GAHC010009132015

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

Case No. : WP(C)/949/2015

AKHIL BHARATIYA CHAH MAZDOOR SANGHA
REP. BY ITS GENERAL SECY., ASSAM STATE COMMITTEE HAVING ITS REGD. OFFICE AT BISWANATH CHARIALI, P.O. BISWANATH CHARIALI, DIST- SONITPUR, ASSAM

VERSUS

THE MANAGEMENT OF ANANDA TEA ESTATE
REP. BY ITS GENERAL MANAGER, P.O. PATHALIPAM, DIST- LAKHIMPUR, ASSAM, PIN-787056

Advocate for the Petitioner : MS.B DAS

Advocate for the Respondent : MR.S CHAKRABORTY

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri A. Dasgupta, Sr. Adv.
Shri JK Sharma, Adv.
Ms. B. Das, Adv.

Advocates for the respondent : Shri S. Chakraborty, Adv. R. 1 to15

Dates of hearing : **09.01.2024 and 10.01.2024**
Date of Judgment : **06.02.2024**

JUDGMENT & ORDER

The legality and validity of an Award dated 08.10.2012 passed by the learned Labour Court, Dibrugarh in Ref. Case No. 8 of 2009 is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India. By the aforesaid Award, the dismissal of the workmen, who are represented by the petitioner Sangha has been upheld. The fairness of the domestic enquiry was taken up as a preliminary issue and the said issue was decided in favour of the Management.

2. Before going to the issue which has arisen for determination, the facts of the case, as projected in the petition, may be narrated briefly.

3. At the outset, this Court records upon instructions that though initially there were 12 nos. of workmen who are represented by the petitioner – Sangha, 5 nos. of them have expired during the pendency of this writ petition. The workmen were employees of the Management of Ananda Tea Estate (hereinafter the Management). On 31.03.2004 in the morning hours, the workmen had come to the Office of the Management and demanded that justice be given by the Senior Assistant Manager, one Shri JK Gogoi, on the issue of assaulting two boys of the Garden. This led to an unruly incident and the workmen had attacked the said Senior Assistant Manager who got injured on his jaw and other parts of his body and he tried to flee away. However, the workmen chased him and when he was inside the Ambassador Car, the

workmen tried to kill him by setting fire.However, on the intervention of other officials, the same was prevented. In the said incident, Shri Gogoi was seriously injured and he had to take treatment in different Hospitals.

4. Having no alternative, the Management had to declare lock-out as the situation was volatile and the workmen were suspended from their services. Thereafter, charges were framed against them and an enquiry was conducted by appointing an Enquiry Officer. The proceeding was conducted in presence of the workmen and evidence was adduced by the Management. After the said enquiry, the workmen were dismissed from their service. The action of dismissing the workmen was raised the dispute and the appropriate Government vide notification dated 15.07.2009 had framed the following issues for determination by the learned Labour Court, Dibrugarh.

> "*(1) Whether the management of Ananda Tea Estate, P.O. Pathalipam, dist. – Lakhimpur, (Assam) is justified in dismissing 12 nos. workers listed below from their regular service? Savasri Baneswar Orang, Langu Munda, Bina Orang, Phanidhar, Eswar Bhagat, Ajoy Orang, Ram Prasad Orang, Pradip Kharia, Smt. Gayatri, Smt. Fulo Baraik, Smt. Dudhoi, Smt. Sonmoi.*
>
> *(2) If not, are they entitled their reinstatement with full back wages and benefits or other relief thereof?"*

5. The Management in their written statement, after narrating the facts, had pleaded that the domestic enquiry was done in accordance with law by giving a fair opportunity to the workmen and therefore, the fairness of the said domestic enquiry should be examined.

6. The workmen who are represented by the petitioner Sangha had filed their

written statement. It is contended that the dismissal was based on unfounded allegation and the enquiry was also partial in nature. It was pleaded that the enquiry was conducted without fulfilling the requirement of the principles of natural justice and therefore, the enquiry was vitiated. It was further pleaded that in the criminal case lodged against the workmen, they were acquitted vide an order dated 29.05.2006. It was accordingly, prayed that the dismissal order be set aside and the issues be decided in favour of the workmen and a direction be issued for reinstating them. The workmen had also filed additional written statement to bring in the fact of acquittal in the criminal case.

7. On perusal of the pleadings, the learned Labour Court had formulated a preliminary issue which is as follows:

> "*Whether principles of natural justice have been followed at the time of domestic enquiry".*

8. The learned Labour Court, Dibrugarh on perusal of the records had found that the enquiry was held in proper time on two dates and apart from the witnesses, there were two independent observers who were employees of the Management. The purpose of the enquiry was explained to the workmen and the contents of the charge sheet and reply were also explained. The Management had adduced 11 numbers of witnesses, who were also cross-examined. The workmen had also adduced evidence through 15 numbers of witnesses.

9. The learned Labour Court noticed that MW1, Shri RK Parik was not present at in the place of occurrence when the unruly incident took place. He had however proved the FIR, Lock-Out Notice, letter to the Superintendent of Police,

letter to the O/C and the signatures appearing on those documents. The seizure list, assessment report relating to the damage of the vehicle, certified copy of the FIR etc. were also proved. The suspension letters, the appointment letters, notice of the enquiry were also proved as exhibits. The injured Officer Shri JK Gogoi had himself adduced evidence as MW2 and had narrated the entire incident where he was tried to be killed and it was only on the intervention of two other officials that his life was saved. In the said process, the said two officials were also attacked and he was chased from the rooms by the workmen who used knife, rod, stones and the Ambassador Car was also tried to be set on fire. The medical documents and certificates of treatment were duly proved. The suggestion given on behalf of the workmen that they were not present at the time of the incident was denied.

10. The deposition of other witnesses on behalf of the Management were consistent with the version of MW2, Shri JK Gogoi. In fact, MW4 Shri Om Prakash Kulwal was also present at the time of the incident. The rest of the witnesses were also present at the time of the incident and their depositions were consistent.

11. The learned Labour Court noticed that the trend of the cross-examination was only to shift the blame to the other workmen and by denying their presence. However, there was no denial of the incident *per se* and rather the deposition would show that an incident had in fact taken place which however was triggered by the assault of two boys by the officials of the Management.

12. The learned Court had also recorded that before the enquiry, notices were duly issued to the workmen and charge sheet was also filed and all the documents were placed on record. The learned Court came to a finding that the

workmen had got adequate opportunity to defend their case and had also participated in the enquiry. It has been recorded that the enquiry was done by an independent person Shri AK Goswami and therefore, the allegation of partiality was not sustainable.

13. The learned Court referred to certain judgments of the Hon'ble Supreme Court wherein it has been laid down that assaulting a superior at the workplace is an act of gross misconduct and punishment of dismissal is justified. The learned Labour Court towards the conclusion has however referred to the case of ***Indian Iron and Steel Company Limited and another Vs. the Workmen*** reported in ***AIR 1958 SC 130***. By quoting the law laid down in the said case, the learned Labour Court had come to a finding that no case for interference was made out as there was no *mala fide* action on the part of the Management. The Award was accordingly passed by deciding the issues in favour of the Management and against the workmen.

14. I have heard Shri A. Dasgupta, learned Senior Counsel, assisted by Ms. B. Das, learned counsel for the petitioner. I have also heard Shri S.Chakraborty, learned counsel for the respondent nos. 1 to 15. The LCRs which have been transmitted to this Court have been carefully perused.

15. Shri Dasgupta, learned Senior Counsel for the petitioner has formulated the following grounds of challenge:

I. The fairness of the domestic enquiry was not properly proved and therefore, on that basis alone, the Award could not have been passed.

II. The concerned workmen were acquitted in the criminal case No. 01/2007 and therefore, they could not have been held to be guilty of the

charges in the domestic enquiry.

III. The findings of the learned Labour Court which have been made on the basis of the case of ***Indian Iron and Steel*** (supra) is contrary to the statute holding the field.

IV. The domestic enquiry itself was not done fairly and therefore, the dismissals were unjustified.

16. Elaborating his submissions, Shri Dasgupta, learned Senior Counsel has submitted that though the learned Labour Court had held that the domestic enquiry was fair, there was no evidence adduced to prove the fairness. He submits that no witnesses were examined by the Court in that aspect and therefore, the findings are not sustainable in law.

