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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.02.2019

+ **W.P.(C) No.6825/2017**

SWIFT SECURITAS (P) LTD PETITIONER
Through Mr.Arun Mehta, Adv. with
Mr.Prabha Mishra, Adv.

versus

GULSHAN SHARMA AND ANR RESPONDENTS
Through Mr.R.S. Jena, Adv. with Mr.Sonu
Kumar, Adv. for R-1 & 3.
Mr.Nitin Sen, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner/management has impugned the order dated 23rd May, 2017 as also the order dated 4th July, 2017, passed by the learned Labour Court XIX in LIR No.5609/2016, whereunder the Court has declined to treat the issue regarding the legality and validity of the domestic enquiry framed by it as a preliminary issue.

2. The brief facts as emerge from the record are that the respondent no.1 who had joined the services of petitioner/organization from 19th April, 2012, raised an industrial dispute on the ground that he had been illegally terminated, upon which a reference was made before the learned Labour Court XIX by way of LIR No.5609/2016. It may be noted that *per contra*, the stand of the petitioner was that the respondent no.1 had abandoned

his services and he was terminated only after a regular inquiry was held in accordance with the principles of natural justice.

3. In the light of the petitioner's submission that the respondent no.1 was discharged from service on the basis of the findings of a regular inquiry, the learned Labour Court had on the petitioner's request, vide its order dated 23rd May, 2017 framed an issue as to whether an inquiry had been conducted against the respondent no.1/workman and the consequences thereof. However, vide its subsequent order dated 4th July 2017, the learned Labour Court rejected the petitioner's request to treat the issue regarding the legality and validity of the domestic inquiry as a preliminary issue.

4. Mr.Arun Mehta, learned counsel for the petitioner submits that it is a settled legal position that in case it is found that the termination is preceded by a domestic enquiry, it is incumbent upon the learned Labour Court not only to frame an issue regarding the legality and validity of the inquiry but also to treat the same as a preliminary issue. He, therefore, prays that both the orders dated 23rd May, 2017 and 4th July, 2017 vide which the learned Labour Court had refused the petitioner's request to treat the issue regarding the legality of the domestic inquiry as a preliminary issue, are liable to be set aside.

5. On the other hand, Mr.Jena, learned counsel for the respondent no.1 supports the impugned orders and states that, in view of the petitioner's own conduct as also the fact that the said issue was brought to the notice of the Court only in the additional written statement filed by the petitioner, the learned Labour Court was not obliged to consider the same as a preliminary issue. He further states that even otherwise, the issue regarding the enquiry could only be proved by way of leading evidence and, therefore,

contends there is no infirmity in the order passed by the learned Labour Court in rejecting the petitioner's request for treating the issue regarding the inquiry as a preliminary issue. He, therefore, prays that the writ petition be dismissed.

6. Though respondent no 2 has filed a counter affidavit, learned counsel for the respondent no.2 states that the said respondent is only a proforma party and has no role to play in the matter.

7. I have considered the submissions of the learned counsel for the parties and carefully perused the record. It is a settled legal position that in case of any alleged termination, if the management claims to have held an inquiry, the Tribunal has to first consider whether a legal and valid inquiry in consonance with principles of natural justice has been held. If the said inquiry is found to be valid, it is not for the Tribunal to interfere with the findings arrived at in the inquiry unless the same are found to be perverse. In the light of the aforesaid legal position, it is not open for the Tribunal to consider the merits of the charge against the workmen when the domestic inquiry is found to be legal and valid and it is for this precise reason that the Courts have been repeatedly emphasising that the issue regarding the legality and validity of a domestic inquiry has to be treated as a preliminary issue. It is only in a case where there is an omission to hold an inquiry or the inquiry is held to be defective, that it is open for the Labour Court to take evidence itself regarding the alleged misconduct of the workman.

8. Even though there may be some merit in the contention of Mr.Jena that the petitioner having brought out the issue regarding the inquiry only at a belated stage, i.e., at the time of filing the additional written statement, the learned Labour Court was justified in not framing an issue regarding the inquiry at the first instance,

the question which remains to be seen is whether once the Court itself frames an issue regarding the domestic inquiry, can it refuse to treat the same as a preliminary issue? The answer in my opinion is a clear 'NO'. In my view, once the respondent no.1's termination was based on a domestic inquiry, it was incumbent upon the Court not only to frame a specific issue regarding the legality and validity of the inquiry, but also to treat the same as a preliminary issue. It needs no reiteration that the direction to treat the said issue as a preliminary issue only saves the time of the Court because in cases where no infirmity is found in the domestic inquiry, the industrial dispute can be decided expeditiously without calling for any evidence regarding the alleged misconduct of the workmen and it only needs to decide whether a case is made out for interfering with the quantum of punishment by exercising of its powers under section 11 A of the Industrial Disputes Act, 1947.

9. Reference may be made to the decision in ***M.L. Singla v. Punjab National Bank and Anr.*** [2018 SCC Online 1585], wherein the Supreme Court observed as under:

“20. When we examine the award in the light of detailed facts set out above, we find that the Labour Court committed more than one jurisdictional error in answering the Reference.

21. The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.

22. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

23. If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was

whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.

24. If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by respondent No. 1-Bank. This the Labour Court could do by taking recourse to the powers under Section 11-A of the ID Act.

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.

26. If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural justice thereby causing prejudice to the rights of the employee, respondent No. 1-Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits."

10. For the aforesaid reasons, the impugned orders dated 23rd May, 2017 and 4th July, 2017 passed by the learned Labour Court are wholly unsustainable and are quashed. The matter is remanded back to the learned Labour Court for framing the issue regarding the legality and validity of the domestic inquiry and treat the same as a preliminary issue. It is clarified that while deciding the preliminary issue, it will open for the learned Labour Court to call for any evidence in respect of the inquiry, if it deems necessary. It is hoped that, keeping in view the fact that the matter has remained pending before this Court also for some time, the learned Labour

Court will deal with the matter as expeditiously as possible.

11. The petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

FEBRUARY 18, 2019/aa

