

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st December, 2015

+ **W.P.(C) 13752/2009**

POONNAMMA VISHWANATHAN

..... Petitioner

Through: Mr Abinash K. Mishra, Adv.

versus

MOOLCHAND KHAIRATI RAM HOSPITAL AND ANR.

..... Respondent

Through: Mr M.Y. Khan, Adv.

+ **W.P.(C) 2957/2010**

MOOL CHAND KHAIRATI RAM HOSPITAL & AYURVEDIC RESEARCH
INSTITUTE

..... Petitioner

Through: Mr M.Y. Khan, Adv.

versus

PONNAMMA VISHWANATHAN

..... Respondent

Through: Mr Abinash K. Mishra, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Ms. Ponnamma Vishwanathan (hereinafter referred to as 'workman') was appointed as Auxiliary Nurse by Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute (hereinafter referred to as 'hospital') w.e.f. 16th February, 1987 vide appointment letter dated 29th January, 1987. It was alleged that the workman indulged in various acts of serious misconduct and acts subversive of indiscipline for which a charge sheet dated 20th August, 2001 was issued to her. She submitted her explanation on 21st August, 2001. Finding the explanation to be unsatisfactory, domestic inquiry was instituted to enquire into the charges levelled against her vide letter dated 29th August, 2001. Sh. Raj Pal Choudhary was appointed as Inquiry Officer. He submitted report

dated 2nd July, 2002 and found the workman guilty of various charges. The copy of the inquiry report was sent to the workman for her comments and she gave her comments on the inquiry report vide letter dated 31st December, 2002. The management gave show cause notice dated 13th January, 2003 and a reminder dated 15th January, 2003 to which the workman replied vide her reply dated 17th January, 2003. The workman was dismissed vide order dated 6th February, 2003.

2. Thereafter an application under Section 33(2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act'.) bearing OP No.71/2005 (old OP No. 1/2003) was moved by the management seeking approval of its action to remove the workman from service. It was further submitted in the application that the workman has been tendered one month's wage of Rs.5902/- by way of depositing the amount in the Savings Bank Account of the respondent.

3. The workman filed reply to the application wherein she denied that she indulged in any act of misconduct or that her acts were subversive of indiscipline. It was submitted that on 12th May, 2000, Management called the respondent and compelled her to resign from services and threatened that if she refused to sign the resignation letter, they will get her family members killed. In this connection, the workman and her colleagues called the police and also filed a written complaint. Thereafter, a charge sheet was issued containing baseless and concocted allegations. It was denied that inquiry officer gave an opportunity to her or that she was found guilty of charges. It was submitted that the inquiry officer submitted its report before the hospital on 2nd July, 2002 in which he had given the findings in favour of the workman and charges were found to be baseless. The management had gone beyond the findings of the Inquiry Officer and dismissed the respondent on 6th February, 2003.

4. On the pleadings of the parties, following preliminary issue was framed:-

"Whether the applicant has conducted a fair and valid inquiry in accordance with principle of natural justice? OPA

5. In order to substantiate this issue, the management examined AW1-Sh.Raj Pal

Choudhary whereas the respondent examined herself. Vide order dated 10th January, 2005, Industrial Tribunal-II, KKD Courts, Delhi observed that the Management was not having any certified standing orders and model industrial employment standing orders are applicable in the instant case. As per Sub-rule 4(b)(a) of Rule 14 which deals with disciplinary action for misconduct, there was a provision for having representative of the office bearer of the union, however, the delinquent official was not permitted to have due representation. As such, the inquiry proceedings were held to be vitiated.

6. Thereafter, following further issues were framed:-

- (i) Whether the respondent has committed the misconduct as alleged?
- (ii) Whether the applicant remitted full one month's wages to the respondent in compliance of Section 33 (2)(b) of the ID Act?
- (iii) Relief.

7. In order to prove these issues, the management examined AW2-Ms. Sumathi Pillai and AW3-Sh. M.K. Kaushik whereas the workman examined herself in rebuttal. Learned Industrial Tribunal decided issue No.1 against the management primarily on the ground that although AW2-Ms. Sumathi Pillai had stated in her affidavit that she made a report against the workman and co-workmen Marry Kutty and Luxmi Kutty about their involvement in instigating others to join *dharna* and to participate in the strike near the gate of the hospital from 1.4.2000 to 12.5.2000 and that occasionally the *dharna* became violent and it could damage the property of the hospital and that she had advised the workman and the co-workman not to participate in *dharna* and strike, however, in cross-examination, she admitted that she personally did not see the workman sitting on *dharna* or instigating others. As such, her complaint was on the basis of hearsay evidence. No eye-witness was examined by the management to prove that the workman participated in the strike or instigated other workers to join *dharna*. The allegations of making false complaint to the police by the workman was also not proved as no such complaint was produced by the management. As such, it was held that the management failed to prove the misconduct on the part of the workman.

