

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 108/2004

Judgment reserved on : 25.01.2010

Judgment pronounced on: 19.04.2010

Delhi Transport Corporation Petitioner.

Through: Mr. Hanu Bhaskar, Adv.

Versus

Sunil Kumar Respondent.

Through: Mr. H.K. Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

*

1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks to set aside the Award dated 21st March, 2002 passed by the learned Labour Court in ID No. 627/96 directing reinstatement of the respondent workman with continuity of service and full backwages.

2 . Facts of the present case adumbrated are that the respondent was appointed as a conductor in the petitioner corporation since 10.9.83 and on 31.12.93 while he was on duty on Bus No. DLP-728 he did not issue tickets to 10 passengers after collecting fare from them and hence a charge sheet was issued to him on 19.1.94. Pursuant to the charge sheet, an enquiry was set up by the petitioner wherein the respondent was found guilty of misconduct and based on the findings of the Enquiry Officer, his services were terminated on 30.6.95. Thereafter, the respondent raised an industrial dispute bearing ID No. 627/96 whereby vide order dated 21.3.2002 the termination of the respondent was held to be illegal and was directed to be reinstated with continuity of service and full back wages. Feeling aggrieved by the same, the petitioner has filed the present writ petition.

3 . The main issue, the Court is confronted with is that whether the Labour Court was justified in rejecting the application of the petitioner to lead additional evidence to prove the charge of misconduct of the respondent workman, when the petitioner did not seek leave in the written statement filed before the Labour

Court to lead additional evidence in the event of the domestic enquiry is held to be vitiated by the Labour Court .

4 . Mr. Hanu Bhaskar, counsel for the petitioner submitted that even though the petitioner in the written statement did not seek any leave to prove misconduct of the workman before the Labour Court in the event the enquiry is held to be vitiated by the Labour Court, but the petitioner in a separate application moved by it sought leave of the Court to adduce evidence to prove misconduct on the part of the respondent. Counsel further submitted that the application of the petitioner management was dismissed by the Labour Court vide order dated 13th February, 2002. The Labour Court in its order placed reliance on the judgment of the Apex Court in ***Karnataka State Transport Corporation vs. Smt. Lakshmiddevamma & Anr. (2001) 5 SCC 433*** and held that the petitioner management cannot be allowed to prove the misconduct of the respondent workman when no such right was reserved by the petitioner in its written statement. Counsel further submitted that the Labour Court has not properly appreciated the said judgment and rather misconstrued the correct import of the judgment of the Apex Court in the said case

of ***Karnataka State Transport Corporation (supra)*** as the majority view was that no fetters can be placed on the powers of the Court/Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded, if on facts and circumstances of the case the Tribunal deemed it fit in the interest of justice. The contention of the counsel for the petitioner was that Hon'ble Mr. Justice V.N. Khare, Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice Y.K. Sabharwal took the same view while Hon'ble Mr. Justice Santosh Hegde and Hon'ble Mr. Justice S.P. Bharucha accepted the earlier view taken by the Apex Court in ***Shambhu Nath Goyal vs Bank of Baroda & Ors.(1983) 4 SCC 491***. Counsel also placed reliance on the judgment of the Apex Court in ***Divyash Pandit vs Management, NCCBM (2005) 2 SCC 684*** where in the facts of that case, the application for leading additional evidence was moved after the passing of the Award, but still the Apex Court after placing reliance on the decision in ***Karnataka State Road Transport Corporation case (supra)*** took a view that no fetters can be placed on the powers of the Tribunal to direct the parties to lead

additional evidence and accordingly held that the Labour Court should have given an opportunity to the management to establish the charge before passing of the Award in favour of the workman. Yet another contention raised by the counsel was that the Labour Court is required to answer the reference even where the enquiry issue has been held against the management. The contention of counsel for the petitioner was that the management can successfully prove misconduct on the part of the workman by leading evidence on the issue framed by the Labour Court to prove the terms of reference and on proving the same, the Labour Court can give appropriate directions in the fact situation of the given case.

