

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.06.2019

Delivered on : 30.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.19736 of 2018

and

W.M.P.No.23178 of 2018 and 404 of 2019

The Management of India Pistons Ltd.,
Huzur Gardens,
Sembiam,
Chennai-600 011 ... Petitioner

Vs.

I.Inbakumar ... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the Presiding Officer, III Additional Labour Court, Chennai and quash the order dated 15.05.2018 made in I.D.No.772 of 2009 (Preliminary issue).

For Petitioner ... Mr.C.Mohan for
M/s.King & Patridge

For Respondent ... Mr.V.Prakash, Sr.counsel for
M/s.N.Suresh and
K.Sudalai Kannu

ORDER

The facts and circumstances necessitating the filing of the writ petition are stated hereunder:-

(a) The respondent workman was an employee of the petitioner Management. He joined the service of the Management on 26.5.1980 as temporary worker and after four years of permanent service, he was confirmed in service as Helper on 01.07.1984. Thereafter, he was promoted as Attender on 01.01.1994 and on 01.04.1995 he was promoted as Junior Store Keeper. According to the respondent/workman, he was actively involved in the Union activities and as a measure of victimization, the Management placed him under suspension along with other workers, who were also involved in the union activities. He was suspended from service by order dated

30.10.2008 stating that he was found missing from the work spot every day for half an hour to one hour and was wasting his valuable working time by often loitering and disturbing other co-workers while on their duty. The petitioner gave an explanation on 15.11.2008, denying the charges. At this, the Management replied on 24.11.2008 stating that his explanation was not satisfactory and it has been decided to hold an enquiry against him. Thereafter, an enquiry was conducted and report was submitted by the Enquiry Officer holding the charges proved against him.

(b)The petitioner was furnished with the copy of the Enquiry Report along with show cause notice, dated 16.02.2009, proposing to impose the penalty of 'dismissal from service.' The petitioner submitted his representation against the enquiry report and the proposed penalty, on 07.03.2009. The Management, however, ultimately passed an order on 11.03.2009, dismissing the respondent/workman from service. The respondent/workman approached the Conciliation Officer, on 18.04.2009. However, the conciliation failed and the failure report was submitted on 22.06.2009. Thereafter the dispute was referred for adjudication before the III Additional Labour Court, Chennai, in I.D.No.772 of 2009.

(c)Before the Labour Court, a preliminary issue was framed in regard to the fairness of enquiry conducted against the petitioner. In the proceedings, on behalf of the workman, the workman examined himself and on behalf of the Management, one witness was examined as M.W.1. Five documents were marked on behalf of the workman as Exs.W1 to W5 and 19 documents were marked on behalf of the Management as Exs.M1 to M19.

(d)The Labour Court, after adverting to various materials, viz., Exhibits and also the evidence tendered on behalf of both the workman and Management, has ultimately concluded that the domestic enquiry had not been conducted in a fair and proper manner by the Management and therefore, the enquiry report dated 21.01.2009 was set aside. The preliminary award passed by the Labour Court on 15.05.2018, holding the enquiry conducted by the Management against the workman defective, is the subject matter of challenge in the writ petition.

2.When the writ petition was taken up for hearing, on behalf of the respondent/workman Mr.V.Prakash, the learned Senior Counsel raised a strong objection as to the maintainability of the writ petition stating that the writ petition against the preliminary award of the Labour Court is not maintainable, as held by various decisions of the Hon'ble Supreme Court of India and also this Court. According to the

learned Senior counsel, it is always open to the Management to challenge both the preliminary as well as the final award and their right to question the preliminary award is protected. Therefore, no prejudice would be caused to the Management if the writ petition is held not maintainable. But on the other hand, great prejudice would be caused to the workman, since he having been dismissed from service, cannot wait for an indefinite period for the Labour Court to pass final award. Taking into account the plight of the workmen, who were always placed in a disadvantageous position against the Managements, the Courts have consistently held that challenge to the preliminary award ought to be discouraged by the Courts, particularly, the Constitutional Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, the learned Senior counsel would implore this Court to address the concern of the workman in this regard before dealing with the submissions to be made on behalf of the Management.

3. Shri. C. Mohan, the learned counsel appearing for the petitioner Management would have strong reservation about the submissions made by the learned Senior counsel appearing for the workman stating that there are several decisions of the Hon'ble Supreme Court of India and the High Court entertaining the writ petitions against the preliminary awards of the Labour Court/Tribunal and therefore, it cannot be concluded that under all circumstances, the Managements are barred from approaching the Courts against preliminary awards, even if it is a question of jurisdictional error or on issues which go to the root of the matter. According to the learned counsel, it is always open to this Court to appreciate when there are genuine challenges against preliminary awards passed by the Labour Court/Tribunal. Therefore, he would request this Court to consider the contention of the petitioner Management and take a final call as to whether the final conclusion reached by the Labour Court holding that the enquiry conducted against the petitioner was not fair and proper, was supported by sufficient materials and whether the finding of the Labour Court was premised on sound reasoning.

4. Having considered the submissions made by the learned counsel appearing for the petitioner Management and the learned Senior counsel Mr. V. Prakash for the respondent workman, this Court proceeded to hear the parties, particularly, the objections of the Management regarding the finding of the Labour Court. As this Court having entertained the writ petition, decided to take a comprehensive call both on the maintainability as well as on merits relating to the objections raised by the Management.

5.The learned counsel Mr.C.Mohan appearing for the petitioner Management would, at the outset, submit that in regard to the maintainability of the writ petition he would rely on the following decisions in support of his contention. According to the learned counsel, the Courts have entertained over the years writ petitions challenging the preliminary awards depending upon the type of challenge, which was involved in each of the cases. According to him, this is a case where the Management is genuinely aggrieved by the preliminary finding of the Labour Court, since the finding is unsupported by any materials and the same is not based on sound reasoning. According to the learned counsel, the Labour Court has completely erred in concluding against the Management by overlooking several crucial aspects and if those aspects are to be considered by this Court, then the finding of the Labour Court may call for interference. In such event, the Management would not be compelled to lead fresh evidence before the Labour Court in order to establish the charges against the respondent/workman. Therefore, the learned counsel would submit that in a case where the Labour Court finding is completely misconceived, which finding is perverse and legally unacceptable, this Court may consider the same and appreciate the objections of the Management on the basis of the materials produced before it and also submissions to be made in the proceedings.

6.In the light of the above, the learned counsel would draw the attention of this Court to various decisions mentioned as under:

(i)Regarding the maintainability of the writ petition, as objected to by the learned Senior counsel Mr.V.Prakash, the learned counsel for the petitioner Management would cite the following decisions:-

D.P.Maheshwari vs. Delhi Administration and Others [1983(4) SCC 293]. According to the learned counsel for the petitioner Management, this decision was rendered by the Hon'ble Supreme Court of India on 14.09.1983. He would particularly rely on Paragraph No.3 of the Judgment, which is extracted hereunder:

"3.The management was dissatisfied with the decision of the Labour Court on the preliminary issue. So, they invoked the High Court's extra-ordinary jurisdiction under Art. 226 of the Constitution. A learned single judge of the High Court, by his judgment dated 12th July 1976 allowed the Writ Petition and quashed the order of the Labour Court and the reference made by the Government. A Division Bench of the High Court

affirmed the decision of the Single Judge on 25th July 1980. The matter is now before us at the instance of the workman who obtained special leave to appeal under Art. 136 on 4th April 1983. The services of the workman were terminated on 28th July 1969. A year later the dispute was referred to the Labour Court for adjudication. Thirteen years thereafter the matter is still at the stage of decision on a preliminary question. In our view, further comment is needless."

