

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUROrder reserved on: 17/07/2018Order delivered on: 01/08/2018**Writ Petition (227) No. 79 OF 2014**

1. Principal, DAV Public School, HUDCO, Bhilai, District Durg, Chhattisgarh.
2. Regional Director, DAV Public School, HUDCO, Bhilai, District Durg, Chhattisgarh.

..... Petitioners**Versus**

Shri B.M. Gupta, Son of Shri B. R. Gupta, 12/6, Nehru Nagar (East), Near Mangal Bhawan, Bhilai, District Durg, Chhattisgarh

..... Respondent

For Petitioners	:	Mr. Amrito Das, Advocate
For Respondent	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**C A V ORDER**

1. By this petition, the petitioners/employer have challenged the order dated 10/07/2013 (Annexure P/2) as well as the order dated 11/07/2012 (Annexure P/1) passed by the Labour Court, Durg (C.G.) whereby the learned Labour Court while deciding the reference made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act') has held that the domestic enquiry initiated against the respondent/employee is vitiated being violative to the principles of natural justice and quashed the domestic enquiry vide order dated 11/07/2012 (Annexure P/1). The learned Labour Court have directed for reinstatement of respondent/employer with 25% back wages vide

order dated 10/07/2013 (Annexure P/2), as the petitioners/employer failed to prove the charges leveled against the respondent/employee before Labour Court.

2. Brief facts of the case, are that, the petitioners/employer are running School in which respondent/employee has been employed as driver to drive school bus. The respondent/employee was appointed on 29/03/2003 and he worked till 13/07/2007 (till the date of his termination from his service). The petitioners/employer have issued charge-sheet to respondent/employee on 16/05/2006 vide Exhibit P-1 and another charge-sheet has been issued on 21/06/2006 vide Exhibit P-2. During the proceedings of domestic enquiry, one Mr. D. Sasidharan was appointed as Enquiry Officer, who concluded the enquiry and submitted its report. Considering the findings recorded by Enquiry Officer, the Authority found all the charges to be proved and subsequently, the services of the respondent/employee was terminated w.e.f. 30/06/2006 vide letter dated 13/07/2007. Respondent/employee raised a dispute before the Assistant Labour Commissioner, Durg on 19/10/2007. After service of notice, the petitioners/employer have made its appearance, but the conciliation proceedings failed. The Assistant Labour Commissioner informed about the failure of conciliation proceeding and thereafter, State Government made reference under Section 10 of the ID Act and referred the case of the respondent/employee by framing a question that "Whether the termination of respondent/employee in view of the findings recorded in the domestic enquiry to be legal and just". The Judge under the ID Act, Labour Court, Durg after receiving the reference registered the case and fixed the case for submission of statement of claim and thereafter, the petitioners/employer has also submitted its reply to the statement of claim.

3. The learned Judge under the ID Act on the basis of pleadings made in statement of claim and reply to the statement of claim, keeping in view subject of reference made to him had formulated a preliminary issue for consideration, which is evident from Annexure P/1. The issue framed by the learned Judge was “Whether domestic enquiry initiated against first party was illegal and unjust”. The learned Labour Court after recording of the evidence of respective parties and considering the evidence of employers' witnesses i.e NAW-1 and NAW-2, wherein they have admitted that no document and list of witnesses were supplied to the respondent/employee along with charge-sheet and also admitted that though the respondent/employee stated that he was not well versed in English, and requested for keeping his father as co-employee which was rejected. The witnesses have further admitted that the questions were put to the witnesses in Hindi, but the same was recorded in English. Looking to the evidence of the witnesses examined on behalf of the employer, the learned Labour Court arrived at a conclusion that as a list of witnesses and the relevant documents were not provided to the respondent/employee as well as ignoring the fact that the respondent/employee was not well versed in English, the statement was recorded in English though the question was put to said witnesses in Hindi. The learned Labour Court had arrived at a conclusion that the proceeding of domestic enquiry was vitiated due to violation of principles of natural justice vide order dated 11/07/2012 (Annexure P/1).
4. After holding domestic enquiry to be vitiated, learned Labour Court granted opportunity to the petitioners/employer to prove the charges leveled against the respondent/employee before the Court itself by producing witnesses and evidence in support of the charges. The learned Labour Court framed issues and thereafter fixed the case for recording of evidence of petitioners/employer. The case was continuously fixed from 11/09/2012 to 06/06/2013 for about nine

months for the employers' evidence but the employer did not produce any witness in its support to prove the charges. In the facts and circumstances of the case, the learned Labour Court while considering the other material available on record, allowed the statement of claim of the respondent/employee in part and directed for reinstatement with 25% back wages vide its order dated 10/07/2013.