5 . Refuting the said submissions of counsel for the petitioner, Mr. H.K. Chaturvedi, counsel for the respondent argued that in ***Karnataka State Road Transport Corporation case*** the majority view endorsed the law laid down by the Apex Court in the case of ***Shambhu Nath (Supra)*** on the point and the said legal position held the field for nearly 18 years. The Court also observed that the doctrine of stare decisis requires them to approve the ratio of the said case to see that a long standing

decision is not unsettled without strong cause. Not agreeing with the contention of counsel for the petitioner, counsel for the respondent submitted that even Khare J. and Patil J. took the same view as they clearly said that they reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek the leave of the Court/Tribunal in the written statement itself to lead evidence to support its action on the misconduct in the alternative and without prejudice to its rights and contentions, and only in a passing reference they observed that no fetters can be placed on the powers of the Court/Tribunal to direct the parties to lead additional evidence to produce the documents at any stage of the proceedings. Counsel thus submitted that Patil, J. and Khare, J. have not only re-affirmed the view of the earlier decision in the case of ***Shambhu Nath Goyal (supra)***, but they also endorsed the view taken by Santosh Hegde, J. and Bharucha, J. Counsel also placed reliance on the judgment of the Apex Court in the case of ***Official Liquidator vs Dayanand and Ors. (2008) 10 SCC*** to submit that under Article 141 of the Constitution of India the Courts are bound to respect the view taken by the larger Benches.

6 . I have heard learned counsel for the parties at considerable length.

7 . The legal controversy has been raised again even after the decision of the Constitutional Bench in the matter of ***Karnataka S.R.T.C. vs. Lakshmiddevamma & Anr. (Supra)*** where the majority view had endorsed and upheld the earlier view of the Apex Court in the matter of ***Shambhu Nath Goyal's case (Supra)***. Before dwelling on the contentions raised by both the counsel representing the parties, it would be appropriate to give a brief background of facts which led the labour court to pass the order dated 21.3.2002 under challenge before this court. The respondent workman had raised the industrial dispute under Section 10 of the I.D. Act challenging his termination. Out of the pleadings of the parties, the learned labour court framed the following issues:

“1. Whether the domestic enquiry was not conducted according to the principles of natural justice and is therefore, not fair, proper and valid?

2. As per terms of reference.”

8 . The Issue No.1, on the domestic enquiry was treated as a preliminary issue and vide order dated 7.11.2001, the domestic

enquiry set up by the management was held to be vitiated as the same was held not conducted in a fair and proper manner. Since the petitioner management did not take any plea in their written statement to prove the misconduct of the respondent workman before the labour court independent of the findings on the enquiry issue, therefore no opportunity was given to the petitioner management to prove the misconduct of the respondent workman. The matter was straightaway fixed by the labour court to decide the issue no. 2 with regard to the terms of reference.

9 . The learned labour court based on the findings on issue no.1, whereby the enquiry was held to be vitiated, straightaway answered the reference in favour of the respondent workman directing his reinstatement with continuity of service with full back wages. Before the final award was passed by the learned labour court, the petitioner in the meantime had filed a separate application vide application dated 26.11.2001 to seek opportunity to prove misconduct of the respondent workman after the decision of the labour court on the preliminary issue having gone against the petitioner. Declining the said request of the petitioner, the learned labour court vide order dated 13.2.2002 rejected the said

application of the petitioner. The Labour Court took a view that in view of the Constitutional Bench decision of the Apex Court in the case of ***Karnataka S.R. T.C. Vs. Lakshmiddevamma (Supra)*** the petitioner management cannot be allowed to prove the misconduct once no such averment or plea was taken by the management in their written statement to prove misconduct on the part of the delinquent employee in the event of the enquiry held to be vitiated. With the rejection of the said application of the petitioner management, the petitioner could not avail any opportunity to prove the misconduct of the respondent by adducing any evidence before the Labour Court and ultimately based on the findings on the enquiry issue, the termination of the respondent workman was held to be illegal and unjustified.

10 . The legal issue raised by the counsel for the petitioner is that the said decision of the Labour Court is not as per the majority view of the Apex Court decision in the case of ***Lakshmiddevamma (Supra)***. As per the counsel for the petitioner, the majority view of the Apex Court in the said case is that of Shivaraj V. Patil, J., V.N. Khare, J. and that of Y.K. Sabharwal, J. which permits the petitioner management to lead

additional evidence including production of documents at any stage of proceedings before the conclusion of the hearing. On the other hand, the counsel for the respondent took a position that the majority view in the said case has only affirmed the earlier view of the Apex Court in ***Shambhu Nath Goyals's*** case which permits the employer to make a proper request for leading additional evidence on the misconduct of the workman when it filed the statement of claim under Section 33 of the I.D. Act or written statement in the industrial dispute raised under Section 10 of the I.D. Act and not at any stage of proceedings whenever it so likes.

