

\$~J-1 to 3 (S.B.)

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

Judgement reserved on **16.02.2021**
Judgement pronounced on **05.07.2021**

+ **W.P.(C) 8215/2019**

M/S DELHI INTERNATIONAL AIRPORT LTD.Petitioner

Through: Mr. Dinesh Agnani, Sr. Advocate with
Mr. Alok Kumar, Ms. Drishti Harpalani
and Mr. Uday Arora, Advocates.

versus

ASHWANI GOELRespondent

Through: Mr Rajiv Agarwal, Ms. Meghna De, Ms.
L. Gangmei and Mr. N. Bhushan, Advs.

+ **W.P.(C) 11157/2019, CM APPLs. 53086/2019, 14965/2020 and
27755/2020**

M/S DELHI INTERNATIONAL AIRPORT LTD.Petitioner

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Mr. Alok Kumar, Ms. Drishti Harpalani
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versus

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Through: Mr Rajiv Agarwal, Ms. Meghna De, Ms.
L. Gangmei and Mr. N. Bhushan, Advs.

+ **W.P.(C) 5854/2020**

SHRI ASHWANI GOELPetitioner

Through: Mr Rajiv Agarwal, Ms. Meghna De, Ms.
L. Gangmei and Mr. N. Bhushan, Advs.

versus

THE MANAGEMENT OF M/S DELHI INTERNATIONAL AIRPORT
PVT LTDRespondent

Through: Mr. Dinesh Agnani, Sr. Advocate with
Mr. Alok Kumar, Ms. Drishti Harpalani
and Mr. Uday Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

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Preface: -

1. The above-captioned writ petitions concern the respondent i.e. Mr. Ashwani Goel [hereafter referred to as “Mr. Goel”]. Mr. Goel, who was employed with the petitioner i.e. Delhi International Airport Pvt. Ltd. [hereafter referred to as “DIAL”] was served with an order of dismissal on 19.05.2010. This led to an eruption of a dispute between Mr. Goel and DIAL, and consequently, a reference was made to the Central Government Industrial Tribunal [hereafter referred to as the “Tribunal”].

1.1. During the pendency of the proceedings before the Tribunal, certain interim orders came to be passed followed by a final award, which has led to the institution of the above-captioned writ petitions.

1.2. DIAL has filed two writ petitions, i.e., W.P. (C) 8215/2019 and W.P. (C) 11157/2019. DIAL, via W.P. (C) 8215/2019, has assailed interim orders dated 11.03.2019 and 03.06.2019 [hereafter referred to as “impugned orders”]. Likewise, DIAL has assailed the final award dated 02.07.2019, passed by the Tribunal [hereafter referred to as “impugned award”], via W.P. (C) 11157/2019.

1.3. Since the impugned award, while setting aside the dismissal order and directing reinstatement of Mr. Goel with consequential benefits, limited the back wages to 60% of the outstanding amount, Mr. Goel has filed W.P. (C) 5854/2020 assailing this part of the impugned award.

2. Before I set out the core issues, which arise for consideration, in the above-referenced writ petitions, it would be relevant to set out the broad contours of the dispute obtaining between the parties.

Backdrop: -

3. Mr. Goel was issued an offer of appointment by DIAL as Senior Assistant - Airside Monitoring Inspector¹, in response to an application made by him, dated 04.07.2007. The offer letter required Mr. Goel to join DIAL on or before 15.07.2007 subject to him being declared medically fit. The offer letter referred, broadly, to the terms and conditions of the employment and also the fact that his spouse, two dependent children, and dependent parents including himself, will be covered under a Group Mediclaim Insurance Policy for a maximum amount of Rs. 1,50,000/- per annum. Besides this, it was also indicated that Mr. Goel will be exclusively covered under the Group Personal Accident Insurance. The premium, for the above policies, was to be factored in as cost to the company. A perusal of the offer letter discloses that Mr. Goel was required to report to “Head Airside”.

4. The offer made, was accepted by Mr. Goel and he joined DIAL’s services on 19.07.2007.

4.1. According to Mr. Goel, in and about, 17.05.2008, there was a fracas between him and two officials of Indian Airlines [i.e. Shri Baburao and Shri Govardan Lal] triggered by an intimation sent by him concerning an unattended

¹ See Clause 10 (e) of the Offer Letter dated 04.07.2007.

aircraft of Indian Airlines. Mr. Goel has claimed that the inspection vehicle in which the two employees [i.e. Baburao and Govardhan] approached the site, where the aircraft was parked, did not bear the original vehicle permit, which led to a scuffle. Mr. Goel claims that, although he was injured, he ended up being issued a memo dated 30.06.2008. This memo levelled charges of non-performance against Mr. Goel. Mr. Goel claims that he sent a response to the said memo, on 16.07.2008.

4.2. It is also claimed by Mr. Goel that the charge sheet dated 11.08.2008 was served on him on 21.08.2008 levelling charges of negligence qua work; to which a response was tendered by him on 24.08.2008. [See pages 109 to 113 of the LCR folder in the electronic file concerning W.P. (C) 8215/2019]

4.3. According to Mr. Goel, he received a notice dated 19.09.2009, which, *inter alia*, informed him that a departmental enquiry been initiated concerning his unauthorised absence, in pursuance of the charge sheet dated 27.08.2009.

4.4. Mr. Goel claims that, since he had not been served various documents including the charge sheet dated 27.08.2009, he served a demand letter dated 30.09.2009, on DIAL, seeking copies of the said documents along with the list of witnesses.

4.5. On the other hand, DIAL sets up a case of dereliction of duty against Mr. Goel, on account of unauthorised absence, for a total period of 88 days, between 01.06.2009 to 27.08.2009. This is captured in DIAL's communication

dated 27.08.2009, which, according to DIAL, was the charge sheet, based on which departmental enquiry was triggered *against* Mr. Goel.

4.6. According to DIAL, before the issuance of the aforementioned charge sheet dated 27.08.2009, three show cause notices [i.e. show cause notices dated 24.07.2009, 07.08.2009, and 14.08.2009] were served on Mr. Goel. DIAL claims that Mr. Goel chose not to reply to any of the said show cause notices. DIAL asserts that, finally, a notice of enquiry dated 19.09.2009 was served on Mr. Goel; as noticed above, the receipt of this communication by Mr. Goel, is not disputed. *Via* this notice, it was also indicated that one, Mr. Yudhveer Singh had been appointed as the enquiry officer.

4.7. Thereafter, Mr. Goel was served with another communication dated 22.09.2009 intimating him that the departmental enquiry *qua* charge sheet dated 27.08.2009 will commence on 30.09.2009.

4.8. It is DIAL's case that, although Mr. Goel presented himself before the enquiry officer on 30.09.2009, he did not allow the proceedings to continue in an orderly manner. DIAL's stand is that Mr. Goel created a ruckus and snatched papers from the enquiry officer. The enquiry officer, however, according to DIAL, despite the disturbance caused by Mr. Goel on 30.09.2009, adjourned the matter to 08.10.2009 hoping that Mr. Goel would participate in the proceedings.

4.9. Mr. Goel, however, takes the stand that he served a demand letter dated 30.09.2009 on the enquiry officer calling upon him to furnish the copy of the charge sheet and other documents including the list of witnesses.

5. The record is suggestive of the fact that Mr. Goel did not join the proceedings on 08.10.2009. The enquiry officer, it appears, adjourned the proceedings to 21.10.2009. Mr. Goel once again chose not to join the proceedings, and instead, sent a communication dated 30.10.2009, wherein he, *inter alia*, placed on record the fact that he had not been able to join the proceedings, as he had severe pain in his back, and also, since a substantive part of his dues had not been cleared, he did not have the money to even commute to and fro from the venue where the proceedings were being held.

6. Since Mr. Goel did not appear on 21.10.2009, it appears that the enquiry officer adjourned the proceedings to 05.11.2009. This position obtained [i.e. the absence of Mr. Goel from the proceedings] on subsequent dates as well viz. 18.11.2009, 30.11.2009, and 17.12.2009.

6.1. Mr. Goel, it appears, was aware of these proceedings, and instead of joining these proceedings entered into correspondence with the enquiry officer. In the record, there is a reference to at least 3 letters that Mr. Goel sent, possibly, to the enquiry officer. These letters are dated 14.11.2009 and 23.11.2009; which were put on record by the enquiry officer on 30.11.2009.

6.2. According to DIAL, it is when the enquiry officer failed to persuade Mr. Goel to join the proceedings, the enquiry officer was constrained to proceed ex parte against him and render his report dated 19.02.2010.

6.3. A perusal of the enquiry report dated 19.02.2010 would show that two witnesses were examined on behalf of DIAL, both of whom testified, that Mr. Goel had remained absent for the period referred to in the charge sheet dated 27.08.2009. Besides this, the enquiry report also adverts to various dates when opportunities were given to Mr. Goel to join the proceedings, and that he chose not to join the proceedings and instead entered into correspondence with the enquiry officer; an aspect to which I have referred to hereinabove. The enquiry report concluded with the finding that the charge levelled against Mr. Goel, of unauthorised absence from duty, stood proved.

6.4. DIAL claims that, thereafter, a notice dated 11.03.2010 was issued to Mr. Goel, calling upon him to show cause as to why he should not be meted out the punishment of dismissal from service.

6.5. Mr. Goel submitted a reply dated 05.05.2010 *qua* the said show cause notice. However, the reply did not pass muster with DIAL, and consequently, the order dated 19.05.2010 was issued, dismissing Mr. Goel from service.

7. After nearly 11 months, Mr. Goel served a legal demand notice on DIAL dated 29.04.2011. Since no response was received *qua* the same, recourse was taken to the next step available in law i.e. conciliation proceedings. Because the conciliation proceedings failed, the appropriate government, on

13.12.2012, referred the dispute to the Tribunal for adjudication in the exercise of its powers under Section 10(2A)(1)(d) of the Industrial Disputes Act, 1947 [in short “I.D. Act”]. The reference made to the Tribunal was *qua* the following aspect.

“Whether the action of the management of Delhi International Airport Pvt. Ltd. in dismissing the services of Shri Ashwani Goel [sic *in dismissing Shri Ashwani Goel from service*] w.e.f. 19.05.2010 is legal and justified? What relief the workman is entitled to?”

8. Consequent thereto, on 31.01.2013, Mr. Goel filed his statement of claim. This was followed by a reply filed on behalf of DIAL. DIAL filed its reply in and about March 2013. On 14.03.2013, the Tribunal framed the following issues in the matter.

- i. “Whether the claimant is a workman within [the] meaning of S. 2(3) [sic *Section 2(s)*] of the I.D. Act?
- ii. Whether the enquiry conducted by the management was just, fair and proper.
- iii. Whether punishment awarded to the claimant commensurate with his misconduct.
- iv. As in terms of reference issues 1, 2 are treated as [a] preliminary issue.”

9. Before the Tribunal, Mr. Goel filed his affidavit of evidence [Ex. WW1/A]. Likewise, DIAL cited only one witness, namely, Mr. Shivnath Singh [MW1]. Like Mr. Goel, he also tendered his evidence by way of affidavit. Both, Mr. Goel and Mr. Shivnath Singh, were subjected to cross-examination. *Via* order dated 11.03.2019, the Tribunal rendered its decision vis-à-vis issue nos. (i) and (ii). These issues were considered, preliminary issues by the Tribunal. Both issues were decided in favour of Mr. Goel.

9.1. The Tribunal, thus, not only held that Mr. Goel was a workman under the meaning of Section 2 (s) of the I.D. Act but also went on to rule that the enquiry conducted against Mr. Goel was not fair, as there was a violation of the principles of natural justice since the relevant documents and list of witnesses was not furnished to him, and he was not paid subsistence allowance during the period of suspension. The Tribunal also went on to state that, DIAL had failed to prove that the enquiry proceedings were conducted, as no one associated with the enquiry or in the making of the report, had been examined.

9.2. Pertinently, on that very date, i.e., 11.03.2019, an application was moved on behalf of DIAL stating that, since the matter was at a preliminary stage and was listed on 22.04.2019, and therefore, an opportunity be given to “prove the enquiry and examine the enquiry officer”. A short reply was filed on behalf of Mr. Goel to the said application in opposition to the prayer made therein, principally, on the ground that, such permission could not be granted at the stage at which the matter was positioned.

9.3. The order sheet of 22.04.2019 shows that arguments on DIAL’s aforementioned application dated 11.03.2019 were heard. Besides this, the order sheet of that date i.e. 22.04.2019, also adverts to the fact that “final arguments” had also been heard in the matter; parties were, however, given an opportunity to file judgements and the matter was reserved for "orders/award". Pertinently, the proceedings sheet dated 22.04.2019 did not refer to any further date. However, on 28.05.2019, the matter was listed before the Tribunal. Since parties were unaware of this date, they went unrepresented on that date. The

Tribunal, however, dismissed DIAL's application dated 11.03.2019, *via* its order dated 28.05.2019, and once again listed the matter for final arguments on 03.06.2019. It appears that, on 03.06.2019, final arguments were heard once again in the matter, whereupon it was reserved for orders/award. As noted above, the impugned award was passed on 02.07.2019 with a direction that same be sent to the appropriate government for publication under Section 17 of the I.D. Act. The impugned award was published on 08.07.2019.

9.4. In the interregnum, DIAL had moved its first writ petition, i.e. W.P. (C) 8215/2019 wherein, as noticed above, it laid a challenge to the orders dated 11.03.2019 and 03.06.2019. Notice in this petition was issued on 30.07.2019 which was made returnable on 01.08.2019. On 01.08.2019, W.P. (C) 8215/2019 was adjourned to 08.08.2019 for further consideration. On 08.08.2019, the Court was informed that the impugned award had been passed. Accordingly, an opportunity was granted to Mr. Goel to file a counter-affidavit. Likewise, DIAL was given leave to file a rejoinder. The matter was listed for further proceedings on 09.10.2019. Since counsel for DIAL informed the Court that DIAL intended to challenge the award, the matter was adjourned to 10.12.2019 while giving further time to the parties to complete pleadings.

9.5. It is in this backdrop, DIAL's second writ petition i.e., W.P. (C) 11157/2019 was listed before the Court on 21.10.2019. On that date, notice was also issued which was made returnable on 10.12.2019. On 10.12.2019, in W.P. (C) 11157/2019, the Court stayed the operation of the impugned award subject to DIAL depositing Rs. 15 lakhs with the Registrar General of this Court and

paying Rs. 15,000 to Mr. Goel towards litigation expenses. Compliance with these directions was required to be made by DIAL within 6 weeks from the date of the passing of the said order.

9.6. On the other hand, Mr. Goel's writ petition i.e. W.P. (C) 5854/2020 came up for hearing on 01.09.2020 when, the Court issued notice and directed that the same be listed along with DIAL's writ petition, i.e., W.P. (C) 8215/2019.

9.7. Since then, pleadings in the matters have been completed.

9.8. It is relevant to note that, on behalf of Mr. Goel, an application under Section 17B of the I.D. Act i.e. CM No. 14965/2020, filed in W.P. (C) No. 11157/2020, was moved on 22.07.2020 when a notice was issued in the said application. Although pleadings in this application were complete, since the above-captioned writ petitions were taken up for final disposal, no orders were sought in this application.

Submissions on behalf of Mr. Goel: -

10. Mr. Rajiv Agarwal, who appeared on behalf of Mr. Goel, broadly made the following submissions.

- i. The writ petitions filed by DIAL were not maintainable as they did not meet the parameters set forth by the Supreme Court in several

judgements including in *Syed Yakoob vs. K.S. Radhakrishnan and Ors.*², AIR 1964 SC 477.

- ii. DIAL has, via its writ petitions, attempted to raise new pleas, which were never raised before the Tribunal for its consideration.
- iii. The Tribunal had treated issue nos. (i) and (ii) as preliminary issues, and gone on to decide the same against DIAL, via its order dated 11.03.2019. DIAL had not sought leave of the Tribunal to prove charge on merits against Mr. Goel. The Tribunal had ruled that the onus for proving misconduct was on DIAL, and since DIAL led no evidence, the alleged misconduct could not be proved. Therefore, the Tribunal had rightly set aside the order of dismissal terming it to be illegal and unjustified.
- iv. Since DIAL had chosen not to take an alternative plea i.e. of being given leave to prove the charges, in its written statement, DIAL could not be allowed to do so, at this stage. Even before the Tribunal, DIAL had applied for proving the enquiry report which was correctly rejected by the Tribunal. [See *Shambhu Nath Goyal vs. Bank of Baroda and Ors.*, (1983) 4 SCC 491³; *Karnataka State Road Transport Corporation vs.*

² In short “*Syed Yakoob Case*”]

³ In short “*Shambhu Nath Goyal Case*”

Smt. Lakshmiddevamma & Anr., AIR 2001 SC 2090⁴; and *Delhi Transport Corporation vs. Rakesh Kumar*, 2018 (5) SLR 268].