According to the learned counsel, the above decision, which is a landmark case, being relied on by various Courts, including the Hon'ble Supreme Court of India in regard to the maintainability of the writ petitions against preliminary awards. The decision was rendered in the facts and circumstances of that case, as could be seen from the extracted portion above. According to the learned counsel, the said decision did not emphatically lay down any law. Therefore, he would submit that this decision cannot be taken to be a declaration of law that no writ petition is maintainable against preliminary award.

(ii) The learned counsel would next draw the attention of this Court to the decision of a Division Bench of this Court in ITC LTD., Industrial Tribunal [(2009) 1 LLJ 90 Mad], wherein the Division Bench of this Court has entertained W.A.No.597 of 2008, aggrieved with the finding of the Tribunal holding that the enquiry was not fair and proper.

(iii) The learned counsel would further rely on a decision of the Hon'ble Supreme Court of India in Bharat Bhawan Trust vs. Bharat Bhawan Artists Association and Another [2001(7) SCC 630]. In this case, the Hon'ble Supreme Court has held that the preliminary objection raised by the Management was valid and ought to have been upheld by the Labour Court. The final conclusion of the Hon'ble Supreme Court of India at paragraph No.13 is extracted hereunder:-

"13. Thus we find that the preliminary objection raised by the appellant is valid and ought to have been upheld by the Labour Court. We, therefore, allow this appeal and set aside the order made by the Labour Court. No costs."

(iv) The learned counsel would also rely on the decision of the Hon'ble Supreme Court of India in Newspapers Ltd vs. State Industrial Tribunal, UP and Others [AIR 1957 SC 532], wherein a challenge to the preliminary award was entertained.

(v)The learned counsel would further draw the attention of this Court to the decision of this Court in W.P.No.8471 of 1998 (The Management of Tamilnadu, Electricity Board vs. The Presiding Officer, I Additional Labour Court and M.Ganesan) (Manu/TN/9555/2006]. He would particularly draw the attention of this Court to Paragraph No.8 of the order, which is extracted hereunder:

"8.From the decisions cited above, it is clear that the petitioner/Management is entitled to raise the preliminary issue with regard to the status of the second respondent as to whether he is a "workman" or not within the definition of Section 2(s) of the Industrial Disputes Act, 1947, and whenever such a preliminary issue is raised, it is for the Workman to establish that he is a "Workman". Therefore the finding given by the Labour Court based on presumption is unsustainable and the same is to be treated as perverse finding.

In the above case, the learned single Judge of this Court has entertained the writ petition against the preliminary award and the finding of the Labour Court was set aside.

(vi)Another decision of this Court was also relied on in W.P.No.32031 of 2017 (JSW Steel Limited, rep.by its General Manager, vs. 1.The Presiding Officer, Labour Court, Salem and two others), dated 19.09.2018, wherein the learned Judge, in paragraph Nos.5 to 7, has held as under:

"5. The above issue is no longer res integra in view of the decision rendered in Management of Tamil Nadu Electricity Board vs. The Presiding Officer, I Additional Labour Court and Anr. (MANU/TN/9555/2006), wherein the ratio laid down by the Supreme Court in Newspapers Ltd. - Vs Industrial Tribunal, U.P. & Ors. (1957 (2) LLJ 1) is taken into account.

6. In such view of the matter, it is always open to the Management to raise the issue regarding the status of the 3rd respondent and on such issue being raised, the Labour Court shall decide the said preliminary issue as to whether the 3rd respondent was a workman or not, as defined under Section 2 (s) of the Industrial Disputes Act.

7. Accordingly, the writ petition is disposed of with a direction to the Labour Court to decide the preliminary issue with regard to the status of the 3rd respondent before proceeding further in the matter. The Labour Court shall decide the said issue within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

In the above matter, the learned Judge has followed the decision of the Hon'ble Supreme Court of India in Newspapers Ltd vs. State Industrial Tribunal, UP and Others [AIR 1957 SC 532], mentioned supra.

(vii) The learned counsel would also rely on a Division Bench decision of this Court in State Bank of India (represented by its Assistant General Manager (Personnel and HRD), Chennai [2007(3) L.L.N.422], wherein the Division Bench has clearly held as follows:

"18. The learned counsel appearing for the second respondent/workman by drawing our attention to the decision of the Division Bench of this Court in the case of Management of Engine Valves Ltd. vs. Presiding Officer, Industrial Tribunal, Madras & another reported in 1996 (1) LLJ 566 submitted that, normally no writ petition is maintainable in respect of finding rendered in a preliminary issue. In the said decision, the Division Bench, in the concluding paragraph has observed, ".... We may point out here that the fact that this Court does not interfere with such preliminary order and keeps all the contentions open, is only intended to ensure that there is no delay caused in the disposal of the dispute by the Tribunal or Labour Court and it does not in any way affect the right of the Management to challenge the validity of the order, in the event it become necessary for it to challenge the award...."

Absolutely, there is no dispute with regard to the above said proposition. In order to facilitate both parties to get relief, normally no court would entertain writ petition against the order passed in a preliminary issue. But however, in view of the peculiar factual circumstances and as pointed

out above that there is no specific provision either in the bye-laws, circular, guidelines, enabling the workman to have the legal assistance, and having participated on several sittings, the workman abandoned the enquiry after certain stage, and copies of documents were also either supplied or allowed to be perused by the workman, and already adequate opportunity was given to him, we are of the view that it is an exceptional case and the Management-Bank is justified in approaching this Court even against the order passed in a preliminary issue. Accordingly, we reject the said contention also."

The Division Bench has clearly held in the above decision that the Management was justified in approaching the Court against preliminary award.

(viii) The learned counsel would also rely on another single Judge's order passed in W.P.No.15080 of 2016 (The Management of ICICI Bank vs. 1.The Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Sastri Bhavan, Chennai and another), dated 19.01.2017, wherein, the learned Judge has held as under:

"12. While restating the said principle, the First Bench of our High Court in N.Gurumurthy v. Second Additional Labour Court, Madras, 1995-1-LLN-1022, after restating the reasons for non interference at the preliminary stage, has also discussed that the interference could be called for, if the preliminary order was passed without notice to one of the parties and (ii) that the entertainment of the writ petition could be made, if the preliminary order does not contain any reason for its conclusion. Applying the said ratio, it has been the contention of the petitioner Bank that the rule of interference with the preliminary award has been subsequently expanded with the rule of peculiar facts and circumstances of the case for interference. But, however, the case on hand does not pertain to any one of the two situations over the rule of peculiar facts and circumstances of the case, but could be with the perverse finding recorded by the Labour Court."