8. As regards issue No.2, the same was decided in favour of the management as the

management had proved that before filing the application, one month's salary was duly deposited in the bank account of the workman.

9. As regards issue No.3, it was held that since the management had failed to prove the misconduct, as such, the approval application was rejected. At the same time, management was directed to reinstate the workman in service with continuity of service within one month and to pay entire arrears of salary to the workman w.e.f. February, 2003 till her reinstatement excluding the amount deposited in the saving bank account of the workman.

10. The worklady Smt. Poonamma Vishwanathan had also raised an industrial dispute feeling aggrieved by her termination from service. As such, Govt. of the National Capital Territory of Delhi referred the dispute for adjudication with following terms of reference:-

“Whether the services of Smt. Poonamma Vishwanathan, W/o Shri Vishwanathan have been dismissed from service illegally and/or unjustifiably by the management, and if so, to what relief is she entitled and what directions are necessary in this respect.”

11. After reference of the dispute, statement of claim was filed by the worklady in ID No. 417/2003 which was contested by the management. At the stage of evidence, the representative of the workman did not press the claim as having become infructuous in view of the order passed by the Industrial Tribunal in OP No.71/05 whereby direction was given to the management to reinstate the worklady with continuity of service and payment of arrears of salary. As such, no dispute award was passed vide order dated 8th May, 2006.

12. Feeling aggrieved, writ petition bearing WP(C) No.2957/2010 has been filed by the management challenging the orders dated 31st March, 2006 and 10th January, 2005 and award dated 8th May, 2006 passed by the Industrial Tribunal. The workman has also filed writ petition bearing WP(C) No.13752/2009 seeking implementation of the order passed by the Industrial Tribunal in OP No.71/05.

13. Since both the writ petitions have arisen out of order dated 31st March, 2006 passed by Industrial Tribunal-I, Karkardooma Courts, Delhi in OP 71/2005 (Old OP No.1/2003), as such, the same are taken up together.

14. Learned counsel for the management, challenging the findings of the Industrial Tribunal on the issues relating to inquiry as well as misconduct, submitted that the management has taken a consistent stand that respondent is not a workman, however, by way of abundant caution, the management was seeking approval of her dismissal from the Industrial Tribunal. Despite that, no specific issue was framed by Industrial Tribunal as to whether the respondent/employee was a workman or not.

15. Counsel further submits that the inquiry was conducted by following all canons of principles of natural justice. The inquiry report was held to be vitiated by the Industrial Tribunal mainly on the ground that the workman was not provided the facility of due representation by a defence assistant. No arguments were advanced by either party regarding applicability of Industrial Employment (Standing Orders) Act, 1946 or the Model Standing Orders being applicable to the management since no such issue was ever raised before the Tribunal. However, without any issue, Industrial Tribunal assumed that Model Industrial Employment (Standing Orders) Act were applicable to the management thereby setting aside the inquiry on the ground that same was not fair and was vitiated as the respondent was deprived of the rights of representation by the union office bearer as provided under the Model Standing Orders.

16. Counsel further submits that the management is not an “industrial establishment” within the meaning of Section 2(e) of the Industrial Employment (Standing Orders) Act, 1946. Reliance was placed on *Indraprastha Medical Corporation vs. NCT of Delhi*, 2006 (110) FLR 1176 for submitting that the Industrial Employment (Standing Orders) Act, 1946 is not applicable to the hospital. Moreover, representation through a defence assistant is only a facility and not a rule of natural justice as held in *N. Kalindi vs. Tata Locomotive & Engineering Co. Ltd.*, AIR 1960 SC 914; *Crescent Dyes and Chemicals Ltd. vs. Ram Naresh Tripathi*, (1993) 2 SCC 115; *Indian Overseas Bank vs. Indian*

Overseas Bank Officers' Associations and Anr., (2001) 9 SCC 540; *National Seeds Corporation vs. R.V. Rama Reddy*, 2006 (111) FLR 819 (SC) and *DG Railway Protection Force vs. K. Raghuram Babu*, (2008) 4 SCC 406. Further the Industrial Tribunal committed an illegality by ignoring the well settled principle of law that domestic inquiry is not to be decided strictly as per the Evidence Act, 1872 because it is not the civil court proceedings as held in *Workmen of Balmadies Estates vs. Management of Balmadies Estates & Ors.*, 2008(4) SCC 517.

17. Moreover, by relying upon *North West Karnataka Road Transport Corporation vs. S.J. Fernandes*, 2001 (89) FLR 813, it was submitted that unless there is inherent basic defect, infirmity and illegalities, the inquiry is not to be mechanically set aside. Counsel further submitted that no prejudice was caused to the workman in her defence as she was given opportunity to bring co-employee in the inquiry.

18. It was further submitted that the Industrial Tribunal committed a grave error in granting reinstatement with full back wages which was beyond the scope of application under Section 33(2) (b) of ID Act. Reliance was placed on *DTC vs. Rajbir Singh & Ors.*, 169 (2010) DLT 177.

19. As such, it was submitted that the impugned orders dated 10th January, 2005 and 31st March, 2006 and award dated 8th May, 2006 be set aside.

20. Counsel for the workman, on the other hand, submitted that the impugned order does not suffer from any infirmity. Moreover, the workman has since been superannuated on 19.08.2011 and, therefore, the relief is now confined to back-wages.

21. I have given my thoughtful consideration to the respective submissions of learned counsel for the parties and have perused the record.

22. A perusal of the order of Industrial Tribunal shows that it has misconstrued the scope of Section 33(2)(b) of the Act. There is a distinction between deciding an application u/s 33 (2) (b) and deciding a labour dispute.

23. The jurisdiction and functions of a Tribunal under Section 33(2)(b) of the Act were explained by Hon'ble Supreme Court as back as in the year 1960 in **Bangalore Woollen, Cotton and Silk Mills Co. Ltd. vs. Dasappa (B) (Binny Mills Labour Union)**, (1960) II LLJ 39 SC where it was held:-

"The settled position in law therefore is that permission should be refused if the tribunal is satisfied that the management's action is not bona fide or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the management has not acted bona fide. A finding that the management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion."

24. The point was again considered by Hon'ble Apex Court in the case of **Lord Krishna Textile Mills v. Its Workmen**, AIR 1961 SC 860 and it was held :-

"In view of the limited nature and extent of the enquiry permissible under s. 33 (2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by s. 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal ? Has an enquiry been held as required by the standing order ? Have the wages for the month been paid as required by the proviso?; and, has an application been made as prescribed by the proviso ?" The Court then proceeded to consider whether the Tribunal in that case had acted rightly, and noted

that one had merely to read the order to be satisfied that the Tribunal had exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits. The Tribunal did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. The Court then indicated that the Tribunal had proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and had come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges had been proved against the workmen in question. It was then held that, in making these comments against the findings of the enquiry, the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under s. 33(2)(b). The Court then indicated the principle applicable by saying:

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which 'is. entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under s. 33(2)(b). It is conceivable that even in holding an enquiry under s. 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

25. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal under s. 33(2) (b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in *State of Andhra Pradesh V.S. Sree Rama Rao*, AIR 1963 SC 1723, where Apex Court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government servant, The Hon'ble Court held:-

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

26. In **Rajbir Singh** (supra) dealing with scope of Section 33 (2)(b), a Single Judge of this Court observed as under:-

"8. It is settled law that a finding on an application under Section 33(2)(b) is not res judicata if a labour dispute is also raised. Reference in this regard may be made to DTC v. Ram Kumar, 21(1982)DLT54(SN)=MANU/DE/0168/1981, DTC v. Delhi Administration MANU/DE/7595/2007 and Bilori v. DTC 153 (2008) DLT 499=MANU/DE/2218/2009. Thus if the employer seeks approval under Section 33(2)(b) of the Act and the same is granted, the same will not come in the way of the workman raising an industrial dispute qua the termination and/or in the way of the Labour Court in deciding afresh whether the termination of employment is illegal or unjustified. If that be the position, an application under Section 33(2)(b) cannot be decided as a labour dispute and the scope of enquiry under Section 33(2)(b) is much narrower.

9. There is a difference between Section 33(1) & Section 33(2). Section 33(1) deals with misconduct connected with the dispute which is already pending. In such cases legislature prohibits discharge or dismissal save with the express permission in writing of the authority before which the dispute is pending. Per contra, Section 33(2) deals with a situation of misconduct not connected with the dispute pending adjudication. In such cases, the legislature does not require express permission in writing but only requires application for approval of the action taken. The reason for the difference is perceptible. If the misconduct is connected with the dispute already pending conciliation or adjudication, the intent is to maintain status quo. However, a misconduct not connected with the pending dispute is like a fresh cause of action. The law does not impose any obligation on the employer to seek approval before dismissing an employee. Post dismissal the employee is empowered to raise a dispute. A misconduct not connected with the pending dispute being a fresh or different cause of action from the pending dispute, the employer, but for

Section 33(2) would be entitled to dismiss the employee and the only remedy of employee would be to raise an industrial dispute.

