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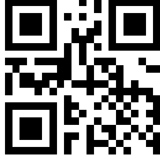

THE GAUHATI HIGH COURT

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

Case No. : WRIT PETITION (C) No. 4569/2013

The Workmen of Dayang Tea Estate, represented by the Secretary, Assam Chah Karmachari Sangha, Golaghat Circle, District – Golaghat, Pin : 785621, Assam.

……………..Petitioner

-Versus-

1. The Management of Dayang Tea Estate, P.O. Golaghat, Pin : 785621, District – Golaghat, Assam.
2. The Presiding Officer, Labour Court, Dibrugarh, Pin : 786001, Assam.

…………………Respondents

Advocates :

Petitioner	:	Ms. A. Bhattacharyya, Advocate.
Respondent no. 1	:	Mr. J. Roy, Senior Advocate, Mr. B.P. Sharma, Advocate.

Date of Hearing, Judgment & Order : 31.08.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The writ petition is preferred by the Secretary, Assam Chah Karmachari Sangha, a trade union of tea garden workmen registered under the Trade Union Act, 1926, on behalf of the Workmen of M/s Dayang Tea Estate. In this writ petition instituted under Article 226 of the Constitution of India, an Award dated 06.11.2012 passed by the learned Presiding Officer, Labour Court, Dibrugarh ['the Labour Court', for short] in Reference Case no. 20 of 1999 has been assailed. In the Award dated 06.11.2012, the learned Labour Court has held that there is nothing to hold that the two charge-sheeted Workmen did not get any opportunity to defend their cases. It has proceeded to hold that the Management was justified in dismissing the two Workmen after holding the domestic enquiry and as such, there is no justification for directing reinstatement of the said two delinquent Workmen.

2. The two Workmen viz. [i] Sri Benudhar Tassa, and [ii] Sri Mubarak Ali, were employed as 4th Tea House and Driver respectively at the tea estate known as M/s Dayang Tea Estate situate in District – Golaghat. The genesis of the present case is an incident which occurred on 05.10.1998. It was alleged from the Management side of M/s Dayang Tea Estate on the basis of complaints received by it, to the effect that there was removal of one bag of tea, weighing about 30 KGs, on that day from the factory premises of Dayang Tea Estate in an unauthorized manner. It was alleged that the Workmen were involved in carrying the said bag in a vehicle bearing no. AS-05/4661, belonging to the Tea

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Estate, along with other bags of tea from the factory premises to the place of the transporter for further transportation. The bag in question, weighing about 30 KGs, was allegedly sold to some third party. It was alleged that the two Workmen were involved in such unauthorized removal of the bag of tea, weighing about 30 KGs, and they sold off the bag to a third party for the purpose of misappropriating the sale proceeds thereof. Finding the allegations serious, the Management suspended both of them on 17.10.1998 pending initiation of domestic enquiry and final orders.

2.1. The Management issued charge-sheets against both of the Workmen seeking their explanations within a date specified in the charge-sheets. On receipt of the original charge-sheets, the two Workmen appeared to have submitted their replies. The original charge-sheets came to be amended at a later date and the amended charge-sheets were duly served upon the two Workmen. On receipt of the amended charge sheet, Sri Benudhar Tassa submitted a reply on 07.12.1998 stating that his earlier explanation made in reply to the original charge-sheet, should be treated as an explanation in respect of the amended charge-sheet.

2.2. Thereafter, an Enquiry Officer was appointed and the process of domestic enquiry was furthered. Both the charge-sheeted Workmen took part in the domestic enquiry. In the course of domestic enquiry, the Management side examined 6 [six] witnesses in support of the charges leveled against the two delinquent Workmen and all 6 [six] Management Witnesses [MWs] were cross-examined on behalf of the two charge-sheeted Workmen. After closure of the evidence from the Management side, the two charge-sheeted Workmen made

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their respective statements as Workmen Witnesses [WWs] in the domestic enquiry before the Enquiry Officer and they were also cross-examined by the Management side. As per the Enquiry Officer, both the Workmen declined to produce any other witness in their defence. After conclusion of the domestic enquiry, the Enquiry Officer submitted a Domestic Enquiry Report dated 30.12.1998 wherein the Enquiry Officer recorded a finding that a bag of tea weighing in between 28 Kgs – 30 Kgs was taken out illicitly from the factory premises of M/s Dayang Tea Estate on the date of the incident. A finding was reached to the effect that Benudhar Tassa who was in charge of the despatch that day, was primarily responsible for the removal. It was held that the other Workman, Mubarak Ali sold the said tea bag at Golaghat for personal gain for himself and that of Benudhar Tassa, who joined hands in the entire process. The Enquiry Officer had held that both the Workmen viz. [i] Benudhar Tassa, and [ii] Mubarak Ali, were guilty of misconduct, as per Clause 10[a][ii] of the Standing Orders then in force in the tea estate.

