

Before Mahesh Grover & Raj Shekhar Attri, JJ.

**THE KAKRALA KALAN COOPERATIVE AGRICULTURAL
SERVICE SOCIETY LTD.—Appellant**

versus

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, LUDHIANA
AND ANOTHER—Respondents**

LPA No.1130 of 2014

December 6, 2017

***Industrial Disputes Act, 1947—S 10(1)—Reinstatement—
Workman reinstated with 50% backwages—Appeal by
management—Serious charges of embezzlement and conviction—
Management cannot be compelled to retain dishonest employee along
with financial burden—Award of Tribunal and judgment of Single
Bench set aside—Appeal allowed.***

Held that we notice from the statement of the workman that even though question was put to him qua the correctness of the fact of his conviction regarding embezzlement and misconduct in the working of the Society, he, while admitting so, had volunteered on his own that he stood acquitted by the Appellate Court on 18.09.2009. The question is not on record. Therefore, the plea of the respondent-workman that appropriate question was not put to him is unfounded. Even otherwise, when the question on this aspect had been put to the workman, he was under oath to testify correctly and he volunteered to say about his acquittal alone but concealed his conviction. It was obligatory upon him to also state regarding his conviction that has been upheld by the Appellate Court in another FIR in the year 2007 itself. By his conduct, the workman has demonstrated that he does not respect the process of law.

(Para 7)

Further held that we have considered this aspect and are unable to accept the plea raised by the workman, who would have no occasion even to plead equity in his favour as he has voluntarily kept the truth away from the Courts. The judgments of conviction against the workman have been placed on record. We cannot overlook these facts. We have also noticed that the impugned order was passed on 29.05.2014 and the learned Single Judge was also kept in the dark

regarding the conviction of the workman which has also been upheld by this Court.

(Para 11)

Further held that even otherwise, we are of the opinion that if a person has been involved in serious issues of embezzlement and his conviction has been upheld by this Court, the appellant, as employer, cannot be fastened with the liability of a dishonest employee and forced to retain him in service alongwith monetary consequences. We, therefore, set aside the impugned orders dated 29.05.2014 and 21.03.2014.

(Para 12)

M. S. Bedi, Advocate
for the appellant.

Vibha Tewari, Advocate
for respondent No.2.

MAHESH GROVER, J. (ORAL)

(1) The appellant has preferred the instant appeal against the judgment dated 29.05.2014, passed by the learned Single Judge.

(2) The writ petition, preferred by the present appellant against the impugned award dated 21.03.2014, passed by the learned Presiding Officer, Industrial Tribunal, Ludhiana (hereinreferred as 'the Tribunal') granting reinstatement alongwith 50% back-wages, was dismissed in limini.

(3) Respondent No.2-workman (hereinreferred as 'the workman'), while working as a secretary of the appellant-Society, faced termination on account of charges of mis-conduct and misappropriation of the Society's funds.

(4) The workman raised an industrial dispute questioning the order of termination and during the process, suffered a statement on 10.06.2011, which is extracted herebelow:-

“I have studied upto 11th standard. I am 52 years of age. My date of birth is 9-4-1958. I have not brought any proof to show my date of birth. It is correct that earlier also I had filed an application No.105 of 1997 challenging my termination. The same was withdrawn as it was not filed before the ALC. It is correct that I was challenged u/s 408, 420, 468, 471 and 477A, in which I was convicted. It is

correct that I was convicted due to embezzlement and misconduct in the working of the society. Volunteered – in an appeal filed by me, my conviction was set aside on 18-9-2009. It is incorrect that opportunity was afforded to me by Inquiry Officer. I am married and have three children. I cannot tell my monthly expenses as there are borne by my son. My son is labourer. I have no document to show employment of my son as no labour is issued any document. It is incorrect that I remained gainfully employed. It is incorrect that I have filed a false affidavit and have deposed falsely. It is further incorrect that respondent has illegally terminated my services. It is further incorrect that the respondent violated the provisions of ID Act.”

(5) Learned counsel for the appellant has contended that the workman faced multiple FIRs and there is only one case in which he was acquitted while in other case, he suffered a conviction which has been upheld by the Appellate Court and a revision No.646 of 2007 was still pending when the aforesaid statement was suffered by the workman. It is contended that the workman deliberately concealed these facts from the Labour Court and chose to rely on the singular acquittal in his favour while concealing the fact of conviction in another case which was duly upheld by the Appellate Court.

(6) The argument, advanced before us, is that the workman having concealed these facts resulted in a favourable award as the Tribunal was precluded from having the proper facts before it. Apart from this, it is contended that since the workman's conviction has been upheld even by this Court while deciding the criminal revision on 02.09.2015, the appellant cannot be burdened with the liability of the employee, who is involved in case of embezzlement and misappropriation as they have lost confidence in such an employee. The workman has been unable to offer any explanation qua this and the learned counsel representing him has mainly asserted that appropriate question was never put to him during the proceedings before the Labour Court and he was not obliged to give any further information.

(7) We notice from the statement of the workman that even though question was put to him qua the correctness of the fact of his conviction regarding embezzlement and misconduct in the working of the Society, he, while admitting so, had volunteered on his own that he stood acquitted by the Appellate Court on 18.09.2009. The question is not on record. Therefore, the plea of the respondent-workman that

appropriate question was not put to him is unfounded. Even otherwise, when the question on this aspect had been put to the workman, he was under oath to testify correctly and he volunteered to say about his acquittal alone but concealed his conviction. It was obligatory upon him to also state regarding his conviction that has been upheld by the Appellate Court in another FIR in the year 2007 itself. By his conduct, the workman has demonstrated that he does not respect the process of law.

(8) We have, thus, of the opinion that by such concealment, the workman misled the Tribunal deliberately. The writ petition preferred by the appellant was dismissed in limini.

(9) At this stage, learned counsel for the workman points out to the order of this Court passed on 17.07.2014, which is extracted herebelow:-

“After arguing for some time, when this Court showed inclination not to interfere on merits, counsel for the appellant restricted the prayer only qua reinstatement of the workman whose service was terminated in the year 1996. It is stated that the workman is at the verge of retirement; the Society is not in a position to accommodate him and the post has been abolished. In view of that, counsel for the appellant states that instead of reinstatement of the workman, some amount of compensation be awarded to him.

Notice of motion for 9.9.2014.

Reinstatement of respondent No.2 shall remain stayed till further orders.”

(10) With reference to the above, it is contended that LPA was virtually dismissed and it is solely with regard to alternate relief that the matter was kept pending.

(11) We have considered this aspect and are unable to accept the plea raised by the workman, who would have no occasion even to plead equity in his favour as he has voluntarily kept the truth away from the Courts. The judgments of conviction against the workman have been placed on record. We cannot overlook these facts. We have also noticed that the impugned order was passed on 29.05.2014 and the learned Single Judge was also kept in the dark regarding the conviction of the workman which has also been upheld by this Court.

(12) Even otherwise, we are of the opinion that if a person has been involved in serious issues of embezzlement and his conviction has been upheld by this Court, the appellant, as employer, cannot be fastened with the liability of a dishonest employee and forced to retain him in service alongwith monetary consequences. We, therefore, set aside the impugned orders dated 29.05.2014 and 21.03.2014.

(13) Accordingly, the instant appeal stands allowed.

Sanjeev Sharma, Editor