and

(4) The wife against whom decree of restitution of conjugal rights in the manner indicated in our first conclusion has been passed, will get the right to claim maintenance from the husband with effect from the date when she is granted divorce and she will continue getting this maintenance till she re-marries.

(12) List the case for disposal before the learned Single Bench dealing with the Criminal Revision Petition.

R.N.R.

Before Jawahar Lal Gupta, J.

P.S.E.B. PATIALA AND ANOTHER,—*Appellant*

versus

NARINDER SINGH,—*Respondent*

R.S.A. No. 1660 of 95

21st March, 1997

Code of Civil Procedure, 1908—S. 100—Punjab State Electricity Board Employees (Punishment and Appeals) Regulations, 1971—Preliminary enquiry report—Supply of copy—Failure to supply copies of preliminary report especially if report is taken as evidence—Amounts to denial of reasonable opportunity and is violative of principles of natural justice.

Held, that whenever a disciplinary authority gets a complaint against an employee, it is entitled to have it investigated. If as a result of the investigation, it is found that there is substance in the complaint, it can initiate a regular inquiry. Otherwise, the complaint can be filed. Still further, if the report of the preliminary enquiry is not relied upon during the course of regular enquiry, the employee may not be entitled to a copy thereof. However, in a case where the statements of various persons are recorded and preliminary enquiry reports are submitted which are taken on record, failure to supply copies of the statements during the preliminary enquiry and also the reports can result in denial of a reasonable opportunity.

(Para 6)

Further held, that the factum of the statements having been recorded during the preliminary enquiry as also the reports was

not disclosed to the employee till the enquiry reports were taken on record. Still further, neither the copies of the statements recorded during the preliminary enquiry nor the reports were supplied to the employee at any stage. In this situation, it appears that there was denial of a reasonable opportunity to the employee. If a person has appeared as a witness during the course of preliminary enquiry, the evidence should be disclosed to the delinquent employee so that he can effectively cross-examine the witness(es) during the course of regular enquiry.

(Para 7)

Code of Civil Procedure, 1908—S. 100—Punjab State Electricity Board Employees (Punishment and Appeals) Regulations, 1971—Reg. 12—Regulation provides opportunity to employee to challenge the findings of Enquiry Officer as also conclusion arrived at by Punishing authority while availing of remedy of appeal/revision—Not merely a ritual to provide copy of enquiry report alongwith order of punishment.

Held, that according to the scheme of regulations, the punishing authority is permitted to pass an order of punishment without issue of a show cause notice. This was the legal position prior to November 20, 1990 when their Lordships of the Supreme Court decided Mohammad Ramzan's case (AIR 1991 SC 471). However, Regulation 12 contemplates that the order made by the punishing authority shall be communicated to the employee alongwith a copy of the report of enquiry and other materials as mentioned therein. This regulation has a purpose to serve. It is calculated to provide an opportunity to the employee to challenge the findings recorded by the Enquiry Officer as also the conclusions arrived at by the punishing authority while availing of the remedies of appeal, revision and review. It is not merely a ritual that the copy of the enquiry report should be furnished alongwith order of punishment. The regulation has a definite purpose to serve.

(Para 13)

G.S. Kanwar, Advocate, *for the appellants.*

R.L. Gupta, Advocate, *for the Respondent.*

JUDGEMENT

Jawahar Lal Gupta, J. (O)

(1) This is defendants' second appeal.

(2) The plaintiff-respondent was working as a clerk with the

Punjab State Electricity Board. On November 3, 1986, a chargesheet was served upon him. He submitted a reply denying the charges. An enquiry was held. Ultimately, the Board passed an order on March 8, 1990 by which the penalty of removal from service was imposed on the plaintiff. Aggrieved by this order, he filed a suit on March 26, 1990 for a declaration that the order of removal dated March 8, 1990 was illegal and void. It was *inter alia* alleged that the plaintiff was not afforded "an opportunity during the course of enquiry", "no findings of the Enquiry Officer were supplied to the plaintiff either before passing the removal order or alongwith the removal order which is mandatory under PSEB Employees (Punishment and Appeal) Regulations, 1971 and that no show cause notice was served upon the plaintiff which is against the principles of natural justice."

(3) After examination of the evidence, the learned trial court *inter alia* observed in paragraph 10 that "preliminary enquiry was held and its copy was not supplied to the plaintiff prior to the start of regular enquiry. It has also been admitted that copies of statements of the witnesses recorded during the course of preliminary enquiry were also not supplied to the plaintiff. Copy of final report of enquiry officer has also not been supplied to the plaintiff at any point of time either before the impugned order was passed on 8th March, 1990 or at the time of passing of impugned order. It has been admitted that show cause notice was not served to the plaintiff in this case." Accordingly, the learned court concluded in paragraph 13 that "due to these reasons singly and collectively the order of removal from service passed against the plaintiff is bad in law. It cannot be sustained and is liable to be quashed". The trial court, thus, decreed the suit.