Therefore, the learned counsel for the petitioner Management would submit that there is absolutely no bar in entertaining the writ petition, as made out by the learned Senior counsel appearing for the workman. Therefore, the learned counsel for the petitioner Management would request this Court to hold the writ petition maintainable and may proceed to examine the challenge made in the writ petition, on merits.

7. The learned counsel for the Management would rely on the following decisions in support of each one of his contentions, as to how the finding of the Labour Court is unsustainable in law:

(i) State of Haryana and Another vs. Rattan Singh - 1977 (2) SCC 491. He would rely on a portion of the finding of the Hon'ble Supreme Court of India at Paragraph No.4, which is extracted hereunder:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. Therefore, we are unable to hold that the order is invalid on that ground."

According to the learned counsel, strict Rule of Evidence cannot be applied in domestic enquiries. Unfortunately, the Labour Court has construed the domestic enquiry on par with criminal trial and held that the enquiry was not fair and proper.

(ii) Crescent Dyes and Chemicals Ltd., vs. Ram Naresh Tripathi - [1993(2) SCC 115]. This decision of the Hon'ble Supreme Court of India was relied on by the learned counsel in regard to the objection that the workman was not given the assistance of a lawyer to defend itself in the Domestic enquiry. He would rely on a portion of the observations of the Hon'ble Supreme Court of India in paragraph No.17, which is extracted hereunder:

"17. It is, therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right to representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice."

(iii) Oriental Insurance Co., Ltd., vs. S. Balakrishnan - [2003 (11) SCC 734]. In this case, the Hon'ble Supreme Court of India has held that in the absence of any prejudice having been caused to the delinquent, mere non-supply of enquiry report before inflicting the punishment, not fatal to the proceedings. One of the main objections in the conduct of the domestic enquiry against the workman was non-supply of the report, dated 30.10.2008, which was the basis of the suspension order/charge memo against the workman. According to the workman, non-furnishing of the basic document has denied him reasonable opportunity and this was one of the primary factors weighed with the Labour Court, while coming to its conclusion against the Management.

The learned counsel would submit that the workman herein participated in the enquiry fully and during his participation in the enquiry, there was no protest at all. In fact, the report was also furnished to him at the time of domestic enquiry. Having participated in the enquiry, without protest, the workman cannot be found to be complaining about non-furnishing of the basic report dated 30.10.2008. According to the learned counsel for the Management that no prejudice was shown, as the workman had understood the charges, replied to the charges and participated in the domestic enquiry.

(iv) West Bokaro Colliery (TISCO Ltd) vs. Ram Pravesh Singh - [2008 (3) SCC 729]. The learned counsel would reply on

paragraph Nos.20 and 21 of the decision, which are extracted hereunder:

"20.The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

21.Learned counsel for the respondent cited two cases - Workmen v. Firestone Tyre and Rubber Co.,of India (P) Ltd. (1973) 1 SCC 813] and South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corporation Ltd. [(2006) 5 SCC 201], to contend that the Labour Court in exercise of its jurisdiction under Section 11-A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal."

The learned counsel would emphasis the fact that the standard of proof in a domestic enquiry is different from a criminal trial and unfortunately, the Labour Court in this case has presumably applied a strict standard of evidence and has ultimately held that the enquiry was not fair and proper.

(v)Biecco Lawrie Ltd., and another v. State of West Bengal and Another - 2009(10) SCC 32. The learned counsel would particularly rely on the following Paragraphs, which are extracted hereunder:

"27. In the present case, the materials on record show that the respondent had been furnished with proper notices intimating him the date, time and place of hearing well before time and the respondent has also received notices as is indicated from the postal acknowledgements made by him in his own letters addressed to the management.

28. It was made the major bone of contention that the charge sheet was bad as it did not mention specifically the abusive language used by the respondent.

29. In this connection, reliance can be placed on a decision of this Court in Punjab National Bank Ltd. v. Their Workmen [(1959) 2 LLJ 666 (SC)] wherein it was held that before the management could dismiss its workman, it must hold a proper domestic enquiry into the alleged misconduct of such a workman and such an enquiry must begin with the supply of a specific charge sheet to him.

30. In the instant case, on a perusal of the charge sheet it is evident that the charges laid down are precise and specific in nature along with the relevant provision of the standing order and neatly lays down the consequences thereof. We do not also find from the said charge sheet that there was any patent or latent vagueness involved and they are unintelligible. This is clearly evident from the explanation furnished by the respondent dated 6th of August, 1984 where he clearly denied all the charges and also mentioned the name of the four appellant-witnesses who were examined in the enquiry proceedings subsequently. This is a clear indication that the respondent was fully aware of the charges and even their specifications and also the probable witnesses for his misconduct and hence the entire plea falls flat on the face of it."

8. According to the learned counsel, the principal objection to the charge memorandum is that it is extremely vague and did not contain specific details regarding the time and date as to when the workman was found to be absent and was wasting

his time during working hours. In this case, the workman understood the charges against him fully and has given a reply. From the reply, it could be seen that the charges have been fully understood, but only in order to wriggle out of the charges, the workman has come up with the allegation of vagueness, which in fact, is not supported by any materials other than his own objection.

9.The learned counsel would, therefore, submit that the Labour Court has completely erred in accepting the objection of the workman that the charges suffered from vagueness and therefore, the domestic enquiry conducted into the charges cannot be fair and proper.

(vi) U.P.State Road Transport Corporation vs Suresh Chand Sharma - [2010 (6) SCC 555], wherein also the Hon'ble Supreme Court has held that in domestic enquiry, complicated principles and procedures laid down in the Code of Civil Procedure or Evidence Act, do not apply. The only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charge.

10.Therefore, the learned counsel for the petitioner Management would submit that the Labour Court has presumably applied the strict principle of evidence, which led to erroneous conclusion that the enquiry concluded against the workman was not fair and proper. The Labour Court ought to have seen that whether the workman concerned was given sufficient opportunity to defend himself in the enquiry. It cannot appreciate the correctness of the charges, as that situation would arise only after the preliminary finding is rendered. Unfortunately, in this case, the Labour Court has gone into the correctness of the charges and held that no matter sufficient opportunity was given to the workman, yet, in view of the vagueness of the charges, the enquiry was to be held as not proper and not fair. Therefore, the Labour Court has over reached its jurisdiction in regard to rendering of preliminary finding in this matter.

11.In this regard, the learned counsel would rely on the decision of the Hon'ble Supreme Court of India in M.L.Singla vs. Punjab National Bank [2018 SCC Online SC 1585]. The learned counsel would rely on paragraph Nos.25 and 34, which are extracted hereunder:

"25.While deciding this question, it was not necessary for the Labour Court to examine as to whether the charges are made out or not. In other words, the enquiry for deciding the question should have been confined to the factors such as what is the nature of the

charge(s), its gravity, whether it is major or minor as per rules, the findings of the Enquiry Officer on the charges, the employee's overall service record and the punishment imposed etc.

34. In other words, the Labour Court failed to see that it would have assumed the jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and secondly, the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted he had led the evidence."

12. According to the learned counsel for the petitioner Management, the Labour Court has exceeded its jurisdiction in examining the correctness of the charges at the preliminary stage and such finding rendered by the Labour Court is contrary to the law laid down by the Hon'ble Supreme Court of India.

13. State Bank of India andn Others vs. Narendra Kumar Pandey - [2013(2) SCC 740]. The learned counsel would rely on paragraph Nos.20 and 23 of the judgment, which are extracted hereunder:

"20. We are of the view that the High Court has committed an error in holding that the charge-sheet should have mentioned about the details of the documents and the names of the witnesses which the Bank proposed to examine and a list to that effect should have been appended to the charge sheet. We may point out that the charge-sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect unless there is a specific provision to that effect. Charge-sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge-sheet. Of course, statement of allegations has to accompany the charge-sheet, when required by the Service Rules.

23. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion

that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt....."

The learned counsel for the petitioner Management would submit that the charges need not contain all the details in domestic enquiry and the proof is also to be based on preponderance of probabilities and not beyond reasonable doubt. Unfortunately, the Labour Court concluded that the charge did not contain details and therefore, is suffered from vagueness. Such finding of the Labour Court is contrary to the above Ruling of the Hon'ble Supreme Court of India.

14. General Manager (Operations) State Bank of India and another vs. R. Periyasamy - [2015(3) SCC 101]. The learned counsel would rely on paragraph No.11, which lays emphasis on 'preponderance of probabilities' concept in domestic enquiries. Paragraph No.11 reads as under:

"11. It is interesting to note that the learned Single Judge went to the extent of observing that the concept of preponderance of probabilities is alien to domestic enquiries. On the contrary, it is well known that the standard of proof that must be employed in domestic enquiries is in fact that of the preponderance of probabilities. In Union of India Vs. Sardar Bahadur[3], this Court held that a disciplinary proceeding is not a criminal trial and thus, the standard of proof required is that of preponderance of probabilities and not proof beyond reasonable doubt. This view was upheld by this Court in State Bank of India & ors. Vs. Ramesh Dinkar Punde[4]. More recently, in State Bank of India Vs. Narendra Kumar Pandey[5], this Court observed that a disciplinary authority is expected to prove the charges leveled against a bank-officer on the preponderance of probabilities and not on proof beyond reasonable doubt."

15. The learned counsel for the Management would submit that from the collective decisions cited above of the Hon'ble Supreme Court of India as well as this Court, several errors emerge in regard to the finding of the Labour Court against the Management on merits and on the preliminary objection of the maintainability of the writ petition, the decisions as cited above would clearly point to the fact that there is absolutely

no bar in entertaining the writ petitions against preliminary awards.

16.As far as the present case on hand is concerned, the learned counsel for the Management would submit that when the finding of the Labour Court is not supported by sound reasons and materials, this Court certainly could interfere with such findings. The learned counsel, after placing reliance on the above decisions, proceeded to draw the attention of this Court to various portions of the preliminary award passed by the Labour Court. He would submit that the foundation of the domestic enquiry is a fulfillment of principles of natural justice and in this case, the principles of natural justice have been entirely complied with and no violation of the same has been specifically pointed out by the workman. Further, the correctness of the charges can only be gone into at a later stage by the Labour Court and the Labour Court has to see in the preliminary stage is as to whether the Management has provided sufficient opportunity to the workman and whether the procedure has been followed in line with the established principles of natural justice.

17.In this case, the learned counsel for the petitioner Management would submit that the workman had not protested about any violation and he fully participated in the enquiry and in such event, the Labour Court could not have held that the enquiry was not fair and proper. According to the learned counsel, the decisions cited above were also cited before the Labour Court, but unfortunately, the Labour Court has overlooked all these decisions and accepted the case of the workman blindly. To the exclusion of all the decisions cited on behalf of the Management, the Labour Court completely relied on two decisions cited on behalf of the workman and proceeded to hold that the enquiry was not fair and proper. According to the learned counsel, the Labour Court has completely misdirected itself and hence, the findings of the Labour Court is deeply flawed and liable to be interfered with. In fact, the learned counsel would also submit that the workman himself had admitted, during his examination in the domestic enquiry, that he was helped/assisted by an Advocate, though service of the advocate was not allowed to be engaged in the domestic enquiry. Therefore, he would submit that the writ petition is to be held maintainable and the findings of the Labour Court are to be interfered with.

18.Per contra, Mr.V.Prakash, the learned Senior counsel appearing for the respondent/workman would submit that the

Hon'ble Supreme Court has consistently held that the writ petition against preliminary award is not maintainable and this Court has also followed the dictum laid down by the Hon'ble Supreme Court of India, in this regard. He would rely on the following decisions in regard to the maintainability of the writ petition:

(i) At the outset, the learned Senior counsel would rely on the decision rendered by the Hon'ble Supreme Court of India in Cooper Engineering Limited vs. Shri P.P.Mundhe [(1975) 2 Supreme Court Cases 661]. The learned Senior counsel would rely on paragraph No.22, which is extracted hereunder:-

"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. When 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 the 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. "

19. The learned Senior counsel would submit that the Hon'ble Supreme Court of India has emphatically held that there will not be justification for any party to stall the final adjudication of the dispute by the Labour Court, by questioning

its decision with regard to preliminary issue. The Hon'ble Supreme Court has held that it will be legitimate for the High Court to refuse to entertain such dispute.

(ii) The learned Senior counsel would also rely on a Division Bench decision of this Court in ITC Ltd., Tiruvottiyur, Chennai-600 019 vs. Industrial Tribunal, second Floor, City Civil Court Buildings, Madras and 22 others [2008 (4) CTC 465]. He would draw the attention of this Court to paragraph No.8, wherein, the Division Bench has relied on the decision of the Hon'ble Supreme Court of India in the Cooper Engineering Limited case, referred supra, that interference at the preliminary stage is not to be encouraged. Paragraph No.8 of the judgment is extracted hereunder:

"8. Apart from that the Hon'ble Apex Court right from the case of Cooper Engineering Ltd. v. P.P. Mundhe, AIR 1975 SC 1900 and D.P. Maheswari v. Delhi Administration, 1983 (2) LLJ 425 SC frowned upon interference by the Courts on a preliminary point when the point on which the interference is sought for can be challenged after the final award is passed. Such interference was never encouraged by the Supreme Court in the interest of expediting quick disposal of cases by the Industrial Tribunal."

(iii) Next, the learned Senior Counsel would rely on the decision of this Court in Sundaram Textiles Ltd., Numbi Nagar, Nanguneri Post, Tirunelveli District vs. The Presiding Officer, Labour Court, Tirunelveli and Others [W.P.(MD) Nos.9980 to 9983 of 2011, dated 14.10.2011]. The learned Judge of this Court, in the above writ petition, has held in paragraph No.12 that it is wrong on the part of the Management to have challenged the preliminary award. Paragraph No.12 is extracted hereunder:

"12. In such circumstances, it is wrong on the part of the management to have challenged the preliminary order. It is always open to them to challenge a final Award as and when any adverse award is passed against them by the Labour Court. This Court is not inclined to entertain these writ

petitions and hence, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed. "

(iv) Apart from the above, the learned Senior counsel would also rely on the decision of the Hon'ble Supreme Court of India in D.P.Maheshwari's case. The said case is a landmark case, apart from Cooper's case, which laid emphasis that preliminary award should not be a subject matter of challenge in the higher Courts, by staling the final adjudication of the Labour dispute.