- v. DIAL's application dated 11.03.2019 was rightly dismissed by the Tribunal, vide its order dated 28.05.2019, as, apart from anything else, the plea was not raised at the appropriate stage. Likewise, this Court should not allow DIAL to fill the lacunae in its pleadings and evidence.
- vi. The fact that Mr. Goel was not paid his salary, medical claim, and subsistence allowance, made it difficult for him to join the enquiry proceedings. This was despite Mr. Goel putting these aspects on record vide letter dated 30.10.2009 [Ex. WW1/7]. [See *Ghanshyam Das Shrivastav vs. State of Madhya Pradesh*, AIR 1973 SC 1183].
- vii. The Tribunal erred in not granting 100% of the back wages to Mr. Goel once it had been held by the Tribunal that his dismissal from service was illegal and unjustified, and that, in the interregnum, he was not gainfully employed. [See *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors.*, (2013) 10 SCC 324]
- viii. Given the aforesaid submissions, W.P. (C) 8215/2019 and W.P. (C) 11157/2019 should be dismissed and W.P. (C) 5854/2020 should be allowed.

⁴ In short "*Lakshmiddevamma* Case"

Submissions on behalf of DIAL: -

11. Mr. Dinesh Agnani, learned senior counsel, who appeared on behalf of DIAL, made the following broad submissions.

- i. The Tribunal, after having decided the preliminary issues on 11.03.2019, did not allow DIAL to prove the charges on merits despite an application having been moved for the said purpose on that very date. Arguments in this application and the main matter were heard on 22.04.2019 whereupon the matter was reserved for orders/award. Thereafter, without notice to parties or their counsel, DIAL's application dated 11.03.2019 was listed for orders on 28.05.2019. Since no prior notice had been issued, the parties went unrepresented on that date. However, the Tribunal dismissed DIAL's application on 28.05.2019 and listed the main matter on 03.06.2019.
- ii. DIAL's lawyer got to know about the fact that the main matter was listed on 03.06.2019 when he happened to be in Court, for another matter. [See Assertions made in paragraph 7 of W.P. (C) 8215/2019] On 03.06.2019, once again, arguments were heard in the main matter. This was followed by the Tribunal passing the impugned award. The procedure followed by the Tribunal was flawed, as no opportunity was given to DIAL to argue or adduce evidence as regards the final reliefs sought by Mr. Goel.

- iii. The Tribunal ought to have allowed DIAL to lead evidence to prove charges even if it concluded that, the domestic enquiry stood vitiated for the reasons given in the order dated 11.03.2019.
- iv. In the facts of the present case, the Tribunal should have, if nothing else, used its discretion and called upon DIAL to lead additional evidence on the merits of the case. This submission was made in the context of the submission that, not less than 7 opportunities were given to Mr. Goel to join the enquiry proceedings, and, *inter alia*, place on record the documents, which would establish that he was ill as contended by him, and therefore, remained absent from duty between 01.06.2009 and 27.08.2009. [See *Shambhu Nath Goyal* Case, *Lakshmiddevamma* Case and *Delhi Transport Corporation vs. Sunil Kumar*⁵; 2010 SCC OnLine Del 1580]
- v. There was no breach of principles of natural justice, as alleged or at all. Furthermore, Mr. Goel had been furnished a copy of the charge sheet. Demand letter dated 30.09.2009 was placed on record before the enquiry officer only to delay the proceedings. Had Mr. Goel joined the enquiry proceedings, the enquiry officer would have ensured that, whatever was required, was furnished to him.
- vi. In support of his submissions, apart from the judgements referred to hereinabove, reliance was also placed on *Biecco Lawrie Limited and*

⁵ In short “*Delhi Transport Corporation* Case”

Anr. vs. State of West Bengal and Anr.; (2009) 10 SCC 32, *University of Delhi vs. Suresh Chand*; 2007 (93) DRJ 455 and *High Court of Gujarat vs. Hitendra Vrajlal Ashara and Anr.* (2014) 15 SCC 614.

Analysis and Reasons: -

12. Having heard counsel for the parties and also examined the record, to my mind, two issues arise for consideration.

- i. First, whether, in the facts and circumstances of the case, the Tribunal could have called upon DIAL to lead evidence qua the alleged misconduct i.e. unauthorised absence from duty?
- ii. Second, if the answer to the first issue is in the affirmative, what are the directions that a Court can issue, at this stage?

Issue no. (i): -

13. In respect of the first issue, it is clear that arguments of both sides veer around the judgements of the Supreme Court rendered in *Shambu Nath Goyal* Case and *Lakshmiddevamma* Case. Before I proceed to discuss the said judgements, it would be important to bear in mind the following facts.

- i. Mr. Goel joined DIAL's services as Senior Assistant - Airside Monitoring Inspector on 19.07.2007. He was served with a charge sheet dated 27.08.2009, wherein the accusation levelled against Mr. Goel was that he had absented himself from duty without permission for 88 days spanning between 01.06.2009 and 27.08.2009.

- ii. An enquiry officer was appointed by DIAL on 19.09.2009. The enquiry officer was unable to persuade Mr. Goel to join the proceedings. The enquiry proceedings, according to the record, were convened on 30.09.2009; 08.10.2009; 21.10.2009; 05.11.2009; 18.11.2009; 30.11.2009; and 17.12.2009.
- iii. Mr. Goel submitted a demand letter on 30.09.2009 to the enquiry officer, wherein he articulated, why he did not want to join the proceedings. *Inter alia*, he adverted to the fact that he had not been furnished with a copy of the charge sheet, documents relied upon by DIAL, and the list of witnesses. There was no reference, at this stage, about other aspects, i.e., that his salary had not been paid, or he had not been paid subsistence allowance. This aspect was flagged by Mr. Goel, for the first time, in his communication dated 30.10.2009, after the enquiry proceedings had been convened on three occasions i.e. 30.09.2009; 08.10.2009; and 21.10.2009.
- iv. Mr. Goel, at no stage, submitted his medical record, as one of the reasons he gave for not joining the enquiry proceedings was that he was suffering from severe back pain since 17.05.2009. Mr. Goel however, entered into correspondence with the enquiry officer, and qua this, there is a reference in the record to letters dated 14.11.2009 and 23.11.2009.
- v. Pertinently, in his testimony recorded before the Tribunal, Mr. Goel has accepted that he did not submit his medical record to the enquiry officer.

“... It is incorrect that my claim relating to fairness of the enquiry is not based in facts. **I have not sent my medical certificate to the Enquiry Officer.** ... “

[Emphasis is mine]

- vi. What is also not in dispute is that the Tribunal treated issue nos. (i) and (ii) [which related to whether Mr. Goel was a workman within the meaning of Section 2(s) of the I.D. Act and whether the enquiry was conducted in a just, fair and proper manner] as preliminary issues. Both issues were decided against DIAL by the Tribunal, vide its order dated 11.03.2019. Insofar as issue no. (ii) is concerned, the Tribunal, *inter alia*, made the following observations.

“6-.....Thus, it emerges from the evidence adduced on record that copy of the documents relied upon by the Management and list of witnesses to be examined by the Management were not at all supplied to the claimant despite his demand vide letter Ex.WW1/6. It is worthwhile to mention here that denial of documents upon which reliance was placed by the Management and list of witnesses which are/were important documents for claimants to defend the case, amounts to depriving him from defending the case in a proper manner. Depriving the workman to defend his case with the relevant documents and list of witnesses amounts to violation of the principle of natural justice.

7- It is fairly settled that the payment of subsistence allowance, in accordance with the rules, to an employee under suspension, is not a bounty but it is a right. Non-payment of the subsistence allowance from the date of suspension till removal is a clear case of breach of principles of natural justice. To this view I am fortified by the decision of Hon'ble Supreme Court in the case of Jagdamba Prasad Shukia Vs. State of UP and others, Manu/SC/0524/2000. Depriving the workman to defend his case with the relevant documents and list of witnesses amounts to violation of the principle of natural justice. It has come on record that claimant who was terminated from service vide order dated 19/5/2010 was not paid subsistence allowance or salary w.e.f. 1/6/2009. As such, there was also breach of principle of natural justice by the Management.”

- vii. The Tribunal in paragraph 8 of the very same order went on to hold the following.

“According to the Management, Shri Yudhveer Singh, Advocate was appointed as Enquiry Officer and he had conducted enquiry against the claimant. However, MW1 Shiv Nath Singh admitted that there is no document on record to show that Shri Yudhveer Singh was appointed as Enquiry Officer. It is pertinent to mention here that so as to prove enquiry proceedings & enquiry report before this Tribunal and/or to rebut the specific allegations of the workman as aforesaid, the Management has not examined Shri Yudhveer Singh -the Enquiry Officer or any other person who was actively associated with the domestic enquiry. MW1 Shri Shiv Nath Singh clarified that Shri Yudhveer Singh, Advocate/Enquiry Officer is alive. He also clarified that he was appearing as an official (of the Management) to watch the proceedings. Admittedly, MW1 was not actively involved in any manner in the domestic enquiry. Thus it is crystal clear, the said witness of the Management was not at all associated with the enquiry proceedings at any stage. To my mind, non examination of the Enquiry Officer or any other official who was associated with the enquiry proceedings, is fatal to the case of the Management, so far as proving of enquiry report and its proceedings is concerned.....”

- viii. On the date, when the order dated 11.03.2019 was passed by the Tribunal, DIAL moved an application before the Tribunal seeking to prove the enquiry proceedings and enquiry report. This application was, to say the least, inappropriately drafted, if the intention of DIAL was to be allowed to prove the alleged misconduct committed by Mr. Goel. The Tribunal, therefore, in my view, correctly dismissed the application vide its order dated 28.05.2019. The Tribunal based its order dated 28.05.2019 on two grounds. First, that the stage for filing the application had been crossed, as there was no alternate plea raised in the written statement/reply of DIAL to the effect that it ought to be allowed to prove the alleged misconduct committed by Mr. Goel. Second, as noticed

above, the application did not read the way it ought to have read if such an opportunity was sought. The application sought leave to prove the enquiry proceedings and the enquiry report and not the charge of unauthorised absence.

14. Therefore, when the Tribunal proceeded to pass the impugned award, it rejected the contention made on behalf of DIAL, and in my view, rightly, that there was no breach of natural justice, as a ruling in that behalf had already been rendered by it, on 11.03.2019.

14.1. As regards the alleged misconduct of Mr. Goel was concerned, the Tribunal observed that the onus to prove the said allegation was upon DIAL, which, having not been discharged, could not help its cause. Furthermore, the Tribunal also went on to hold that since no personal hearing had been accorded to Mr. Goel before the imposition of penalty of dismissal from service, the order passed to that effect [i.e. order dated 19.05.2010] could not be sustained. The relevant observations, made in the impugned award, are extracted hereafter.

“10-.....The Management in its written statement had not reserved its right to prove the allegations of misconduct against the claimant/workman. Charge sheet dated 27/8/2009 contained allegations of misconduct against the claimant/workman to the effect that he had been unauthorisedly absenting from duty w.e.f. 1/6/2009 without prior sanction of any leave or any intimation and the management sent him various communications vide letters dated 24/7/2009, 7/8/2009 and 14/8/2009 but he neither responded nor joined duty and this remained absent from duty for 88 days. Onus to prove the allegations of misconduct against the workman/claimant was/is upon the Management. The Management has not led any evidence to prove the misconduct regarding unauthorized absence from duty by the workman/claimant or to prove service of the aforesaid letters to the claimant/workman. Even if it is

assumed for the sake of arguments that the workman/claimant remained absent from duty unauthorisedly and this fact was held to be proved by the Enquiry Officer in his enquiry report, in that eventuality also the Disciplinary Authority was required to give personal hearing to the workman before imposing penalty upon the workman. There is nothing on record to show that personal hearing was afforded to the claimant/workman prior to imposition of penalty of removal/dismissal from service. ...”