(4) Aggrieved by the judgment, the defendants filed an appeal. The judgment was challenged only on the ground that "it was not necessary for the appellants to supply the copy of the report of the enquiry officer." The learned appellate court specifically recorded in paragraph 8 that "on other points no arguments were advanced by the counsel for the appellants...." The contention raised on behalf of the appellants was considered. It was found that Regulation 12 of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971 imposes a legal duty on the punishing authority to supply a copy of the report of the enquiry. The copy having not been supplied, it was held that the action was not in conformity with the regulation. Aggrieved by the judgment and decree, the defendants have filed the present second appeal.

(5) Mr. Kanwar, counsel for the appellants has contended that it was not mandatory for the punishing authority to supply a copy of the enquiry report to the employee. Failure to comply with the provisions of Regulation 12 cannot vitiate the order. Mr. Kanwar has placed reliance on the observations of their Lordships of the Supreme Court in Civil Appeal No..... of 1996 arising out of SLP (c) No. 11692 of 1995 *(Punjab State Electricity Board and another* v. *Uggar Sain Goyal and others)* in support of his submission. The claim made on behalf of the appellants has been controverted by the counsel for the respondent.

(6) A perusal of the record shows that the appellants had conducted at least two preliminary enquiries before the issue of charge-sheet to the respondent. A perusal of the enquiry report which is on the record of the case as Ex. D-22 indicates that reports of enquiry had been submitted by Shri B.S. Arora, SDO which were taken on record as Ex. PW6/I.J and K. It further appears that Mr. H.S. Sindu, Executive Engineer had submitted an enquiry report which is on record as Ex. PW6/O. Still further, Mr. Kanwar, counsel for the appellants has admitted before the court that the statements of various persons had been recorded during the course of preliminary enquiries. Some of these persons had appeared as witnesses even during the course of regular enquiry. It has also been admitted by the learned counsel that the copies of the statements of the witnesses recorded during the preliminary enquiry and copies of the preliminary enquiry reports were not disclosed or supplied to the plaintiff during the course of regular enquiry. Counsel, however, submits that these were not asked for. He is unable to show that even the factum of the existence of the enquiry report was disclosed to the employee. In this situation, the first question that arises for consideration is—was the employee given a reasonable opportunity to defend himself during the course of enquiry ? The answer has to be in the negative. It is true that whenever a disciplinary authority gets a complaint against an employee, it is entitled to have it investigated. If as a result of the investigation, it is found that there is substance in the complaint, it can initiate a regular enquiry. Otherwise, the complaint can be filed. Still further, if the report of the preliminary enquiry is not relied upon during the course of regular enquiry, the employee may not be entitled to a copy thereof. However, in a case where the statements of various persons are recorded and preliminary enquiry reports are submitted which are taken on record, failure to supply copies of the statements during the preliminary enquiry and also the reports can result in denial of a reasonable opportunity.

(7) In the present case, it is the admitted position that the statements of various persons were recorded during the preliminary enquiry. It has also been conceded at the bar that some of those persons had appeared as witnesses during the regular enquiry. It is also not disputed that the factum of the statements having been recorded during the preliminary enquiry as also the reports was not disclosed to the employee till the enquiry reports were taken on record. Still further, neither the copies of the statements recorded during the preliminary enquiry nor the reports were supplied to the employee at any stage. In this situation, it appears that there was denial of a reasonable opportunity to the employee. If a person has appeared as a witness during the course of preliminary enquiry, the evidence should be disclosed to the delinquent employee so that he can effectively cross-examiane the witnesses during the course of regular enquiry. Similarly, if the report of the preliminary enquiry is taken as evidence, a copy thereof should be available to the employee so as to enable him to either show that the conclusions recorded are wrong or to make use of such findings as may be in his favour. In the present case, the appellants did not make the copies available to the respondent at any stage.

(8) Mr. Kanwar submits that the employee did not ask for it. It may be so. However, nothing has been pointed out to show that the employee was made aware of the fact that statements of various persons who had appeared during the regular enquiry had been recorded at an earlier stage. In such a situation, the failure of the employee to ask for a copy cannot be a valid defence for the appellants. Equally, it is not disputed that even the copies of the reports of preliminary enquiry were not supplied to the employee. This was violative of the principles of natural justice. Reference in this behalf may be made to the observations of their Lordships of the Supreme Court in *State of Madhya Pradesh* v. *Chintaman Sadashiva Waishampayan* (1), wherein it was held as under :—

> "The right to cross-examine the witnesses who give evidence against him is a very valuable right and if it appears that effective exercise of this right has been prevented by the Enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that enquiry had not been held in accordance with rules of natural justice."

(1) AIR 1961 S.C. 1623

This rule is fully applicable to the facts of the present case.

(9) It also deserves mention that the trial court had categorically observed that copies of the statements recorded during the preliminary enquiry as also the reports had not been supplied to the employee. This was one of the grounds on which the court had concluded that there was denial of a reasonable opportunity. This part of the judgment was not challenged by the appellants either before the appellate court or even during the course of hearing of the second appeal. This being the factual position, the appeal deserves to be dismissed on the short ground that the enquiry conducted by the appellants was not in conformity with the principles of natural justice.

(10) Mr. Kanwar has, however, argued the matter on the basis of Regulation 12 and the decision of their Lordships of the Supreme Court. Even this aspect of the matter may be noticed.

(11) Regulation 8 prescribes the procedure for the enquiry. Regulation 9 prescribes the action on the enquiry report. It authorises the punishing authority to impose one of the prescribed penalties. Thereafter, Regulation 12 provides as under :—

> "Orders made by the punishing authrity shall be communicated to the employee who shall also be supplied with a copy of the report of the enquiry, if any, held by the punishing authority and a copy of its findings on each article of charge, or where the punishing authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the punishing authority together with brief reasons for its disagreement, if any, with the findings of inquiring authority (unless they have already been supplied to him.)"

(12) Regulation 18 provides for the remedy of appeal against the order of punishment. Regulation 29 provides for remedies of revision and review against the order passed by the appellate authority.

(13) According to the scheme of regulations, the punishing authority is permitted to pass an order of punishment without issue of a show cause notice. This was the legal position prior to November 20, 1990 when their Lordhsips of the Supreme Court decided Mohammad Ramzan's case (AIR 1991 SC 471). However, Regulation

12 contemplates that the order made by the punishing authority shall be communicated to the employee alongwith a copy of the report of enquiry and other materials as mentioned therein. This regulation has a purpose to serve. It is calculated to provide an opportunity to the employee to challenge the findings recorded by the enquiry officer as also the conclusions arrived at by the punishing authority while availing of the remedies of appeal, revision and review. It is not merely a ritual that the copy of the enquiry report should be furnished along with order of punishment. The regulation has a definite purpose to serve.

(14) In the present case, it is the admitted position that even when the punishing authority passed the order directing the removal of the plaintiff respondent from service, a copy of the enquiry report or the other record as contemplated in the regulation was not furnished to him. A specific grievance in this behalf was made by the employee in para 5(ii) of his plaint. Even though the allegation was vaguely denied, it was not specifically stated in the written statement that the copy of the enquiry report or the finding on each article of charge was even disclosed to the employee. Thus, there was a clear violation of the provisions of Regulation 12. This prevented the respondent from effectively availing of the remedies of appeal, revision or review. He was compelled to challenge the order by filing a civil suit. Even at that stage, the defendant-appellants did not remedy the wrong. They persisted in claiming that the suit should be dismissed.

(15) Mr. Kanwar refers to the decision in Uggar Sain's case (supra). In this case, their Lordhsips were pleased to notice that the decision in Mohammad Ramzan's case "has since been explained away in a decision of this Court in *Managing Director, ECIL Hyderabad and others* v. *B. Karunakar and others* (2), which would take out the sting, if any, in the orders of termination of service. On these two aspects of the matter, learned counsel for the plaintiff-respondent has nothing to say."

(16) Such is not the position in the present case. It is the categorical case of the plaintiff-respondent that copy of the enquiry report was required to be supplied to him along with the order. It is further evident that the employee had the remedies of appeal, revision and review. The availing of those remedies becomes totally impossible in the absence of the availability of the report. The prejudice to the employee is obvious. Thus, the decision in Uggar

(2) 1993 (4) S.C.C. 727

Sain's case is of no avail to the appellants. This is all the more so in view of the fact that even during the course of enquiry, there was denial of a reasonable opportunity to the plaintiff-respondent.

(17) No other point has been urged.

(18) In view of the above, the inevitable conclusion is that there is no merit in this appeal. It is consequently, dismissed. In the circumstances of the case, there will be no order as to costs.

J.S.T.

Before G.S. Singhvi and S.S. Sudhalkar, JJ.

RAJINDER SINGH,—*Petitioner*

versus

THE PRESIDING OFFICER, LABOUR COURT, U.T. CHANDIGARH AND OTHERS,—*Respondents*

C.W.P. 923 *of 96*

April 10th, 1995

The Industrial Disputes Act, 1947—S.25-F-Retrenchment in violation of s. 25—F-Labour Court held the retrenchment illegal—Normal rule in such cases—Reinstatement with full back wages—Deviation from normal rule—Discretion exercised by the Labour Court—Interference in exercise of writ jurisdiction.

Held, that in exceptional cases, the Labour Court/Industrial Tribunal may exercise its discretion to make deviation from the normal rule of re-instatement with full back wages. The very recognition of the fact that the discretion vests in the Labour Court/ Industrial Tribunal to modulate the relief to be awarded to the workman leads to an irresistible inference that in all cases of unlawful retrenchment of the service of the workman, it is not necessary that the adjudicating body must award reinstatement with full back wages. The adjudicating bodies constituted under the *Act* 1947 are presumed to be possessed with special knowledge with regard to industrial Legislation and industrial disputes. They are presumed to be well equipped and well versed in law relating to industrial disputes and are expected to judicially exercise their discretion while giving relief to the workmen. In cases where the discretion is properly exercised by the Labour Court/Industrial Tribunal and there is no failure of justice, this court will not exercise its certiorari jurisdiction to interfere with the award.

(Paras 11 and 12)