11 . ***Lakshmiddevamma's case*** is a decision by the Constitutional Bench of five judges. The majority decision in the said case was rendered by N. Santosh Hegde, J. for himself and Bharucha, J., Shivraj V. Patil, J. wrote a concurrent note for himself and V.N. Khare, J. while Y.K. Sabharwal, J. alone wrote a dissenting judgment. This matter was referred by the Bench of two judges of the Apex Court after it perused conflicting decisions in the matter of ***Shambhu Nath Goyal (Supra)*** and ***Rajinder Jha Vs. Labour Court, 1984 Supp (1) SCC 520.***

Although the court did not find any such conflict in both the said judgments but since in some of the earlier judgments of the Apex Court, contrary view to that of ***Shambhu Nath's case*** was taken, therefore, the Apex Court found it appropriate to decide the question so as to put the controversy to rest. Before proceeding to decide the question as to whether the petitioner management had unfettered right to lead additional evidence to prove misconduct on the part of the delinquent employee at any stage, without setting up any such plea in the written statement, after the finding of the Labour Court on the enquiry issue was held out to be vitiated, the Apex Court proceeded to deal with the said issue on the premise that the right of the management to lead evidence before the labour court or the industrial tribunal is not a statutory right. So far the right of the petitioner management to prove misconduct of the delinquent employee before the labour court/industrial tribunal is concerned, the same was never in dispute as there was a consistent view that the petitioner management can still prove misconduct of the delinquent employee before the labour court after having failed to succeed in proving the same on the

preliminary issue of the enquiry. It would be appropriate to refer to the relevant para of the said judgment here.

“Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this Court has agreed on the conferment of this right of the management but there seems to be some differences of opinion in regard to the timings of making such application. While some judgments hold that such a right can be availed by the management at any stage of the proceedings right upto the stage of pronouncement of the order on the original application filed either under Section [10](#) or Section [33\(2\)\(b\)](#) of the Industrial Disputes Act, some other judgments hold that the said right can be invoked only at the threshold.”

12 . As would be evident from the aforesaid, the moot question before the Constitutional Bench of the Apex Court was:

“As when would be the relevant stage when such a request can be made by the petitioner to avail its right to lead evidence on the misconduct of the employee; should it necessarily be by taking a plea in the written statement filed in reply to the statement of claim under Section 10 proceedings or in provisional application filed under Section 33 of the I.D. Act.”

13 . At the very outset in ***Shambhu Nath Goyal’s case***, the Apex Court took a view that once any such request was not made in the written statement itself then it cannot be allowed to do so at any later stage of proceedings by filing an application for this purpose as the same would result in delay which would lead to wrecking the morale of the workman and compel him to

surrender, which he may not otherwise do. Affirming the view of ***Shambhu Nath Goyal's case***, Santosh N. Hegde, J. and Bharucha, J. clearly took a position that the view earlier taken in the case of ***Shambhu Nath Goyal*** need not be varied, the same being just and fair. It would be useful to refer to the relevant paras of ***Lakshmiddevamma's case*** dealing with the same here:

"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 Goyal's 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 Goyal's 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 Goyal's 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 been held the law for nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that 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 : (1983)ILLJ415SC is the correct law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforestated principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with cost."

14 . Santosh N. Hegde, J. and Bharucha, J. also found that since the employer in the said case did not seek permission to lead evidence after the Labour Court had held that domestic enquiry was vitiated, therefore, they found the decision of the High Court dismissing the writ petition of the petitioner management as legal and valid. So far the said view taken by the two Hon'ble Judges, which is referred to as the majority view, does not pose any difficulty as clearly they have affirmed and upheld the earlier view of the Apex Court taken in ***Shambhu Nath Goyal's case*** clearly envisaging that the right of the employer to lead additional evidence in a proceeding before the labour court or before the Tribunal either under Section 10 or Section 33 of the I.D. Act must be availed by the employer by making a proper request at the time when it files its statement of claim or written statement.