20.The learned Senior Counsel would submit that as stated in the preliminary objection raised as to the maintainability of the writ petition, no prejudice would be caused to the Management, since the right to challenge the preliminary award will always remain intact even after the final order was passed by the Labour Court. Therefore, the learned Senior counsel would submit that as far as the present case on hand is concerned, the challenge to the preliminary finding rendered by the Labour Court is completely misplaced and misconceived, particularly, in view of the fact that the Labour Court has premised its finding on the basis of sufficient materials and sound reasons. Therefore, the challenge by the Management lacks in bona fides and the same is intended to frustrate the workman from getting his dispute adjudicated finally. Therefore, the learned Senior counsel would implore this Court to dismiss the writ petition as being not maintainable, without going into the merits of the objections raised on behalf of the Management.

21.As regards the merits of the objections raised on behalf of the Management, the learned Senior counsel would submit that the preliminary award of the Labour Court was a well considered decision and the learned Senior counsel in his turn would draw the attention of this Court to the basis of the findings of the Labour Court. The learned Senior counsel would draw the attention of this Court to Paragraph Nos.14 to 20 of the preliminary award, which are extracted hereunder:

"14. In the light of the above judgements, the rival factors considered. In every domestic enquiry, no doubt the charge memo is the base. As rightly pointed out by the learned counsel for the prtitioner, from

the face of the said charge memo, in respect of the charge u/s.24 (24), it is not specific on the time of the shift and the name of the Supervisor who reported the misconducts were to mentioned. Further, it is not clear and specific from the Ex.M5 memo that, what are all the dates on which the petitioner was found missing from the work spot. Further, it is not mentioned in the Ex.M5 memo regarding the date, time, place, the abusive language and the name of the worker against whom the petitioner used such filthy words. Further, in the said memo, there is no specific mention as to, the date, time, place and the threatening words and the name of the new apprentices against whom the petitioner used such words. Even during the domestic enquiry, from the cursory view of the evidence adduced by the MW.1 Mr. Natarajan, for the limited purpose of this issue, it is seen that , no names of the affected workers were mentioned. Further, it is not clear as to, whether the witness Natarajan has personally witnessed all these misconducts or whether the affected workmen have reported the same to him. It is seen from the cursory view of the report of Mr. Natarajan in Ex.M15 dated 30.10.2008 that, he has not mentioned the names of the affected workmen or apprentices or the nature of the language used by the petitioner, and the date, time and place. Without these basic details, the management would not expect the workman to reply for the charges. On that score, the claim of the petitioner that the charge memo is vague has to be accepted.

15. The facts of the case further considered. It is learnt from the charge memo that, the misconducts of the petitioner were reported to the management on 30.10.2008 and only on the basis of the said report, the charges were levelled on this petitioner. From the reply sent by the petitioner on Ex.M6 dated 15.11.2008, the petitioner has specifically mentioned that, the said report which is the base for all the allegations has not been furnished the copy of the report dated 30.10.2008 to the petitioner in order to submit his detailed reply. On the other hand, they have not furnished and the said report has been served on the petitioner only during

the time of domestic enquiry. What prevented the respondents to serve the copy of the Ex.M15 even in the initial stage itself has not been properly explained. The above lapse on the part of the management goes to squarely hit the fairness of the domestic enquiry.

16. On considering the facts in further, it is seen from the enquiry proceedings that, so specific charges were read over to the petitioner by the Enquiry officer before commencement of the enquiry proceedings. During the cross examination of the MW.1 done by the petitioner, the Enquiry officer has recorded only the answers in three numbers and has not recorded any of the questions put to the witness by the petitioner. On the other hand, the cursory view of the Ex.M12 enquiry report for the very limited purpose of this issue, it is seen that, the Enquiry officer has mentioned the dates and time of the absence of the petitioner during his duty hours and also the names of the workmen and the apprentices, who were alleged to have been intimidated by the petitioner. On the other hand, none of the above facts were mentioned in the Ex.M11 and M12.

17. From the above facts and circumstances, this court is of the considered view that, the charges were not specific and precise and the material documents were not supplied to the petitioner and the report of the Enquiry officer is lacking in all the above aspects, and hence it has to be concluded that the Enquiry officer has not conducted the domestic enquiry in a fair and proper manner and his report has to be set aside for the reason stated above.

18. At this juncture, the learned counsel for the respondent would submit that, in case, if the enquiry is found to be defective by this court, then necessarily, they have to be given a fair chance to prove the charges before this court and if such a situation arises, unfortunately, due to the lapse of time, they were in a handicapped position to locate the concerned witnesses to prove the charges before this court. Further, it is his contention that, since the delay has been caused only by the conduct of the petitioner, they should not be placed in a

disadvantageous position which will affect the interest of the respondent company.

19. Considered. The dispute has been raised in the year 2009 and for so many reasons, the proceedings were pending for long time and this court is not inclined to go into those details as to, who is the reason for the delay. When the report of the Enquiry officer is ex facie lacking in merits, then the respondents cannot be permitted to take advantage of the delay caused in this proceedings. When the interest of both parties were taken for consideration, this court is of the view that, the balance of convenience has to lie in favour of the workman, who is in a disadvantageous position than the management. On that score, the contention raised by the learned counsel for the respondents cannot be accepted.

20. From the facts discussed above, this court concludes that the domestic enquiry has not been conducted in a fair and proper manner by the respondent and this preliminary issue is answered accordingly.

In the result, it is held that the domestic enquiry has not been conducted in a fair and proper manner by the respondent and the enquiry report dated 21.01.2009 is hereby set aside.

22. In regard to the vagueness of the award, on behalf of the workman, the learned Senior Counsel would rely on two decisions of the Hon'ble Supreme Court of India as under:

(i) Anil Gilurker v. Bilaspur Rajpur Kshetriya Gramin Bank and another - [2011 (14) SCC 379]. The learned Senior counsel would draw the attention of this Court to paragraph Nos.11 to 14, which are extracted hereunder:-

"11. A plain reading of the charges and the statement of imputations reproduced above would show that only vague allegations were made against the appellant that he had sanctioned loans to a large number of brick manufacturing units by committing irregularities, but did not disburse the entire loan amount to the borrowers and while a portion of the loan amount was deposited in the account of the borrowers, the balance was

misappropriated by him and others. The details of the loan accounts or the names of the borrowers have not been mentioned in the charges. The amounts of loan which were sanctioned and the amounts which were actually disbursed to the borrowers and the amounts alleged to have been misappropriated by the appellant have not been mentioned.

12. We also find that along with the charge-sheet dated 31.01.1989 no statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans sanctioned, disbursed and misappropriated were furnished to the appellant, and yet the disciplinary authority has called upon the appellant to submit his written defence statement in reply to the charges. We fail to appreciate how the appellant could have submitted his written statement in defence in respect of the charges and how a fair enquiry could be held unless he was furnished with the particulars of the loan accounts or the names of the borrowers, the amounts of loan sanctioned, the amounts actually disbursed and the amounts misappropriated were also furnished in the charge-sheet.

