GAHC010122712014

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WRIT PETITION (C) No. 994/2012

The workman Sri Simanta Kataky of Koomtai Tea Estate, represented by the Secretary, Assam Chah Karmachari Sangha, Golaghat Circle, Pin – 785621, District – Golaghat, Assam.

.....*Petitioner*

-Versus-

1. The Management of Koomtai Tea Estate, P.O. Badlipar, Pin – 785611, District – Golaghat, Assam.
2. The Presiding Officer, Labour Court, Dibrugarh – 786001,Assam.

.....*Respondents*

Advocates :

Petitioner : Ms. A. Bhattacharya, Advocate.

Respondent no. 1 : Mr. P. Das, Advocate.

Respondent no. 2 : Mr. G. Bokolial, Junior Government Advocate

Date of Hearing, Judgment & Order : 03.10.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The present writ petition under Article 226 of the Constitution of India is preferred by the Workman of M/s Koomtai Tea Estate to assail an Award dated 31.12.2010 passed by the learned Labour Court, Dibrugarh in Reference Case no. 10/2007. By the Award dated 31.12.2010, the learned Labour Court, Dibrugarh ['the Labour Court', for short] has decided the two issues framed in the Reference notification dated 17.07.2007 in favour of the Management of M/s Koomtai Tea Estate and by deciding the two issues against the petitioner-Workman, the learned Labour Court has held that the Management of M/s Koomtai Tea Estate was justified in dismissing the services of the petitioner-Workman w.e.f. 12.04.2005 and that the petitioner-Workman would not be entitled to the relief of reinstatement or any other relief in lieu thereof. Before the learned Labour Court, the petitioner-Workman was represented by the Secretary, Assam Chah Karmachari Sangha, Golaghat Circle, a registered trade union of Workmen.

2. It is not in dispute that the petitioner was a Workman under employment of M/s Koomtai Tea Estate, situate in district of Golaghat, Assam, which is a unit of M/s Badulipar Limited ['the Company', for short]. The genesis of the dispute is traceable to a Show Cause Notice dated 20.07.2004 issued by the Senior Manager, M/s Koomtai Tea Estate against [i] Ratul Borah and [ii] Simanta Kotoky, Store Clerk [the petitioner]. In the Show Cause Notice, it was stated that it had come to the notice of the Management of M/s Koomtai Tea Estate that its store of M/s Koomtai Tea Estate, which under the control of the two

noticees, was not being maintained properly and there were many items in the store which did not tally with the store ledgers. The Show Cause Notice had further mentioned that there was no good system of receipt and issue of items and their accountability was in a mess. Reference was made to a Letter dated 16.07.2004 issued from the Head Office of the Company to mention that there were discrepancies in connection with chemicals. Reference was also made to an Internal Audit Report dated 28.06.2004 to state that a difference of 31,356 litres in High Speed Diesel [HSD] consumption was detected. By serving the Show Cause Notice, the noticees were asked to explain as to why such discrepancies occurred in the store items/store ledgers which were under their control. The petitioner-noticee as the Store Clerk submitted a written reply on 30.07.2004. The two noticees were further served a Letter on 14.08.2004 informing that on cross-checking of the store ledgers by the Management, discrepancies on issuance of High Speed Diesel [HSD] without requisition on various dates, indicated therein, were found and the noticees were directed to clarify the position on or before 08.08.2004. On receipt of the letter dated 14.08.2004, the petitioner replied in writing on 18.08.2004. It was on 29.11.2004, the Management served a Charge Sheet to the petitioner and Sri Ratul Borah wherein it was stated that on cross-checking of the store ledgers by the Management, it was detected that the petitioner with a mala fide intention of committing theft had misappropriated the Company's property for personal gain by indulging into alleged offence like misappropriation of High Speed Diesel [HSD] to the extent of 30,691 litres, worth Rs. 6,25,880/-, between the period from 01.04.2003 to 31.07.2004 and indulged in fraudulent activities by manipulating the store ledgers, the requisition slips, etc. It was mentioned that if the alleged offences were proved then the same would be an offence under

the Standing Orders in force in M/s Koomtai Tea Estate. The petitioner was called upon to explain as to whey disciplinary action should not be taken against him and the petitioner was asked to submit his explanation within a time period mentioned therein. In response to the Charge Sheet, the petitioner submitted his explanation vide a Letter dated 07.12.2004.

2.1. The Management had thereafter, issued a Letter dated 14.12.2004 to the petitioner informing that his explanation provided in the Letter dated 07.12.2004, submitted in reply to the Charge Sheet dated 29.11.2004, was found not satisfactory. The petitioner was informed that the Management had decided to hold an enquiry into the charges leveled against the petitioner and in the said enquiry, he would be given full opportunity to conduct his defence and to examine his witnesses and to cross-examine the witnesses of the Management. On 20.12.2004, the petitioner replied in writing to the Letter dated 14.12.2004. On 06.01.2005, the Senior Manager, M/s Koomtai Tea Estate served a notice of even date upon the petitioner informing him that one Mr. N. Singh, Superintendent Manager, M/s Duklingia Tea Estate had been appointed as the Enquiry Officer and the petitioner was directed to attend the enquiry before the said Enquiry Officer. It was mentioned therein to the effect in the enquiry, the petitioner would be given full opportunity to conduct his defence and to examine his witnesses and to cross-examine the witnesses of the Management. The petitioner was requested to give the names of the employees, if any, whom he would like to examine as witnesses so that arrangement could be made for their presence at the enquiry. It was further informed that if the petitioner would wish to examine as a witness anyone not employed in M/s Koomtai Tea Estate he should arrange for their attendance in

the enquiry.

2.2. It transpires that the Domestic Enquiry proceedings was conducted by the appointed Enquiry officer on a number of dates including 29.01.2005. The Domestic Enquiry proceedings on 29.01.2005 was shown to be attended by the delinquent Workman i.e. the petitioner, a Presenting Officer appointed by the Management of M/s Koomtai Tea Estate and two Independent Observers. It further transpires from the records of the Reference Case no. 10/2007, requisitioned by an Order dated 02.08.2013 of this Court, that the Management side through the Presenting Officer exhibited a number of documents in order to bring home the charges against the delinquent Workman, apart from examining two witnesses as Management Witnesses [MWs] viz. [i] M.W.1 - Jiten Kurmi & [ii] M.W.2 – Bonchi Dhar Kurmi. The records reveal that the said two Management Witnesses [MWs] were cross-examined by the delinquent Workman. It further transpires from the case records that the delinquent Workman had also adduced his evidence [WW] in the Domestic Enquiry proceedings.

2.3. After recording of the depositions of the Management Witnesses [MWs] and the delinquent Workman [WW], the Enquiry Officer submitted an Enquiry Report on 15.02.2005 wherein he held that both the charges brought against the delinquent Workman vide Charge Sheet dated 29.11.2004 were found to be proved. On receipt of the Enquiry Report, the Senior Manager, M/s Koomtai Tea Estate had issued a letter to the delinquent Workman i.e. the petitioner on 01.03.2005 stating *inter alia* that as the Enquiry Officer had recorded his findings to the effect that the charges leveled against him were proved, the

petitioner would be given an opportunity of personal hearing to submit further statements, if any, and the petitioner was thereby, directed to appear before the Senior Manager, M/s Koomtai Tea Estate on 04.03.2005 with the observation that in the event the petitioner would fail to attend the personal hearing it would be presumed that he had nothing further to add and final orders would be passed on the basis of the Enquiry Report. Finally on 12.04.2005, the petitioner was informed vide a Communication of even date that the petitioner was found guilty of gross misconduct in the Domestic Enquiry proceedings and the personal hearing was given to him on 04.03.2005. As the statement of the petitioner given in the said personal hearing was found not satisfactory to disprove the charges, the Management of M/s Koomtai Tea Estate had decided that the petitioner should be dismissed from services. It was further informed that as the past records of the petitioner did not reflect any extenuating circumstances to take a lenient view, the Management by the Communication dated 12.04.2005, which was, in essence, the order of dismissal, the petitioner was informed that he had been dismissed from the services of the company w.e.f. 12.04.2005.

3. Being aggrieved by the said decision taken by the Management of M/s Koomtai Tea Estate to dismiss the services of the Workman, the trade union, M/s Assam Chah Karmachari Sangha, Golaghat Circle through its Secretary raised an industrial dispute in respect of the matter of dismissal of the Workman i.e. the petitioner.