10. The Courts have thus held that the scope of jurisdiction of the Tribunal under Section 33(2)(b) is only to oversee the dismissal to ensure that no unfair labour practices or victimization has been practiced. If the procedure of fair hearing has been observed, and a prima facie case for dismissal is made out, the approval has to be granted. The jurisdiction of the Tribunal/Labour Court under Section 33(2) cannot be wider than this. Reference in this regard may be made to **Lalla Ram v. Management of DCM Chemical Works Ltd.**, AIR 1978 SC 1004 and **Cholan Roadways Limited v. G. Thirugnana Sambandam**, AIR 2005 SC 570.

11. The Tribunal/Labour Court must not sit in appeal over the findings of the enquiry officer. Where the enquiry officer having considered all aspects of the case has found the employee guilty of misconduct, the Industrial Tribunal could not re-appreciate the evidence and refuse approval. All that can be examined by the Tribunal is that opportunity was given to the worker concerned to establish his innocence and there is a prima facie case made out against him on the basis of the record of domestic enquiry. The Tribunal is not to see whether on the weight of evidence a different conclusion is possible. The Tribunal is not empowered to review the decision of the management. The mere circumstance that the Tribunal was inclined to arrive at a different conclusion of fact on its appreciation of the same evidence will not entitle it to withhold the approval sought for by the management for dismissal of the worker so long as the management's findings could not be shown to be perverse or based on no evidence. The Tribunal is to look only to ensure that there is no lack of bona fides and victimization on the part of the management. The Tribunal can overturn the findings handed over by the enquiry officer only if they are perverse. A finding can be said to be perverse in case it is not supported by any legal evidence. If a finding arrived at by the enquiry officer is such that no reasonable person could have arrived at that finding on the material before him then also the finding can be said to be perverse. If the finding is not a perverse one, in the said sense, and if there is prima facie evidence to support the finding, the Tribunal cannot refuse to grant approval to the order passed by the management. It is only on finding the principles of natural justice to have been violated or bias by the enquiry officer against the employee that the enquiry report is to be disregarded."

27. It is in the light of these principles that we have to see whether the Industrial Tribunal in the present case, was justified in passing the impugned order.

28. Vide order dated 10.01.2005, the enquiry proceedings were held to be vitiated on the ground that the workman was not permitted to have due representation. Enquiry report reveals that the workman admitted in her cross-examination that she participated in the inquiry proceedings, she used to be supplied copies of proceedings on every date, she was granted opportunity to bring Layak Ram and Vijender Singh, she was supplied with the documents produced by the management during inquiry proceedings, however, enquiry was held to be vitiated primarily on the ground that Model Industrial Employment Standing Orders are applicable in the present case. Sub Rule 4(b)(a) of Rule 14 dealing with disciplinary action for misconduct provides for representation of workman by an office bearer of the Union of which he/she is a member. The workman was not permitted to have due representation, hence inquiry was vitiated.

29. As seen above, it is required to be seen which Standing Orders are applicable in the instant case. According to Management, this was not an issue before the Tribunal. Moreover by relying upon *Indraprastha Medical Corporation*(supra), counsel submits that Industrial Employment (Standing Orders) Act, 1946 is not applicable to hospital. This is an aspect which was required to be seen.

30. Even otherwise, perusal of inquiry report reveals that the workman wanted to be represented through a lawyer which was opposed by the management as management's representative was not a legally qualified executive. The inquiry officer also held that a lawyer is not entitled to appear in the domestic inquiry as barred under the provisions of Advocates Act and ID Act, 1947. In *D.G. Railway Protection Force and Ors.* (supra) it was held that departmental inquiry is not a civil suit or trial. An employee accused of misconduct has, therefore, to conduct his own case. There is no vested right to claim assistance of a counsel or any other person unless the statute or rules/Standing Orders provide for such a right. Moreover, the right to representation through someone even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice. In

BIECCO LAW RIE Ltd. vs. State of West Bengal and Anr., 2010 (124) FLR 108 Court went a step further. In that case, the management was represented by a legally trained person but workman was denied the right to engage a lawyer. Even under those circumstances, it was held that mere presumption of bias cannot be sole ground for holding the findings to be perverse. Again between **Management of National Seeds Corporation Ltd. and K.V. Ramareddy** (supra), it was held that an employee has no basic right to representation in the departmental proceedings by another person or a lawyer unless the service rules specifically provide so.

