

Civil Writ Jurisdiction Case No.19181 of 2012

.... Petitioner/s

1. The State Of Bihar, through Department of Labour Resources, Govt. Of Bihar, Patna
2. Ram Naresh Chaudhary, Ex-Conductor, Son Of Sri Ram Kripal Chaudhary Resident Of Village- Pokhram, P.O. & P.S. Biraul, District- Darbhanga

.... Respondent/s

For the Petitioner/s : Mr. P.K. Verma, Sr. Advocate.
: Mr. Saroj Kumar Sharma
For the Respondent/s : Mr. SHAIL KUMARI SC15
For the State : Mr, Sheo Shankar Prasad, S.C 8
: Mr. Anil Kumar, A.C to S.C 8

Date: 12-07-2018

3. The petitioner has filed this writ petition for quashing the



award dated 28.04.2011 passed by the Presiding Officer, Labour Court, Patna in Reference Case No. 11 of 2009/ 16 of 2000 whereby and whereunder termination of the workman by the management has been held to be unjustified and an order has been passed to re-instate him with back wages except for the period between 17.02.1989 and 04.11.1995.

4. The Government of Bihar, vide its notification no. 696 dated 18.12.1999 under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act'), referred the industrial dispute between the workman and the petitioner to the Labour Court, Patna for adjudication of the dispute. The reference made by the State reads as under:-

“Whether the termination from service of workman Shri Ram Naresh Choudhary, Ex-conductor Godda Depot, Godda Divison of Bihar State Road Transport Corporation, Patna by the management is justified? If not, what relief workman is entitled to?”

5. The said reference was registered as Reference Case No. 16 of 2000 and, after hearing the parties, initially an award was passed on 01.06.2007 by the Labour Court, Patna observing that the court at Patna had no jurisdiction as the charge pertains to Dumka Division in the State of Jharkhand, which is beyond the territorial



jurisdiction of the Labour Court at Patna.

6. Against the said award, a writ petition vide CWJC No. 15882 of 2009 was filed by the workman in which while setting aside the award this Court directed the Presiding Officer of Labour Court, Patna to proceed with the Reference Case No. 16 of 2000 and dispose of the same at the earliest and, in any case, within six months from the date of receipt/production of a copy of the order. Thereafter, the workman and the petitioner appeared before the Labour Court, Patna and submitted their reply and contested the matter.

7. After hearing the parties, the Labour Court passed the impugned award on 28.04.2011 observing therein that the termination of the workman by the management was not justified and he is entitled to re-instatement with back wages except for the period between 17.02.1989 and 04.11.1995. Being aggrieved by the aforesaid award dated 28.04.2011, the petitioner has filed the instant writ petition.

8. Mr. P.K.Verma, learned Senior Advocate appearing for the petitioner submitted that once the domestic enquiry was held improper, it was incumbent upon the Labour Court to have provided an opportunity of hearing to the petitioner for adducing evidence of independent witnesses against the workman. He submitted that though a prayer in this regard was made before the Labour Court, the



same was erroneously rejected on the ground that such prayer was not made by the petitioner at the earliest available opportunity. He submitted that the Labour Court committed error in not framing the preliminary issue for deciding the illegality of domestic enquiry and after having found fault in the domestic enquiry he committed another error in not allowing the petitioner to lead evidence of independent witnesses.

9. Per contra, learned counsel appearing for the State submitted that the workman and the management appeared before the Labour Court and they also argued the case in part on the point of relief to the workman after holding the domestic enquiry to be illegal. After arguing the case in part on the point of relief as provided under Section 11-A of the Act, a belated application was filed by the petitioner seeking leave to lead evidence before the Labour Court, which has rightly been rejected. He submitted that the Labour Court has answered the reference after considering the entire facts and evidences on record. Since the order impugned dated 28.04.2011 was passed by a court of competent jurisdiction and the reasons assigned therein are cogent, no interference is warranted.

10. I have heard learned counsel for the parties and carefully perused the record.

11. From perusal of the record, it would appear that after the



Labour Court gave its finding that the domestic enquiry was conducted against the principle of natural justice and proper opportunity was not given to the workman, the management filed an application before the Labour Court on 22.12.2010 with a prayer to give it an opportunity to prove the charges against the workman for which he was terminated. The application filed by the petitioner was contested by the workman. Vide order dated 03.02.2011, the Labour Court rejected the prayer of the petitioner for adducing evidence on merit. Thereafter, the Labour Court heard the parties on two dates and ultimately reserved its order vide order dated 16.03.2011. Ultimately, the Labour Court passed the impugned award on 28.04.2011.

