

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.3857 of 2006

Bengal Nagpur Cotton Mill, Rajnandgaon, Through its General Manager & Officer on Special Duty, Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State Industrial Court of Chhattisgarh at Raipur, Mahanadi Khand, D.K.S. Bhawan, Raipur (C.G.)
2. Labour Court, Rajnandgaon (C.G.)
3. Abdul Basir, S/o Shri M.A. Qadar, R/o BNC Mill, Chal, Rajnandgaon (C.G.)

---- Respondents

ANDWrit Petition (S) No.3141 of 2007

Abdul Basir, S/o Shri M.A. Qadar, R/o BNC Mill, Chawl, Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State Industrial Court of Chhattisgarh at Raipur, Mahanadi Khand, D.K.S. Bhawan, Raipur (C.G.)
2. Bengal Nagpur Cotton Mill, Rajnandgaon, through its General Manager & Officer on Special Duty, Rajnandgaon (C.G.)

---- Respondents

For Employer – Bengal Nagpur Cotton Mills: -

Mr. N.K. Vyas, Advocate.

For Employee – Abdul Basir: -

Mr. Basant Dewangan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/07/2018

1. Since both the petitions involve common question of law and fact, they were clubbed and heard together and are being disposed of by this common order.

2. Workman Abdul Bashir was inflicted with the penalty of dismissal after holding domestic enquiry against him which he challenged by filing application under Section 65 of the Chhattisgarh Industrial Relations Act, 1960, in which the enquiry was held to be legal and proper, but punishment was held to be disproportionate and he was directed to be reinstated along with 50% back-wages which was challenged by the employee and the employer, both, by filing appeals, both the appeals came to be dismissed by the Industrial Court against which these writ petitions have been preferred by both the parties.
3. Mr. N.K. Vyas, learned counsel appearing for the employer – Bengal Nagpur Cotton Mills, would submit that both the Tribunals have failed to follow the proper procedure, as the Labour Court and the Industrial Court are required to reassess and reappraise the evidence and the material available on record to come to a finding that whether on the basis of material available on record, misconduct is established or not. Therefore, the order passed by the Labour Court as affirmed by the Industrial Court deserve to be set aside.
4. On the other hand, Mr. Basant Dewangan, learned counsel appearing for the employee – Abdul Bashir, would support the impugned orders and would submit that the employee is entitled for full back-wages.
5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
6. It is well settled law that even if the departmental enquiry is held to be legal and proper, the Industrial Tribunal is required to reassess and reappraise the evidence and material available on record to come to a finding whether on the basis of material on record misconduct is established against the delinquent.

7. In the matter of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and others¹, the Supreme Court has held that even if the domestic enquiry is held to be legal and proper, the Tribunal is at liberty to consider not only whether the findings of misconduct recorded by the employer is correct, but is also entitled to differ from the said finding if a proper case is made out and observed as under: -

“36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron & Steel Co. Ltd. v. Workman*², existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by [Section 11-A](#). The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd.* case (supra), can no longer be invoked by an employer. 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.”

8. Likewise, in the matter of Mavji C. Lakum v. Central Bank of India³, the Supreme Court held that the Tribunal has to examine the finding of the Enquiry Officer qua misconduct and quantum of punishment as

1 (1973) 1 SCC 813

2 AIR 1958 SC 130

3 (2009) 1 SCC (L&S) 254

well by holding as under: -

“23. So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in reappreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under [Section 11-A](#) has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons.”

9. Finally, the Supreme Court in the matter of **Nicholas Piramal India Ltd. v. Harisingh**⁴, following the judgment of **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.** (supra) held as under: -

“28. ... Ultimately, the Labour Court has exercised its jurisdiction and on reappreciation of the facts and the evidence on record and in accordance with the decision of this Court in *Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813, it has found fault with the findings of the enquiry officer which were endorsed by the disciplinary authority which has erroneously held that the workman was guilty of the misconduct. ...”

10. After having noticed the scope and jurisdiction of Labour Court qua domestic enquiry, reverting to the facts of the present case, the Industrial Tribunal has concluded on the basis of holding that valid and

⁴ (2015) 8 SCC 272

legal domestic enquiry has been conducted against the workman by the impugned award and further held that the punishment awarded is disproportionate to the guilt of the workman. The Tribunal has failed to take note of the decisions rendered by the Supreme Court in The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra), Mavji C. Lakum (supra) and Nicholas Piramal India Limited (supra) and did not record any findings that whether on the basis of material available on record, finding of misconduct as recorded by the disciplinary authority is established against the workman or not which was required to be considered and come to an independent finding that misconduct alleged has been established, and thereafter could have considered the question of back-wages that too by providing opportunity to lead evidence.

11. The Labour Court though framed issues with regard to question of punishment and back-wages, but did not permit the workman to lead any evidence in that behalf and straightway passed the impugned order after holding the domestic enquiry to be legal and proper.

12. In the matter of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others⁵, the Supreme Court while dealing with wrongful/illegal termination of service qua back-wages, held as under: -

“38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the

5 (2013) 10 SCC 324

person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

13. Thus, on the basis of principle of law flowing from above-stated judgments, it is quite clear that the Industrial Tribunal has failed to follow the appropriate procedure in dealing with the matter. After having held that the domestic enquiry held against the workman is just and proper, the Tribunal could have independently assessed the material available on record to come to an independent conclusion that the finding of misconduct found by the Enquiry Officer, duly endorsed by the disciplinary authority, is proper and thereafter, could

have considered the issue of quantum of punishment and other ancillary issues, which the Tribunal has failed to observe.

14. As a fallout and consequence of the aforesaid discussion, the order passed by the Labour Court as affirmed by the Industrial Court are set aside. The matter is remitted back to the Labour Court for following the correct procedure and passing fresh order after hearing the parties in accordance with law within six months from the date of receipt of a copy of this order.
15. With the aforesaid observation, the writ petitions stand finally disposed of. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge