GAHC010192332013

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

Case No. : WRIT PETITION (C) No. 1962/2013

The Management of Bogapani Tea Estate, P.O. – Digboi, District – Tinsukia, Assam, Pin – 786171, represented by its Manager.

……***Petitioner***

-Versus-

1. The Secretary, Assam Chah Mazdoor Sangha, Margherita Branch, P.O. – Margherita, District - Tinsukia.
2. The Presiding Officer, Labour Court, Assam at Dibrugarh, P.O. – Dibrugarh.

……***Respondents***

Advocates :

Petitioner : Mr. K. Kalita, Advocate.

Respondent no. 1 : Mr. B.K. Bhagawati, Advocate,

Date of Hearing, Judgment & Order : 07.09.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The instant writ petition under Article 226 of the Constitution of India is preferred by the Management of M/s Bogapani Tea Estate to assail an Award dated 07.11.2012 passed by the learned Labour Court, Dibrugarh in Reference Case no. 14/2004. By the Award dated 07.11.2012, the learned Labour Court, Dibrugarh ['the Labour Court', for short] has held that the Management side had failed to prove or to justify their action of dismissing the 4 [four] Workmen viz. [i] Bijoy Lachman, [ii] Kali Budhua, [iii] Somra Etowa, and [iv] Sushil Budhua. By holding so, the learned Labour Court has observed that the Management is bound to reinstate the 4 [four] Workmen. It has been held that since in the case of the Workmen named Somra Etowa, reinstatement is not possible because of his death, sufficient compensation has to be given to the legal heirs of Somra Etowa. By deciding the Reference in the afore-mentioned manner, the learned Labour Court has directed the Management side to reinstate the Workmen with full back wages and to disburse sufficient compensation in monetary terms to the legal heirs of the deceased workman named Somra Etowa. Before the learned Labour Court, the 4 [four] Workmen were represented by the Secretary, Assam Chah Mazdoor Sangha, Margherita Branch, a trade union of tea garden Workmen registered under the Trade Union Act, 1926.

2. It is not in dispute that the 4 [four] persons viz., [i] Bijoy Lachman, [ii] Kali Budhua, [iii] Somra Etowa, and [iv] Sushil Budhua were Workmen in M/s Bogapani Tea Estate, located in the district of Tinsukia. The genesis of the dispute was an incident allegedly occurred on 01.04.1999 within the premises of M/s Bogapani Tea Estate. The allegations leveled against the 4 [four] Workmen

were *inter alia* to the effect that at about 11-30 a.m. on 01.04.1999, they had assaulted one Rajat Johar, a Welfare Officer of M/s Bogapani Tea Estate. The allegation was to the effect that on that day, when the Welfare Officer asked the Workmen of the Tea Estate including the 4 [four] Workmen herein, to re-pluck the area properly, an altercation ensued between them and the Welfare Officer was allegedly assaulted at an area named Section no. 38 on South Side Division of the Tea Estate. After the alleged incident, which occurred on 01.04.1999, the 4 [four] Workmen were suspended on 02.04.1999 by Suspension Orders of even date, pending initiation of domestic enquiry and final orders to be passed thereon. Thereafter, charge-sheets, all dated 08.05.1999, were served upon the 4 [four] delinquent Workmen asking them to submit their explanations, within the stipulated time period mentioned therein, as to why disciplinary action should not be taken against them. In reply to the charge-sheets, all the 4 [four] Workmen submitted their replies on 17.05.1999. After receipt of the explanations from the 4 [four] Workmen, the same were stated have been considered by the Senior Manager, M/s Bogapani Tea Estate. Notices of Enquiry dated 19.05.1999 were thereafter, served upon the 4 [four] Workmen stating that the explanations furnished by them were found not satisfactory and that the Management of M/s Bogapani Tea Estate had decided to hold an enquiry in respect of the charges leveled against them. By the Notices of Enquiry, the 4 [four] Workmen were directed to be present in the domestic enquiry proceedings with the further observation that they would be given full opportunity to give their defence. An Enquiry Officer was thereafter, appointed. In the course of the domestic enquiry proceedings, the Management side examined 5 [five] nos. of witnesses as Management Side Witnesses [M.W.s] and they were :- [i] M.W.1 - Sri Pravir Kumar Murari, Senior Assistant Manager, M/s