5. It is this order, which was challenged by the petitioners/employer along with first order dated 11/07/2012, in this writ petition filed under Article 227 of the Constitution of India.
6. Learned counsel appearing for the petitioners/employer submitted that the dispute raised by the respondent/employee was referred by the State Government under Section 10 of the ID Act to the Labour Court in reference. The question framed by the State Government and referred to the Labour Court was only with respect to whether termination of service of the respondent/employee based on finding of domestic enquiry to be legal and proper, but the learned Labour Court travelled beyond the question of reference and decided the issue whether the domestic enquiry was illegal and unjust. He further submitted that the learned Labour Court could have acted and decided the reference within four corners of the question referred to it considering the findings of domestic enquiry and ought to have given finding whether termination was proper or not. He further submitted that the learned Labour Court ought to have considered only with respect to the proportionality of the punishment imposed against the respondent/employee. He further submitted that the finding recorded by learned Labour Court that the respondent/employee is not well versed in English, but even then the proceeding of the domestic enquiry has been drawn in English language and also recorded the statement of witnesses in English though the question was put in Hindi and the answer was

also made in Hindi are perverse. He lastly submitted that learned Labour Court has not considered that the respondent/employee admitted one of the charges. In view of the above submissions, he submitted that as the first order of the learned Labour Court itself is without jurisdiction, therefore, the subsequent final order of reinstatement also becomes illegal and the same is also liable to be set aside. He placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of ***Tata Iron and Steel Company Limited v. State of Jharkhand and others*** reported in ***(2014) 1 SCC 536***, ***Bhogpur Cooperative Sugar Mills Ltd. v. Harmesh Kumar*** reported in ***(2006) 13 SCC 28***, ***National Engineering Industries Ltd. v. State of Rajasthan and others*** reported in ***(2000) 1 SCC 371***, ***Director, Food and Supplies, Punjab and another v. Gurmit Singh*** reported in ***(2007) 5 SCC 727*** and ***B. S. Bharti v. IBP Co. Ltd.*** reported in ***(2004) 7 SCC 550***.

7. Per contra, learned counsel appearing for the respondent/employee submitted that the learned Labour Court while considering the question referred to him has rightly initiated proceedings and made a preliminary issue for deciding the question with regard to legality of domestic enquiry initiated against the respondent/employee because the order of termination of the respondent/employee is a consequential order based on findings recorded in domestic enquiry. He further submitted that the learned Labour Court has rightly framed preliminary issue in view of the question referred to him and the learned Labour Court has rightly arrived at a finding that there was violation of the principles of natural justice as the employee was not afforded proper opportunity to defend himself. He also urged that after conclusion of trial on the preliminary issue held that domestic enquiry was vitiated, learned Labour Court thereafter offered an opportunity to the petitioners/employer to prove charges leveled against the respondent/employee, but the petitioners/employer did not lead any

evidence before the Labour Court. He further submitted that the petitioners/employer have not challenged the order Annexure P/1 passed by the learned Labour Court wherein the learned Labour Court has set aside the proceeding of domestic enquiry on the ground of violation of principles of natural justice. Therefore, the said finding recorded by the learned Labour Court in its order dated 11/07/2012 has become final and subsequently, after passing an order/award of reinstatement, the employer is precluded from challenging the first order passed by the learned Labour Court i.e. Annexure P/1. He also submitted that the impugned order passed by learned Labour Court is in accordance with the provisions of Section 11A of the ID Act and law laid down by Hon'ble Supreme Court. He placed reliance on the judgments rendered by the Hon'ble Supreme Court in the matters of ***Mavji C. Lakum v. Central Bank of India*** reported in ***(2008) 12 SCC 726***, ***Kurukshetra University v. Prithvi Singh*** reported in ***(2018) 4 SCC 483***, ***Amrit Vanaspati Co. Ltd. v. Khem Chand and another*** reported in ***(2006) SCC (L&S) 1331*** and ***United Bank of India v. Tamil Nadu Banks Deposit Collectors Union and another*** reported in ***(2008) 2 SCC (L&S) 529***.

8. I have heard learned counsel appearing for the parties and perused the record carefully.
9. The question which was referred by the State Government to learned Labour Court reads as under :-

“क्या श्री बी.एम. गुप्ता को विभागीय जांच के निष्कर्षों के आधार पर सेवा से पृथक किया जाना वैध एवं उचित है? यदि नहीं तो आवेदक किस सहायता का पात्र है? अतः इस संबंध में नियोजक/प्रबंधन को क्या निर्देश दिया जाना चाहिये?”

