Gurmail Singh *v.* Presiding Officer, Labour Court, Ludhiana and others (S. S. Sodhi, J.)

(8) To conclude, we are of the view that the impugned notification annexure P. 4 does not suffer from any infirmity. Consequently, we dismiss the petition *in limine*.

R.N.R.

Before : *S. S. Sodhi, J.*

GURMAIL SINGH,—*Petitioner.*

versus

PRESIDING OFFICER, LABOUR COURT, LUDHIANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4281 *of* 1981.

September 15, 1988.

Industrial Disputes Act (XIV of 1947)—Ss. 2 A and 10—Termination—Labour Court finding domestic enquiry held not fair or proper. Management's right to adduce evidence to justify termination before the Labour Court—No application made in this behalf—However, specific issue framed regarding justification of termination—No objection taken against framing of issue and evidence led by both parties—Absence of application to adduce evidence by management—Effect of—Stated—Jurisdiction of Labour Court to decide in absence of such application.

Held, that no infirmity can be imputed to the award of the Labour Court on account of the management not making an application for adducing additional evidence as a specific issue had been framed with regard to the justification of the order of termination passed against the workman and it was under this issue that management had adduced evidence to justify the order of termination and at no stage, was, the framing of this issue, or the right or competence of the management to adduce evidence thereunder, ever sought to be questioned.

(Para 5).

Industrial Disputes Act (XIV of 1947)—S. 10—Relief of back wages—Order of termination justified for the first time before the Labour Court—Workman—Whether entitled to back wages till the date of award.

Held, that where the services of workman are terminated without holding any enquiry and mis-conduct is established for the first time before the Labour Court the order of termination would take effect from the date of the award of the Labour Court and not from the date on which the management had terminated his services. That being so the workman is entitled to back wages, till the date of award upholding his termination.

(Para 8).

J. C. Verma, Advocate with Dinesh Kumar, Advocate, *for the petitioner.*

D. N. Rampal, Advocate, for A.G. Punjab, *for the respondent.*

JUDGMENT

S. S. Sodhi, J.

(1) The challenge in writ proceedings here is to the award of the Labour Court, Ludhiana, in a Reference under Section 10 of the Industrial Disputes Act, up-holding the termination of the services of workman—Gurmail Singh—a bus-conductor with Punjab Roadways, Ludhiana.

(2) A reference to the record shows that in the proceedings before the Labour Court, a preliminary issue was framed with regard to the validity of the domestic enquiry held against the workman leading to the order of termination of services being passed against him. The Labour Court, by its order of May 29, 1980, annexure P/1, came to the finding that no fair or proper enquiry had been held against the workman. The Labour Court, thereafter, proceeded to adjudicate upon the other issues in the reference, one of which being "whether termination is justified and in order". It was after taking into account the evidence adduced by the parties under this issue that the Labour Court held that the order of termination passed against the workman did not justify any interference and the workman was thus not held entitled to any relief.

(3) Mr. J. C. Verma, counsel for the petitioner-workman, sought to assail the impugned Award of the Labour Court on the ground that the Labour Court had no jurisdiction to afford any opportunity to the Management to adduce evidence seeking to justify the termination of the service of the workman in the absence of a special application being filed by the Management containing this prayer.

This contention being founded upon the judgment of the Supreme Court in *Delhi Cloth and General Mills Co.* v. *Ludh Budh Singh* (1), Stress being on the following observations:—

> "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."

(4) Further support for the contention raised was sought from the latter judgment of the Supreme Court in *Shambhu Nath Goyal* v. *Bank of Baroda and others* (2). This was sought to be read to imply that an application by the Management to seek to justify the order of termination passed against the workman by adducing evidence before the Tribunal can be made only at the time of the filing of the written statement by the Management and not later.

(5) The principle, of course, is well established that once the Labour Court holds that no valid or legal enquiry had been held against a workman, leading to an order of termination of services being passed against him, it is open to the Management to seek to justify its order by adducing evidence before the Labour Court and further that the request for adducing evidence or stand of the Management, in this behalf, must not be made at any belated stage of the proceedings. Each case has, however, to be seen in the context of its own facts and circumstances. In the present case, it will be seen that a specific issue was framed with regard to the justification of the order of termination passed against the workman. It was under this issue that the Management adduced evidence to justify its order against the workman. It is pertinent to note that at no stage was the framing of this issue or the right or the competence of the Management to adduce evidence, on this issue ever sought to be questioned. In these circumstances, the rule laid down

(1) A.I.R. 1972 S.C. 1031.
(2) A.I.R. 1984 S.C. 289.

by the Supreme Court in the two authorities cited is clearly not applicable and no infirmity can be imputed to the impugned Award of the Labour Court on this account.

(6) A half-hearted attempt was next made to suggest that the order of termination passed against the workman was based on no evidence. The argument here being that the charge against the workman was that he was carrying a load of two maunds in the bus for which no ticket had been issued. The carrying of the load is indeed accepted even by the workman, but it was sought to be suggested by his counsel that it was left there by some unknown person and was consequently to be deposited in the office. Counsel could however, point to no evidence to show that any such explanation was put-forth by the workman when his bus was checked by the Inspectors. On the face of it, this explanation is clearly an after-thought. This cannot thus, at any rate, be treated as a case of no evidence.

(7) No point was raised with regard to the punishment imposed keeping in view the fact that workman already had to his credit four punishments—two censures and two orders passed against him relating to stoppage of increments with cumulative effect.

(8) Where, however, the Labour Court fell in error was in not holding the workman entitled to wages till the date of its award. It is now well-settled, as held in (*Zora Singh* v. *The Koom Kalan Co-operative Agricultural Service Society Limited*) (3), that where the services of a workman are terminated without holding any enquiry and misconduct is established for the first time before the Labour Court, the order of termination would take effect from the date of the Award of the Labour Court and not from the date on which the Management had terminated his services. This being so, the respondents are directed to pay wages to the petitioner-workman upto the date of the Award, that is, April 6, 1981 within six months from today. This petition is thus accepted to this extent. There will, however, be no order as to costs.

R.N.R.

(3) C.W.P. 2212 of 1986 decided on August 12, 1986.