Bogapani Tea Estate [examined and cross-examined on 25.05.1999]; [ii] M.W.2 – Rajat Johar, Welfare Officer, M/s Bogapani Tea Estate [examined and cross-examined on 25.05.1999]; [iii] M.W.3 - Lalit Chandra Bora, Zamadar Babu [examined and cross-examined on 25.05.1999]; [iv] M.W.4 – Dr. N.R. Deb, Medical Officer, M/s Bogapani Tea Estate [examined on 25.05.1999]; and [v] M.W.5 –Mahesh Jagdew, Sirdar of Section 38, M/s Bogapani Tea Estate [examined on 25.05.1999]. The Workmen side declined to cross-examine the Management Witness no. 4 [M.W.4] and the Management Witness no. 5 [M.W.5]. After closure of the evidence from the Management side, the Workmen side adduced their evidence through one Birsa Daskon as Workman Witness no. 1 [W.W.1]. After conclusion of the recording of evidence by both the sides in the domestic enquiry proceedings, the Enquiry Officer submitted a Domestic Enquiry Report dated 02.06.1999 wherein the Enquiry Officer recorded a finding that the charges of misconduct leveled against the 4 [four] Workmen were established. It is pertinent to mention that the domestic enquiry proceedings were held against a total of 7 [seven] nos. of Workmen including the 4 [four] Workmen mentioned herein. The other 3 [three] Workmen against whom charge-sheets were also submitted were :- [i] Kiron Amus, [ii] Samoo Sunu and [iii] Rotiram Konwar Sing. In the Enquiry Report, the Enquiry Officer had held that the other 3 [three] Workmen were not found guilty of the charges leveled against them by the Management side.

3. After submission of the Enquiry Report, the Management side, vide its letter dated 05.06.1999, forwarded a copy of the Enquiry Report to each of the 4 [four] Workmen providing them an opportunity to make representation regarding their case to the Management before taking a final decision. The Workmen were requested to submit their representations on or before

11.06.1999. On receipt of the letter dated 05.06.1999, the 4 [four] Workmen submitted their representations before the Management on or before 11.06.1999. After receipt of the representations from the 4 [four] Workmen, the final decision in respect of the Enquiry Report was taken on 14.06.1999 by the Management of M/s Bogapani Tea Estate and by a Communication of even date, the Management of M/s Bogapani Tea Estate informed the 4 [four] Workmen that there were no extenuating grounds or circumstances to deal with their cases leniently and the Management had decided to terminate their services. The 4 [four] Workmen were informed that they were to be dismissed from service w.e.f. 15.06.1999, by serving Orders dated 14.06.1999.

4. Being aggrieved by the said decision taken by the Management of M/s Bogapani Tea Estate to dismiss the services of the 4 [four] Workmen, the trade union, M/s Assam Chah Mazdoor Sangha, Margherita through its Secretary, raised an industrial dispute in respect of the matter of dismissal of the 4 [four] Workmen viz. [i] Bijoy Lachman, [ii] Kali Budhua, [iii] Somra Etowa and [iv] Sushil Budhua.

5. The Government of Assam in the Labour and Employment Department referred the dispute to the 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.164/2004/5 dated 01.09.2004. The contents of the Notification read as under :

GOVERNMENT OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT
ORDERS BY THE GOVERNOR
NOTIFICATION
Dated Dispur, the 1st Sept/04.

