

(11) Accordingly, I find no merit in these writ petitions. These are accordingly dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.

(12) Before parting with the judgment, it would be appropriate to point out that the Department has treated these cases most **casually**. **In spite of the availability of sufficient time no written statement** has been filed to the various writ petitions which are pending in this Court. Specific averments made in the petitions have not been answered. The Authorities concerned shall do well to be more careful in future.

(13) In Civil Writ Petition No. 13160 of 1990, the two petitioners belong to the category of Backward Classes. So far as these petitioners are concerned, none below them in order of merit has been appointed. Accordingly, in view of the above, there is no merit in this petition. It is accordingly dismissed.

(14) In Civil Writ Petitions No. 6813, 7005, 7428, 7429 and 12913 of 1991, the petitioners belonged to one or the other of the reserved categories, but no one below them in order of merit has been appointed. Accordingly, there is no merit in these petitions and as such, the same are also dismissed.

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*R.H.R.*

*Before : Hon'ble A. L. Bahri & V. K. Bali, JJ.*

THE PUNJAB DIARY DEVELOPMENT CORPORATION LIMITED,  
—*Petitioner.*

*versus*

THE PRESIDING OFFICER, LABOUR COURT, AMRITSAR AND  
ANOTHER,—*Respondents.*

*Civil Writ Petition No. 3110 of 1992*

**March 16, 1992.**

*Constitution of India, 1950—Art. 226/227—Employee held guilty in two enquiries—On appeal Appellate authority ordering de novo enquiry—Latest enquiry exonerating employee—Dismissal of said employee on the basis of earlier enquiry reports—Such termination illegal.*

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*Held*, that the order with regard to conducting *de novo* enquiry, even though during pendency of the appeal, in the facts and circumstances of this case, cannot be said to be an interim order, the life of which may be limited till pendency of the appeal. Having given to understand that there will be a *de novo* enquiry against him with the obvious result that the effect of earlier enquiries is washed off, the management which admittedly conducted a *de novo* enquiry cannot, in the facts and circumstances of the present case, be permitted to take a stand at this stage that the appeal of the workman having been dismissed, interim order with regard to the *de novo* enquiry automatically fizzles out. Inasmuch as the action against the respondent/workman has been taken on the strength of the enquiry reports, the effect of which stood washed off, and in as much as the result of third enquiry that was conducted against him with regard to all the charges first two enquiries having gone in his favour, the orders passed by the Labour Court cannot be questioned. The order of dismissal was certainly illegal.

(Para 7)

P. S. Patwalia, Advocate. for the Petitioners.

JUDGMENT

V. K. Bali, J.

(1) The Punjab Dairy Development Corporation Ltd., through its managing director, has challenged the award of the Labour Court rendered on 10th January, 1991, which was published in the gazette, dated August 2, 1991 (Annexure P8),—*vide* which Jagjit Singh, workman was reinstated with continuity of service and was paid back wages with effect from September 23, 1977, less wages that he had earned at Milkfed Hoshiarpur Milk Producers Union, Jalandhar and at Baghdad.

(2) The brief facts that have given rise to this petition need to be mentioned first. The Punjab Government referred the industrial dispute to Labour Court, Amritsar and the aforesaid reference was as to whether the termination of the services of Jagjit Singh, workman, was justified and in order; if not, to what relief/exact amount of compensation was he entitled. The case of respondent-workman before the Labour Court was that he was working as Senior Technical Assistant at Milk Chilling Centre, Fatehgarh Churian on a permanent post and his services were terminated on September 23, 1977 without service of notice or charge-sheet; that he was appointed to the service in September, 1970; that he was getting a pay of Rs. 425 per month

plus allowance thereon. He challenged the aforesaid order of removal and the management in the appeal preferred by him passed an order directing *de novo* enquiry against him. The enquiry officer after conducting *de novo* enquiry against the workman exonerated him of all the charges. The Board of Directors of the petitioner company, however, in its meeting held on 22nd November, 1979, considered the matter and expressed its displeasure with the enquiry officer with regard to the manner in which he had conducted the enquiry and exonerated the workman. Thereafter the appeal preferred by the workman in which the order of *de novo* enquiry was **passed was dismissed and a resolution was passed on 6th February, 1980, removing the workman from service on the basis of the enquiry reports that came into existence against him earlier.**

(3) The cause of the workman was resisted by the petitioner-management on the ground that he had committed certain acts of misconduct and charge-sheet dated July 2, 1976, containing five charges was issued against him. One Shri Amrik Singh held the enquiry and found charges No. 1, 2 and 4 proved. The General **Manager, on receipt of the enquiry report, recommended punishment against the workman.**

(4) Meanwhile, the workman had committed some other acts of misconduct as well and for the said misconduct committed by him, another charge-sheet dated January 25, 1977, containing seven charges, was issued to him. One Dr. Nirban Singh was appointed the enquiry officer and he too held charges No. 1 to 3, 6 and 7 proved against him. The General Manager again recommended the punishment and,—*vide* order dated September 23, 1977, the petitioner-management removed the workman from service by recording that the case and magnitude of the acts of misconduct alleged and proved against him were of serious nature.

(5) Admittedly, the respondent/workman filed an appeal before the Chairman of the Corporation. Admittedly as well, the Chairman ordered *de novo* enquiry and Shri S. S. Bagga who had earlier recommended punishment on two counts held *de novo* enquiry. Concededly, it is in the *de novo* enquiry that the workman was held not guilty of any charge that was the subject-matter of earlier two enquiries held by two different persons as has been narrated above. Even though such was the position, the management chose to do away with the services of the workman/respondent on the basis of earlier two enquiries. It is this action of the management which was taken exception to by the workman by taking up the matter through a reference u/s 10 of the Industrial Disputes Act.

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(6) The Labour Court, after recording evidence of the parties came to the conclusion that in view of the fact that the previous two enquiries held against the workman were washed off, the result of the said enquiries could not be made a valid ground to terminate the services of the workman and inasmuch as the verdict of the third enquiry went in favour of the workman, the action taken by the petitioner-management was unjustified. It is against this award of the Labour Court that the present writ petition has been filed.

(7) Learned counsel for the petitioner-management contends that the Labour Court did not take into consideration the fact that the removal order passed by the Managing Director was not set aside in appeal preferred by the respondent-workman and that all interim orders passed during pendency of the appeal would automatically become non-existent at the time of final disposal of the appeal. He further contends that in view of the fact that the appeal was later dismissed, the management was well within its right to take action against the workman on the basis of the enquiry reports that came to be recorded against him. The contentions raised by the learned counsel have, in our view, no substance. The order with regard to conducting *de novo* enquiry, even though during pendency of the appeal, in the facts and circumstances of this case, cannot be said to be an interim order, the life of which may be limited till pendency of the appeal. In fact, on passing the aforesaid order, the appeal of the workman had been rendered practically infructuous and instead of dismissing the same on a later date, the same ought to have been dismissed as such on the same day when the order with regard to *de novo* enquiry was passed. Any other conclusion would result into complete injustice to the workman who would be obviously deprived of a right to challenge the order of dismissal of his appeal. Having given to understand that there will be a *de novo* enquiry against him with the obvious result that the effect of earlier enquiries is washed off, the management which admittedly conducted a *de novo* enquiry cannot, in the facts and circumstances of the present case, be permitted to take a stand at this stage that the appeal of the workman having been dismissed, interim order with regard to the *de novo* enquiry automatically fizzles out. Inasmuch as the action against the respondent/workman has been taken on the strength of the enquiry reports, the effect of which stood washed off, and inasmuch as the result of third enquiry that was conducted against him with regard to all the charges of the first two enquiries having gone in his favour, the orders passed by the Labour Court cannot be questioned. The

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order of dismissal was certainly illegal and the Labour Court, on the **facts aforesaid**, came to the right conclusion. **Finding no merit in this writ petition**, we dismiss it *in limine*.

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R.N.R.

*Before Hon'ble J. L. Gupta, J.*

**KEWAL KRISHAN NAGPAL,—Petitioner.**

*versus*

**THE STATE OF HARYANA AND OTHERS,—Respondents.**

*Civil Writ Petition No. 7276 of 1988.*

**April 1, 1992.**

*Constitution of India, 1950—Article 226—Parity—Petitioner an Instructor in Stenography/Typewriting in a college affiliated to University—Seeking parity of treatment with Demonstrators on basis of letter recommending that grades of Instructors be raised and brought on par with Demonstrators—Held, University not competent to decide question of equation of posts—Petitioners treated at par with those of University employees—Action fair.*

*Held, that the Registrar of the University had addressed this communication to the Director of Public Instruction, Haryana and recommended that the grades of Instructors may be raised and brought at par with that of Demonstrators. The University is neither competent nor was called upon to decide the question of equation of posts. This vests exclusively in the State Government which has to bear the financial burden.*

(Para 4)

*Further held, that the petitioners who are working in affiliated colleges in the State of Haryana have been treated at par with those of the University employees. The action is apparently fair. There seems to be no basis for giving the petitioners a preferential treatment vis-a-vis their counter-parts in Government Colleges.*

(Para 6)

**K. L. Arora, Advocate, for the Petitioner.**

**Jaswant Singh, Advocate for Haryana State, for the Respondent**