2.3. On receipt of the Domestic Enquiry Report dated 30.12.1998, the Management on the basis of the findings recorded in the Domestic Enquiry Report, decided to dismiss both of them from their services with effect from 05.03.1999.

3. Being aggrieved by the dismissal of the two Workmen, 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 two Workmen viz. [i] Benudhar Tassa, and [ii] Mubarak Ali. The Government of Assam in the Labour and Employment Department referred it to the Labour Court by a

Reference vide a Notification bearing no. GLR.239/99/15 dated 26.11.1999. The contents of the Notification dated 26.11.1999 read as under :

GOVERNMNET OF ASSAM
LABOUR AND EMPLOYMENT DEPARTMENT
ORDERS BY THE GOVERNOR
NOTIFICATION
Dated Dispur, the 26th Nov'99.

NO.GLR/239/99/15 : Whereas an industrial dispute has arisen in the matter specified in the schedule below between :-

1. The Management of Dayang Tea Estate, Golaghat.

-Vs-

2. The Secy. A.C.K.S. Golaghat Circle, P.O. Golaghat.

And whereas it is considered expedient by the Govt. of Assam to refer the dispute for adjudication to a Labour Court Dibrugarh Industrial Tribunal 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 Management of Dayang Tea Estate is justified in dismissing Md. Mubarak Ali, Driver and Shri Benudhar Tessa, 4th Tea House with effect from 05.03.99 ?

[b] If not, are the said workmen entitled to reinstatement with full wages or any other relief in lieu thereof ?

Sd/- A. Choudhury,
Deputy Secy. to the Govt. of Assam,
Labour and Employment Deptt.

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4. On receipt of the Notification, the learned Labour Court registered the same as Reference Case no. 20/1999. After registration of Reference Case no. 20/1999, the learned Labour Court, Dibrugarh by an Order dated 15.12.1999, issued notices to the parties asking them to file their respective written statement along with all other documents on which they intended to rely. On receipt of notices, both the parties, that is, the Management side and the Workmen side made their appearances before the learned Labour Court. While the Workmen side through the trade union filed their written statement on 29.06.2000, the Management side filed its written statement on 05.06.2001.

4.1. From the Workmen side, it was contended that no proper domestic enquiry was held and the Workmen were denied proper opportunities of hearing and as such, the domestic enquiry was not fair and reasonable. Allegations were made to the effect that the Enquiry Officer was biased and his findings were perverse. The Management side in their written statement had contended that the domestic enquiry was conducted strictly in compliance of the principles of natural justice and the domestic enquiry was fair and reasonable. It was contended that both the Workmen were given full opportunities to defend themselves in the course of domestic enquiry. It was contended that it was after proper appreciation of the evidence led in the course of domestic enquiry, the Enquiry Officer found both the Workmen guilty of misconduct and arrived at the findings at the conclusion that the charges leveled against them were duly proved. A projection was made from the Management side that Sri Benudhar Tassa was not a workman within the meaning of Section 2[s] of the Industrial Disputes Act, 1947 as he drew a salary exceeding Rs. 1,600/- per month and his role was supervisory in nature.

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5. After submission of the written statements by both the sides, the learned Labour Court had proceeded to record the depositions of the witnesses from the Management side on different dates. From the Management side, 5 [five] witnesses viz. M.W.1 – Madav Baruah [examined on 06.12.2000 and cross-examined on 10.08.2001]; M.W.2 – Anup Kumar [examined and cross-examined on 13.09.2001]; M.W.3 – Hollo Bakti [examined and cross-examined on 13.09.2001]; M.W.4 – Tintush Mura [examined and cross-examined on 11.12.2001]; and M.W.5 – Suren Mura [examined and cross-examined on 11.12.2001] adduced their evidence. The learned Labour Court also recorded depositions of the two witnesses from the Workmen side, that is, the two Workmen themselves as W.W.1 – Md. Mubarak Ali [examined and cross-examined on 09.01.2002] and W.W.2 – Benudhar Tassa [examined and cross-examined on 09.01.2002]. The learned Labour Court pronounced its Award in Reference Case no. 20/1999 on 19.03.2002 holding that the findings recorded by the Enquiry Officer in the Domestic Enquiry Report were not based on the records placed before him by the Management. It was held that the dismissal of the two Workmen w.e.f. 05.03.1999 was not justified and they were entitled to re-instatement with full wages.