NO.GLR.164/2004/5 : Whereas an industrial dispute has arisen in the matter specified in the schedule below between :-

1. Management of Bogapani T.E. P.O. Digboi.

-Vs-

2. Workmen represented by Assam Chah Mazdoor Sangha, Margherita Branch.

And whereas it is considered expedient by the Govt. of Assam to refer the dispute for adjudication to a Labour Court Dibrugarh constituted under Section 7 of the Industrial Disputes Act, 1947 [Act XIV of 1947].

Now, therefore, in exercise of the powers conferred by Clause [c] of 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 of the Labour Court Dibrugarh, appointed under the provisions of the said Act.

- SCHEDULE -

1. [a] Whether the dismissal of four workers namely [1] Shri Bijoy Lachman [2] Shri Kali Budhua [3] Shri Somra Etowa and [4] Shri Sushil Budhua, by the management of Bogapani Tea Estate are justified ?

[b] If not what relief they are entitled to ?

Sd/- N.H. Laskar,
Deputy Secy. to the Govt. of Assam,
Labour and Employment Deptt.

6. After receipt of the Notification, the learned Labour Court registered the same as Reference Case no. 14 of 2004. After registration of Reference Case no. 14/2004, the learned Labour Court by an Order dated 13.09.2004, issued notices to both the sides asking them to file their respective written statement along with all other documents on which they intended to rely. On receipt of notices, the Management side submitted its written statement on 02.05.2005 while the Workmen side filed its written statement through the Trade Union on 23.06.2005.

7. From the Management side, it was contended in the written statement that the 4 [four] Workmen were dismissed from services for committing serious acts which amounted to gross misconduct as per Standing Orders in force in the Tea Estate. It was contended that Rajat Johar, Welfare Officer of the Tea Estate was assaulted on the alleged date of incident by the 4 [four] Workmen and as a result, Rajat Johar was seriously injured and he required medical treatment and hospitalization. It was contended that in the course of domestic enquiry proceedings, the Workmen side were given all the opportunities for defending their cases in compliance of the principles of natural justice. By stating so, the Management side had contended that the domestic enquiry proceedings was fair and proper. The Management side had contended that since the charges which were serious in nature, were proved against the 4 [four] Workmen in the domestic enquiry proceedings, the decision to dismiss the 4 [four] Workmen by the Management side required no interference. On the other hand, the Workmen side in their written statement had contended that the charges were all false and concocted and the Workmen were victimized for their trade union activities. The allegation of serious injuries sustained by Rajat Johar was categorically denied. It was highlighted that in respect of the incident, one First Information Report [FIR] was lodged against the 4 [four] Workmen but the 4 [four] Workmen were acquitted from the charges level against them by the trial court after trial. It was contested that no proper domestic inquiry proceedings was held and the Workmen were denied the adequate opportunities of hearing. As such, there was no justification to impose the extreme punishment of dismissal.

8. After submission of the written statement by both the sides, the learned

Labour Court had proceeded to record the depositions of the witnesses from the Management side at first. From the Management side, 3 [three] witnesses viz. [i] M.W.1 – Arati Sarmah [examined and cross-examined on 31.08.2005]; [ii] M.W.2 – Lalit Chandra Bora [examined and cross-examined on 19.03.2010]; and [iii] M.W.3 – Pravir Kumar Murari [examined and cross-examined on 18.09.2010] had adduced evidence. The learned Labour Court also recorded the depositions of 2 [two] witnesses from the Workmen side and they were :- [i] W.W.1 – Susil Budha [examined and cross-examined on 14.11.2005]; and [ii] W.W.2 – Birsa Daskan [examined and cross-examined on 28.01.2011]. The learned Labour Court pronounced its Award in Reference Case no. 14/2004 on 07.11.2012 recording that the Management side had failed to prove or to justify their actions in dismissing the 4 [four] Workmen. The learned Labour Court had thereafter, directed to reinstate the 3 [three] Workmen and disbursement of sufficient compensation to the heirs of the deceased Workman viz. Somra Etowa, as mentioned hereinabove.