4. The Government of Assam in the Labour & Employment Department referred the industrial dispute to the learned Labour Court by way of a

Reference under Clause [c] of sub-section [1] of Section 10 of the Industrial Disputes Act, 1947, as amended, vide a Notification bearing no. GLR.70/2007/8 dated 17.07.2007. The contents of the Notification read as under :

GOVERNMENT OF ASSAM
LABOUR & EMPLOYMENT DEPARTMENT
ORDERS BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 17.07.2007

NO. GLR.70/2007/8 Whereas an industrial disputes has arisen in the matter specified in the Schedule below between :-

The Management of Koomtai T.E. and their workman, Sri Simanta Kataky represented by the Secretary, A.C.K.S. Golaghat.

An whereas it is considered expedient by the Government of Assam to refer the dispute for adjudication to Labour Court, Dibrugarh constituted under Section 12[4] of the Industrial Disputes Act, 1947 [Act XIV of 1947].

Now, therefore, in exercise of the powers conferred by Clause [c] Sub-Section [1] of Section 10 of the Industrial Disputes Act, 1947 [Act XIV of 1947], as amended, the Governor of Assam is pleased to refer the said dispute to the Presiding Officer appointed under the provisions of the said act.

- SCHEDULE -

1. Whether the management of Koomtai Tea Estate, P.O. :- Badulipar, District, Golaghat is justified in dismissing the services of Shri Simanta Kataky, Workman w.e.f. 12.04.2005 ?

2. If no, is the said Workman entitled to re-instatement with full back wages or any other relief in lieu thereof ?

Sd/- A.K. Gogoi,
Under Secy. To the Govt. of Assam
Labour & Employment Department.

5. After receipt of the Notification, the learned Labour Court registered the same as Reference Case no. 10/2007. After registration of Reference Case no.

10/2007, the learned Labour Court by an Order dated 03.08.2007, issued notices to both the sides asking them to file their respective Written Statement along with all other documents on which they would intend to rely. On receipt of notices from the learned Labour Court, both the sides entered their appearances before the learned Labour Court. It is noticed from the records of Reference Case no. 10/2007, the Workmen side submitted its Written Statement and documents on 13.02.2008. The Management side had thereafter, filed its Written Statement and documents on 18.02.2008. On 13.03.2008, the Management side made a prayer before the learned Labour Court to allow it to file additional Written Statement and documents. An additional Written Statement was filed by the Management side on 23.04.2008 and on 19.05.2008, the Management side filed documents along with a list of documents. Subsequent thereto, the Workmen side filed an additional Written Statement on 11.06.2008, after the learned Labour Court allowed its prayer. On 16.09.2009, the Management side by filing a petition made a prayer for permission to file an additional Written Statement and to accept the additional Written Statement filed on that day. The learned Labour Court after hearing both the sides, allowed the prayer of the Management side to file the additional Written Statement in the interest of justice and accordingly, the additional Written Statement was accepted.

6. In the proceedings before the learned Labour Court, the Workmen as W.W.1 adduced his evidence on 04.06.2010 and he was also cross-examined by the Management side. After cross-examination, the Workman was also re-examined. On that date, the Workman side evidence was closed. The Management side adduced testimonies of two witnesses viz. [i] Adhir Chandra

Roy as M.W.1 [examined and cross-examined on 21.10.2010 and [ii] Bharat Bhooshan Bawa as M.W.2 [examined and cross-examined on 21.10.2010].

7. In the Written Statement/additional Written Statement, the Workman side had contended that it was the Factory Engineer/Deputy Manager, who received the oil vouchers and were responsible for loading and unloading of concerned oil tankers and had the responsibility to supervise the factory fuel tanks and High Speed Diesel [HSD]. It was contended that the petitioner as the Store Clerk was not at all involved in any alleged act of misappropriation. It was further contended that the HSD Oil preserver tank was within well fenced boundary and there used to be tight security in and around it. As such, the allegation of misappropriation by the Workman from such secured HSD Oil preserver tank was baseless and misconceived. The requisition slips for HSD oil were mainly issued by the Head Fitter and signed by the Factory Manager and the duty of the Store Clerk was only to issue the HSD or any other materials to the bearer on receipt of proper requisition slips. In view of presence of responsible Supervisor like Factory Manager, etc., the petitioner as the Store Clerk could not have been made responsible for any alleged misappropriation of HSD or other materials from the store. In the additional Written Statement, the Workmen side had highlighted the fact that the Senior Store Keeper who was the sole In-charge of the store, and the Factory Manager were not implicated.