15 . However, in the above decision, Y.K. Sabharwal, J. gave

a dissenting view. In his dissenting view, the learned Judge clearly held that the procedure laid down in ***Shambhu Nath Goyal's case*** is not just and proper both for the employer and the workman. Y.K. Sabharwal, J. after referring to some earlier decisions of the Apex Court in the case of *Devendra Pratap Narain vs. State of U.P* (1962 Supp.(1) SCR 315), *M/s Bharat Sugar Mills Ltd. Vs. Shri Jai Singh & Ors.* (1962)3 SCR 684, *Workmen of Motipur Sugar Factory (Pvt.) Ltd. Vs. Motipur Sugar Factory* (1965)3 SCR 588, *Delhi Cloth & General Mills Vs. Ludh Budh Singh* 1972 (25) FLR 1 (SC), *Cooper Engg. Co. Ltd. Vs. P.P. Mundhe* 1975 (31) FLR 1888(SC), *The Workmen of M/s Firestone Tyre & Rubber Co. of India(Pvt.) Ltd. Vs. The Management & Ors.* (1973) 1 SCC 813 and then the case of *Shankar Chakravati Vs. Britannia Biscuit Co.Ltd. & Anr.* 1979(39) FLR 70 (SC), where these previous decisions came to be examined, came to the conclusion that earlier to ***Shambhu Nath Goyal's case*** the settled legal position was that the employer could ask for opportunity to adduce its evidence before the proceedings are closed before the labour court/industrial tribunal and this departure for the first time came up only in ***Shambhu Nath***

Goyal's case. It would be relevant to refer to the following paras where the said view has been taken:-

*"It is evident from the above that on pronouncement of the decision of the preliminary issue as to whether the domestic enquiry has violated the principles of natural justice, the management was to decide whether it will adduce any evidence before the labour Court. That was held to be the appropriate stage. All these decisions again came to be examined in **Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr.**: [\(1979\)IILLJ194SC](#) and the decision in **Cooper Engineering Ltd.'s** case indicating the stage of opportunity was cited with approval and it was further opined that such an opportunity had to be asked for. The Bench held that if request is made in the statement of claim or written statement, depending upon whether the proceedings were under Section [23](#) or Section [10](#) of the Industrial Disputes Act, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the labour Court/Industrial Tribunal should ordinarily grant an opportunity to adduce evidence. It was further held that if no request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity.*

38. In the present case, we are not called upon to decide a case where no request to adduce evidence is made by the employer. we are concerned with the question that in a case where request is made to adduce evidence immediately after the decision of the preliminary issue but such a request was not made in the written statement filed in reply to the statement of claim of the workman in proceedings under Section [10](#) of the Industrial Disputes Act, does it require outright rejection without being considered on merits? The opinion expressed in **Shankar Chakravarti's case** reads as under:

*"When read in the contest of the propositions culled out in **Delhi Cloth & General Mills Co. case** and the **Firestone Tyre & Rubber Co. of India (P) of Ltd. case**, the decision in **Cooper Engineering Ltd.** case merely indicates the stage at which an opportunity is to be give but it must not be overlooked that the opportunity has to be asked for. Earlier clear-cut pronouncements of the Court in **R.K.Jain case** and **Delhi Cloth & General Mills Co.** case that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate*

stage and there is no duty in law cast on the Industrial Tribunal or the Labour Court suo motu to give such an opportunity notwithstanding the fact that none was ever asked for are not even departed from. When we examine that matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their right more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section [10](#) or Section [33](#) of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action by it. If such a request is made in the statement of claim, application or written statement the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceeding are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings."

(emphasis supplied)

39. It appears that earlier to **Shambu Nath Goyal's** case (supra), it was not doubted that the employer could ask for an opportunity to adduce evidence before the proceedings are closed before the Labour Court/Industrial Tribunal. The departure came up only in **Shambu Nathu Goyal's** case.