9. Aggrieved by and dissatisfied with the Award passed by the learned Labour Court on 07.11.2012 in Reference Case no. 14/2004, the Management side of M/s Bogapani Tea Estate has preferred the instant writ petition challenging the same.

10. After institution of the writ petition, the respondent no. 1, that is, the Secretary, Assam Chah Mazdoor Sangha, Margherita Branch in the affidavit-in-opposition, filed on 27.08.2013, has stated that the Workmen named Bijoy Lachman expired on 02.09.2011 and the workman named Somra Etowa expired on 03.10.2003. It has been stated that at the time of institution of the writ

petition, only two out of the originally charge sheeted 4 [four] Workmen, that is, Kali Budhua and Sushil Budhua are alive. In this connection, it is worthwhile to mention that the fourth proviso to sub-section [8] of Section 10 of the Industrial Disputes Act, 1947, as amended, has *inter alia* provided that no proceedings pending before a Labour Court in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court shall complete such proceedings and submit its award to the appropriate Government.

11. I have heard Mr. K. Kalita, learned counsel for the petitioner and Mr. B.K. Bhagawati, learned counsel for the respondent no. 1.

12. Mr. Kalita, learned counsel for the petitioner has submitted that the learned Labour Court had proceeded wrongly and erroneously to decide the Reference by discussing the evidence led by both the sides before it, without arriving at a finding first about the validity and propriety of the domestic enquiry proceedings concluded against the 4 [four] Workmen resulting in the order of their dismissal by the Management on 14.06.1999. Mr. Kalita has contended that the learned Labour Court ought to have recorded its finding about the validity and propriety of the domestic enquiry proceedings at first and it is only after reaching a finding on merits as regards the domestic enquiry proceedings, the learned Labour Court could have proceeded to discuss the evidence adduced before it depending on the finding reached about the validity and propriety of the domestic enquiry proceedings.

13. In response, Mr. Bhagawati, learned counsel appearing for the respondent

no. 1 i.e. the Workmen side has supported the Award. Mr. Bhagawati has submitted that the learned Labour Court has appreciated the evidence of witnesses of both the sides and it was after such appreciation, the learned Labour Court had observed that the Management side was not justified in dismissing the 4 [four] Workmen from their services. As the evidence of the witnesses did not inspire confidence of the learned Labour Court, there is no ground for the writ Court to disturb such findings.

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 case records of Reference Case no. 14/2004 in original. I have also gone through the records of the domestic enquiry proceedings conducted by the Management side against the 4 [four] Workmen.

15. The sequence of events which preceded the impugned Award have already been outlined hereinabove. The alleged incident occurred on 01.04.1999 in Section no. 38 on South side Division of the M/s Bogapani Tea Estate had led to the issuance of the charge-sheets against 7 [seven] nos. of Workmen including the 4 [four] Workmen herein on 08.05.1999. On perusal of the case records, it is noticed that during the course of domestic enquiry proceedings, the Enquiry Officer recorded the depositions of 5 [five] witnesses [MWs] from the Management side and to rebut the charges, the Workmen adduced evidence of 1 [one] Workmen Witness [WW]. It was after recording the depositions of 5 [five] Management Witnesses [MWS] and the one Workmen Witness [WW], the Enquiry Officer submitted the Domestic Enquiry Report on 02.06.1999. On

perusal of the contents of the Domestic Enquiry Report, which is available in the case record and which had been exhibited as Exhibit no. 14 in Reference Case no. 14/2004, it is noticed that the Enquiry Officer had discussed the depositions of the witnesses from the Management side as well as from the Workmen side. It was after discussing the depositions of all the witnesses, the Enquiry Officer had recorded his findings that the 4 [four] Workmen were guilty of the charges leveled against them and were found to be guilty of misconduct under the Standing Orders in force in the Tea Estate.

16. At this stage, it is apposite to discuss the principles required to be followed in a domestic enquiry proceedings held by the Management leading to the dismissal of a Workman/Workmen and the procedure required to be followed by the Labour Court on receipt of a Reference under Section 10 of the Industrial Disputes Act, 1947, as amended, as laid down by the Hon'ble Supreme Court of India in different decisions.