8. In the Written Statement filed on 18.02.2008, the Management side had taken the stand that the unbold Domestic Enquiry proceedings was held in conformity with the principles of natural justice and fair play. The delinquent Workman attended the Domestic Enquiry proceedings without any objection and

the Domestic Enquiry proceedings was held in presence of Independent Observers. The Enquiry Officer had recorded his findings in an Enquiry Report on the basis of the available evidence, records, exhibits, etc. as provided for by the Presenting Officer and other witnesses including the delinquent Workman who was present throughout the course of the Domestic Enquiry proceedings. As the Enquiry Officer recorded findings to the effect that the charges leveled against the delinquent Workman stood proved beyond doubt, the Management had come to the conclusion that the delinquent Workman was guilty of gross misconduct. Accordingly, the Management side after giving an opportunity of personal hearing to the delinquent Workman on 04.03.2005 took the decision to dismiss him from service w.e.f. 12.04.2005 by serving unbold him the Order of dismissal dated 12.04.2005. In the additional Written Statement filed on 16.11.2009, the Management side took the plea that the dismissal of the Workman from service was fully justified and he was not entitled to any reinstatement or any other relief. The Management side had further taken a stand that they intend to rely on the Domestic Enquiry held by it first and if the learned Labour Court would hold that the Domestic Enquiry proceedings was not in order and was violative of the principles of justice they would lead evidence to prove their case on merits. It was further averred that since it was the Workman who initiated the proceedings for adjudication on the ground that his dismissal was illegal, it would be the Workman who must lead evidence first to prove his case. After submission of the Written Statements and additional Written Statements by both the sides, the learned Labour Court had proceeded to record the depositions from the witnesses from the Workman side at first and the witnesses from the Management side [MWs] thereafter.

9. The learned Labour Court pronounced its Award in Reference Case no. 10/2007 on 31.12.2010 recording its finding on the first issue to the effect that the Management of M/s Koomtai Tea Estate was justified in dismissing the services of the petitioner-Workman w.e.f. 12.04.2005. In view of the finding recorded on the first issue in the afore-stated manner, the learned Labour Court had observed that the petitioner-Workman was not entitled to reinstatement with full back wages or any other relief in lieu thereof. By holding so, the learned Labour Court had also decided the issue no. 2 against the petitioner-Workman.

10. Aggrieved by and dissatisfied with the Award dated 31.12.2012 passed by the learned Labour Court in Reference Case no. 10/2007, the Workman side has preferred the instant writ petition challenging the same.

11. I have heard Ms. A. Bhattacharya, learned counsel for the petitioner; Mr. P. Das, learned counsel for the respondent no. 1; and Mr. G. Bokolial, learned Junior Government Advocate, Assam for the respondent no. 2.

12. Ms. Bhattacharya, learned counsel for the petitioner has submitted that the learned Labour Court for deciding the two issues forwarded to it by the Reference, had proceeded to discuss the testimonies of the two Management Witnesses [MWs] who adduced evidence as M.W.1 [Adhir Chandra Roy] and M.W.2 [Bharat Bhooshan Bawa], who did not depose as Management Witnesses [MWs] in the Domestic Enquiry proceedings conducted by the Management, but deposed as Management Witnesses [MWs] only before the learned Labour Court after the Reference. Ms. Bhattacharya has, thus, submitted that the learned

Labour Court did not arrive at a finding first about the validity and propriety of the Domestic Enquiry proceedings concluded against the petitioner Workman resulting in the Order of his dismissal dated 12.04.2005. It has been contended that the learned Labour Court ought to have recorded its findings about the validity and propriety of the Domestic Enquiry proceedings at first. It is only in the event the learned Labour Court had reached a finding that the Domestic Enquiry proceedings was not held properly and/or was held in violation of the principles of natural justice, the learned Labour Court could have assumed jurisdiction to deal with the merits of the dispute by discussing the evidence led before it by the Management side and the Workman side. It has been contended that by a long line of decisions, it has been settled that the learned Labour Court has to conduct the enquiry in two stages in the same proceedings, after a Reference under Section 10 of the Industrial Disputes Act, 1947.

13. In response, Mr. Das, learned counsel for the respondent no. 1 has supported the reasonings recorded by the learned Labour Court in the Award. Mr. Das has submitted that the Management side had, in the additional Written Statement, taken a clear stand that they would first intend to rely on the Domestic Enquiry proceedings held by it and it was only in the event the learned Labour Court would hold that the Domestic Enquiry proceedings was not in order and/or was in violation of the principles of natural justice, it would lead evidence before the learned Labour Court in response to the Reference. He has pointed out that the learned Labour Court had allowed both the sides to lead evidence, after filing of the Written Statements/additional Written Statements. Accordingly, the Management side had led evidence in the Reference proceedings by adducing evidence of two Management Witnesses [MWs]. The

learned Labour Court did not examine the validity and legality of the Domestic Enquiry proceedings as a preliminary issue.

