

HIGH COURT OF CHHATTISGARH, BILASPUR
WP No.170 of 2002

Chandra Shekhar Nirmalkar, S/o Late Shri Hari Ram Nirmalkar, R/o Tribal Mohala, Dantewara, Distt. Dantewara (old Distt.Bastar)

---- Petitioner

Versus

Chhattisgarh State Power Distribution Company Ltd. (CSPDCL)
Through it's Executive Engineer (O&M) Dantewara, District Dantewara (CG)

---- Respondent

For Petitioner	:	Mr.Parag Kotecha, Advocate
For Respondent	:	Mr.Vinod Deshmukh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/02/2018

1. Learned counsel for the petitioner would submit that the Labour Court after having recorded a finding that domestic enquiry is valid, failed to consider the effect of the provisions contained in second part of Section 107-A of the Chhattisgarh Industrial Relations Act, 1960 (hereinafter called as 'the Act of 1960') and the Industrial Court has perpetuated the illegality by dismissing the appeal, which are liable to be set aside.
2. On the other hand, learned counsel for the respondent would support the impugned order.
3. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
4. It is correct to say that the Labour Court has recorded a finding that domestic enquiry is proved against the petitioner and he has admitted the proceedings of departmental enquiry.
5. At this stage, it would be appropriate to notice Section 107-A of

the Act of 1960 which reads as under:-

“107-A. Power of Labour Court and Industrial Court to give appropriate relief in case of discharge or dismissal of employee.- Where industrial dispute relating to the discharge or dismissal of an employee has been referred to a Labour Court or the Industrial Court for decision under any of the provisions of this Act and in the course of the proceedings the Labour Court or the Industrial Court, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may set aside the order of discharge or dismissal and direct reinstatement of the employee on such terms and conditions, if any, as it thinks fit or give such other relief to the employee 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 or the Industrial Court, 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.”

Second part of Section 107-A of the Act of 1960 obliquely the Labour Court to consider as to whether an employee who has been discharged or dismissed is entitled for lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

6. Undisputedly, the Labour Court did not consider the aforesaid provisions of law and straightway by holding the domestic enquiry to be valid dismissed the application, which has been affirmed by the Industrial Court.
7. In view of above, the writ petition is partly allowed and order of the Labour Court and the Industrial Court to the extent of not considering the provisions of second part of Section 107-A of the Act of 1960 is set aside. The matter is remitted to the Labour Court to consider as to whether the petitioner is entitled for

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lesser punishment in lieu of discharge or dismissal as the
circumstances of the case may require. Such exercise will be
done by the Labour Court within three months from the date of
receipt of a copy of this order. Record be sent to the Labour
Court forthwith.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-