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 formulated the principles governing the jurisdiction of the Labour Court or Tribunal that had emerged therefrom, as under :

> 6.1. From the above decisions the following principles broadly emerge :
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> [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.
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> [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 available 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 suo moto 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. 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 governing the principles applicable to adjudications of industrial disputes arising out of orders of dismissal or discharge. It has mentioned that the principles which governed the jurisdictions of the Labour Courts or 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 mis-conduct 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 straight away, 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 interferred 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 Panitola Tea Estate v. The Workmen*, within the judicial decision of a Labour Court or Tribunal.

32-A.The above was the law as laid down by this Court as on 15.12.1971 applicable to all industrial adjudication arising out of orders of dismissal or discharge.

19. Section 11A stood incorporated in the Industrial Disputes Act, 1947 by the Industrial Disputes [Amendment] Act, 1971 and the provisions of Section 11A came into effect on and from 15.12.1971. The powers of Labour Court or Tribunals to give appropriate relief in case of discharge, dismissal, 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 :

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.

20. 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.
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> 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.

21. 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 Constitutional Bench in **Lakshmidevamma [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 Goyals* 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. 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 Workmen. After receipt of the Reference by the learned Labour Court through the Notification bearing no. GLR.164/2004/5 dated 01.09.2004, when notices were issued by the learned Labour Court to the parties vide Order dated 13.09.2004, the

Management side in its written statement, filed on 02.05.2005, had taken a specific stand 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 was violative of the principles of natural justice, they would intend to lead evidence to prove their case.

23. In the Constitution Bench Judgment of **Lakshmidevamma [Smt]** [supra], the Hon'ble Supreme Court of India has traced the history as to why such procedure is required to be followed in a case of dismissal or discharge of a Workman.

24. In the face of such established principles of law, a perusal of the Award dated 07.11.2012 goes to show that it was submitted on behalf of the Workmen side that the domestic enquiry proceedings was not held by adhering to the principles of natural justice. It was by recording such plea from the Workmen side, the learned Labour Court proceeded to discuss and appreciate the evidence of the 3 [three] witnesses from the Management side, led before it after the Reference. The learned Labour Court had observed that the 3 [three] Management Witnesses [MWs] who adduced their evidence before it, did not see the alleged incident of assault. It was further observed that Dr. N.R. Deb, who had examined and treated Rajat Johar and who was examined as M.W.4 in the course of domestic enquiry proceedings, was not examined before it. Similarly, the injured person, Rajat Johar, who was examined as M.W.2 in the course of domestic enquiry proceeding was also not examined before the learned Labour Court. Observing that non-examination of these two witnesses from the side of the Management side was with no proper explanation, the

learned Labour Court had gone on to observe that the Management side had failed to establish the involvement of the delinquent Workmen in the alleged incident of assault of Rajat Johar. Submissions from the Workmen side as regards non-examination of the injured person [Rajat Johar] as well as the Doctor treating the injured person [Dr. N.R. Deb] were accepted and the evidence of the 3 [three] Management Witnesses were disbelieved.

25. The case in hand is one where the depositions of 5 [five] Management Witnesses [MWs] and one Workman Witness [WW] were recorded by the Enquiry Officer during the course of the domestic enquiry proceedings and those depositions were discussed in the Domestic Enquiry Report dated 02.06.1999. Therefore, both the depositions of the Management Witnesses [MWs] and the Workmen Witness [WW] and the Domestic Enquiry Report dated 02.06.1999 were available before the learned Labour Court. The depositions of the 3 [three] Management Witnesses [MWs] and two Workmen Witnesses [WWs], led before it after the Reference made by the Government of Assam on 01.09.2004, 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 were valid and proper or not in view of the categorical stand taken by the Management side in its written statement that they intend to rely on the domestic enquiry held by them first. If after such consideration the learned Labour Court had reached a satisfaction that such domestic enquiry proceedings had been held properly and validly, the question of considering the evidence adduced before it 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 were not properly and validly held it derives jurisdiction to deal with the merits of the dispute before it by discussing the evidence adduced before it after the Reference under Section 10 of the Industrial Disputes Act, 1947.