15. Given the aforesaid facts and circumstances, the question that arises for consideration is, firstly, was there any residuary power left in the Tribunal to call upon DIAL to lead evidence on the merits of the case. Mr. Agarwal has relied upon the judgement in *Shambu Nath Goyal* Case and *Lakshmiddevamma* Case to contend that, once the Tribunal holds that the enquiry is vitiated then, the management can be allowed to lead evidence qua the alleged misconduct only if a plea to that effect finds a place in the written statement. On the other hand, Mr. Agnani argued that leeway was, indeed, available to the Labour Court/Tribunal, if the facts and circumstances required such an approach to be adopted.

15.1. It is, thus, important to briefly advert to what, exactly is the ratio of the Constitution bench judgement in *Lakshmiddevamma* Case. The Constitution Bench in the said case was called upon to resolve if any, the conflict between the decisions rendered by the Court in *Shambu Nath Goyal* Case and *Rajendra Jha vs Presiding Officer, Labour Court*, 1984 SCC Supp. 520⁶.

15.2. The Constitution Bench [speaking through Hon’ble Mr. Justice Santosh Hegde, as he then was, for himself, and Hon’ble Mr. Justice S.P. Bharucha]

⁶ In short “*Rajendra Jha* Case”

concluded that there was no conflict between the view taken in *Rajendra Jha* Case and *Shambu Nath Goyal* Case. The Court observed that *Rajendra Jha* Case was decided based on facts obtaining in the said matter without laying down any principle of law. The Court went on to say that, in the *Rajendra Jha* Case, the bench did not take a view that was opposed to the principle laid down in *Shambu Nath Goyal* Case. In effect, according to the Constitution Bench, there was no conflict in the two judgements. [See paragraph 6⁷ at page 438].

15.3. Furthermore, the Constitution Bench proceeded to examine the matter further, because of the view taken in some judgements that had been cited before it, which though rendered before the decision in *Shambu Nath Goyal* Case had led to some abstruseness. In short, the Court was keen on putting a quietus to the issue raised before it. The Court after examining its earlier judgements observed that while all judgements cited before it, were agreed on a right being conferred on the management to lead evidence on merits to justify the impugned dismissal of the employee, there was a difference of opinion concerning the timing of such application by the management. The Court observed that, while in some judgements it had been held that the management could avail of this right at any stage of the proceedings, i.e., right up to the

⁷ “6. Thus it is seen from the above observations of the Court in *Rajendra Jha* case [1984 Supp SCC 520 : 1985 SCC (L&S) 235 : (1985) 1 SCR 544] that the same is decided on the facts of the said case without laying down any principle of law nor has the Court taken any view opposed to *Shambhu Nath Goyal* case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] . Therefore, having considered the two judgments, we are of the opinion that there is no conflict in the judgments of this Court in the cases of *Shambhu Nath Goyal* [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] and *Rajendra Jha* [1984 Supp SCC 520 : 1985 SCC (L&S) 235 : (1985) 1 SCR 544] .”

stage of pronouncement of the order, other judgements had taken a view that the said right could be invoked only at the threshold. [See paragraph 9⁸ at page 439]

15.4. The Court finally, agreed with the view taken in the *Shambhu Nath Goyal* Case, which was that the alternative plea for leave to lead evidence qua the alleged misconduct should be taken at the earliest, i.e., in the written statement filed in the Section 10 proceedings or, in an application filed under Section 33 of the I.D. Act. The Court was also of the view that, since the ruling rendered in *Shambhu Nath Goyal* Case had prevailed for nearly 18 years, it ought not to be unsettled. In this context, the Court applied the doctrine of stare decisis. [See observations in paragraph 16⁹ and 17¹⁰ at pages 441 and 442]

⁸ “9. Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this Court have[sic has] agreed on the conferment of this right on the management but there seem to be some differences of opinion in regard to the timings of making such application. While some judgments hold that such a right can be availed of by the management at any stage of the proceedings right up to the stage of pronouncement of the order on the original application filed either under Section 10 or Section 33(2)(b) of the Industrial Disputes Act, some other judgments hold that the said right can be invoked only at the threshold.”

⁹ “16. While considering the decision in *Shambhu Nath Goyal* case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the case of *Cooper Engg.* [(1975) 2 SCC 661 : 1975 SCC (L&S) 443 : (1976) 1 SCR 361] However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in *Goyal* case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the management had to exercise its right of leading fresh evidence at the first available

15.5. Importantly, Hon'ble Mr. Justice Y.K. Sabharwal, as he then was, rendered a dissenting opinion. In sum, Justice Sabharwal held that the employer's request, if made before the close of proceedings, should be examined by the Tribunal, on its own merits, and while doing so it should exercise its discretion on well-settled judicial principles. Besides this, he observed that the Tribunal should also examine the bona fides of the employer in making such an application. According to Justice Sabharwal, the procedure laid down in *Shambu Nath Goyal* Case if followed would not be just, fair and reasonable to both, the employer as well as the workmen. Justice Sabharwal went on to hold that, the decision in *Shambu Nath Goyal* Case had not attracted the doctrinal status of stare decisis [See paragraphs 39¹¹, 40¹²].

opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.”

¹⁰ “17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambhu Nath Goyal case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambhu Nath Goyal case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] is just and fair.”