13. As has been held by this Court in *Surath Chandra Chakrabarty v. State of West Bengal* (supra):

"5.The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts

and circumstances that may be in the contemplation of the authorities to be established against him....."

14. This position of law has been reiterated in the recent case of Union of India & Ors. v. Gyan Chand Chattar (supra) and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges."

(ii) The learned Senior counsel would also rely another decision of the Hon'ble Supreme Court of India in Anant R Kulkarni vs. Y.P.Educational Society and another - [2013(6) SCC 515]. He would rely on Paragraph No.16, which would run thus:

"16. Where the charge-sheet is accompanied by the statement of facts and the allegations are not specific in the chargesheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge-sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge-sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the

delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges."

23. In both the decisions above, the Hon'ble Supreme Court of India has laid emphasis on the definiteness of the charges, as the charge must be specific, definite, clear, as otherwise the enquiry would stand vitiated. In fact, the Labour Court has relied on the said decisions in coming to the conclusion adverse against the Management.

24. The learned Senior counsel Mr. V. Prakash, apart from the maintainability and vagueness of the charges, would also rely on the following decisions in support of his other contentions:

(i) Rangarajan (S.) and Srirangam Janopakara Bank Ltd., and another [W.P.No.380 of 1960, dated 18.7.1962]. The learned Senior counsel would rely on the following passage from the judgment:

"Domestic enquiry - Principles of natural justice and reasonable opportunity - A board of directors enquiring into the allegations levelled against the employee - Two of such directors had already made statements in support of the charges - Copies of the statements of such witnesses not furnished to the employee - The employee called upon in the forenoon to attend the domestic enquiry to be held in the same evening - The domestic enquiry and the conclusions arrived at such enquiry in the circumstances, held, vitiated by violation of principles of natural justice."

"3. Under the first point it is said that out of thirteen directors of the Board, two had admittedly given statements in support of the charges. It appears to be also a fact that two other directors including the ad hoc president gave additional evidence before the Commissioner. In such circumstances the argument is that these directors were liable to be charged with bias and at any rate their participation in the enquiry was likely to

raise the petitioner's apprehension as to whether he could at all have an impartial and objective enquiry and decision. A further point also is made that since the statements of the two directors were taken behind the petitioner's back and he was not supplied with copies thereof and as only a short time was given on 10th June, 1954 to get ready for his defence, he has had no reasonable opportunity to defend himself against the charges. It seems to me that every one of these contentions is well founded.

7.The other grievance of the petitioner that he was not given a reasonable opportunity to defend himself also appears to be well founded. The statements of the two directors were never brought home to the petitioner. No copies of them were given to the petitioner and not even an indication was given to him that those statements were going to be relied on against him. Naturally therefore, he could not ask for cross-examining the directors in respect of them. It seems to me that in such circumstances it cannot be said that the petitioner had a reasonable opportunity. Reasonable opportunity means not only framing of charges and asking for explanation but much more. He must be apprised of the material on which the charges were framed so that he could have a proper opportunity of testing or challenging that material so far as would be possible for him....."

25.In the above matter, the learned Judge of this Court has held that reasonable opportunity includes furnishing of basic documents. In this case, admittedly, the basic report, on which the charges framed against the workman, was not furnished and therefore, the learned Senior counsel would submit that the conclusion by the Labour Court is perfectly in line with the legal principles laid down by the Hon'ble Supreme Court of India and also by this Court and in such view of the matter, the present writ petition has to be dismissed on merits also.

26.The learned Senior counsel would also rely on the decision of the Hon'ble Supreme Court of India in Chairman and Managing Director, Central Bank of India and Others vs. Central Bank of India, SC/ST Employees Welfare Association and Others

[Manu/SC/0019/2016], in order to highlight what is error apparent on the face of the record. The learned Senior counsel would submit that in this case, no such error could be found in the preliminary award passed by the Labour Court, since, the preliminary award was passed on sound reasoning with supportive materials.

(ii) Ebrahim Aboobakar and Others vs. Custodian General of Evdacuee Property [Manu/SC/0058/1952]. The learned Senior counsel would reply on Paragraph No.14 of the order, which is extracted hereunder:

"14. The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated the 13th May, 1950, a nullity, cannot be the subject-matter of a writ of certiorari. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them."

27. In the above case, the Hon'ble Supreme Court of India has held as early as in 1952 that in case any party feels wrong by the decision of the Court, it can only take recourse prescribed by law. Therefore, the learned Senior counsel would

submit that by implication, the Hon'ble Supreme Court of India has held that the preliminary award need not be put to challenge at the instance of the Management, when the Management has a recourse to challenge the preliminary award along with the final award, in case, it is aggrieved.

(iii) Pratap Mehta and Others vs. Sunil Gupta and Others [Manu/SC/1253/2018]. The learned Senior counsel would rely on paragraph No.31 of the judgment, which is extracted hereunder:

"31.The above decision in no manner support the case of the appellant rather it reiterates that the High Court under Articles 226 and 227 can interfere with an arbitrary order passed by an authority. The next judgment relied by the appellant is Constitution Bench judgment of this Court in Syed Yakooob (supra). This Court had elaborately considered the scope of Article 226 of the Constitution in the aforesaid case. This Court held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. It was further held that jurisdiction of High Court under Article 226 to issue a writ of certiorari is a supervisory jurisdiction and the High Court exercising it is not entitled to act as an appellate court."

28.The learned Senior counsel would submit that as per the above decision of the Hon'ble Supreme Court of India, the jurisdiction of this Court under Article 226 of the Constitution of India in undertaking judicial review is rather limited to see error apparent on the face of the record and the jurisdiction is not appellate jurisdiction.

29.The learned Senior counsel would therefore submit that unless there is a grave error committed by the Labour Court, the same does not call for interference by this Court.

30.To sum up, the learned Senior counsel would submit that the Labour Court in principal accepted the two decisions relied on by the respondent/workman, viz.,

(i)Anil Gilurker vs. Bilaspur Raipur Kshetriya Gramin Bank and Another [2011 (14) SCC 379] and

(ii) Anant R Kulkarni vs. Y.P. Educational Society and Another [2013(6) SCC 515].

31. In regard to the vagueness of charges, the Hon'ble Supreme Court of India has in clear terms held that if the charges were vague, the enquiry stood vitiated. Therefore, the Labour Court has correctly followed the legal principle laid down by the Hon'ble Supreme Court of India and come to the right conclusion holding that the domestic enquiry conducted against the workman was not fair and proper.

32. The learned Senior counsel for the respondent/workman would therefore submit that the writ petition is liable to be dismissed on both counts, viz., not maintainable in regard to the challenge of the preliminary award passed by the Labour Court and also on merits, as the findings of the Labour Court are well founded, which cannot be construed as legally unacceptable or perverse.

33. This Court bestowed upon itself its anxious consideration to various objections both in regard to the maintainability of the writ petition and also on merits of the conclusion reached by the Labour Court, raised on behalf of both the Management as well as the workman.

34. This Court while endeavoring to set at rest the controversy between the Management and the workman both in regard to the maintainability of the writ petition as well as on merits, has decided to answer both the points, on the basis of various decisions relied on by the learned counsels appearing on either side and submissions made on their behalf.

35. The foremost objection raised on behalf of the respondent/workman is to the maintainability of the writ petition, since the writ petition is against the preliminary award passed by the Labour Court, dated 15.05.2018, in I.D.No.772 of 2009, holding that the domestic enquiry conducted against the workman, which culminated in the order of dismissal passed against him, was not fair and proper.

36. In regard to the preliminary objection of maintainability of the writ petition, this Court has to take into consideration the rival submissions made by the learned counsels both for the Management and for the Labour and the decisions relied on by them. As far as the decision relied on by the learned counsel for the Management, it is seen that there is

no legal bar in absolute terms to entertain the writ petitions against preliminary award passed by Labour Courts/Tribunal. In fact, the learned counsel for the Management would rely on host of decisions in order to emphasize the fact that the Courts have entertained writ petitions against preliminary award. This Court cannot have any quarrel over such submission made on behalf of the Management. However, in the larger perspective of finding a final resolution to the dispute between the management and the labour, the ultimate task of this Court is to ensure that the weaker party is not prejudiced at all if the higher Courts start interfering in preliminary matters as a matter of routine. Ofcourse, when the issue regarding maintainability of the dispute is seriously raised and answered in the negative, it is open to the aggrieved party to approach the higher Courts seeking appropriate remedies at that stage itself. But it is certainly not open to the Management to challenge the preliminary award as a matter of course, with a view to drag the proceedings pending before the Industrial Adjudicator. When the Management embarks upon such litigious journey even at the preliminary stage, the person truly affected is the workman, since he would not be in a position to fight the dispute with unflagging vigor and strength till a final resolution is found for the dispute, after a lapse of several years. Therefore, any attempt by the management to challenge the preliminary award has to be evaluated critically by this Court, so that by entertaining such writ petitions, the right of the workman shall not be prejudiced or frustrated.

37. This is precisely what the Hon'ble Supreme Court of India has held in Cooper Engineering case [(1975) 2 SCC 661] in paragraph No. 22 which is extracted supra, followed by a Division Bench decision of this Court in ITC Ltd., case [2008 (4) CTC 465], paragraph No. 8 of which was also extracted supra. Further the learned Judge of this Court has also held in paragraph No.12, as extracted above, that it is always open to the management to challenge the preliminary award along with the final award and no prejudice would be caused to the management. Therefore, ultimately as between the right of the Management and the Labour, what emerges is that the right of the Management does not suffer any prejudice if the management is turned away from its attempt to challenge the preliminary award, since as held by this Court, it is always open to the Management to challenge the adverse preliminary award along with the main award in case they are aggrieved.

38. On the other hand, the right of the workman to have the final resolution to the dispute gets derailed midstream by sheer pendency of challenge before the higher forum and that pendency would ultimately and invariably result in subverting the legitimate expectation of the workman to have the dispute

resolved finally. Therefore, the balance of convenience in such situation is to ensure that the weaker party ought not to suffer any prejudice by the acts of the Courts. In such consideration, this Court has to necessarily come to the conclusion that normally the challenge against preliminary award ought not to be entertained and the Courts must be wary of entertaining such writ petition, as the adverse effect of such entertainment of the writ petition would befall the workman and take away the essence of challenge and push the workman to precipice despair and helplessness. In the said circumstances, this Court has to see, as far the present case on hand is concerned, whether challenge by the Management here is bona fide and whether if the challenge is not entertained, the Management would suffer irreparable prejudice, if the industrial adjudicator is not allowed to proceed with finalization of the dispute.

39. In this case, the Labour Court has passed a preliminary award holding that the domestic enquiry conducted against the workman was not fair and proper. The said finding of the Labour Court was premised on the most crucial aspect of the charges leveled against the workman, viz., the vagueness as being imprecise and non-specific. Admittedly, there was no imputation to the charge memo issued to the workman and what was placed before the Labour Court was Ex.M5, which was the suspension order, in which charges were mentioned under 24(12), 24, 25, 33, 26(b) of Certified Standing Orders. The charges as mentioned in the suspension order reads as under:

"It is reported that on 30.10.2008, in your respective shift, you were given the allotted work of oil ring loading at Cr4 Department. You refused to perform the allotted work by your supervisor. It is also reported that you are found missing from the work spot everyday half an hour to one hour before or after the lunch (i.e. Between 10.00 a.m. to 11.30 a.m. and wasting your valuable working time by often loitering and disturbing other co-workers while in their duty. You also have the habit of using filthy and abuse languages in the department and also often instigate and threaten the new apprentices to leave the company.

The above are serious acts of misconduct which amount to gross indiscipline, which is detrimental to the interest of the discipline and affects the production work adversely."

40. The Labour Court, after carefully examining the contents of the charges and also after relying on (i) Anil Gilurker vs. Bilaspur Raipur Kshetriya Gramin Bank and Another [2011 (14) SCC 379] and (ii) Anant R Kulkarni vs. Y.P. Educational Society and Another [2013(6) SCC 515], cited on behalf of the workman, has held that the charges were imprecise, vague and not specific. The two decisions of the Hon'ble Supreme Court of India, which were relied on by the learned Senior counsel laid down the principle that if the charges were bereft of specific details, the same could vitiate consequential disciplinary action. The Labour Court, after analysing the contents of the charges had therefore come to the conclusion that the domestic enquiry conducted on the vague charges was not fair and proper. The Labour Court, in fact has also premised its reason on the admitted fact that the basic report dated 30.10.2008, which was marked as Ex.M15 before the Labour Court, was not furnished to the workman along with the charge memorandum. In the absence of the basic report being furnished to the workman, though the workman has given his reply to the charge memorandum, the fact remained that the basis of the charges was not disclosed to the workman and non-furnishing of the basic report therefore amounted to not affording reasonable opportunity to the workman. This was more particularly so when the charges did not contain any details as to the date and time where the workman was found to be loitering and disturbing the other workers on their duty. The other charges of using filthy language, instigating and threatening of the new apprentices, which were also alleged without disclosing any specific date and time of such conduct exhibited by the workman during the period of his employment. In the above circumstances, the Labour Court was left with no option except to come to the conclusion that the domestic enquiry, on the basis of such vague charges, could not be held to be proper and fair, which conclusion by the Labour Court, in the opinion of this Court, does not suffer from any infirmity. As a consequence of such finding, the management could have sought permission of the Labour Court to let in fresh evidence to establish the charges against the workman, as the right of the Management to take action against the workman for proved charges is not taken away by the preliminary award.

41. Ultimately what remains to be seen is as to whether the Management could be said to have lost their right in the face of the preliminary award passed by the Labour Court. As held by the Hon'ble Supreme Court of India and this Court, the right of the Management to question the preliminary award is rather protected and such right can be enforced even after the final award is passed. Even assuming for a moment, the right of the Management suffered prejudice as a consequence of the adverse preliminary award and the Labour Court proceeding with the passing of final award, such prejudicial effect on the

Management is only transitory and not irreversible, as the right to challenge both the preliminary award as well as the final award is fully preserved for the Management. Therefore, in that view of the matter this Court is unable to appreciate as to how the management could said to be irreparably prejudiced in the teeth of the preliminary award passed by the Labour Court.