10. From bare perusal of the question referred to the learned Labour Court, it is evident that the question is with regard to whether the termination from service of respondent/employee is legal and proper on the basis of the findings recorded in the domestic enquiry. The order of termination has been passed against the respondent/employee on the basis of outcome of domestic enquiry; therefore, the learned Labour Court has to consider the proceeding of the domestic enquiry in its entirety to consider the question of legality of the order of termination.
11. Before scrutinizing the facts of the case, it would be profitable to quote the relevant provisions of the ID Act applicable to this case. Section 10 of the ID Act deals with the reference of disputes to Boards, Courts or Tribunals. The provision of Section 10(1) of the ID Act is reproduced herein below for ready reference:-

“10. Reference of disputes to Boards, Courts or Tribunals.- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,-

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for enquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the

Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

[Provided also that where the dispute in the relation to which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;]

[(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the

Second Schedule or the Third Schedule, to a National Tribunal for adjudication.]”

12. Sub-section (4) of Section 10 of the ID Act is also relevant as it deals with the powers and jurisdiction to deal with the question referred to it by the appropriate Government. Sub-section (4) of Section 10 of the ID Act reads as under:-

“10.(4) Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, [the Labour Court or the Tribunal or the National Tribunal, as the case may be] shall confine its adjudication to those points and matters incidental thereto.]”

13. Section 11A of the ID Act deals with the powers vested in the Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of the workmen. Section 11A of the ID Act is reproduced herein below for ready reference:-

“11A. 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.]”

14. In the case in hand, the issue before the Labour Court was termination of an employee after holding domestic enquiry and looking to the question framed by the State Government itself, it has been mentioned that the Labour Court has to consider whether the termination is legal and just on the basis of the findings arrived at in the domestic enquiry.
15. The Labour Court while dealing with the issue whether the termination is legal and just, has first to look into whether the proceedings of the domestic enquiry itself is legal, proper and in accordance with the settled principles of law and after coming to the conclusion that domestic enquiry has been proceeded strictly in accordance with law based on fair play by providing proper opportunity of hearing then only, the question of termination to be legal and just will arise. The termination is outcome of the findings recorded in domestic enquiry and therefore, in view of the provisions of Section 10(4) of the ID Act, the Labour Court was having the jurisdiction to go into the question of legality and validity of the proceedings of the domestic enquiry.
16. The judgment relied upon by learned counsel for the petitioners/employer are on different facts and in none of the case, the issue of termination after holding domestic enquiry was in question before the Hon'ble Court. In the matter of **B.S. Bharti** (supra), the matter reached to the Court when the State Government refused to refer the dispute of termination raised by employee to Tribunal or

Court. In another matter of ***Bhogpur Cooperative Sugar Mills Ltd.*** (supra), the Hon'ble Supreme Court dealt with issue of termination of seasonal employee after completion of the season for which they were employed/appointed. In the matter of ***Tata Iron and Steel Company Limited*** (supra) relied upon by the petitioners/employer, the Hon'ble Supreme Court dealt with the issue of transfer of the employee from one establishment to another establishment and the reference made by the State Government itself was under challenged. In the matter of ***National Engineering Industries Ltd.*** (supra), the matter which reached to the Court was with regard to the objection raised by the employer in making reference by the State Government. In the light of aforementioned judgments relied upon by the learned counsel for the petitioners/employer, tried to argue his case that in a case where a reference made to the Labour Court and there is no question framed in reference with regard to looking of the legality and validity of proceedings of domestic enquiry, then, the Labour Court has no jurisdiction to enter into such question and if the workmen is aggrieved, then he ought to have challenged the reference itself by filing a writ petition.

17. I am not convinced with the argument raised by the learned counsel for the petitioners/employer that learned Labour Court exceeded its jurisdiction, firstly, on the ground that the judgments relied upon by them were on different facts and therefore, the law laid down by the Hon'ble Supreme Court in those cases are not applicable to the facts and circumstances of the present case. Secondly, considering the provisions of Section 10(4) and Section 11A of the ID Act as discussed in the forgoing paragraphs, the Hon'ble Supreme Court held that in the matter of termination after holding the domestic enquiry, the first question in the nature of 'preliminary issue' to be decided by the Labour Court will be with respect to whether the proceedings of the domestic enquiry initiated by the

petitioners/employer was legal, just and in accordance with the principles of natural justice.