12. In order to appreciate as to whether or not the award passed by the Labour Court is justified, it would be necessary to look to the provisions prescribed under Section 11-A of the Act, which was inserted in the Act with effect from 15.12.1971. The same reads as under :-

“11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen:

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and. In the course of the adjudication



proceedings the Labour Court Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions. if any, as it thinks fit, or give such other relief to the Workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on' record and shall not take any fresh evidence in relation to the matter.”

13. From perusal of the aforesaid provision, it would appear that the Labour Court/Tribunal has not only power to set aside the order of dismissal and direct reinstatement of the workman, it has also the power to award lesser punishment. The proviso to Section 11-A of the Act provides that the Tribunal would rely only on material already on record and shall not take fresh evidence. The proviso to Section 11-A of the Act providing that the Labour Court would not take any fresh evidence has been considered by the Supreme Court in several cases.

14. In *Delhi Cloth & General Mills Co. Vs. V. Ludh Budh*



Singh [(1972) 1 SCC 595], the Supreme Court held that where enquiry was found to be defective, the employer shall have to be given a chance to adduce evidence before the Tribunal for justifying its action provided the employer was permitted to appear and justify its action. In the said case, the Supreme Court laid down the following propositions :

- (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 straightaway 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.
- (2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. in such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by 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.
- (4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the



domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence 56 and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of



the alleged misconduct.

- (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.
- (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.
- (7) The above principles apply to the proceedings



before the Tribunal, which have come before it either on a reference under s. 10 or by way of an application under section 33 of the Act.

15. The ratio laid down by the Supreme Court in *Delhi Cloth & General Mills Co.* (Supra) have been adopted with approval by the Supreme Court in the *Workmen of M/s Firestone Tyre & Rubber Company of India Vs. Management & Ors.* [AIR 1973 SC 1227].

16. Similarly, in *Bharat Forge Company Limited Vs. A.B. Zodge & Anr.* [(1996) 4 SCC 374] as also in the *United Planters Association of Southern India Vs. K. G. Sangameswaran & anr.* [(1997) 4 SCC 741], the Supreme Court has laid down that the Labour Court or the Tribunal can allow the management to take fresh evidence on merits of the charge when it is found that the domestic enquiry was not properly held and principle of natural justice was not followed.

17. In view of the aforementioned decisions of the Supreme Court, the legal position is that where the domestic enquiry has been found to be improper or defective, the Labour Court or the Tribunal can call upon the employer to justify its action taken against the workman and to lead fresh evidence to show that the termination or dismissal order was proper. In case an employer fails to adduce any evidence by availing of this opportunity it cannot raise any objection



in this regard at any subsequent stage and the Labour Court or the Tribunal, in these circumstances, would be justified in passing an award in favour of the workman. However, after holding domestic enquiry improper and defective if the employer makes a request for leading fresh evidence and the Labour Court or the Tribunal rejects such request and thereafter passes an award, the same cannot be sustained.

18. When I examine the facts of the present case in the light of the aforementioned principles of law, I find that the termination of the workman from service by the petitioner was made pursuant to domestic enquiry conducted by the petitioner, which was held to be bad by the Labour Court on the ground of violation of principle of natural justice and immediately thereafter an application was filed by the petitioner to give it an opportunity to prove the charges against the workman by leading fresh evidence before the Labour Court itself, but the same has erroneously been rejected by the Labour Court on flimsy ground that such request had been made at a belated stage.

19. In the light of the foregoing discussions, the impugned award dated 28.04.2011 passed by the Presiding Officer, Labour Court, Patna in Reference Case No. 11 of 2009/ 16 of 2000 cannot be sustained. Accordingly, I set aside the award passed by the Labour Court and remit the matter back to the Labour Court. The Labour



Court will now afford an opportunity to the petitioner lead evidence on the charges leveled against the respondent workman after issuing notice to him and depending upon the findings which the Labour Court would record on the issue of charges, the issue of termination of the workman would be decided afresh.

20. With the aforesaid observations and direction, the writ application is allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-07-2018
Transmission Date	

