & Haryana at Chandigarh in C.W.P. No.13094 of 2006 whereby the Division Bench of the High Court dismissed the petition filed by the appellant herein and affirmed the Award dated 23.01.2006 passed by the Presiding Officer,

2. The controversy involved in the case is short as it would be clear from the narration of the relevant facts infra.

3. The appellant is the Kurukshetra University (hereinafter referred to as "the University"). The respondent was working as Security Guard in the University as daily rated employee.

4. On 18.08.1999, the respondent while on duty alleged to have misbehaved with one lady Research Scholar, who was working in the University. The appellant took note of the incident and held departmental enquiry by appointing Enquiry Officer to probe into the incident.

5. The Enquiry Officer, in his report dated 20.09.1999, found the respondent guilty for committing the misconduct. The appellant accordingly decided to discontinue the services of the respondent and

treating him to be the daily rated worker dispensed with his services with effect from 30.03.2000.

6. This led the State to make the industrial reference to the Labour Court, Ambala under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act") for deciding the legality and correctness of the respondent's termination from the services of the appellant-University w.e.f. 30.03.2000.

7. Before the Labour Court, the stand of the appellant(University) in the written statement was two-fold. First, the respondent was working as a daily wager for a period of 89 days and, therefore, he was not entitled to claim any benefit available to any workman under the ID Act and Second, the respondent committed misconduct while on duty for which a departmental enquiry was held though it was not required because the respondent was a daily rated employee and on being found guilty in the domestic inquiry, his services were dispensed with.

8. The Labour Court, by award dated 23.01.2006, answered the reference in respondent's favour. The Labour Court held that the respondent has worked for more than 240 days in one calendar year. It was further held that since the appellant had leveled charge of misconduct against the respondent, it was necessary for the appellant to have held regular departmental enquiry by issuing a charge sheet etc. and then depending upon the outcome of the enquiry, appropriate orders should have been passed. It was held that the enquiry held by the appellant was not legal and proper. With these findings, the Labour Court held this to be a case of illegal retrenchment and set aside the respondent's termination order as being illegal. The Labour Court granted liberty to the appellant to hold regular departmental enquiry for the charges leveled by them against the respondent, in case the appellant so desires.

9. The appellant (University), felt aggrieved of the award of the Labour Court, filed writ petition before the High Court. By impugned judgment, the Division Bench of the High Court dismissed the appellant's writ petition and upheld the Award passed by the Labour Court.

10. Against this judgment of the High Court, the appellant(University) felt aggrieved and has filed this appeal by way of special leave before this Court.

11. Notice of the SLP was sent to the respondent. Despite service and repeated notices sent to the respondent, he neither appeared nor represented through any counsel. We have, therefore, no option but to decide the appeal by hearing the counsel for the appellant.

12. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are constrained to allow the appeal and while setting aside the judgment of the High Court and the award of the Labour Court remand the case to the Labour Court for deciding the reference afresh in the light of our observations made infra.

13. In our considered opinion, neither the Judge of the Labour Court and nor the Judges of the High Court applied their judicial mind while deciding the issues arising in the case and completely ignored the settled legal principles which are applicable to the case at hand and proceeded to decide

the case contrary to the principles laid down by this Court. Due to this reason, we are compelled to interfere in the impugned judgment and remand the case to the Labour Court for deciding it afresh.

14. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination order of a workman under the Labour Laws in reference proceedings and what are the rights of the employer while defending the termination order in the Labour Court remains no more res integra and is settled by series of decisions of this Court beginning from AIR 1958 SC 130 (Indian Iron & Steel Co. Ltd. & Anr. Vs. Their Worken) till AIR 1979 SC 1653 (Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. & Anr.) and also thereafter in several decisions as mentioned below.

15. In between this period, this Court in several leading cases examined the aforesaid questions. However, in Shankar's case (supra), this Court took note of entire case law laid down by this Court in all previous cases and reiterated the legal position in detail.

16. The legal position, in our view, is succinctly explained by this Court (two-Judge Bench) in the case of Delhi Cloth & General Mills Co. vs. Ludh Budh Singh, 1972(3) SCR 29=1972(Lab IC) 573 in Propositions 4, 5 and 6 in the following words:

> "(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal.

But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

17. The aforesaid principle of law was quoted with approval in Shankar's case (supra) by a Bench of three Judges in Para 23 observing, "…..After an exhaustive review of the decisions bearing on the question and affirming the ratio in R.K. Jain's case (1972 Lab IC 13) this Court extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion."

18. The aforementioned decisions were extensively discussed by the Constitution Bench in the case of Karnataka State Road Transport Corpn. vs. Lakshmidevamma(Smt.) & Anr., 2001 (5) SCC 433 wherein the law laid down in the aforementioned two cases was approved.

19. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the respondent was by way of punishment because it was based on the adverse findings recorded against the respondent in the domestic enquiry.

20. So the question, which the Labour Court was expected to decide in the first instance as a "preliminary issue", was whether the domestic enquiry held by the appellant (employer) was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic enquiry held by the appellant was conducted following the principles of natural justice or not.

21. If the domestic enquiry was held legal and proper then the next question which arose for consideration was whether the punishment imposed on the respondent(delinquent employee) was proportionate to the gravity of the charge leveled against him or it called for any interference to award any lesser punishment by exercising the powers under Section 11-A of the ID Act.

22. If the domestic inquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant (employer) to prove the misconduct/charge

before the Labour Court on merits by adducing independent evidence against the respondent (employee). The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written statement. (see- also Para 33 at page 1665/66 of Shankar's case(supra) ).

23. Once the appellant(employer) was able to prove the misconduct/charge before the Labour Court, then it was for the Labour Court to decide as to whether the termination should be upheld or interfered by exercising the powers under Section 11-A of the ID Act by awarding lesser punishment provided a case to that effect on facts is made out by the respondent(employee).

24. We are constrained to observe that first, the Labour Court committed an error in not framing a "preliminary issue" for deciding the legality of domestic enquiry and second, having found fault in the domestic inquiry committed another error when it did not allow the appellant to lead independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence the respondents' termination is bad in law.

25. By no stretch of imagination, in our view, the Labour Court could treat the respondent's termination as "retrenchment" much less an "illegal retrenchment". The Labour Court failed to notice the definition of retrenchment in Section 2(oo) of the ID Act which, in clear terms, provides that retrenchment does not include termination of the service if it is imposed by way of punishment.

26. In this case, the respondent's services were terminated by the appellant by way of punishment after holding a departmental enquiry and therefore, the termination in question could never be regarded as "retrenchment". The Labour Court was, therefore, wholly wrong in treating the termination of the respondent as "retrenchment".

27. We notice that the Labour Court held on facts that the respondent had worked for 240 days in one calendar year. We do not consider it proper to set aside this factual finding. Indeed, it is due to this finding, the respondent is held entitled to claim protection of Labour Laws.

28. The High Court while deciding the appellant's writ petition did not take note of any legal issues mentioned above and cursorily dismissed the writ petition.

29. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable.

30. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

31. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and

depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

32. The appellant shall appear before the Labour Court on 05.03.2018 and will file the copy of this judgment. Since the respondent has not appeared in this Court despite service on him, the Labour Court will issue fresh notice to the respondent for his appearance before the Labour Court and then decide the case as directed above within three months from the date of service of notice to the respondent.

.....J. [R. K. AGRAWAL] .....J. [ABHAY MANOHAR SAPRE] New Delhi;

February 15, 2018