31. Furthermore, workman was allowed to bring a co-worker of her choice from the Institute. On an apprehension raised by the worker that in case she brings a co-worker, he may be harassed by the management, management's representative gave an assurance that co-worker will not be harassed or chargesheeted merely because he/she assisted the chargesheeted employee and also assured that co-opted worker will be released from duties for participation in the inquiry proceedings. Since inquiry proceedings was going against two workers, hence, they co-opted each other as their co-workers, however, subsequently they even dropped this idea and stated that no co-worker is willing to represent them. The witnesses examined by the management were cross-examined by the workman. All these aspects were required to be gone into before returning a finding that inquiry is vitiated due to non-representation of workman by any person. This is more particularly so because there is no finding that any prejudice has been caused to the workman.

32. Further, as regards misconduct on the part of workman, the finding has been given against the workman primarily on the ground that testimony of Sumathi Pillai is only hearsay. Learned counsel for the petitioner relied upon **Managing Director, the North East Karnataka Road Transport Corporation, Gulbarg vs. Shivayananamath**, 2003 (99) FLR 918 for submitting that in a domestic inquiry, strict and sophisticated rules of evidence under the Indian Evidence Act do not apply. All materials which are logically probative for a prudent mind are permissible to be relied upon. Even hearsay evidence is admissible provided it has reasonable nexus and credibility. In that case,

charge against the employee was non-issuance of tickets to passenger despite collection of fare from them. It was held that non-examination of passenger during domestic inquiry or before Labour Court cannot be taken as a ground for disproving the charge.

33. In *Cholan Roadways Ltd. vs. G. Thirugnanasambandam*, 2005 (104) FLR 440 again it was reiterated that principles of Evidence Act have no application in a domestic inquiry. The Court relied upon *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and Ors.*, (1991) 2 SCC 716, wherein it was held:

"It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires."

34. Dealing with jurisdiction of the Tribunal while considering an application for grant of approval, it was observed that while exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held

against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act. The Court referred to the observations made by the Apex Court in *Martin Burn Ltd. v. R.N. Banerjee*, (1958) I LLJ 247 SC where it was held:

*"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See *Buckingham & Carnatic Co. Ltd.v. The Workers of the Company*, (1952) LAC 490(F)."*

35. Moreover in *Apparel Export Promotion Council vs. A.K. Chopra*, 1 (1999) SLT 212, Supreme Court reiterated that in departmental proceedings the disciplinary authority is the sole judge of the facts and has power/jurisdiction to come to its own conclusion and once findings of fact, based on appreciation of evidence are recorded, the Court/Tribunal should not normally interfere with those findings unless it found that the recorded findings were based either on no evidence or that the findings are wholly perverse and/or legally untenable. The adequacy or inadequacy of evidence is not permitted to be canvassed.

36. Last but not the least, in application u/s 33 (2)(b), the jurisdiction of the Tribunal is confined to granting approval/rejecting of the application and not to order reinstatement with back wages as has been done in this case. The application u/s 33 (2)(b) has been dealt with as a labour dispute and the termination has been found to be illegal as in a labour dispute. Scope of inquiry u/s 33(2)(b) is much narrower. Under the circumstances, the order dated 10th January, 2005 and 31st March, 2006 are set aside and

matter is remanded to the Industrial Tribunal for deciding the matter afresh.

37. Since the Tribunal awarded reinstatement with back-wages, when the workman challenged her termination by raising industrial dispute, which was pending before the Tribunal, she relied upon this finding and did not deem it proper to proceed with that case resulting in passing a no-dispute award. That being so, since it was a no-dispute award, management was not affected by it but it still challenged it. As such, keeping in view the fact that the orders dated 10th January, 2005 and 31st March, 2006 are being set aside for giving the findings afresh as such award dated 8th May, 2006 is also set aside.

38. So far as application under Section 33(2)(b) of ID Act bearing OP No.71/2005 is concerned, parties have already led their evidence hence it is impressed upon the Industrial Tribunal to decide this application as expeditiously as possible but not exceeding three months.

39. However, as regards ID No.417/2003 is concerned, since parties were yet to lead evidence when in view of the order of reinstatement passed by Tribunal in OP No.71/2005, workman opted not to lead evidence resulting in passing 'no-dispute award' therefore, the Tribunal will afford opportunities to both the parties to lead evidence and then decide the matter preferably within a period of six (6) months.

The parties are directed to appear before the concerned Industrial Tribunal on 11.01.2016.

Copy of this judgment along with Trial Court record be sent back immediately.

(SUNITA GUPTA)
JUDGE

DECEMBER 21, 2015/rs