26. In respect of the alleged incident, which had given rise to the industrial dispute, a First Information Report [FIR] was also lodged and a crime case was registered. Investigation was initiated and thereafter, a charge sheet under Section 173[2], Code of Criminal Procedure, 1973 was submitted after completion of investigation, finding a *prima facie* case against 7 [seven] nos. of accused persons including the 4 [four] charge-sheeted Workmen involved herein, for offences under Sections 147/141/325/307, Indian Penal Code [IPC]. After commitment of the case, the case was registered as Sessions Case no. 34[T]/2000 and trial proceeded before the Court of learned Assistant Sessions Judge, Tinsukia. The charges against the accused persons therein were framed under Sections 147/325/307, IPC to which the accused persons pleaded not guilty and claimed to be tried. After recording of evidence and appreciation thereof, the trial court of learned Assistant Sessions Judge, Tinsukia vide its Judgment and Order dated 28.09.2001 had acquitted the accused persons of the charges by holding that the prosecution side failed to bring home the charges framed against the accused persons beyond all reasonable doubt. A plea has been advanced before this Court from the respondent side that in view of the acquittal of the accused persons in Sessions Case no. 34[T]/2000, that is, the delinquent workmen, there is no necessity to continue with the domestic enquiry proceedings. Acquittal in a criminal case would not operate as a bar for drawing up of a domestic enquiry proceedings against the delinquent Workmen.

It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in domestic enquiry proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a domestic enquiry proceeding is preponderance of probabilities. Thus, acquittal in a criminal case does not preclude the employer to proceed against the delinquent Workman in a domestic enquiry proceedings.

27. It is settled that a writ of Certiorari is issued in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. The writ jurisdiction extends to cases where orders are 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 they act illegally or improperly in the exercise of their jurisdiction causing miscarriage of justice. A writ in the nature of Certiorari, under Article 226 of the Constitution, is issued for correcting errors of jurisdiction i.e. when a subordinate Court or Tribunal is found to have acted [i] without jurisdiction - by assuming jurisdiction where there exists none, or [ii] in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or [iii] acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. From the discussion made above, it has clearly emerged that the learned Labour Court in the process of adjudicating the Reference, vide the Award dated 07.11.2012 had confined itself in considering only the evidence led by both the sides before it after the Reference, without first reaching any finding whatsoever as regards the validity and propriety of the domestic enquiry proceedings conducted by the Management of M/s Bogapani Tea Estate, culminating in the Domestic Enquiry

Report dated 02.06.1999. The learned Labour Court had lost sight of the position of law that it is only after it reaches a satisfaction to the effect that the domestic enquiry proceedings conducted by the Management leading to the dismissal of the Workmen were not valid and proper it can assume jurisdiction to proceed to deal with the evidence led before it for adjudication of the industrial dispute referred to it by the Reference. Thus, this Court is of the unhesitant view that the Award dated 07.11.2012 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 07.11.2012, this Court has no alternative but to remand the matter back again to the learned Labour Court, Dibrugarh to decide the Reference, that is, Reference Case no. 14/2004 afresh in conformity with the principles required to be followed in a Reference of such nature. It is accordingly remanded. 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 11.10.2023 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 11.10.2023, 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 11.10.2023, the learned Labour Court, Dibrugarh would proceed to decide the Reference afresh in an expeditious manner, preferably within a period of 3 [three] months from the date of such appearance.

29. It is made clear that the observations made in this order are made only for the purpose of testing the validity and legality of the Award dated 07.11.2012 and none of such observations shall be construed to be observations on the merits of the claims of the respective parties.

30. The Office to send back the LCR forthwith.

JUDGE

Comparing Assistant