5.1. Dissatisfied with the Award passed by the learned Labour Court on 19.03.2002 in Reference Case no. 20/1999, the Management of M/s Dayang Tea Estate preferred a writ petition, W.P.[C] no. 7040/2002 challenging the same. It was contended from the petitioners' side, that is, the Management side that the findings reached by the learned Labour Court were perverse. On the other hand, it was contended from the Workmen side that a writ court while

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exercising its power of judicial review would not sit in appeal over the findings recorded by the learned Labour Court. After hearing the learned counsel for the parties and perusal of the materials available in the case records, this Court found that in the Award, there was no reference to the depositions made by the Management's witnesses [MWs] and no analysis of the their depositions were recorded by the learned Labour Court in reaching the findings. It was noticed that the learned Labour Court had brushed aside the depositions made by the Management side witnesses [MWs] on the ground that there were improvements made in their depositions. This Court had observed that the learned Labour Court before recording the findings that there were improvements made by the Management's witnesses [MWs], ought to have analyzed the same on the touchstone of the principles involved in a domestic enquiry. It was observed that since the domestic enquiry proceedings were not like criminal proceedings, the charges were required to be established on the basis of preponderance of probabilities and it was the duty of the learned Labour Court to find out as to whether the said principles involved in the domestic enquiry were complied with or not. It was found that the learned Labour Court did not explain as to why the delay of 9 [nine] days in lodging the complaint was fatal to the charges against the Workmen. It observed that it was not the case of the Workmen that such delay was prejudicial to their defences. Finding that there was no proper appreciation of the evidence by the learned Labour Court, the impugned Award dated 19.03.2002 passed by the learned Labour Court, Dibrugarh was set aside and quashed by this Court vide Judgment and Order dated 05.02.2010. The matter was remanded back to the learned Labour Court for deciding the Reference afresh on the basis of the evidence on record by keeping in mind the observations made in the Judgment

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and Order dated 05.02.2010 passed in the writ petition, W.P.[C] no. 7040/2002. It was ordered that the learned Labour Court shall decide the Reference afresh on the basis of available evidence/materials as expeditiously as possible.

5.2. On being so remanded back and after receipt of the case records with a copy of the Judgment and Order dated 05.02.2010, the learned Labour Court issued notices to both the parties. It was on 28.11.2011, the Workmen side entered their appearance before the learned Labour Court in Reference Case no. 20/1999 and the Management side of M/s Dayang Tea Estate entered their appearance on 17.03.2012. The learned Labour Court heard the arguments of both the sides on 05.11.2012 and passed the Award on 06.11.2012 holding *inter alia* that the Management side was justified in dismissing the two Workmen after holding the domestic enquiry and there was no justification for re-instatement of the said two Workmen. The Government of Assam published the Award in the Official Gazette by Notification bearing no. LGD.103/91/2654-59 dated 02.05.2013. The said Award dated 06.11.2012 passed by the learned Labour Court, Dibrugarh in Reference Case no. 20/1999 is the subject-matter of challenge in this writ petition.

6. I have heard Ms. A. Bhattacharyya, learned counsel for the petitioner and Mr. J. Roy, learned Senior Counsel assisted by Mr. B.P. Sharma, learned counsel for the respondent no. 1.

7. Ms. Bhattacharyya, 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

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arriving at a finding first about the validity and propriety of the domestic enquiry conducted against the two Workmen resulting in the order of dismissal by the Management. Ms. Bhattacharyya has submitted that the learned Labour Court ought to have recorded its finding about 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. In response, Mr. Roy, learned Senior Counsel appearing for the respondent no. 1 i.e. the Management side has supported the Award. Mr. Roy has submitted that the principles are well settled as about the manner how the learned Labour Court has to proceed in respect of a Reference where the matter of dismissal of Workman/Workmen is involved. He has, however, fairly submitted that it was an obligation on the part of the Labour Court to record a finding as there was already a domestic enquiry conducted by the Management side leading to the dismissal of the two Workmen, first as to whether such domestic enquiry was fair and reasonable and as to whether adequate opportunities of hearing were provided to the charge-sheeted Workmen adhering to the principles of natural justice.

8. The sequence of events which had preceded the impugned Award have already been outlined hereinabove. The alleged incident occurred in the factory premises of M/s Dayang Tea Estate on 05.10.1998 had led to the issuance of the charge-sheets against the two Workmen on 28.10.1998. On perusal of the case records, it is noticed that during the course of domestic enquiry proceedings, the Enquiry Officer recorded the depositions of 6 [six] witnesses [MWs] from the Management side and to rebut the charges, the two Workmen

had examined themselves [WWs] to adduce their evidence. It was after recording the depositions of 6 [six] Management Witnesses [MWS] and the two Workmen [WWs], the Enquiry Officer submitted the Domestic Enquiry Report on 30.12.1998. 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. 16 in Reference Case no. 20/1999, 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 recorded his findings and held that charges were duly established and the two Workmen were found to be guilty of misconduct under the Standing Orders in force in the Tea Estate.