17. He further submits that under Section 11 (3) (d) of the ID Act of 1947, the powers of the Court, amongst others, would be in respect of such others matters as may be prescribed. Further, under Section 38, the power to make Rules have been given to the appropriate Government. He submits that under the aforesaid provision, the Assam Industrial Disputes Rules, 1948 have been framed. Under Rule 12 thereof, the proceedings before the learned Labour Court / Tribunal has been laid down and under Rule 12(4), it has been laid down that arguments are to follow after closing of the evidence. By referring to the order sheets of the learned Labour Court he submits that on 03.01.2011, the next date was fixed for evidence on 24.01.2011 on which date, the petitioner had filed a petition that the Management is required to lead evidence. However, the hearing was conducted without any evidence being adduced.

18. It is submitted that the criminal case was lodged concerning the same

incident which was registered as Sessions Case No. 107(N)/2005 and vide judgment dated 29.05.2006, the workmen were acquitted. The case was registered under Sections 147/148/149/323/325/307 of the Indian Penal Code. This important factor, it is submitted, was overlooked by the learned Labour Court.

19. The third submission with regard to the case of ***Indian Iron and Steel*** (supra) is in connection with the observations made by the learned Labour Court justifying the stand not to interfere with the order of dismissal. He submits that though the observations which have been referred above were made in the aforesaid case by the Hon'ble Supreme Court, subsequently, Section 11-A was inserted by an amendment of the year 1971. The reason for such amendment was a consequence of the decision of ***Indian Iron and Steel*** (supra) and the same is evident from the statement of objects and reasons, the relevant part of which reads as follows:

> "*3. Regarding Section 11A, in the Statement of Objects and Reasons it is stated as follows :-*
>
> *"In Indian Iron and Steel Co. Ltd. v. Their Workmen, (AIR 1958 S.C. 130 at p. 138), the SC, while considering the Tribunal s power to interfere with the management s decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.*

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal s power in an adjudication proceeding relating to discharge or dismissal of a workmen should not be limited and that the Tribunal should have the power in cases wherever necessary to 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 reliefs to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new S. 11A is proposed to be inserted in the Industrial Disputes Act, 1947....."

He accordingly submits that discretion has been conferred upon the learned

Labour Court or Tribunal to pass an award if it is satisfied that the order of dismissal was not justified and to set aside such dismissal order and direct reinstatement on such terms and conditions or give any other relief including Award of lesser punishment.

20. As regards the fourth ground formulated, it is submitted that the allegations were not proved by reliable witnesses. He submits that MW1 is a hearsay witness whose evidence has got no value and MW2 was an interested witness. It is further submitted that the charges were vague and the workmen were not allowed to cross examine the MWs. It is further submitted that copy of the enquiry report was not furnished to the workmen and therefore, the proceeding stood vitiated.

21. In support of his submissions, Shri Dasgupta, learned Senior Counsel has relied upon the following decisions:

i. The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. the Management and Others. [(1973) 1 SCC 813]

ii. Sarva Shramik Sangh, Bombay Vs. Indian Hume Pipe Company Limited, Bombay [1993 (2) SCC 386]

iii. Senapathy Whiteley Ltd. Vs. Karadi Gowda and Anr. [(1999) 9 SCC 259]

iv. Raghubir Singh Vs. General Manager, Haryana Roadways, Hissar [(2014) 10 SCC 301]

v. Raj Kumar Vs. Assistant General Manager, State Bank of India [(2016) 7 SCC 582]

vi. Management of Bharat Heavy Electricals Limited Vs. T.A. Mathivanan (dead) through Legal representatives [(2018) 1 SCC 285]

22. In the case of ***Firestone Tyre and Rubber*** (supra), the history of incorporation of Section 11-A in the ID Act of 1947 has been elaborately stated and explained by referring to the case of ***Indian Iron and Steel*** (supra). It has further been laid down that after the aforesaid amendment, the ambit of exercise of powers by the learned Labour Court / Tribunal has been expanded. For ready reference, the relevant paragraphs are extracted hereinbelow-

> *47. We will now pass on to consider the proviso to Section 11A. Mr. Deshmukh relied on the terms of the proviso in support of his contention that it is now obligatory to hold a proper domestic enquiry and the Tribunal can only take into account the materials placed at that enquiry. The counsel emphasised that the proviso places an obligation on the Tribunal 'to rely only on the materials on record' and it also prohibits the Tribunal from taking 'any fresh evidence in relation to the matter'. According to him, the expression 'materials on record' refers to the materials available before the management at the domestic enquiry and the expression 'fresh evidence' refers to the evidence that was being adduced by an employer for the first time before the Tribunal. From the wording of the Proviso, he wants us to infer that the right of an employer to adduce evidence for the first time has been taken away, as the Tribunal is obliged to confine its scrutiny only to the materials available at the domestic enquiry.*
>
> *48-49. We are not inclined to accept the above contention of Mr.*