14. I have given due consideration to the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the materials available in the case records on Reference Case no. 10/2007, in original. I have also gone through the records of the Domestic Enquiry proceedings conducted by the Management side against the petitioner Workman, which are available in the case records of Reference Case no. 10/2007.

15. The sequence of events which preceded the impugned Award have already been delineated hereinabove. As mentioned hereinabove, the dispute arose, inter alia, with issuance of a Letter dated 14.08.2004 which, also, finds a mention in the impugned Award dated 31.12.2010. The initiation of the Domestic Enquiry proceedings, which started from the Letter dated 14.08.2004, preceded by the Show Cause Notice dated 20.07.2004, had culminated with the submission of the Enquiry Report by the Enquiry Officer on 15.02.2005. On perusal of the case records, it has been noticed that during the course of the Domestic Enquiry proceedings, as mentioned hereinabove already, the Enquiry Officer recorded the depositions of the two witnesses as Management Witnesses [MWs], that is, M.W.1 - Jiten Kurmi and M.W. 2 – Banchi Dhar Kurmi and also to rebut the charges, the Workman adduced his own evidence [WW]. It was after recording the depositions of the two Management Witnesses [MWs] and the Workman Witnesses [WWs], the Enquiry Officer submitted the findings of the Domestic Enquiry proceedings vide the Enquiry Report dated 15.02.2005.

According to the Management side, the Domestic Enquiry Proceedings was held in presence of two Independent Observers. On perusal of the contents of the Domestic Enquiry Report which is available in the case records of and which had been exhibited as Annexure-N in Reference Case no. 10/2007, it is noticed that the Enquiry Officer had discussed the depositions of the witnesses from the Management side [MWs] as well as from the Workman side [WW]. It was after discussing the depositions of all the witnesses, the Enquiry Officer had recorded his findings that the charges brought against the delinquent Workman were proved and resultantly, the Workman was found to be guilty of misconduct under the Standing Orders of the Company.

16. At this stage, it is apposite to refer to the principles required to be followed by the Labour Court on receipt of a Reference of any industrial dispute under Clause [c] of sub-section [1] of Section 10 of the Industrial Disputes Act, 1947, as amended, wherein the Management claims that the Workman was dismissed either after or without a Domestic Enquiry proceedings, as laid down by a catena of decisions of the Hon'ble Supreme Court of India.

17. In Delhi Cloth and General Mills Co. vs. Ludh Budh Singh, reported in [1972] 1 SCC 595, the Hon'ble Supreme Court of India after discussing a number of previous decisions, has outlined the principles governing the jurisdiction of the Labour Court or Industrial Tribunal that had emerged therefrom, as under :

> From the above decisions the following principles broadly emerge :
>
> [1] If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal

justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

[2] If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

[3] When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

[4] When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made

by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

[5] The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

[6] 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 suomoto the employer to adduce evidence before it to justify the action taken by it.

[7] The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

18. After laying down the principles in the afore-stated manner, it has been observed that the enquiry proceedings before the Labour Court/Industrial Tribunal is a composite one, though the jurisdiction of the Labour Court/Industrial Tribunal to consider the validity of the Domestic Enquiry proceedings and the evidence adduced by the management before it, are considered in two stages. While observing that the Management has got a right to adduce evidence before the Labour Court/Industrial Tribunal in case the Domestic Enquiry is held to be vitiated, it has been held that the Labour Court/Industrial Tribunal derives jurisdiction to deal with the merits of such evidence only if it holds that the Domestic Enquiry has not been held properly. But the two stages in which the Labour Court/Industrial Tribunal has to conduct the enquiry are in the same proceedings which relate to the consideration of the dispute regarding the validity of the action taken by the Management.

19. In the case of The Workmen of M/s Firestone Tyre and Rubber Co. of India [Pvt.] Ltd. vs. The Management and others, reported in [1973] 1 SCC 813, the Hon'ble Supreme Court of India has discussed the principles applicable to adjudications of industrial disputes arising out of orders of dismissal or discharge. It has outlined the principles which govern the jurisdictions of the Labour Courts or Industrial Tribunals prior of incorporation of Section 11A in the Industrial Disputes Act, 1947 w.e.f. 15.12.1971, as follows :-

> 32. From those decisions, the following principles broadly emerge :
>
> [1] The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
>
> [2] Before imposing the punishment, an employer is expected to conduct a proper

enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

[3] When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

[4] Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

[5] The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

[6] The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

[7] It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

[8] An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the

first time before the Tribunal is in the interest of both the management and the employee, and to enable the Tribunal itself to be satisfied about the alleged misconduct,

[9] Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to, suggest victimisation.

[10] In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate v. The Workmen*, *[1971] 1 SCC 742*, within the judicial decision of a Labour Court or Tribunal.

20. Section 11A stood incorporated in the Industrial Disputes Act, 1947 by the Industrial Disputes [Amendment] Act, 1971. The powers of the Labour Court/Industrial Tribunal to give appropriate relief in case of dismissal, discharge, etc. of workmen have been laid down in Section 11A of the Industrial Disputes Act, 1947. For ready reference, Section 11A of the Industrial Disputes Act, 1947 is quoted herein below :

> **11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**
> Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :
> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and

shall not take any fresh evidence in relation to the matter.

21. The Hon'ble Supreme Court of India in The Workmen of M/s Firestone Tyre and Rubber Co. of India [Pvt.] Ltd. [supra] has also examined the question as to whether incorporation of Section 11A in the Industrial Disputes Act, 1974 w.e.f. 15.12.1971 has brought any changes in the principles outlined above and if so, to what extent and has *inter alia* observed as under :-

> 36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd., AIR 1958 SC 130 existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd., AIR 1958 SC 130 case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the

satisfaction of the Tribunal that finally decides the matter.

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. *Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective*. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. vs. Ludh Budh Singh, [1972] 1 SCC 595. No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

38. All parties are agreed that even after Section 11A, the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer.

39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

22. The decision in Delhi Cloth and General Mills Co. [supra] came to be considered by a Constitution Bench of the Hon'ble Supreme Court in the case of Karnataka State Road Transport Corporation vs. Lakshmidevamma [Smt] and Another, reported in [2001] 5 SCC 433. The principles laid down by a three judges bench of the Hon'ble Supreme Court of India in Shambhu Nath Goyal vs. Bank of Baroda, reported in [1983] 4 SCC 491, has also been considered by the Constitution Bench in Karnataka State Road Transport Corporation [Smt] [supra] along with a decision in Cooper Engg. Ltd. vs. P.P. Mundhe, reported in [1975] 2 SCC 661, where a conflicting observation was stated to have been made. The Majority view of the Constitution Bench Judgment is as under :

16. While considering the decision in *Shambu Nath Goyal*s case, we should bear in

mind that the judgment of *Vardarajan, J.* therein does not refer to the case of *Cooper Engineering* [supra]. However, the concurring judgment of *D.A. Desai, J.* specifically considers this case. By the judgment in *Goyals* case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in *Shambu Nath Goyals* case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in *Shambu Nath Goyals* case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in *Shambu Nath Goyals* case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this

Court in the case of *Shambu Nath Goyal vs. Bank of Baroda & Others* is the correct law on the point.

22.1. The concurring view given by two other judges is as under :-

44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgement of *Hedge, J.* and not the power of the court/tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11[1] of the Industrial Disputes Act, 1947 [for short the 'Act'] a court/tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the Rules framed thereunder and in accordance with the principles of natural justice. Under Section 11[3], the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed

just and necessary in the interest of justice.

22.2. One Hon'ble Single Judge in the 5-Judges Bench in Karnataka State Road Transport Corporation [supra] has given a dissenting view.

22.3. In the Constitution Bench Judge in Karnataka State Road Transport Corporation [supra], the history as to why such procedure is required to be followed in a case of dismissal or discharge of a Workman has been traced.

