

218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.20528 of 2016

Date of decision: 14.10.2019

Dr. B.L. Kapur Memorial Hospital

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Ludhiana and another

...Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. B.S. Sudan, Advocate for
Mr. M.S. Virk, Advocate for the petitioner.Ms. Shaillie Mahajan, Advocate for
Mr. Sharwan Sehgal, Advocate for respondent No.2.

B.S. WALIA, J. (Oral)

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing Annexure P/18 dated 18.08.2016, rejecting the application filed by the petitioner under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), seeking approval for the dismissal of respondent No.2/workman.

2. Learned counsel for the petitioner by relying upon the decision of Hon'ble the Supreme Court in M/s Bharat Iron Works vs. Bhagubhai Balubhai Patel and others 1976 (1) SCC 518, contended that on finding being arrived at by the Industrial Tribunal-cum-Labour Court, Ludhiana (hereinafter referred to as 'the Tribunal') that the domestic enquiry was in violation of the principles of natural justice, the Tribunal was required to give an opportunity to the employer to

produce evidence, if any, and also to the workman to rebut the evidence if he so chose and on said exercise being carried out, the Tribunal was to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of misconduct with which the workman was charged. Learned counsel contends that despite prayer having been made in the written statement that in the eventuality of the domestic enquiry being found to be vitiated on any ground, management be permitted to defend the case on merits, no opportunity whatsoever was granted by the Tribunal. Learned counsel contended that in the circumstances the impugned order is liable to be set-aside and matter remanded to the learned Tribunal to proceed further in the matter in the light of the decision of Hon'ble the Supreme Court in M/s Bharat Iron Works's case (supra) and to give an opportunity to the employer to produce evidence as also to the workman to rebut the same if he so chooses and thereafter to arrive at a decision with regard to misconduct alleged against the workman. Relevant extract of M/s Bharat Iron Works's case (supra) is reproduced as under:-

“When an application under Section 33 whether for approval or for permission is made to a tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. It on the

other hand, there is violation of the principles of natural justice, the tribunal will then give opportunity to the employer to produce evidence, if any, and also to the workman to rebut it if he so chooses. In the latter event the tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's finding in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the tribunal on merits."

3. Learned counsel for the respondent-workman does not dispute the position as noticed above and states that she has no objection to the prayer of learned counsel for the petitioner subject to the condition that directions be issued to the learned Tribunal to conclude the proceedings at the earliest and in any case within a period of four months from the date the parties put in appearance before the Tribunal.

4. In view of the position as noted above, impugned order Annexure P/18 dated 18.08.2016, is set-aside. Case is remanded to the Tribunal to conduct proceedings in the light of the decision of Hon'ble the Supreme Court in M/s Bharat Iron Works's case (supra) in accordance with law from the stage of holding the inquiry to be not

fair and proper and thereafter to take a decision on the application U/s 33(2)(b) of the Act after providing effective opportunity to the parties to lead evidence, within a period of four months from the date of parties putting in appearance before the Tribunal. Parties are directed to put in appearance before the learned Tribunal on 01.11.2019.

5. Petition stands disposed of in the above terms.

(B.S. WALIA)
JUDGE

14.10.2019

rajesh.k.khurana

- | | | |
|------------------------------|---|---------|
| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |