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

Date of Decision: 15th December, 2021

+ **W.P.(C) 14365/2021 & CM APPLs. 45272/2021, 45273/2021 &
45274/2021**

M/S RYAN INTERNATIONAL SCHOOL Petitioner

Through: Mr. Romy Chacko, Advocate.

versus

SHRI PAN SINGH Respondent

Through: None

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present petition has been filed challenging the order dated 15th February, 2020 passed by the Labour Court in **LIR No.4285/2016** titled **Sh. Pan Singh v. M/s. Ryan International School**, by which the enquiry report of the Petitioner/School against the Respondent/Workman has been held to be violative of the principles of natural justice, and hence, the same was discarded by the Labour Court.
3. The Respondent/Workman was working with the Petitioner/School as a transport in-charge from 1994 to 2010. The allegation against the Workman was that he was watching some indecent videos during school hours, and also showed the same to a female employee of the School. Consequently, the School, conducted a domestic internal enquiry against

him and dismissed the Workman from service. The Workman challenged the said dismissal before the Labour Court.

4. In the course of the proceedings before the Labour Court, the School relied upon the enquiry report. The Labour Court held that the mobile phone in which the indecent video was contained, was crucial evidence, and the same was initially not produced before the Enquiry Officer. The Enquiry was closed on 12th January, 2011. It was only upon a specific request by the School to re-open the enquiry proceedings as the mobile phone could not be produced as evidence at the earlier occasion, that the said mobile phone was permitted to be taken on record as additional evidence. According to the Labour Court, such a course of action was contrary to the principles of natural justice. Hence, it decided to discard the enquiry report.

5. Mr. Chacko, Id. Counsel for the Petitioner/School, submits that the Workman has admitted the incident which took place, vide his Letter dated 5th October, 2010, submitted to the Principal of the School. He further submits that, though the mobile phone was initially not produced before the Enquiry Officer as the same had been confiscated and kept in safe custody in the head office of the School, the mobile phone was produced at a later stage during enquiry proceedings. Further, an opportunity was also given to the employee to cross-examine the Management Witnesses. According to him, strict rules of evidence are not applicable to enquiry proceedings.

6. This Court has perused the Letter dated 5th October, 2010 as also the impugned order dated 15th February, 2020. In the opinion of this Court, the consequence of the Enquiry Report being discarded would, in effect, be that the School would have to lead independent evidence before the Labour Court, in order to contest the claim of the Workman.

7. In the opinion of this Court, a two-tranche challenge – first against the preliminary award or opinion and thereafter against the final award, ought not to be entertained. This is the settled position of law as laid down by the Supreme Court in ***Cooper Engineering Limited v. Sh. P.P. Mundhe*** [(1975) 2 SCC 661]. The relevant extract from the said judgment reads 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.”

8. Considering that the proceedings challenging the dismissal of the Workman are still pending before the Labour Court, the following directions are issued:

- i) The Enquiry report having been discarded by the Labour Court, the School shall now be given an opportunity to lead

independent evidence, before the Labour Court, in order to establish the misconduct alleged against the Workman;

- ii) The findings of the Labour Court in the impugned order dated 15th February, 2020 relating to the enquiry report shall be subject to the challenge, if any, which may be raised by the School, in the final award.
- iii) The findings in the impugned order dated 15th February, 2020 shall not come in the way of adjudication of the claims on merits as also in any challenge in respect of the final award.
- iv) A challenge to the impugned order dated 15th February, 2020 may also be raised by the School, if so required once the final award is passed. All contentions are left open. If such a challenge is preferred before this Court, the legality and validity of the impugned order dated 15th February, 2020 as also the final award shall be considered by the Court comprehensively, at that stage.

9. The petition is disposed of in these terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 15, 2021

Rahul/A