Deshmukh. The Proviso specifies matters which the Tribunal shall take into account as also matters which it shall not. The expression 'materials on record' occurring in the Proviso, in our opinion, cannot be confined only to the materials which were available at the domestic enquiry. On the other hand, the 'materials on record' in the Proviso must be held to refer to materials on record before the Tribunal. They take in -

(1) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) the above evidence and in addition, any further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

The above items by and large should be considered to be the 'materials on record' as specified in the Proviso. We are not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The Proviso only confines the Tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal. It is only on the basis of these materials that the Tribunal is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the Tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment. From the Proviso it is not certainly possible to come to the conclusion that

when once it is held that an enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal. The expression 'fresh evidence' has to be read in the context in which it appears namely, as distinguished from the expression 'materials on record". If so read, the Proviso does not present any difficulty at all.

50. The Legislature in S. 11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of

discharge or dismissal that is being considered by the Tribunal.

52. There may be other instances where an employer with limited number of workmen may himself be a witness to a misconduct committed by a workman. He will be disabled from conducting an enquiry against the workman because he cannot both be an enquiry officer and also a witness in the proceedings. Any enquiry held by him will not be in keeping with the principles of natural justice. But he will certainly be entitled to take disciplinary action for which purpose he can serve a charge-sheet and, after calling for explanation, impose the necessary punishment without holding any enquiry. This will be a case where no enquiry at all has been held by an employer. But the employer will have sufficient material available with him which could be produced before any Tribunal to satisfy it about the justification for the action taken. Quite naturally, the employer will place before the Tribunal, for the first time, in the adjudication proceedings material to support his action. That material will have to be considered by the Tribunal. But if the contention of Mr. Deshmukh is accepted, then the mere fact that no enquiry has been held, will be sufficient to order reinstatement. Such reinstatement, under the circumstances mentioned above, will not be doing justice either to the employer or to the workman and will not be conducive to preserving industrial peace.

53. We have indicated the changes effected in the law for Section 11A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been

holding that an employer is expected to hold a proper enquiry according to the Standing Orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Further by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or mala fide. It cannot be over-emphasised that conducting of a proper and valid enquiry by an employer will conduce to harmonious and healthy relationship between him and the workmen and it will serve the cause of industrial peace. Further it will also enable an employer to persuade the Tribunal to accept the enquiry as proper and the finding also as correct."

23. In the case of ***Sarva Shramik Sangh*** (supra) it has been laid down that a learned Labour Court / Industrial Tribunal is a substitute forum to the learned Civil Court though the same would not be bound by the technical Rules or Procedures which bind the learned Civil Court.

24. In the case of ***Senapathy Whiteley Ltd.*** (supra), it has been held that it would be open to the High Court to modify the order of the learned Labour Court in justifiable cases.

25. In the cases of ***Raghubir Singh*** (supra) and ***Bharat Heavy Electrical***(supra), the principles laid down in ***Firestone*** (supra) have been reiterated.

26. *Per contra,* Shri Chakraborty, learned counsel for the respondent has emphatically refuted the contentions made on behalf of the petitioners. He submits that the present adjudication is required to be confined to the pleadings which were made before the learned Labour Court or even in this writ petition. He submits that the only ground of challenge taken in the written statement is that the charges were vague. In the writ petition, two new grounds *qua* the challenge to the dismissal from service have been pleaded. He submits that without even going to the aspect as to whether new grounds can be taken, the said grounds are also factually incorrect. He submits that in paragraph 9 of the writ petition, it has been stated that the workmen were not allowed to cross examine the MWs and in paragraph 10 it has been submitted that copy of the enquiry report was not furnished.

27. By referring to the affidavit-in-opposition, Shri Chakraborty, learned counsel submits that in paragraph 6 thereof, it has been categorically stated that cross examination of the MWs were done by the workmen. In support of the said contention, the LCR has been referred and it is seen that from pages 74 onwards, the cross examination of the MWs are also recorded.

28. As regards furnishing of the enquiry report, Shri Chakraborty submits that not only copy of the same was furnished, the workmen had also filed their objection. In this regard, reference has been made to pages 172-183 of the LCR which contains the enquiry report and pages 184-195 which contains the representations of the workmen.

29. In response to another ground which has been pleaded in the writ petition that the enquiry officer was not examined in the learned Labour Court, Shri Chakraborty has again referred to the order sheet of the learned Labour Court.

He submits that from the order dated 09.08.2012, it would appear that the Management had filed a petition to examine the enquiry officer. Such petition was filed subsequent to earlier orders whereby the Management was directed to lead evidence first which was on a petition by the workmen. The said petition was objected to by the workmen and accordingly the prayer of the Management to examine the enquiry officer was rejected and the preliminary issues were framed. Shri Chakraborty accordingly submits that the Management cannot be faulted with for not adducing evidence of the enquiry officer before the learned Labour Court. However, he submits that the entire records of the domestic enquiry was placed before the learned Labour Court.

30. This Court on perusal of the order dated 09.08.2012 of the learned Labour Court has also seen that a view was taken that under Section 11-A of the ID Act, there was no scope to provide for adducing of evidence. The correctness of the said view was not tested by any of the parties by approaching the appropriate Court and therefore, at this stage, this Court would not embark upon the same.

31. Though there was a contention raised on behalf of the petitioner that there was victimization due to trade union activities, Shri Chakaraborty, the learned counsel has submitted that there is no pleading, whatsoever in that regard and therefore, the same cannot be taken up at the time of argument. He submits that in any case, there are no materials to show any victimization.

32. Shri Chakraborty further submits that the present petition is otherwise liable to be dismissed as the same has been filed by suppressing materials fact. As indicated above, he submits that all the principal grounds regarding non-supply of enquiry report and not affording opportunity to cross examine the

MWs are belied by the records. He also refers to the order dated 09.08.2012 of the learned Labour Court from which it will appear that the workmen had submitted that the learned Labour Court was to proceed on the basis of the materials alone. He submits that in paragraph 20 of the written statement of the Management filed before the learned Labour Court, it has been clearly stated that the domestic enquiry would be relied upon.

33. Shri Chakraborty submits that this Court in exercise of powers under Article 226 of the Constitution of India would not make a roving enquiry and would not substitute the view taken by the learned Labour Court only because there may be another plausible view. He submits that in cases of industrial disputes under the ID Act, there is no strict rules of procedure in a domestic enquiry and the only requirement is to comply with the principles of natural justice. He lastly submits that the charges are of grave nature wherein certain officials of the Management narrowly escaped the attempt of their lives by the workmen.

34. In support of his submissions, Shri Chakraborty has placed reliance upon the following case laws-

i. State Bank of Patiala Vs. SK Sharma [(1996) 3 SCC 364];

ii. Management of Krishna Kali Tea Estates Vs. Akhil Bhartiya Chah Mazdoor Sangh [(2004) 8 SCC 200];

iii. Management of Madurantakam Co-Op Sugar Vs. S. Viswanathan [(2005) 3 SCC 193];

iv. Hombe Gowda Edn. Trust and Anr. Vs. State of Karnataka and ors. [(2006) 1 SCC 430];

v. KD Sharma Vs. Steel Authority of India [(2008) 12 SCC 481];

vi. Kishore Samrite Vs. State of M.P. [(2013) 2 SCC 398] and

vii. M.L. Singla Vs. Punjab National Bank and Anr. [(2018) 18 SCC 21]

35. The case of ***State Bank of Patiala*** (supra) has been cited to bring home the contention that an order of dismissal can be interfered with only when there is violation of substantial provisions and the question of prejudice is also required to be addressed. The Hon'ble Supreme Court laid down a distinction between "no opportunity" and "no adequate opportunity". The cases of ***Hombe Gowda Trust*** (supra) and ***Management of Krishna Kali*** (supra) have been cited in support of the contention that assault to an official is a grave offence.

36. In the case of ***Management of Madurantakam*** (supra), the Hon'ble Supreme Court has laid down that the findings of a learned Labour Court are findings of fact wherein the scope of interference is limited. Similarly, in the case of ***ML Singla*** (supra), it has been laid down that once a Labour Court comes to a finding that a punishment is justified, there is no need for substituting such punishment.

37. The cases of ***KD Sharma*** (supra) and ***Kishore Samrite*** (supra) have been cited on the contention of the consequence of suppression of materials fact in a Writ Court. It has been laid down that a Writ Court being a Court of equity, it is obligatory on the party approaching the Court to come with clean hands.

38. The rival submissions have been carefully examined and the materials including the original records of the learned Labour Court have been duly perused.

39. Let us deal with the grounds taken in the petition along with the defence of the respondent serially. The first ground was that the fairness of the domestic enquiry was not properly proved as no evidence was taken by the learned Labour Court. To examine this ground, it is necessary to refer to the order sheets of the learned Labour Court from which the procedure adopted along with the conduct of the parties would be evident. It has been noted above that on 03.01.2011, the next date was fixed for evidence as 24.01.2011. On the said date, the workmen had filed a petition that the Management was to lead evidence. Thereafter, there was transfer of the proceedings to the learned District Court. Subsequently, vide order dated 17.04.2012, the next date was fixed on 17.05.2012 for the Management to adduce evidence first. Accordingly, a petition was filed by the Management to examine the enquiry officer which was however objected to by the workmen. Accordingly, vide an order dated 09.08.2012 the learned Labour Court had rejected the prayer upon such objection and also framed a preliminary issue. Under such situation, this Court is of the opinion that the aforesaid ground would not be available to the workmen as they had objected to the petition by the Management to adduce evidence by the enquiry officer. This Court has also noticed that the entire proceedings of the domestic enquiry was placed before the learned Labour Court which were examined and there was no denial regarding the said documents by the petitioner Sangha in its written statement.

40. Regarding the next ground, the concerned workmen were acquitted in the

criminal case No. 01/2007 and therefore, they could not have been held to be guilty of the charges in the domestic enquiry, this Court is of the view that mere acquittal in a criminal case would not automatically absolve the workmen from the charges in the domestic enquiry. This Court has also noticed that the acquittal is on the benefit of doubt. It is otherwise a settled law that the standard of proof in a criminal case is beyond all reasonable doubt unlike a domestic enquiry wherein the proof is on the preponderance of probabilities.

41. Before dealing with the issue of application of the law laid down in the case of ***Indian Iron and Steel*** (supra), let us deal with the contention that the domestic enquiry was not done fairly. In this regard, this Court has noticed that all the contentions raised namely, not allowing the workmen to cross examine the MWs and not furnishing copy of the enquiry report are belied from the materials available in the LCR. This Court has already recorded that the cross examination of the MWs are available from page 74 onwards of the LCR. The enquiry report which finds places in pages 172-183 of the LCR was responded to by the workmen by filing representation which is found in page 184-195. This Court has also noticed that the workmen did not raise any dispute with regard to the authenticity and the contents of the documents.

42. This brings us to the ground of application of the case of ***Indian Iron and Steel*** (supra). The law laid down in the aforesaid case leading to amendment of the ID Act, 1947 by inserting Section 11-A has been elaborately explained by the Hon'ble Supreme Court in the case of ***Firestone*** (supra) which has already been discussed in details above. The limitations on the part of the Labour Court / Industrial Tribunal and the scope for interference was explained in the case of ***Indian Iron and Steel*** (supra) which however was diluted by

the aforesaid amendment. The dismissal from the service in the instant case being of a subsequent period, the view of the learned Labour Court by applying ***Indian Iron and Steel*** (supra) does not appear to be correct and rather appears to be *per incuriam* the statutory provision of Section 11-A.

43. This Court however makes it clear that it is only that part of the impugned Award of the learned Labour Court relying upon the case of ***Indian Iron and Steel*** (supra) which is interfered with. However, the substantial part of the Award of the learned Labour Court is upheld.

44. This Court is also of the view that the principal ground that the domestic enquiry was not fair on the allegation that cross examination of the MWs were not allowed and copy of the enquiry report was not furnished are factually incorrect to the knowledge of the petitioner and therefore, the petitioner appear not to have approached this Court with clean hands and rather projected incorrect statements. Therefore, the petitioner is otherwise also not entitled to the equitable relief under Article 226 of the Constitution of India.

45. In view of the aforesaid discussion, this Court is of the unhesitant opinion that the petitioner Sangha has not been able to make out any case for interference and accordingly, the writ petition is dismissed.

46. No order as to cost.

47. LCR be sent back.

JUDGE

Comparing Assistant