

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 188 of 2017**

1. M/s. Karam Chand Thapar and Brothers (Coal Sales) Ltd Through its President, Thapar House, 25 Brabourne Road, Kokata (WB)
2. General Manager, M/s Karam Chand Thapar and Brothers (Coal Sales) Ltd (Establishment & Administration) Thapar House, 25 Brabourne Road Kolkata (WB)
3. Vice President, M/s Karam Chand Thapar and Brothers (Coal Sales) Ltd, Thapar House, A-39, Rajkishore Nagar, Bilaspur (C.G.)
4. General Manager, M/s Karam Chand Thapar and Brothers (Coal) Sales Ltd. Thapar House, A-39, Rajkishore Nagar, Bilaspur (C.G.)

---- Petitioner**Versus**

Ashok Kumar Mihsra, S/o Late Mata Prasad Mishra, Aged about 50 years, Occupation – Terminated Employee, R/o Station Road, Bishrampur, Distt: Sarguja (C.G.)

---- Respondent

For Petitioner	:	Mr. Chandresh Shrivastava, Advocate.
For Respondents/	:	Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/04/2018**

(1) The appropriate Government referred the matter to the Labour Court under the Industrial Disputes Act, 1947 (henceforth "Act, 1947") to determine the question as to whether the termination of the respondent is valid and proper. In the said proceeding, the Labour Court firstly considered the preliminary issue as to whether the domestic enquiry held by Petitioners- employer against the respondent is valid and proper and ultimately came to the conclusion, by the impugned order dated

24.07.2017 that domestic enquiry is invalid and improper.

(2) Questioning the legality, validity and correctness of the said interim order passed by the Presiding Officer, Labour Court, instant writ petition has been filed questioning the same.

(3) Mr. Chandresh Shrivastava, learned counsel appearing for the petitioners would submit that the impugned order passed by the Presiding Officer, Labour Court is absolutely illegal and bad in law. He would further submit that the domestic enquiry conducted by the petitioner-employer is strictly in accordance with law and consistent with the principles of natural justice and, therefore, the same is liable to be set aside.

(4) Per contra, Mr. H.S. Ahluwalia, learned counsel appearing for the respondent would submit that it is purely an interlocutory order and the petitioner is at liberty to question that order, if the award is ultimately passed against him, and, therefore, the writ petition deserves to be dismissed.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(6) True it is that the domestic enquiry has been held to be invalid and improper by the Labour Court and the opportunity to the employer to adduce evidence has been granted by the impugned order, which is sought to be challenged in the instant writ petition.

(7) In the matter of The **Cooper Engineering Ltd. Vs. P.P. Mundhe**¹, their Lordships of the Supreme Court while dealing with the similar issue has held as under:-

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. Where there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

(8) In the aforesaid judgment, it has been held that High Court be reluctant to intervene in the interlocutory stage particularly when the opportunity has been granted to the employer to lead evidence and to justify its action of discharge or dismissal of workman or suffer the consequences.

(9) In view of above-stated authoritative pronouncement particularly when the

1 1975 (2) SCC 661

Labour Court has granted opportunity to the petitioner/employer to justify its action of discharge or dismissal of workmen, this court is not inclined to interfere in the instant writ petition. However, liberty is reserved to the petitioners to challenge the impugned order if ultimately award is passed against the petitioner/employer. Looking to the facts of the case, it is directed that the Labour Court shall consider and decide the same expeditiously preferably within a period of three months from the date of receipt of a certified copy of this order.

(10) Accordingly, the writ petition fails and is hereby dismissed with the aforesaid observation.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