40. In **Shambu Nath Goyal**, the main judgment does not refer to the decision of **Cooper Engineering Ltd.'s** case. The said judgment after reproducing the paragraph from Shankar Chakravarti's case which held that if the request is made before the proceedings are concluded, the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence' observes that the management is made aware of workman's contention regarding the defect in domestic enquiry by the written statement of defence filed by him in the application filed by the management under Section [33](#) of the Act or in statement of claim filed by the workman under Section [10](#) of the Act. Noticing that the defect in domestic enquiry is pointed out by the workman in the written statement filed in the Labour Court or Industrial Tribunal and

the management has the opportunity to look into that statement has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or the Industrial Tribunal and, therefore, the management could make the request for opportunity in the written statement itself. Then, the opinion expressed is that if the management does not choose to do so at that stage, it cannot be allowed to do it at any latter stage of proceedings by filling any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do. The only reason which seems to have weighed for coming to the conclusion that the management is barred from making such an application at later stage is the likely delay to the proceedings.

41. As already noticed, the **Cooper Engineering Ltd.'s** case (supra) has not been considered in the main judgment delivered by justice Varadarajan in **Shambu Nath Goyal's** case. In **Cooper Engineering Ltd.'s** case which was also a decision by a Bench of three judges, it was held that the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice and on that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. It has to be borne in mind that grant of opportunity to an employer to adduce evidence for the first time before the Labour Court/Tribunal is in the interest of both the management and the employee. It is also to be borne in mind that non-grant of such an opportunity may in the ultimate analysis adversely affect the workman. Except the main judgment of **Shambu Nath Goyal's** case, no other decision of this Court was cited before us wherein may have been that the prayer of the management to adduce evidence is to be rejected if not made either in the written statement filed to the statement of claim in reference under section [10](#) or at the initial stage of proceedings under Section [33\(2\)\(b\)](#) of the Industrial Disputes Act. Even justice Desai in the concurring judgment does not go that far and opines that if such an application is made it would be open to Labour Court to examine the question whether it should be granted or not.

42. In various decisions rendered by this Court, it was been held that such a request can be made before the proceedings are closed the Labour Court/Tribunal. There is no compelling reason to limit the exercise of discretion by the Labour Court/Industrial Tribunal to examine such a prayer on its own merit and decline it if not considered to be bone fide and made

to delay the proceedings and to wreck the moral to delay the proceedings and to wreck the morals of the workman and compel him to surrender, to use the language of, **Shambu Nath Goyal's case (supra)**. Ordinarily such a request when made immediately after the decision of the preliminary issue deserves to be allowed of the preliminary issue deserves to be allowed as held in **Shankar Chakravarti's case** prior to its elaboration by justice Desai in **Shambu Nath Goyal's case**. If such a request is made soon after the enquiry is held to be invalid and the Labour Court holds it to be bona fide and further holds that no prejudice would be caused to the workman, there is no reason still to shut the employer when it has been rightly held, time and again, that the employer has a right to adduce evidence before the Labour Court in case of no enquiry or invalid enquiry. In such proceedings, pleadings do not deserve to be strictly construed.

43. For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to statement of claim in proceedings under Section [10](#) cr. when an application is filed for approval under section [33\(2\)\(b\)](#) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request, when made before close of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/Tribunal will exercise discretion on well settled judicial principles and would examine the bona fides of the employer in making such an application.

44. The doctrine of stare decision has also no applicability. In decisions earlier to **Shambu Nath Goyal's case (supra)**, the consistent view was that the prayer for adducing evidence could be made before the close of proceedings. Soon after **Shambu Nath Goyal's case**, in **Rajendra Jha's case**, similar view was expressed. The procedure laid down in **Shambu Nath Goyal's case** would not be just, fair and reasonable both to the employer and the workman. The said decision has no acquired the status attracting the doctrine of stare decisis. Shambu Nath Goyal represents highly technical view. Considering that we are considering the rule of convenience, expediency and procedure which promotes the cause of both employer and workman deserves to be laid down.

45. In view of above, I am of the opinion that the **Shambu Nath Goyal's case (supra)** does not lay down correct law. The law has been correctly laid in **Shankar Chakravarti's case** and **Rajendra Jha's case**. The correct procedure is as stated

in Shankar Chakravarti's case subject to further safeguards for workman as already indicated above.

46. Despite above conclusions, in so far as the present appeal is concerned, considering that the award was made by the Labour Court more than 16 years back and also that the employee has already retired as we are informed, it would not be appropriate to interfere in exercise of power under Article [136](#) of the Constitution. In this view, I would dismiss the appeal leaving the parties to bear their own costs”.

