

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 6325 of 2011****Reserved on 29.06.2017****Delivered on 22.08.2017**

Dr. Shyama Prasad Mukherjee, Thermal Power Station, Chhattisgarh State Power Generation Company Ltd. Korba, (East) through the Superintendent Engineer, Office of Chief Engineer, Generation, Korba, Tahsil and District Korba (C.G.)

---- Petitioner**Versus**

1. Devi Deen Tiwari, aged about 57 years, S/o late Shri Gaurishankar Tiwari, R/o Super E-592 C.S.E.B. Colony, Korba (East), Tahsil & District Korba (CG)
2. State Industrial Court, Bench at Bilaspur, District Bilaspur, C.G.
3. Presiding Officer, Labour Court, Korba, District – Korba, C.G.

---- Respondents

For Petitioner	:	Shri N. K. Vyas, Advocate
For Respondent no.1	:	Shri K. P. S. Gandhi, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER**

By way of the present writ petition the petitioner has assailed the order dated 26.08.2011 passed by the learned Industrial Court, Bench at Bilaspur in Appeal No. 9/CGIR Act/A-II/2011 affirming the order dated 14.03.2011 passed by the learned Labour Court, Korba in Case No. 2/CGIR Act/2010 whereby the Labour Court, Korba has quashed the termination order dated 14.01.2010 passed against the respondent no.1 and ordered for reinstatement with full back-wages.

2. The facts, in brief, are that the respondent no.1 was working on muster roll in the petitioner's establishment since 1977. In the year 1982, the services of the respondent no.1, considering his employment in the muster roll, was

regularized as Plant Attendant Grade-III subject to the condition that the respondent no.1 furnishes proof of his educational qualification and date of birth. Immediately thereafter, respondent no.1 submitted his educational certificate i.e. 8th Class marks sheet wherein his date of birth is also mentioned which was also recorded in the service record. The Respondent-employee continued to discharge of his duties continuously on the said post till a complaint was received by the petitioner's establishment on 10.08.2009. As per the complaint, the educational qualification and the proof of date of birth submitted by the respondent-employee were fake documents. Subsequently, a charge sheet was issued to the respondent no.1 on 11.12.2009 and thereafter an enquiry was also conducted. The Enquiry Officer submitted a report holding the charges levelled against respondent no.1 to have been proved. Based upon the Enquiry Officer's report, the disciplinary authority vide Annexure P-8 dated 14.01.2010 terminated the services of respondent no.1 with immediate effect. The workman respondent no.1 questioned the termination order by raising a dispute under the provisions of the CGIR Act before the Labour Court, Korba where the case was registered as Case No. 2/CGIR Act/2010.

3. The Labour Court after conclusion of the pleadings and recording of the evidences on either side vide order dated 14.03.2011 held the termination order to be bad in law as the same was totally in contravention to the basic principles of nature justice. The charges having not been established, the Labour Court ordered for reinstatement with full back-wages.

4. This order of the Labour Court was subjected to challenge in an appeal under Section 65 of the CGIR Act before the Industrial Court at Bilaspur where the case was registered as Appeal No. 9/CGIR Act/A-II/2011. The Industrial Court also after taking into consideration the findings of the Labour Court reached to the conclusion that there was no merits in the appeal preferred by

the present petitioner and vide impugned order dated 26.08.2011 Annexure P-1 dismissed the appeal of the petitioner leading to the filing of the present writ petition.

5. Shri N. K. Vyas, the learned counsel for the petitioner assailing the impugned order submitted that the Labour Court as well as the Industrial Court have committed error of law in not conducting the proceedings before the Labour Court as per the procedure established since ages. According to Shri Vyas, in a case of misconduct it is settled position of law that when the matter travels to the Labour Court or the Industrial Tribunal, as the case may be, the foremost issue which is to be decided is whether the departmental enquiry conducted against the delinquent employee was following the principles of natural justice and that whether the delinquent was afforded fair and reasonable opportunity of hearing during the enquiry to prove his innocence. According to him, once when it is decided and the Court reaches to the conclusion that the enquiry stands vitiated for non compliance of the principles of natural justice and also for not affording fair and reasonable opportunity of defence to the delinquent employee, it is the duty casted upon the Labour Court/Industrial Court to fix the case for evidence of the Management granting opportunity to prove the misconduct before the Labour Court/Industrial Tribunal. This procedural practice, according to the counsel for the petitioner, has not been followed by the Labour Court as also has not been appreciated by the Industrial Court in appeal. Thus, the entire proceedings drawn by the Labour Court and the order of the Industrial Court deserves to be set aside/quashed.

6. In addition to the aforesaid preliminary objection, counsel for the petitioner assailed the impugned orders on their merits holding the finding arrived at by the Labour Court which has been affirmed by the Industrial Court being contrary to the evidence on record and also a perverse finding,

deserving its quashment. According to the counsel for the petitioner, a perusal of the evidences which have come on record, it would clearly reflect that the case of misconduct was proved by the Enquiry Officer himself after visiting the school along with the delinquent employee and the Presenting Officer from where the certificate was said to have been issued and the Headmaster of the school gave a report that the said certificate was a fake certificate. When the delinquent employee was taken by the Enquiry Officer along with the Presenting Officer to the concerned school, the entire case got established on the face of it and there was no further evidence required to establish the case. The Enquiry Officer himself appeared before the Labour Court and adduced evidence narrating the entire facts. Hence, the finding of the Court below of the charge having not been proved is bad in law and contrary to the evidence on record. It was contended by the counsel for the petitioner, that the Industrial Court also failed to appreciate these facts in their correct perspective. Thus, prayed for quashment of the impugned orders.

