



2026:AHC:209118

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 10799 of 2024

M/S Taehwa Enterprises India Private Limited

.....Petitioner(s)

Versus

State Of Up And 9 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Atul Mehra, Vivek Ratan Agrawal
Counsel for Respondent(s)	:	C.S.C., Sarwar Ali Siddique

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri V.R. Agrawal, learned counsel for petitioner-employer and Sri S.A. Siddique, learned counsel for respondent-workman.

2. The contesting respondent was terminated from services and it appears that no inquiry was conducted. In aforesaid circumstances, an industrial dispute was referred wherein it was held that since no inquiry was conducted, therefore, order of termination was bad in law, however, admittedly, no opportunity was granted to petitioner-employer to lead the evidence to prove the charge against the workman before Labour Court, therefore, petitioner has preferred this writ petition, wherein following interim order was passed 03.04.2024 :-

"1. It is submitted that the learned Labour Tribunal has illegally passed an order for reinstatement of the workmen in service and awarded backwages since the date of their termination dated 6.9.2017. It is further submitted that learned Labour Tribunal has not given effective and proper opportunity of hearing to the present petitioner to prove the misconduct of the workmen on which basis they have been terminated. In support of his case learned counsel for the petitioner has cited the judgment of three judges Bench of Hon'ble Supreme Court i.e. State of Uttarakhand and others Vs. Smt. Sureshwati 2021(168) FLR 488. The relevant paragraph No.14 of the said judgment, relied upon by the learned counsel for the petitioner, is quoted hereinbelow :

"14. This Court has in a catena of decisions held that where

an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

A four Judge Bench of this Court in Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory, AIR 1965 SC 1803 held that :

" 11. It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron and Steel Co. v. Workmen, AIR 1958 SC130) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sana Musa Sugar Works (P) Limited v. Shobрати Khan AIR 1959 SC923, Phulbari Tea Estate v. Workmen AIR 1959 SC1111, and Punjab National Bank Limited v. Workmen AIR 1960 SC160. These three cases were further considered by this Court in Bharat Sugar Mills Limited v. Jai Singh AIR 1961 (3) FLR 371 (SC), and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co. (1954) LAC 697. It was pointed out that "the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence

adduced whether the charges have really been made out".

It is true that three of these cases, except Phulbari Tea Estate case, were on applications under Section 23 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

Subsequently in Delhi Cloth and General Mills Co. v. Ludh Budh Singh 1972 (25) FLR 1 (SC) this Court held that :

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway 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.

....

(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.

Reliance is also placed on the judgment of this Court in Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Management of Firestone Tyre and Rubber Co. of India (P) Ltd and Others. (1973) 1 SCC 813 wherein the broad principle regarding holding of the enquiry were spelt out as:

"32. From those decisions, the following principles broadly emerge:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified

only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

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

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

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

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

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the

appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

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

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmens 1971 (22) FLR 217 (SC) within the judicial decision of a Labour Court or Tribunal.....?

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 11-A, 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.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is

not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A."

14. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.

A four Judge Bench of this Court in Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory¹ held that :

" 11. It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry

before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron and Steel Co. v. Workmen²) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sana Musa Sugar Works (P) Limited v. Shobrati Khan³, Phulbari Tea Estate v. Workmen⁴, and Punjab National Bank Limited v. Workmen⁵. These three cases were further considered by this Court in Bharat Sugar Mills Limited v. Jai Singh⁶, and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co.⁷. It was pointed out that "the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out".

It is true that three of these cases, except Phulbari Tea Estate case, were on applications under Section 23 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on

the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

2. *It is further submitted that, in view of the ratio decided by the Hon'ble Supreme Court in the said case, the finding returned by learned Labour Tribunal is a nullity in the eye of the law. It is further submitted that the observation with regard to the non-employment of the workmen during the period of termination is not supported by any affidavit. It is next submitted that after the date of termination dated 6.9.2017, the petitioner has given sufficient fund to the workmen who have kept that money with them and deliberately filed the petition under the Industrial Disputes Act, however, the said money, as mentioned in the written statement, has not been considered by the learned Tribunal.*

3. *The matter requires consideration.*

4. *Respondents No. 1, 2 and 10 are represented through learned Standing Counsel.*

5. *Issue notice to respondents Nos. 3 to 9 fixing 18.7.2024 as the date.*

6. *In the meantime, both the parties shall exchange their respective affidavits, if any.*

7. *The effect and operation of the award in question dated 4.9.2023, published on 3.11.2023, shall remain stayed provided the present petitioner shall deposit 25% of the backwages as determined by the learned Tribunal, vide award impugned dated 4.9.2023, within a period of one month, with the labour Tribunal."*

3. Learned counsel for petitioner has rightly referred a recent judgment of this Court in **M/s Shahi Export House (now known as Shahi Export Pvt. Ltd.) vs. Presiding Officer, Labour Court and another, 2026 LLR 984** and relevant part of it is quoted below :-

"13. In aforesaid circumstances, when law on issue is very clear and reiterated by Supreme Court time and again, the procedure undertaken by

Labour Court concerned, being contrary and in the teeth of judgments passed by Supreme Court, cannot be sustainable. For sake of repetition the principle enunciated by Supreme Court in Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. (supra) is again taken into consideration that even a Workman is dismissed or any adverse action is taken against a Workman even without conducting an inquiry, in such case the Labour Court after making a declaration that no inquiry was conducted, an opportunity should be granted to Employer to prove, whether charge can be proved or not and that further proceeding will be initiated only after the Labour Court has taken a decision, whether domestic inquiry was fair or not. "

4. Learned counsel for respondent-workman submits that it was duty of petitioner-employer to conduct inquiry before an adverse order was passed against contesting respondent and since it was not admittedly done, therefore, award was passed, however, he is not able to dispute above referred position of law and prays that if the matter is remitted back, the same be decided expeditiously.

5. In view of above, since impugned award is in the teeth of above referred judgments passed by Supreme Court and this Court, therefore, impugned order is interfered only to the extent that award was passed in favour of contesting respondent-workman and no interference is caused so far as finding that no inquiry was conducted is concerned and matter is remitted back to concerned Labour Court to proceed further and decide the same after providing opportunity of leading evidence by petitioner-employer. The respondent-workman will have liberty to rebut it and on basis of consideration of evidence as well as material produced, a fresh order shall be passed within a period of three months from today.

6. With aforesaid observations, directions and modification of impugned award, this writ petition is **disposed of**.

(Saurabh Shyam Shamshery,J.)

October 6, 2026

N. Sinha