42.Considering the above facts and the finding of the Labour Court regarding the preliminary conclusion, this Court is of the view that there cannot be any other conclusion except the conclusion as reached by the Labour Court. When such is the position, the challenge by the Management to the preliminary award passed by the Labour Court appears to be lacking in bona fides and the same has to be discountenanced by this Court.

43.In these circumstances, this Court is of the firm view that the writ petition filed by the Management against the preliminary conclusion is not maintainable, as the preliminary award passed by the Labour Court against the Management did not finally determine the rights of parties, which could be prejudicial to the interest of one party against the other. As narrated above, there may be some cases, as a matter of exception, where any finding of the Labour Court on a preliminary framing of issue may go to the root of the matter like whether the Management is an industry or not? Whether the workman comes within the definition of the Industrial Disputes Act or not? and any such substantive maintainability issues are raised and any adverse finding is given, the party aggrieved need not be subjected to full fledged trial towards final resolution of the dispute. In such exceptional circumstances, the preliminary awards can be a subject matter of challenge. However, this is not one such case, which can be treated as exceptional one calling for intervention at the preliminary stage.

44.Be that as it may. As regards the second challenge is concerned, viz., the merits of the findings of the Labour Court, this Court, in the earlier part of the order, has in extenso extracted paragraph Nos. 14 to 20 of the preliminary award. From the contents of the reasons and the analysis of the Labour Court, it could be clearly discerned that the Labour Court has discharged the task of rendering a preliminary finding appreciably and effectively. The contents of the charges do not spell out any specific instances of the act of misconduct committed by the workman. The tone and tenor of the charges appear to be too generic of allegations, bereft of any details. In fact, admittedly, there was no separate imputation to the charge memorandum issued. The basic report on which the charges were framed, dated 30.10.2008, a copy of which was not furnished to the workman along with the charge memorandum. Ofcourse, the

basic report was furnished to the workman at the time of domestic enquiry, nevertheless, non furnishing of the basic report, which was a foundation of the charges, is deemed to have affected the right of the workman to defend the charges effectively.

45.The learned counsel appearing for the Management cited several decisions, which were referred to above, contending that the strict Rules of evidence need not be followed. No prejudice suffered by the workman was shown. The standard of proof in domestic enquiry is different from the standard of proof in the criminal proceedings. No details need to be mentioned in the charge memorandum. The Labour Court cannot also go into the correctness of the charges at the stage of giving a preliminary finding. This Court, while appreciating the arguments advanced on behalf of the management by the learned counsel, is in agreement with the submissions made in regard to each of those objections and contentions. However, ultimately the action of the Management has to be tested on the touch stone of prejudice. According to the learned counsel for the Management no prejudice was shown by the workman and therefore, the charges could not be termed as vague.

46.This Court is unable to comprehend and appreciate the arguments for the reason that the prejudice is writ large on the vagueness of charges, particularly when the charges were not accompanied by imputations. No doubt, the charge memorandum need not contain all details, but at the same time, in the absence of imputations of misconduct, the charge memorandum without specific details, has to be held as being vague and any disciplinary action initiated on such charges has to be held as vitiated.

47.In the case on hand, according to the learned counsel for the Management, no prejudice was shown by the workman, as he fully participated in the domestic enquiry and hence, there was absence of prejudice. Such contention cannot be countenanced both in law and on facts for the simple reason that the participation of the workman in the domestic enquiry does not absolve the Management from its responsibility of levelling specific charges against the workman, which could be understood by him in clear terms. The workman's participation in the enquiry was out of compulsion, as he had no choice and because of the fact that he participated in the enquiry, the workman cannot said to be not prejudiced at all. The prejudice can be noticed and found in the entirety of circumstances of the case and in the facts and circumstances of the present case, the charges suffer from vagueness. Once the charges were found to be vague, any domestic enquiry held into those charges cannot be

held to be fair and proper and that is what precisely the Labour Court finding is.

48. So much so was argued in regard to non application of Rules of Evidence, advocates assistance taken by the workman, standard of proof in the domestic enquiries etc. All that would have relevance only when charges are precise and specific. When the charges itself are proved imprecise, not specific and vague, these contentions advanced by the learned counsel for the Management will pale into insignificance. The finding of vagueness of the charges by the Labour Court is well founded and that finding of fact by the Labour Court can be interfered with by this Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, if only the finding is legally unacceptable and perverse. The impugned finding of the Labour Court does not suffer from either of the infirmities and therefore, this Court has to conclude that the findings of the labour Court do not call for interference.

49. The learned counsel for the Management would also submit that the Labour Court has exceeded its jurisdiction in going into the correctness of the charges. In fact, the learned counsel would rely on a specific decision of the Hon'ble Supreme Court of India in this regard in M.L.Singla vs. Punjab National Bank [2018 SCC Online SC 1585]. The learned counsel placed reliance on paragraph No. 34 of the decision, which was extracted supra. This Court once again is of the view that the observation of the Hon'ble Supreme Court of India would have relevance only if the Labour Court has gone into the correctness of the charges and rendered a finding on a preliminary issue. But as far as the present case is concerned, the Labour Court found that the charges itself were vague after a detailed consideration. When the charges itself were found to be vague, the question of appreciating the correctness of the charges does not arise at all. By implication, when the charges were found to be vague, it becomes non est. Therefore, the arguments advanced on behalf of the Management on this aspect is misconceived and does not merit serious consideration.

50. In the conspectus of the above discussion, this Court is of the view that the present challenge by the Management has to fail on two grounds, viz., (i) the challenge to the preliminary award, in the facts and circumstances of the case, is not maintainable in terms of several orders passed by the Hon'ble Supreme Court of India as well as this Court starting from Cooper Engineering case [(1975) 2 SCC 661], followed by ITC Ltd., case [2008 (4) CTC 465] and orders passed by this Court, which were referred to above. Even otherwise, the finding of the Labour Court in regard to the conduct of the

domestic enquiry being not fair and proper has to be upheld, since such finding is premised on concrete material and proper understanding of the facts and circumstances and the legal principle as relied on by the learned Senior counsel for the workman. This Court does not find anything amiss in the finding, calling for interference. The charges, even in the opinion of this Court, as it framed, are extremely vague and the Labour Court had no option except to come to the conclusion that any disciplinary action by the Management and the conduct of the domestic enquiry into the vague charges, stand vitiated.

51. In the said circumstances, this Court holds that the preliminary finding of the labour Court is perfectly in order and the writ petition shall stand dismissed. The Labour Court is directed to complete the proceedings and pass final award within a period of six months from the date of receipt of copy of this order. It is also made clear that in case the management wants to pursue its option to lead any evidence to establish the charges against the workman, it may approach the Labour Court with appropriate application and if such application is made, the same may be considered by the Labour Court. No costs. Consequently connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
III Additional Labour Court, Chennai

+1 cc to M/s.King & Partridge, Advocates, SR.No.75663
+1 cc to Mr.K.Sudalaikannu, Advocate Sr.No.75797

AKM/01.10.19/36P- 4C /
AKM/31.10.19

order in
W.P.No.19736 of 2018