16 . Hence, based on the said analysis of the earlier cases, Y.K. Sabharwal, J. did not find the procedure laid down in ***Shambhu Nath Goyal's case*** as just, proper and fair or even reasonable both to the employer and the workman.

17 . Now coming to the view taken by Shivraj Patil, J. and V.N. Khare, J. These Hon'ble Judges although had agreed with the view given by Santosh Hegde, J. and Bharucha, J. but to the said view they added another dimension. The angle given by them was that although the management has to seek leave of the courts/tribunals in the written statement itself to lead additional evidence to support its action in the alternate, but similar restriction cannot be placed on the powers of the courts/tribunals requiring or directing the parties to lead additional evidence including production of documents at any stage of proceedings before the conclusion of the hearing in the said facts and

circumstances of the case as the court/tribunals deem it just and necessary to grant such an opportunity. Relevant paras of the said judgment highlighting their view are reproduced as under:

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

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

18 . So the clear line of demarcation would be apparent from the views expressed by the said judges and it would be quite manifest that so far the dissenting view of Y.K. Sabharwal, J. is concerned, his Lordship clearly held that the employer can ask for an opportunity to adduce evidence before the proceedings are closed before the labour court/industrial tribunal but in any case the labour court/tribunal will exercise discretion on a set of judicial principles and would examine the bona fides of the employer in making such an application at a belated stage. Justice Sabharwal also clearly discarded the view taken by the Apex Court in the earlier decision in ***Shambhu Nath Goyal's case*** which was termed as not being just, proper and reasonable to both the employer and the employee. The view taken by the Apex Court in ***Shambhu Nath Goyal's case*** was also found by Y.K. Sabhawal, J. to be highly technical.

19 . So far the view taken by Hegde, J. and Bharucha, J. is concerned, they have clearly affirmed and upheld the view taken by the Apex Court in ***Shambu Nath Goyal's case*** whereby the employer must make a proper request at the time of filing its statement of claim or written statement or make any application

seeking such permission under Section 33 of the I.D. Act and not at a later stage whenever it so chooses.

20. Since Shivraj Patil, J. and V.N. Khare, J. had agreed with the view taken by Hegde, J. and Bharucha, J. and therefore, their view will form the majority view and as per the majority view, the management has to seek leave of the court/tribunals in the written statement itself to lead additional evidence without prejudice to its rights and contentions. That is the same view as was taken in ***Shambhu Nath Goyal's case*** but with this view it was also held that in a given facts of the case the labour court/tribunals may direct the parties to lead additional evidence including production of documents at any stage of proceedings before the hearing is concluded.

21. The Apex Court in the case of ***Divyash Pandit (2005) 2 SCC 684*** also took the same view as the majority view of the Apex Court in ***Lakshmidewamma's case (Supra)*** and held as under:-

It is true no doubt that the respondent may not have made any prayer for (sic submitting) additional evidence in its written statement but, as held by this Court in Karnataka S.R.T.C. v. Laxmidewmma : 2001 (90) FLR 35 (SC) this did not place a fetter on the powers of the Court Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are

concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an award in favour of the workman.

22. In the facts of ***Divyash Pandit's case (Supra)***, the application to lead additional evidence was made by the management after passing of the award and in the said context the said observations were made by the Apex Court and the matter was remanded back to the labour court for fresh adjudication after giving an opportunity to the management to lead additional evidence.

23. Hence, on a careful reading of the majority decision of the Constitution Bench of the Apex Court in ***Lakshmiddevamma's case*** and the same decision as interpreted by the Apex Court in ***Divyash Pandit's case***, there cannot be any manner of doubt that the management has to exercise its right for seeking opportunity to lead fresh/additional evidence at the first available opportunity by raising a specific plea in the written statement/reply itself so far the industrial dispute raised by the workman under Section 10 of the Industrial Disputes Act is concerned or in the application filed under Section 33 I.D. Act and not at a subsequent stage after the

enquiry is held to be vitiated by the Labour Court after the decision on the preliminary issue. This is the position so far the right of the petitioner management is concerned, but however, so far the powers of the Labour Court/Industrial Tribunal are concerned, the clear legal position that emerges from the above decisions is that the Labour Court/Industrial Tribunals have unfettered powers to direct the management to lead additional evidence including production of documents at any stage of the proceedings before the hearing is finally concluded, if in the facts and circumstances of the case, the exercise of such power is considered just and proper to meet the ends of justice.