18. The Hon'ble Supreme Court in number of decisions has held that the domestic enquiry should not be a formality; it has to be initiated and proceeded strictly in accordance with law after providing proper opportunity to the workmen before giving finding on the misconduct of employer and passing consequential order of punishment.
19. The Hon'ble Supreme Court dealt with the procedure and powers of the Labour Court or Tribunal in the matter of ***G. M. ONGC Shilchar v. ONGC Contractual Workers Union*** reported in ***(2008) 12 SCC 275*** and held as under:-

“17. It is true that the underlined portion of the reference prima facie does give the impression that it presupposes that the workmen were contractual employees and the only dispute was with regard to the regularization of their services. It is equally true that the reference appears to have been rather loosely worded but as observed by the Industrial Tribunal and the Division Bench, both parties were aware of the real issues involved in the light of the protracted litigation and the efforts made during conciliation proceedings. The Division Bench has, thus, rightly observed that it was open to the Industrial Tribunal to have lifted the veil so as to determine the nature of the employment and the dispute between the parties and for that purpose to look into the pleadings and evidence produced before it.

18. In ***Delhi Cloth & General Mills Co. Ltd. vs. The workmen & Others***, MANU/SC/0188/1966, this is what the Court had to say:

"In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else".

20. In the matter of ***Tata Iron and Steel Company Limited*** (supra), the Hon'ble Supreme Court while considering the scope of jurisdiction of Labour Courts or Tribunals for considering the question of reference made by the State Government and held as under:-

"12. We would hasten to add that, though the jurisdiction of the Tribunal is confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Had the reference been appropriately worded, as discussed later in this judgment, probably it was still open to the appellant to contend and prove that the Respondent workmen ceased to be their employees. However, the reference in the present form does not leave that scope for the appellant at all."

21. Recently, in the matter of ***Kurukshetra University*** (supra), the Hon'ble Supreme Court held as under :-

“12. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination order of a workman under the Labour Laws in reference proceedings and what are the rights of the employer while defending the termination order in the Labour Court remains no more res integra and is settled by series of decisions of this Court beginning from *AIR 1958 SC 130 (Indian Iron & Steel Co. Ltd. Vs. Workmen)* till *AIR 1979 SC 1652 (Shankar Chakravarti vs. Britannia Biscuit Co. Ltd.* and also thereafter in several decisions as mentioned below.

17. When we examine the facts of this case in the light of the aforementioned principles of law, we find that the termination of the respondent was by way of punishment because it was based on the adverse findings recorded against the respondent in the domestic enquiry. So the question, which the Labour Court was expected to decide in the first instance as a “preliminary issue”, was whether the domestic enquiry held by the appellant (employer) was legal and proper. In other words, the question to be decided by the Labour Court was whether the domestic enquiry held by the appellant was conducted following the principles of natural justice or not. If the domestic enquiry was held legal and proper then the next question which arose for consideration was whether the punishment imposed on the respondent (delinquent employee) was proportionate to the gravity of the charge leveled against him or it called for any interference to award any lesser punishment by exercising the powers under Section

11-A of the ID Act.”

22. In view of aforementioned provisions of ID Act and the law laid down by Hon'ble Supreme Court, if the facts of the present case is considered then it will reveal that the respondent/employee, who is a Class-IV employee was terminated after holding domestic enquiry by the petitioners/employer and on an application before the Labour Commissioner and after failure of conciliation proceeding, the dispute raised by the respondent/employee was referred to Labour Court for deciding the question whether the termination of respondent/employee was legal and proper on the basis of finding arrived in domestic enquiry. As held by the Hon'ble Supreme Court, the Labour Court correctly framed the preliminary issue for evaluating the legality and propriety of the proceedings of enquiry, which is incidental and without going into the said preliminary issue, the finding cannot be arrived at by the Labour Court that the termination of respondent/employee was just and proper.
23. In view of above, the Labour Court has not committed any illegality or jurisdictional error and not tried to overreach the question referred by the State Government.
24. After framing the preliminary issue, the Labour Court proceeded with the trial and after recording of evidence of the petitioners/employer as well as the respondent/employee, considered the proceedings of the domestic enquiry. The Labour Court considered the evidence of witnesses No.1 and 2 examined by the petitioners/employer, namely, G. P. Shukla and Prashant Kumar. They have admitted in their evidence that alongwith documents included to the charge-sheet and list of witnesses were not provided to respondent/employee. They have further admitted that the respondent/employee has stated in the domestic

enquiry proceedings that he do not knew English language and want to keep his father as co-worker, but the same is refused. In the evidence, witnesses also stated that the questions were put to the witnesses in Hindi and the answers were written down in English.

