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

Date of Decision:- 18.02.2019

\+ W.P.(C) 6826/2017 & CM APPL. 28422/2017

SWIFT SECURITAS (P) LTD ..... Petitioner

Through Mr.Arun Mehta with Mr.Prabha Mishra, Advs.

versus

GULSHAN SHARMA ..... Respondent

Through Mr.R.S.Jena with Mr.Sonu Kumar, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner impugns the order dated 04.07.2017 passed by the learned Labour Court in O.P. No.06/2017, whereunder the learned Labour Court has while framing the issues after completion of the pleadings in the petitioner's application u/s 33(1)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act), refused to frame any issue regarding the validity and legality of the domestic inquiry stated to have been conducted by the petitioner. The learned Labour Court has straightaway framed issues regarding the alleged misconduct of the respondent and as to whether the petitioner was entitled to get permission for dismissal/discharge of the respondent.

2. The brief facts as emerge from the record are that the respondent who had joined the services of the petitioner/organization from 19.04.2012, raised an industrial dispute on the ground that he had been illegally

terminated, upon which a reference was made on 08.04.2015 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 had abandoned his services.

3. During the pendency of the aforesaid reference, in the light of the subsequent disciplinary action taken against the respondent, the petitioner moved an application u/s 33(1)(b) of the Act seeking the permission of the Court to discharge the respondent, which was registered as O.P. No.06/2017. In the said application, the petitioner took a categorical plea that a valid domestic inquiry had been held against the respondent. However, despite the petitioner's aforesaid plea, the learned Labour Court vide its order dated 04.07.2017 straightaway framed issues regarding the alleged misconduct of the respondent and did not frame any issue regarding the validity and legality of the inquiry stated to have been held against him.

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 the order dated 04.07.2017 vide which the learned Labour Court failed to frame any issue regarding the legality and validity of the inquiry is liable to be set aside.

5. Mr.Jena, learned counsel for the respondent does not dispute the aforesaid position that the petitioner in paragraph 10 of its application, had specifically stated that the respondent had been discharged pursuant to a domestic enquiry held against him and had also prayed that an issue

regarding the legality and validity be framed and the same be treated as a preliminary issue. He also does not dispute that despite the petitioner's specific plea, no such preliminary issue was framed.

6. 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.

7. In my view once the respondent'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 its powers under to section 11A of the Act.

8. 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.*
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> *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.*
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> *22. Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.*
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> *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.*
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> *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.*
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> *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."*

9. For the aforesaid reasons, the impugned order dated 04.07.2017 passed by the learned Labour Court is wholly unsustainable and is quashed. The matter is remanded back to the learned Labour Court for framing a preliminary issue regarding the legality and validity of the domestic inquiry. 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.

10. The petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

FEBRUARY 18, 2019/sr