7. Learned counsel appearing for respondent no.1, however, opposing the petition submitted that the technical ground raised by the counsel for the petitioner is not sustainable for the reason that the order sheet of deleting the preliminary issue by the Labour Court in respect of the veracity of the departmental enquiry was passed in the presence of the counsel for the petitioner with the consent of the parties, therefore, they now cannot be permitted to challenge the same. Counsel for respondent no.1 also highlighted the fact that the Management did lead evidence before the Labour Court but the same was not sufficient to establish the case or prove the charge. Counsel for respondent no.1 submitted that in fact, even before the Labour Court the petitioner establishment has only adduced the evidence of the Enquiry Officer which alone could never establish the charge levelled against respondent no.1. The petitioner's establishment has failed to adduce

any cogent and strong evidence to establish the charge or misconduct both before the Enquiry Officer as also before the Labour Court. Thus, the finding of the Labour Court cannot be faulted at nor can it be said to be perverse or contrary to the evidence on record. In addition, counsel for respondent no.1 referred to the evidence of the Management witness, a plain reading of which itself establishes the fact that the basic principles of natural justice were violated in the course of conducting the departmental enquiry and the respondent-employee was also not afforded sufficient opportunity to prove his innocence by either granting time to file reply to the charges or permitting him to lead evidence before the enquiry officer. The enquiry proceeding is also bad in law to the extent that the respondent no.1 was not granted an opportunity to be defended by a co-worker in the enquiry and for all these reasons, counsel for respondent no.1 prayed for dismissal of the writ petition.

8. Having considered the rival contentions put forth by the counsel on either side and on perusal of the record, this Court is of the opinion that before going into the merits of the case, it would be more appropriate to decide the first ground of attack raised by the counsel for the petitioner with regard to the alleged flaw in the procedural aspect by the Labour Court while deciding the case and only in the event the said objection goes against the petitioner, the need of going to adjudicate the other issues in the case would arise.

9. The Supreme Court in “**Workmen vs. Firestone Tyre & Rubber Co. of India (P) Ltd. 1973 (1) SCC 813**” has dealt with the issue elaborately and laid down the procedure of practice to be adopted by the Industrial Tribunal or the Labour Court. It has been categorically held by the Supreme Court that even in a case of no inquiry being conducted before dismissal or where the inquiry conducted was found to be defective an opportunity must be given to the employer to prove the charges and for this the Management should be given an opportunity to lead evidence before the Labour Court to substantiate their

action. This view was initially propounded by the Supreme Court in the case **“Workmen vs. Motipur Sugar Factory” AIR 1965 S.C. 1803**. Subsequently it has also been reiterated by the Supreme Court in the case of **“Daily Cloth and General Mills Co. vs. Ludh Budh Singh” 1972 (1) SCC 595**. The ratio which has been propounded in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. (supra) has been laid down in paragraph 32, the relevant portion of which is reproduced hereinunder:-

“32. (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 recognized 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 and as to suggest victimisation.”

10. From the aforesaid judgments it is evidently clear that if the preliminary issue of the veracity of the departmental inquiry is decided in favour of the Management, no additional evidence is required to be produced by the Management. But, if the finding on the preliminary issue is decided against the Management, the Tribunal will have to give the employer an opportunity to lead additional evidence for proving the misconduct by leading evidence afresh before the Labour Court.

11. The aforesaid proposition of law further came up for consideration before the Supreme Court in case of “**Amrit Vanaspati Co. Ltd. Vs. Khemchand and others**” **2006 (6) SCC 325** and also in 2007(12) SCC 585 (United Bank of India vs. Tamilnadu Banks Deposit Collectors Union) and 2008 (5) SCC 554 (Usha Breco Majdoor Sangh vs. Management of Usha Breco Ltd.)

12. In view of the aforesaid judicial pronouncement when we look into the proceedings in the present case, undoubtedly there is a finding by the Labour Court that the departmental inquiry stands vitiated for violation of the principle of natural justice and also for not affording fair and reasonable opportunity of defence. What is also relevant to refer at this juncture is that the proceedings also reflect that at one point of time, the Labour Court did frame an issue, but later deleted the said issue which perhaps was not a usual practice or procedure adopted by a Labour Court, in a case of challenge to the disciplinary proceedings. Once when the Labour Court had framed the issue so far as the veracity of the departmental enquiry is concerned, it was incumbent upon the Labour Court to have dealt with the issue which is also the requirement of law. Just because the management or the employer does not oppose the same or does not insist for grant of permission to lead evidence by itself would not have permitted the Labour Court from doing away with the practice and procedure. Another aspect which cannot be lost sight is the fact that the sole evidence

which had been led by the employer before the Labour Court was that of an Inquiry Officer alone and once when there is a finding of the Labour Court of the departmental enquiry being held to be bad, it has to be presumed that there was no fresh evidence before the Labour Court except for the statement of the Inquiry Officer which perhaps would not be sufficient enough to prove a case of misconduct.

13. In view of the same, the order of the Labour Court dated 14.03.2011 (Annexure P/2) in Case No. 2/CGIR Act/2010 as also the order dated 26.08.2011 (Annexure P/1) passed by the Industrial Court in Appeal No. 9/CGIR Act/A-II/2011 are not sustainable and the same deserve to be and are accordingly set-aside. The matter is remitted back to the Labour Court with a direction to grant the petitioner an opportunity to prove the misconduct and thereafter to proceed further and decide the case on its merit. Considering the fact that it is an old matter, let the records be sent to the Labour Court forthwith with a further direction that the Labour Court shall make all endeavour to conclude the proceedings at the earliest preferably within a maximum period of six months from the date the records are received by the Labour Court along with the copy of this order.

14. The Registry is directed to take steps at the earliest for sending the records back to the concerned Labour Court.

15. The Writ Petition thus is allowed and disposed of.

Sd/-
(P. Sam Koshy)
JUDGE