25. From perusal of the domestic enquiry submitted by the enquiry officer, it is evident that in Paragraph-5, of proceedings dated 22/07/2006 he specifically mentioned that respondent/employee has not pleaded guilty and thereafter, Presenting Officer submitted the bunch of documents which was given to the charged employee and on the same day, the Presenting Officer submitted a list of witnesses showing seven witnesses, out of which, five witnesses were examined on the same date.
26. From the above proceeding initiated by the petitioners/employer, it is clear that the domestic enquiry proceedings initiated by the management was not in accordance with law, in fact, it is in violation of principles of natural justice and fair play. The respondent/employee has not been provided proper opportunity to make his defence, therefore, the Labour Court has rightly arrived at a conclusion that domestic proceeding is vitiated as it is contrary to law and in violation of principles of natural justice.
27. The learned Labour Court arrived at a conclusion that domestic enquiry proceedings itself is vitiated, therefore, the Labour Court has called upon the petitioners/employer to prove the charges levelled against the respondent/employee in the Court itself by producing witnesses and evidence. The Labour Court has framed charges and thereafter, fixed the case for recording of the evidence of witnesses of petitioners/employer.

28. The procedure adopted by the Labour Court was strictly in accordance with the provisions of law and in consonance with judgment passed by the Hon'ble Supreme Court in the matter of ***Delhi Cloth and General Mills Co. v. Ludh Budh Singh*** reported in ***(1972) 1 SCC 595***, which reads as follows:-

“(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 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."

29. Further, in the matter of ***Kurukshetra University*** (supra), the Hon'ble Supreme Court held as under :-

“18. If the domestic enquiry was held illegal and improper then the next question, which arose for consideration, was whether to allow the appellant employer to prove the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent employee. The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and pleading the misconduct in the written statement. (See also para 33 at pp.1665-66 of *Shankar case*).

19. Once the appellant employer was able to prove the misconduct/charge before the Labour Court, then it was for the Labour Court to decide as to whether the termination should be upheld or interfered by exercising the powers under Section 11-A of the ID Act by awarding lesser punishment provided a case to that effect on facts is made out by the respondent employee.

20. We are constrained to observe that first, the Labour Court committed an error in not framing a “preliminary issue” for deciding the legality of domestic enquiry and second, having found fault in the domestic enquiry committed another error when it did not allow the appellant to lead independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence the respondents' termination is bad in law.”

30. In case in hand, the petitioners/employer did not avail opportunity provided by the Labour Court to prove the charges levelled by them against the

respondent/employee and during the pendency of proceedings before learned Labour Court for nine months i.e. 11/09/2012 to 06/06/2013 they took time to produce witnesses, but, the petitioners/employer have not produced any witness and subsequently, they have closed their right to lead evidence and only thereafter, the Labour Court passed an order Annexure P/2 dated 10/07/2013 after considering all materials on record directing reinstatement of respondent/employee.

31. Learned counsel appearing for petitioners/employer lastly submitted that Courts below committed an error in awarding 25% of back wages even when there is no specific pleading made in statement of claim. True it is that, respondent/employee has not pleaded in so many words that the back wages may also be awarded to him and he was not employed elsewhere during that period, but in his relief clause, he sought relief for setting aside of order of termination and further that any other relief which Courts deem and proper should also be awarded/granted. The respondent/employee in his affidavit of evidence under Order 18 Rule 4 of CPC has specifically made statement that back wages may also be granted to him. The grant of back wages is a consequential relief which can be granted when the Tribunal/Court comes to a conclusion that the termination was illegal and violative to principles of natural justice while passing an order of reinstatement. In the instant case, learned Courts below have categorically held that termination of respondent/employee was illegal being violative to principles of natural justice and while exercising its discretionary jurisdiction awarded back wages to the extent of 25% only.
32. The issue with regard to grant of back wages was considered by the Hon'ble Supreme Court in the matter of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others** reported in **(2013) 10 SCC**

324, in which, it has been discussed elaborately that in what circumstances, back wages are to be granted after considering earlier judgments passed by Court and held as under :-

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an

employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

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 victimizing 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 keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and 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.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is

denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and Others*, (1979) 2 SCC 80.”

33. In view of the aforementioned judgment passed by the Hon'ble Supreme Court, if the facts and circumstances of the case are considered, it would show that the respondent/employee was terminated without following the procedure of law and in violation of principles of natural justice on 13/07/2007. Since July, 2007, respondent/employee, who was Class-IV employee was forced to involve in litigation for almost 6 years when the Labour Court passed an order of reinstatement of respondent/employee on 10/07/2013.
34. From the aforementioned discussions and considering the facts and circumstances of the case in the light of judgments as referred above, I am of the considered view that the Learned Labour Court acted strictly in accordance with the settled principles of law, which do not call for any interference.
35. In the result, the petition being devoid of merit, is liable to be and is hereby dismissed.
36. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge