dated 5th February, 1975 was a sham transaction not intended to resolve any dispute. In fact, what to talk of dispute, there was not even scintilla or shred of a dispute between Ram Kishan and Roop Chand. Will or no will in favour of Smt. Khazani, Smt. Khazani is entitled to succeed to the entire property of her father as being his only child.

(14) In view of what has been said above, this appeal succeeds and is, accordingly, allowed. Judgments and decrees of the courts below are set aside and the suit of the plaintiff is decreed for possession of 1/2 share of land measuring 161 k 16m as detailed in the heading of the plaint and the judgment and decree dated 5th February, 1975 suffered in favour of Ram Kishan by Roop Chand is adjudged void and as of no effect so far as the rights of Smt. Khazani are concerned. No costs.

R.N.R.

Before Arun B. Saharya, C.J. & V.K. Bali, J

P.R.T.C. PATIALA THROUGH ITS MANAGING DIRECTOR,—*Appellant*

versus

DHANI RAM,—*Respondent*

L.P.A. No. 1126 of 1990

7th November, 2000

Constitution of India, 1950—Art.226—Termination of services of a workman on account of misconduct—Labour Court finding no merit in the reference made to it—Appellant failed to show that any show cause notice was given to the workman or the report of the Enquiry Officer was disclosed to him—Labour Court failing to discuss evidence on merits of the controversy—No evidence at all led before the Enquiry Officer to prove the charges agaisnt the workman—Order of termination held to be illegal & arbitrary being non-speaking & without application of mind—High Court has jurisdiction to reappreciate the evidence where there has been a failure to deal with the evidence—Order of learned Single Judge ordering reinstatement of the workman with all consequential benefits upheld— However, order with regard to grant of interest on arrears of pay to the workman set aside.

Held that non-compliance of principles of natural justice as also passing of non-speaking order terminating the services of the workman

apart, the impugned order and the one passed by the Labour Court also deserve to be set aside on the ground that it was a case of no evidence at all. Insofar as enquiry officer is concerned he returned a finding of guilt against the petitioner with regard to damaging of the vehicle driven by him on the basis of evidence of a service Engineer and insofar as Labour Court is concerned, it felt content to answer the reference against the workman after giving an opinion that the enquiry conducted against the workman was fair and by observing the principles of natural justice. Insofar as evidence of the Service Engineer is concerned, in our view as well, his statement cannot be accepted and, in any case, opinion so as to return a finding at the workman on the basis os his statement, has to be termed as conjectural.

(Para 16)

Further held, that the contention that High Court, in its jurisdiction under Article 226 of the Constitution of India, could not reappraise the evidence, would carry no weight in a case like the present one, where the Labour Court, discussed no evidence on merits of the controversy. It was, thus, not a case of reassessing or reappreciating the evidence. Thus, order terminating the services of the workman has to be held as illegal and arbitrary as also an out-come of non-observance of principles of natural justice.

(Para 17 & 18)

Further held, that in a contested matter where the Labour Court answered the reference agaisnt the workman and it is only in the High Court that plea of workman found favour, there was no justification for granting interest to the workman. It was not a debt due to the workman, on which interest is normally granted. The money became due to the workman only on setting aside the order of termination. Thus, it is only the part of order passed by learned Single Judge with regard to grant of interest is set aside.

(Para 19)

D.S. Chanan, Advocate,—*for the appellant*

Deepak Agnihotri, Advocate,—*for the respondent*

JUDGMENT

V.K. Bali, J.

(1) Challenge in this Letters Patent Appeal filed under Clause X of the Letters Patent is to judgment of lerned Single Judge dated

7th March, 1990 vide which order of removal from service of the respondent—workman dated 1stFebruary, 1979, Annexure P-3, was set aside and so was award, Annexure P-6, dated 2nd February, 1987, rendered by the Presiding Officer, Labour Court, Jalandhar, who had found no merit in reference made to him under Section 10(1)(c) of the Industrial Disputes Act, 1947, sought against termination of service of the respondent. In consequence of setting aside orders Annexures P-3 and P-6, learned Single Judge ordered reinstatement of respondent with all consequential benefits, like, arrears of pay and allowances, seniority and promotion. The workman was further held entitled to interest @ 12% per annum on the arrears of pay and allowance.

(2) The facts necessitating the petitioner (here-in-after to be referred to as the workman), in filing Civil Writ Petition No. 7566 of 1988, giving rise to present appeal, need a necessary mention. Vide order dated 1st February, 1979, Annexure P-3, Pepsu Road Transport Corporation (here-in-after to be referred to as the appellant), terminated services of the workman. The order that came to be passed by the disciplinary authority, reads thus :-

> "The services of Shri Dhani Ram, Driver No. K-39 are hereby terminated with immediate effect on account of misconduct".

(3) Being aggrieved of the order aforesaid, workman sought reference under Section 10(1)(c) of the Industrial Disputes Act (here-in-after reffered to as the said Act) and the Government, vide notification dated 22nd January, 1980, referred following dispute for adjudication :—

> "Whether termination of services of shri Dhani Ram, workman, is justified and in order? If not to what relief/exact amount of compensation is he entitled?"

(4) It has been the case of workman that he had worked for a period of five years in the appellant-Managemnt as driver and his services were terminated on 1st February, 1979 without any notice, charge-sheet, compensation or holding fair and proper enquiry. The action of the appellant in terminating his service was styled by him to be illegal, unjustified and *malafide.*

(5) The matter was contested by the appellant and in the written statement that came to be filed on its behalf it was pleaded that the services of the workman were terminated after holding a fair enquiry. The workman was found quilty of certain charges of misconduct, unsatisfactory record, damage to vehicle No. PUP-2678, and negligen in performing official duties.

(6) On the pleadings of the parties, learned Labour Court, Jalandhar, framed following issues :-

"1. Whether proper and fair enquiry was held by the respondent against Shri Dhani Ram? OPM

2. If issue No. 1 is not proved, whether termination of services of Shri Dhani Ram-workman is justified and in order. If not, to what relief/exact amount of compensation is he entitled?"

(7) After resultant trial, on the issues referred to above, learned Labour Court, while discussing both the issues together, held that "a perusal of the material on the enquiry file clearly shows that the enquiry was not a formality and was held by keeping in view the procedure, rule and principles of natural justice". The aforesaid finding came to be recorded after noticing that the management produced on record enquiry file Ex. M1 and other documents Ex.M2 to M6 and that no questions were put to the Assistant of the Management, who produced the record questioning the authenticity of the said documents and that workman had only filed an affidavit on 3rd December, 1982 which was not properly verified in accordance with the provisions of the High Court Rules and Orders and, thus, could not be read into evidence. It was also observed that the workman had admitted that he had been associated in an enquiry held against him and that he had received a charge-sheet before the enquiry and further that he had received a show cause notice and was given a personal hearing. In a short order that, thus, came to be passed by the learned Labour Court, all that has further been observed is that the contentions raised by the workman with regard to minor irregularities would not vitiate the order of his termination as the same have not resulted in miscarriage of justice and no prejudice has been caused to the workman.

(8) The findings of the Labour Court came under serious challenge in a writ petition and it was canvassed before the learned Single Judge that the impugned order, Annexure P-3 was cryptic and non-speaking one, the workman was not issued a show cause notice and report of Enquiry Officer was not supplied to him. Learned Single Judge, before whom the matter came up for adjudication, sent for the records of the case and after examining the same, returned a firm finding of fact that the counsel for the respondent-Corporation had not been able to show that any show cause notice was given to the petitioner or the report of the Enquiry Officer was disclosed to him and that order of termination, as reproduced above, being without application of mind, could not possibly sustain. Learned Single Judge examined the evidence and on the basis thereof further returned a finding of fact

that there was no evidence at all before the Enquiry Officer from where the charges framed against the workman could be proved. It requires to be mentioned at this stage that insofar as Labour Court is concerned, there is not even a partial reference of the evidence that was led by the parties, except, of course, making a mention of enquiry file and some other documents produced by the management.

(9) Primary and in fact only charge against the workman, as is clear from the arguments raised by learned counsel for the parties before us, was that the workman, because of his rash and negligent driving, caused an accident of the vehicle driven by him and, thus, damaged the same. The plea of appellant was contested by the workman, who stated that accident had occurred due to breakage of front left side hanger because of a manufacturing defect. In order to support his plea, workman had examined Ajit Singh Mechanic, who had stated that the accident had taken place due to breakage of front left side hanger and the hanger broke due to manufacturing defect and there was no fault on the part of the driver. Pala Ram, Cleaner and Om Parkash, SSI also supported the defence projected by the workman. The Enquiry Officer, however, relying upon the evidence of Kundan Lal, Service Engineer, came to the conclusion that an inference can be drawn that the petitioner was driving the vehicle with high speed and he had no control over the same and it is for that reason that front left side hanger had broken. On the basis of the evidence that came to be led before the Enquiry Officer, learned Single Judge held that evidence of service Engineer Kundal Lal was not acceptable as no reasonable person could form the opinion that the petitioner was driving the vehicle with over speed in the face of evidence of Ajit Singh Mechanic, Pala Ram Cleaner and Om Parkash SSI and further that it was not disclosed in the evidence of Kundan Lal that any technical test was conducted by him to form the opinion that petitioner was driving the vehicle with high speed and that he had also not pointed out as to how it was scientifically possible to form an opinion whether the vehicle was being driven at a high speed when he was not personally present there. In ultimate analysis, learned Single Judge, on the evidence led by the appellant, came to the following conclusion :-

> "In my opinion, the opinion of Kundan Lal is arbitrary, unreasonable and not supported by any scientific criterion. It is actually no evidence at all and is merely a conjecture".

(10) Learned counsel representing the appellant, without touching the merits of the case, on the basis of evidence led by the parties, has, however, still endeavoured that the judgment of learned Single Judge be set aside on the ground that in the facts and circumstances of the

present case, there was no need at all for the Punishing Authority to pass a speaking order while terminating the services of the workman and further that show cause notice was served upon the workman and to that extent, finding of the learned Single Judge was not based on the evidence that was led by the parties. Whereas, for the first proposition, as mentioned above, learned counsel relies upon a judgment of the Supreme Court in *Ram Kumar* v *State of Haryana, (1)* for the second proposition, he relies upon observations made by learned Labour Court with regard to issuance of show cause notice. It may be reiterated that no arguments have at all been raised that may detract from the findings recorded by the learned Single Judge on the basis of evidence that came to be led before the Enquiry Officer, but for half heartedly contending that the learned Single Judge could not re-appreciate the evidence in his jurisdiction under Article 226 of the Constitution of India.

(11) We have heard leaned counsel for the parties and, with their assistance, examined the records of the case. We find no merit whatsoever in either of the contentions of learned counsel, noted above. The order resulting into termination of services of the workman has since been reproduced above. It can not possibly be disputed that the same is non-speaking and without application of mind. Counsel for the appellant, however, states that the finding of the learned Single Judge that the said order is vitiated being non-speaking and without application of mind, needs to be set aside in view of the Supreme Court Judgment in Ram Kumar's case (supra). The facts of the aforesaid case would reveal that a charge was levelled against the appellant that he did not issue tickets to nine passengers, although he had taken the fare from each of them. The disciplinary proceedings were started against him and the enquiry officer, after considering the allegations constituting the charge, the plea of appellant in defence and the evidence adduced by the parties including the appellant, held that the charge against the appellant was proved. The Punishing Authority agreed with the findings of the Enquiry Officer and by the impugned order terminated the services of the appellant". The Punishing Authority, while terminating the services of the appellant, had passed the order that needs to the noticed and the same is reproduced herein below :—

> "I have considered the charge-sheet, the reply filed to the charge-sheet, the statements made during enquiry, the report of the Enquiry Officer, the show cause notice, the reply filed by the delinquent and other papers and that no reason is available

(1) AIR 1987 S.C. 2043

to me on the basis of which reliance may not be placed on the report of the Enquiry Officer. Therefore, keeping these circumstances in view, I terminate his service with effect from the date of issue of this order".

(12) On the plea that order aforesaid was non-speaking and without application of mind, the Supreme Court observed that "in view of the contents of the impugned order, it is difficult to say that the Punishing Authority had not applied his mind to the case before terminating the services of the appellant. The Punishing Authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the Punishing Authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the Punishing Authority to again discuss the evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the Punishing Authority has accepted the findings of the Enquiry Officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order".

(13) The observations made by the Supreme Court, reproduced above, in the facts and circumstances of this case, in our view, would not come to the rescue of the appellant, as in the present case, a non-speaking order terminating the service of workman has been passed. There is not even a remote mention that while doing so, the Punishing Authority had even cared to look at the report of Enquiry Officer and other material, resulting into a finding of guilt against the workman. In *State of Punjab etc* v *Bakhtawar Singh and Ors. (2)* order of the Minister removing the respondent, in the said case, reads as follows:—

"I have gone through the charges and the explanation furnished by Shri R.P. Abrol. From the material on the file, I am definitely of the opinion that he is not a fit person to be retained as part-time member of the Electricity Board. I, therefore, order that Shri Abrol may be removed from membership under sub-clause (iv) of Clause (e) of Sub-Section (1) of Section 10 of the Electricity Supply Act, 1948".

(2) AIR 1972 SC 2083

(14) The order aforesaid had been opined so as not to be speaking one by the Supreme Court. It was held to be arbitrary to the core. True, insofar as Ram Kumar's case (supra) is concerned, there was an enquiry followed by the report whereas in Bakhtawar Singh's case (supra), no such enquiry report was ever available before the Punishing Authority but it is quite clearly made out from reading of the judgment in Ram Kumar's case (supra) that the Punishing Authority had applied his mind to the relevant material available on record. It is different matter that reasons for coming to the conclusion had not been specifically mentioned. In the case in hand, the Punishing Authority had not even cared to go through the enquiry file, least applying his mind to the enquiry report, evidence that came to be led before the Enquiry Officer, reply given by the workman and other allied material.

(15) Insofar as contention of learned counsel with regard to issuance of show cause notice and finding of learned Single Judge recorded contrary to that is concerned, suffice it to say that even though there is a mention in the order passed by the Labour Court that show cause notice was given but it is not known at all as to whether same was a show cause notice preceding framing of charge or preceding order of punishment. As mentioned above, learned Single Judge had sent for the records of the case and the counsel representing the appellant was unable to show any show cause notice having been given at a stage when report had already been given by the Enquiry Officer. More so, from the record, it was found that the report of Enquiry Officer was not given to the workman.

(16) Non-compliance of principles of natural justice as also passing of non-speaking order terminating the services of the workman apart, the impugned order, Annexure P-3 and the one passed by the Labour Court also deserve to be set aside on the ground that it was a case of no evidence at all. As mentioned above, insofar as enquiry officer is concerned, he returned a finding of guilt against the petitioner with regard to damaging of the vehicle driven by him on the basis of evidence of Kundan Lal, Service Engineer and insofar as Labour Court is concerned, it felt content to answer the reference against the workman after giving an opinion that the enquiry conducted against the workman was fair and by observing the principles of natural justice. Insofar as evidence of Kundan Lal, Service Engineer is concerned, in our view as well, his statement can not be accepted and, in any case, opinion so as to return a finding against the workman on the basis of his statement, has to be termed as conjectural. As mentioned by learned Single Judge, the vehicle was not tested nor the concerned witness was present at the scene of occurrence. Further, it can not be said that in every event, if a part of vehicle fails, it would be because of rash and negligent

driving. Every part, in a motor vehicle, is made so as to bear the maximum speed of the same and presumption of its breakage because of high speed can be only a quess at its worst. As compared to the evidence of Kundan Lal, Service Engineer, examined by the appellant, evidence led by the workman was more in consonance with the facts of the case. The motor mechanic examined by the workman clearly stated that the breakage of front left side hanger was because of manufacturing defect. Those, who were present and examined by the workman, supported his plea and we find nothing inherently wrong in a motor part breaking down because of manufacturing 'defect.

(17) The contention of learned counsel for the appellant that High Court, in its jurisdiction under Article 226 of the Constitution of India, could not reappraise the evidence, would carry no weight in a case like the present one, where the Labour Court, as mentioned above, discussed no evidence on merits of the controversy. It was, thus, not a case of re-assessing or re-appreciating the evidence.

(18) Looked from any angle, thus order terminating the services of the workman has to be held as illegal and arbitrary as also an out-come of non-observance of principles of natural justice.

(19) The only surviving contention of learned counsel for the appellant with regard to grant of interest, however, needs acceptance. Learned Single Judge allowed 12% interest on the arrears of wages and allowance without there being even a prayer of the workman in his petition filed in this Court. That part, the wages would become due to the workman only on setting aside the order of termination and not before that. In a contested matter like the one in hand, where the Labour Court answered the reference against the workman and it is only in the High Court that plea of workman found favour, there was no justification for granting interest to the workman. As mentioned above, it was not a debt due to the workman, on which interest is normally granted. The money became due to the workman only on setting aside the order of termination.

(20) In view of the discussion made above, whereas, we find no merit in the appeal insofar as order of learned Single Judge setting aside orders, Annexures P-3 and P-6 with consequential benefits, is concerned, we find merit in the contention of learned counsel for the appellant with regard to grant of interest. It is only the part of order passed by learned Single Judge that deals with interest that is, thus, set aside. Appeal on all other points fails and to that extent dismissed.

(21) Parties are, however, left to bear their own costs.

R.N.R.