24. Applying the aforesaid principles of law in the facts of the present case, let me now examine as to whether the Labour Court correctly rejected the application of the petitioner or not. The learned Labour Court declined the request made by the petitioner to lead additional evidence solely based on the majority view of the Apex Court judgment in ***Lakshmiddevamma's*** case, but without taking into consideration the facts and circumstances of the case. No doubt the petitioner management did not take up any plea in the written statement to lead additional evidence in the

event of findings in the preliminary issue of the enquiry was held to be vitiated, but certainly the same did not foreclose the right of the petitioner management to lead additional evidence, subject, however to the condition that the petitioner management is able to satisfy the learned Labour Court to grant such an opportunity even at the belated stage in the interest of justice. The matter thus deserves to be remanded back before the learned Labour Court for a fresh decision on the said application of the petitioner seeking to lead additional evidence to prove misconduct on the part of the respondent workman.

25. So far the other contention raised by the counsel for the petitioner with regard to grant of opportunity to lead evidence on the terms of the reference and the labour Court to give independent finding on the same, totally uninfluenced by the findings on the preliminary issue of enquiry, the issue raised is no more res integra. It is a settled legal position that if the enquiry is held out to be fair and proper after due observance of the principles of natural justice, the Labour Court has no power to interfere with the punishment imposed by the Disciplinary Authority unless the punishment awarded is disproportionate and

calls for interference of the Labour Court/Industrial Tribunal under Section 11A of the ID Act. Interpretation of Section 11A came up for consideration before the Apex Court in the case of ***Workmen vs Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. 1973 (1) SCC 813*** and it was opined that Section 11A of the Act had brought out a complete change in this behalf. The Apex Court, despite insertion of Section 11 A, not only conferred jurisdiction on the Tribunal to alter the quantum of punishment imposed upon a workman, but also held that it can enter into the merit of the matter so far the determination of the proof of misconduct or otherwise on the part of the workman is concerned. Relevant para of the said judgment is reproduced as under:-

"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.

.....

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."

26. The Apex Court also in the case of ***South Indian Cashew Factories Workers' Union vs. Kerala State Cashew Development Corpn. Ltd. (2006) 5 SCC 201*** also held that Section 11 A of the ID Act is only applicable in the case of dismissal or discharge of the workman and the interference of the labour Court/Industrial Tribunal would arise only if the punishment awarded is shockingly disproportionate. Relevant para of the same is referred as under:-

"The Labour Court had earlier held that the enquiry was properly held and there was no violation of the principles of natural justice and that the findings were not perverse. The vitiating facts found by the Labour Court against the enquiry are erroneous and are liable to be set aside. If enquiry is fair and proper, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed. Section [11A](#) of the Act gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section [11A](#) of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the Section itself. Before the introduction of Section [11A](#) in Indian Iron and Steel Co. Ltd. v. Their Workmen : (1958)ILLJ260SC this Court held that 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. There is no allegation of

unfair labour practice, victimisation etc. in this case. The powers of the Labour Court in the absence of Section 11A is illustrated by this Court in Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management : (1973)ILLJ278SC . When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimisation or malafides or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11A is not applicable, Labour Court has no power to re-appraise the evidence to find out whether the findings of the enquiry officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry.”

27. It would be thus quite evident from the above discussion that the learned Labour Court/Industrial Tribunal while answering the reference can certainly look into the aspect of punishment in exercise of its power under Section 11A of the ID Act and interfere with the same if the punishment awarded by the Disciplinary Authority is shockingly disproportionate. If the punishment awarded is not disproportionate as envisaged under Section 11A of the ID Act, then certainly the Labour Court/Industrial Tribunal cannot interfere in the same while answering the terms of the reference.

28. Hence, in the light of the above discussion, the present matter is remanded back for fresh consideration by the Labour

Court on the application moved by the petitioner to lead additional evidence to prove misconduct of the respondent workman.

29. Parties are directed to appear before the Labour Court on 3rd May, 2010.

April 19, 2010

KAILASH GAMBHIR, J.