¹¹ “39. For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to the statement of claim in proceedings under Section 10 or when an application is filed for approval under Section 33(2)(b) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request, when made

Interestingly, other two judges on the bench, i.e., Hon'ble Mr. Justice Shivraaj V Patil and Hon'ble Mr. Justice V.N. Khare, while agreeing with the view taken by Justice Hegde, on his behalf and on behalf of Justice Bharucha, made the following critical observations. [See paragraphs 44¹³ and 45¹⁴ at page 452]

before close of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/Tribunal will exercise discretion on well-settled judicial principles and would examine the bona fides of the employer in making such an application.”

¹² “40. The doctrine of stare decisis has also no applicability. In decisions earlier to Shambhu Nath Goyal case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] the consistent view was that the prayer for adducing evidence could be made before the close of proceedings. Soon after Shambhu Nath Goyal case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] , in Rajendra Jha case [1984 Supp SCC 520 : 1985 SCC (L&S) 235 : (1985) 1 SCR 544] similar view was expressed. The procedure laid down in Shambhu Nath Goyal case [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] would not be just, fair and reasonable both to the employer and the workman. The said decision has not acquired the status attracting the doctrine of stare decisis. Shambhu Nath Goyal [(1983) 4 SCC 491 : 1984 SCC (L&S) 1 : (1984) 1 SCR 85] represents a highly technical view. Considering that we are considering the rule of convenience, expediency and prudence and there is no statutory prohibition, the procedure which promotes the cause of both the employer and the workman deserves to be laid down.”

¹³ “44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgment of Hegde, J. and not the power of the court/tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short “ the Act”) a court/tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the rules framed thereunder and in accordance with the principles of natural justice. Under Section 11(3), the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.”

15.6. This approach was adopted by a Single Judge of this Court in ***Delhi Transport Corporation***¹⁵ Case, wherein it was, *inter alia*, held that Labour Court had unfettered power to direct the management to lead additional evidence at any stage of the hearing before it is finally concluded, if it is considered just and proper to meet the ends of justice.

¹⁴ “45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.”

¹⁵ “23. Hence, on a careful reading of the majority decision of the Constitution Bench of the Apex Court in Lakshmiddevamma's case the same decision as interpreted by the Apex Court in Divyash Pandit's case, there cannot be any manner of doubt that the management has to exercise its right for seeking opportunity to lead fresh/additional evidence at the first available opportunity by raising a specific plea in the written statement/reply itself so far the industrial dispute raised by the workman under Section 10 of the Industrial Disputes Act is concerned or in the application filed under Section 33 I.D. Act and not at a subsequent stage after the enquiry is held to be vitiated by the Labour Court after the decision on the preliminary issue. This is the position so far the right of the petitioner management is concerned, but however, so far the powers of the Labour Court/Industrial Tribunal are concerned, the clear legal position that emerges from the above decisions is that the Labour Court/Industrial Tribunals have unfettered powers to direct the management to lead additional evidence including production of documents at any stage of the proceedings before the hearing is finally concluded, if in the facts and circumstances of the case, the exercise of such power is considered just and proper to meet the ends of justice.”

15.7. That being said, one needs to reiterate the contours of the jurisdiction of the Court while exercising powers under Article 226 of the Constitution as what I am called upon to deal with are writ actions: The Court, while exercising supervisory jurisdiction, does not act as an appellate Court. The Court is not entitled to supplant its views with those of the Tribunal or courts subordinate to it only because another view is possible. The Court is concerned with the decision-making process and not with the decision. The Court, therefore, does not reappreciate evidence and, thus, cannot interdict the decision of the Tribunal on the ground of insufficiency or inadequacy of evidence or material. The Court can, however, correct errors of law which are apparent on the face of the record. The Court does not interfere with the findings of fact, however, grave they may be, except when they are perverse i.e. not based on evidence, or are pivoted on inadmissible evidence or are rendered in disregard of admissible evidence. The Court's areas of interference, ordinarily, relate to cases where the Tribunal/subordinate Courts act without jurisdiction, exercise their jurisdiction irregularly or fail to exercise jurisdiction, which is vested in them. The Court is bound to interfere when affected parties are not heard or a procedure is adopted which contravenes the well-established principles of natural justice. [See *Calcutta Discount Co. Ltd. vs. ITO*, (1961) 2 SCR 241; *G.B. Mahajan v. Jalgaon Municipal Council*, (1991) 3 SCC 91; and *Syed Yakoob*¹⁶ Case]

¹⁶ “7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting

15.8. Having regard to the aforementioned guiding principles, in my opinion, this is a case which calls for interference as the Tribunal failed to notice,[I must emphasize completely] that it had jurisdiction in the matter to, at least, consider as to whether or not DIAL should be allowed to lead evidence concerning the alleged misconduct said to have been committed by Mr. Goel. The Tribunal, in my opinion, failed to comprehend the true ratio of the view rendered by the majority in *Lakshmiddevamma* Case. [See paragraph 44 and 45]

errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* [(1958) SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168])”

15.9. Thus, in my view, the Tribunal, failed to direct its attention, as noticed above, as to whether or not, the matter before it was a fit case in which it should call upon DIAL to lead evidence and produce documents to establish its case that the misconduct, as alleged, had occurred. The Tribunal, on the other hand, without applying its mind to this aspect of the matter, ruled on issues no. (iii) and (iv) based, simply on, the failure of DIAL to discharge its onus. Thus, the argument advanced by Mr. Agarwal, that the writ petitions filed by DIAL, are not maintainable, in my view, is misconceived.

16. To my mind, given the fact that Mr. Goel was undoubtedly aware that the domestic enquiry proceedings had been convened and were continuing, as also his failure to produce the medical record - were reasons enough for the Tribunal to call upon DIAL to lead evidence *qua* the alleged misconduct. Notwithstanding the dismissal of DIAL's misconceived application *via* its order dated 28.05.2019, the Tribunal ought to have rendered a decision in this case, on the merits of the matter, and not merely based it on the failure of DIAL to discharge its onus. That being said, it requires to be noticed that DIAL's sloppiness resulted in the Tribunal not permitting DIAL to lead evidence *qua* the alleged misconduct said to have been committed by Mr. Goel.

Issue no. (ii): -

17. It is trite to state that, often, the litigation battle between a workman and an employer is a battle between David and Goliath, and therefore, intuitively, Courts make every effort to balance the scales of justice. The underlying object

being irrespective of the standing of the party before it the scales of justice remain evenly balanced. The ultimate goal of the adjudicator should be to reach a decision that is not only legally tenable but is also just qua the disputants before it.

18. Therefore, in my view, the best way forward would be to set aside the impugned award and remand the matter to the Tribunal to render a decision on merits. However, in my opinion, the interest of Mr. Goel will also have to be taken into account to balance the scale. To achieve this end, one would have to modulate the relief, sought in the writ petitions while exercising powers under Article 226 of the Constitution. That the Court has such powers is discernible from the observations made by the Supreme Court in *B.C. Chaturvedi vs. Union of India*, (1995) 6 SCC 749.

“23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.”

18.1. As noticed above, Rs. 15,00,000/- have been deposited by DIAL, pursuant to the order dated 10.12.2019, passed in W.P. (C) 11157/2019, with the Registry of this Court. Furthermore, because the captioned matters were

heard finally, a decision on Section 17B application, filed on behalf of Mr. Goel, was not considered necessary.

Conclusion: -

19. Thus, W.P. (C) 8215/2019 and 11157/2019 are disposed of with the following directions.

- i. The impugned award i.e. award dated 02.07.2019 is set aside.
- ii. The matter is remanded to the Tribunal for a decision on merits concerning the alleged misconduct said to have been committed by Mr. Goel.
- iii. The Tribunal will allow DIAL to lead evidence qua the alleged misconduct. Mr. Goel will also be given an opportunity in that regard.
- iv. Parties will have the right to cross-examine each other's witnesses if recourse is taken to this route.
- v. Mr. Goel will be paid his last drawn wages or minimum wages, whichever is higher, from 02.07.2019, i.e., the date of the impugned award. The money paid will not be recouped from Mr. Goel, irrespective of whether or not the final decision rendered by the Tribunal is in his favour. This direction is being issued in furtherance of powers vested in this Court, under Article 226 of the Constitution. [See Order dated

29.01.2021, passed by this Court¹⁷, in W.P. (C) 6128/2017; upheld by the Division Bench of this Court, vide order dated 16.03.2021, passed in LPA 112/2021]. It is made clear that the aforesaid remuneration will be paid to Mr. Goel, by DIAL, till the final disposal of the matter, by the Tribunal.

¹⁷ “5.4. That being said, I am in agreement with Mr. Ghose that this Court, under Article 226 of the Constitution can, and if I may say so, ought to, grant interim relief in such like matters. In this behalf, the observations made by the Supreme Court in Dena Bank vs. Kiritikumar T. Patel, (1999) 2 SCC 106 : 1999 SCC (L&S) 466, being apposite, are extracted hereafter.

“23. As regards the powers of the High Court and the Supreme Court under Articles 226 and 136 of the Constitution, it may be stated that Section 17-B, by conferring a right on the workman to be paid the amount of full wages last drawn by him during the pendency of the proceedings involving challenge to the award of the Labour Court, Industrial Tribunal or National Tribunal in the High Court or the Supreme Court which amount is not refundable or recoverable in the event of the award being set aside, does not in any way preclude the High Court or the Supreme Court to pass an order directing payment of a higher amount to the workman if such higher amount is considered necessary in the interest of justice. Such a direction would be dehors the provisions contained in Section 17-B and while giving the direction, the court may also give directions regarding refund or recovery of the excess amount in the event of the award being set aside. But we are unable to agree with the view of the Bombay High Court in Elpro International Ltd. [1987 Lab IC 1468 : (1987) 2 LLJ 210 : (1987) 1 LLN 695] that in exercise of the power under Articles 226 and 136 of the Constitution, an order can be passed denying the workman the benefit granted under Section 17-B. The conferment of such a right under Section 17-B cannot be regarded as a restriction on the powers of the High Court or the Supreme Court under Articles 226 and 136 of the Constitution.”

[Also see Observations made in the Judgement dated 28.04.2006, passed in CM No. 48/2005, filed in W.P. (C) No. 2211/1998, titled Food Craft Instt. vs. Rameshwar Sharma & Anr.]”

- vi. Since the remand of the matter has taken place to give DIAL an opportunity to prove the charge levelled against Mr. Goel, it is mulcted with costs which are quantified at Rs. 5,00,000/-.
- vii. Rs. 15,00,000/- deposited in this Court by DIAL, along with the accrued interest will be remitted to the Tribunal for payments and costs required to be made under clause (v) and (vi) above. In case, the surplus amount is left, the Tribunal will retain the same, and the amount retained by it [along with accrued interest], shall abide by the final decision rendered in the matter. In line with this direction, in the interregnum, the Tribunal will invest the money in an interest-bearing fixed deposit, maintained with a nationalised bank.
- viii. The Tribunal will conclude its proceedings at the earliest, though not later than six (6) months, from the date of receipt of a copy of this judgement.
- ix. The interim order dated 10.12.2019, passed in W.P. (C) 11157/2019, shall stand vacated.
20. Given the aforesaid, the writ petition filed by Mr. Goel, i.e., W.P. (C) 5854/2020, is dismissed.
21. Needless to add, any observations made hereinabove will not come in the way of the Tribunal trying the case on merits.

22. Consequently, all pending applications shall stand closed.

RAJIV SHAKDHER, J

JULY 05, 2021

Click here to check the corrigendum, if any