9. At this stage, it is apposite to make a survey of the principles required to be followed in a domestic enquiry 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 in different decisions.

10. 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 :

> From the above decisions the following principles broadly emerge :
>
> [1] If no domestic enquiry had been held by the management, or if the management

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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

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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 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.

11. 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

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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 con- ducted by an employer is found to be defective.

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[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.

12. Section 11A was 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.—

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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.

13. 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 outlines 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.

14. From the principles laid down in the afore-said decisions, it is clear that the Labour Court is an under obligation to examine, at first, whether the domestic enquiry proceedings, if any conducted by the Management for dismissing a workman, was conducted in accordance with the principles of natural justice and in so examining, it can consider the aspect whether reasonable opportunities were given to the charge-sheeted workman to represent and defend his case. If it appears to the Labour Court that the domestic enquiry was

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not conducted in accordance with the principle of natural justice and a reasonable opportunities were not provided to the charge-sheeted workman/workmen to lead evidence in support of his/their defence, that could be a valid ground on which the Labour Court can discard the findings of the domestic enquiry that the workman was guilty of misconduct and consider the matter on the merits uninfluenced by such findings. It is also well settled that since the domestic enquiry is not by a court therefore, strict rules of the Evidence Act, 1872 is not applicable to such domestic enquiry. The standard of proof in domestic enquiry is preponderance of probabilities and not proof beyond reasonable doubt. Once it is found that the domestic enquiry tribunal based on evidence comes to a particular conclusion, normally it is not open to a Labour Court as an appellate tribunal to substitute its subjective opinion opposite to the one arrived at by the domestic enquiry tribunal. In a case where where two views are possible on the evidence on record, then the Labour Court should be very slow in coming to a conclusion other than the one arrived at in the domestic enquiry by substituting its opinion in place of the opinion recorded in the domestic enquiry. It is, thus, a settled position that where two views are possible on evidence, the Labour Court has to be slow in interfering with the findings arrived at in the domestic enquiry.

15. In the face of such principles of law, a perusal of the Award dated 06.11.2012, passed by the learned Labour Court in Reference Case no. 20/1999, goes to show that it was pleaded from the Workmen side that the domestic enquiry was not held in accordance with the principles of natural justice. Just by recording such plea from the Workmen side in the Award dated 06.11.2012, the learned Labour Court had proceeded to discuss the evidence of the 5 [five]

Management Witnesses [MWs] and the depositions of the two Workmen's Witnesses [WWs], led before it after the Reference to arrive at the findings, mentioned hereinabove. The case in hand is one where the depositions of 6 [six] Management Witnesses [MWs] and two Workmen [WWs] 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 30.12.1998. Therefore, both the depositions of the Management Witnesses [MWs] and the two Workmen Witnesses [WWs] and the Domestic Enquiry Report dated 30.12.1998 were available before the learned Labour Court. The depositions of 5 [five] Management Witnesses [MWs] and 2 [two] Workmen [WWS], led before it after the Reference made by the Government of Assam on 26.11.2019, were also 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. 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.

16. It is settled that a writ of Certiorari can be issued in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. The writ

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jurisdiction extends to cases where orders are passed by courts or tribunals, upon which the High Court exercises supervisory jurisdiction, 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 grave miscarriage of justice. A writ in the nature of Certiorari, under Article 226 of the Constitution, is issued for correcting gross 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 06.11.2012 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 culminating in the Domestic Enquiry Report dated 30.12.1998. The learned Labour Court had lost sight of the position of law that it is 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 06.11.2012 is not sustainable in law and the same is liable to be set aside and quashed. It is accordingly set aside and quashed.

17. With the setting aside and quashing of the impugned Award dated 06.11.2012, this Court has no option but to remand the matter back again to the learned Labour Court, Dibrugarh to decide the Reference, that is, Reference Case no.20/1999 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 03.10.2023 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 03.10.2023, 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 03.10.2023, the learned Labour Court, Dibrugarh would proceed to decide the Reference in an expeditious manner, preferably within a period of 3 [three] months from the date of such appearance.

18. It is made clear that any observations made in this order are made only for the purpose of testing the validity and legality of the Award dated 06.11.2012 and none of such observations shall be construed to be observations on the merits of the claims of the respective parties.

19. The Office to send back the LCR forthwith.

JUDGE

Comparing Assistant

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