

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CR No.6199 of 2016 (O&M)
Date of decision : 21.01.2019
Anil Kumar ...Petitioner

Versus

Managing Director M/s Contitech India Pvt. Ltd. ...Respondent

2. CR No.6208 of 2016 (O&M)
Date of decision : 21.01.2019
Prem Singh ...Petitioner

Versus

Managing Director M/s Contitech India Pvt. Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.S. Kharb, Advocate for the petitioner.
(In both the petitions)

Mr. Ashwani Talwar, Advocate for the respondent.
(In both the petitions)

ANIL KSHETARPAL, J.

By this order, two revision petitions bearing Nos.6199 and 6208 of 2016 shall stand disposed of.

The Tribunal has passed the order treating issue No.2 as preliminary issue and decided the same against the workman.

Learned counsel for the petitioner-workman contends that issue No.2 could not be treated as preliminary issue and the Tribunal was required to decide all the issues together.

On the other hand, learned counsel for the Management has submitted that in the references arising for Industrial Disputes Act, 1947, in a case dismissal/discharge of an employee in which services of the employee has been dispensed with after the domestic enquiry, Labour Court

should first decide as a preliminary issue that whether the domestic enquiry has violated the principles of natural justice or the enquiry was fair and proper.

Learned counsel for the petitioner has relied upon the order passed by the Coordinate Bench in *CR No.7760 of 2013, titled as Labh Singh Vs. General Manager, Haryana Roadway, Sonapat Depot*, in support of his contention.

This Court has carefully gone through the order passed by a Coordinate Bench and has also examined the issue in detail. In fact attention of the learned Single Judge while deciding CR No.7760 of 2013 was not drawn to various judgments passed by the Hon'ble Supreme Court, in this respect. Reference to one judgment would be sufficient i.e. **(1975) 2 SCC 661, The Cooper Engineering Ltd. Vs. Shri P.P. Mundhe**. In para 22 of the same, Hon'ble the Supreme Court held as under:-

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. 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.”

Later on, the learned Single Judge of this Court in the case of *Punjab Tractors Limited Vs. Presiding Officer, Labour Court and another*, decided on 31.10.2007 has in detail examined this issue and held that the Tribunal should treat such issue as preliminary issue.

Still further, while deciding the reference under the Industrial Disputes Act, 1947 against dismissal/discharge of an employee, the Industrial Tribunal/Labour Court ought to first decide the issue as to whether domestic enquiry was fair and proper and is in accordance with the principles of natural justice. If such issue is decided alongwith the main case, the Management would not be in a position to lead evidence before the Labour Court to prove the charge against the Workman.

In view thereof, there is no scope for interference.

Accordingly, both the revision petitions are dismissed.

21.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No