23. The right of the Management side to lead evidence before the learned Labour Court in justification of its decision under consideration by such Court is not a statutory right. The procedure has been laid down by the Hon'ble Supreme Court of India to avoid delay and multiplicity of proceedings in the disposal of disputes between the Management and the Workman. After receipt of the Reference by learned Labour Court through the Notification bearing no. GLR.70/2007/8 dated 17.07.2007, when notices were issued by the Learned Labour Court to the parties vide Order dated 03.08.2007, the Management side had filed its Written Statement and additional written statements on 18.02.2008, 23.04.2008 & 16.11.2009 and the Workman side had submitted its Written Statement and additional Written Statement on 13.02.2008 & 11.06.2008 respectively. In the additional written statement filed by the Management side on 16.11.2009, a specific stand was taken that they intended to rely on the Domestic Enquiry held by them first and if after its consideration, the learned Labour Court would come to a finding that the Domestic Enquiry proceedings was not in order and/or was in violation of the principles of nature justice, they would intend to lead evidence to prove their case. It is discernible from the Order dated 16.11.2009 passed in Reference Case no. 10/2007, the

learned Labour Court had allowed the Management Side to file its additional Written Statement wherein such plea was taken. The Order dated 16.11.2009 has further reflected that it was after hearing both the sides, the learned Labour Court had allowed the Management side to file an additional Written Statement in the interest of justice wherein such plea was taken.

24. In view of such established principles of law and on a perusal of the Award dated 31.12.2010, it goes to show that it was submitted on behalf of the Workman side that the Domestic Enquiry proceedings was not conducted by the Management by duly adhering to the principle of natural justice. A further plea was taken that non supply of the Enquiry Report prior to the Order of dismissal dated 12.04.2005 had vitiated the Domestic Enquiry proceedings. In so far as such contentions are concerned, the learned Labour Court had observed that the non-supply of the Enquiry Report would not *ipso facto* vitiate the order of punishment in the absence of any prejudice to the delinquent Workman and had gone on to observe that in the Domestic Enquiry proceedings held against the petitioner-Workman leading to the Order of dismissal dated 12.04.2005, the petitioner-Workman had failed to show any prejudice. But what is noticeable from the impugned Award of the learned Labour Court is that to arrive at the findings in respect of the two issues framed by the Notification, it had proceeded to discuss the evidence led before it by the Management side and the Workman side after the Reference, to examine the legality, validity and propriety of the Domestic Enquiry proceedings. It was after discussing the evidence of the two Management Witnesses [MWs] and the documents exhibited by them, the learned Labour Court had reached the finding on the first issue to the effect that the Domestic Enquiry proceedings was a valid one and

the delinquent Workman was given opportunities of being heard before being dismissed from his service. The learned Labour Court had further observed that the delinquent Workman did not suffer any prejudice because of non-supply of the Enquiry Report prior to the Order of dismissal and the Management of M/s Koomtai Tea Estate was justified in dismissing the services of the delinquent Workman resulting in non-entitlement of any relief including the relief of reinstatement. On perusal of the impugned Award, it is found that there is no discussion about the Domestic Enquiry proceedings held by the Management, the records of which were available before it. There was no discussion about the documentary evidence presented by the Presenting Officer before the Enquiry Officer appointed to conduct the Domestic Enquiry. There was also no discussion as to what evidence were adduced by the two Management Witnesses, [i] Jiten Kurmi – M.W.1 and [ii] Bonchi Dhar Kurmi – M.W.2 in the said Domestic Enquiry proceedings. There was no discussion as to whether the findings recorded by the Enquiry Officer in the Enquiry Report on the two charges leveled against the delinquent Workman were to be termed as justified on the basis of the evidence led in the course of the Domestic Enquiry proceedings or not and whether it had got the satisfaction or dissatisfaction about such findings on the charges. As has been observed in The Workmen of M/s Firestone Tyre and Rubber Co. of India [Pvt.] Ltd. [supra], it is open for the Labour Court/Industrial Tribunal, after incorporation of Section 11[a] in the Industrial Disputes Act, 1947, to consider the matter on the evidence to reach a satisfaction about the guilt or otherwise of the delinquent Workman concerned by considering the evidence and to come to a conclusion one way or the other, and it can differ from that finding in a proper case. The learned Labour Court/Industrial Tribunal may also hold that the punishment imposed on the

delinquent Workman is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge.

25. The case in hand is one where the depositions of two Management Witnesses [MWs] and the deposition of the delinquent Workman [WW] were recorded by the Enquiry Officer during the course of the Domestic Enquiry proceedings and these depositions were discussed in a Domestic Enquiry Report dated 15.02.2005. Therefore, both the depositions of the Management Witnesses [MWs] and the Workman witnesses [WWs] along with the Domestic Enquiry Report dated 15.02.2005 were available before the learned Labour Court. In such obtaining fact situation, the learned Labour Court ought to have, in the first instance, proceeded to consider as to whether the Domestic Enquiry proceedings conducted by the Management side was valid and proper or not in view of the categorical stand taken by the Management side in its additional Written Statement that they intend first to rely on the Domestic Enquiry held by them and to reach the satisfaction or otherwise, instead of deciding the legality, validity and propriety of the Domestic Enquiry proceedings on the basis of the evidence led by the two Management Witnesses [MWs] before it after the Reference. If after such consideration of the materials in the Domestic Enquiry proceedings the learned Labour Court reaches a satisfaction that such Domestic Enquiry proceedings had been held properly and validly and in conformity with the principles of natural justice by affording adequate opportunity of being heard the question of considering the evidence adduced before it after the Reference, on merits would not have survived as it is settled that it is only when the Labour Court holds that the Domestic Enquiry proceedings conducted by the Management was not properly and validly held, it can assume and derive

jurisdiction to deal with the merits of the dispute before it by discussing the evidence adduced before it after the Reference made under Section 10 of the Industrial Disputes Act, 1947.

26. It is settled that a writ of certiorari is issued in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India. The writ jurisdiction extends the cases where orders were passed by Courts or Tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or if such Courts or Tribunals or authorities act illegally or improperly in exercise of their jurisdiction or fails to exercise jurisdiction which is vested in them. A writ in the nature of certiorari under Article 226 of the Constitution of India is issued for correcting errors of jurisdiction, that is, when a subordinate Court or Tribunal or authority is found to have acted in disregard of the law or established rules of procedure, thereby, occasioning failure of justice. It has been observed in ML Singla vs. Punjab National Bank and another, reported in [2018] 18 SSC 21 that in so far as the scope of interference in certiorari jurisdiction under Article 226 of the Constitution of India is concerned, a proper approach for the High Court should be to identify the jurisdictional errors, if any, committed by the Labour Courts/Industrial Tribunals, clarify the law and remand the matter for decision afresh, rather than going into the merits of the case.

27. From the discussion made above in respect of the fact situation obtaining in the case in hand and for the reasons assigned therein, it has clearly emerged that the learned Labour Court in the process of adjudicating the Reference vide Award dated 30.12.2010 had confined itself in considering only the evidence led

by both the sides before it after the Reference, without first reaching any findings whatsoever as regards the legality, validity and propriety of the Domestic Enquiry proceedings held by the Management side culminating in the Domestic Enquiry Report dated 15.02.2005 and the Order of dismissal dated 12.04.2005. It has, thus, clearly emerged that the learned Labour Court has lost sight of the position of law that it is only after it reaches a satisfaction that the Domestic Enquiry proceedings conducted by the Management leading to the Domestic Enquiry Report and the dismissal of the delinquent Workman was not valid and proper, it can assume and derive jurisdiction to proceed and to deal with evidence led before it for adjudication of the industrial dispute referred to it by the Reference. Thus, this Court is of the view that the Award dated 31.12.2010 is not sustainable in law and the same is liable to be set aside and quashed. It is accordingly set aside and quashed.

28. With the setting aside and quashing of the impugned Award dated 31.12.2010 in the afore-stated manner, the matter stands remitted to the Labour Court, Dibrugarh to decide the Reference i.e. Reference Case no. 10/2007 afresh in conformity with the principles required to be followed in a Reference of such nature which consists of two stages for consideration of the dispute. It is accordingly remitted. For the purpose of facilitating an expeditious consideration of the Reference, both the contesting sides who are present before this Court, are directed to appear before the learned Labour Court, Dibrugarh on 10.11.2023 by presenting a copy of this order. The learned counsel representing the two contesting sides have fairly submitted that for the purpose of appearances on 10.11.2023, the parties would not insist for issuance of notices by the learned Labour Court, Dibrugarh. It is expected that on such

appearance of the parties before it on 10.11.2023, the learned Labour Court, Dibrugarh would proceed with the matter to decide the Reference afresh in an expeditious manner, preferably within a period of 3 [three] months from a date of such appearance.

29. It is made clear that the observations made in this Order are made only for the purpose of examining the legality and validity of the Award dated 31.12.2010 passed in Reference Case no. 10/2007 and the same shall not be construed as observations on merits in respect of the Domestic Enquiry proceedings held by the Management side leading to the Enquiry Report dated 15.02.2005 and the Order of dismissal dated 12.04.2005. Thus, the learned Labour Court, Dibrugarh shall proceed to decide the Reference on its own merits and in accordance with law.

30. LCRs be sent back forthwith.

JUDGE

Comparing Assistant