

\$~20, 22 to 25 & 27

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

Date of decision: 23rd December, 2021

+ **W.P.(C) 14889/2021 & CM APPLs. 47058-59/2021**

SECURITRANS INDIA (P) LTD. Petitioner

Through: Mr. Arun Mehta, Advocate (M-9811019124).

versus

SHRI MANOJ PRASAD Respondent

Through: None.

22 WITH

+ **W.P.(C) 14901/2021 & CM APPLs. 47079-80/2021**

SECURITRANS INDIA (P) LTD. Petitioner

Through: Mr. Arun Mehta, Advocate

versus

SHRI SHIV BHAGWAN SINGH RATHOR Respondent

Through: None.

23 AND

+ **W.P.(C) 14902/2021 & CM APPLs. 47081-82/2021**

SECURITRANS INDIA (P) LTD. Petitioner

Through: Mr. Arun Mehta, Advocate

versus

SHRI GAURAV DUBEY Respondent

Through: None.

24 WITH

+ **W.P.(C) 14903/2021 & CM APPLs. 47083-84/2021**

SECURITRANS INDIA (P) LTD Petitioner

Through: Mr. Arun Mehta, Advocate

versus

SHRI MANOJ KUMAR YADAV Respondent

Through: None.

25 WITH

+ **W.P.(C) 14904/2021 & CM APPLs. 47085-86/2021**

SECURITRANS INDIA (P) LTD Petitioner

Through: Mr. Arun Mehta, Advocate

versus

SHRI CHANDER BHAN SINGH CHAUHAN Respondent

Through: None.

27 AND
+ **W.P.(C) 15007/2021 & CM APPLs. 47369-70/2021**
SECURITRANS INDIA (P) LTD. Petitioner
Through: Mr. Arun Mehta, Advocate
versus
SHRI RAHUL 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. These are six petitions filed by the Petitioner-Management (*hereinafter "Management"*) challenging the order dated 22nd November, 2021 passed by the Labour Court in **LIR No.2920/19, 2921/19, 2922/19, 2023/19, 2925/19 & 2926/19** whereby an application which was filed by the Management for framing of an additional issue in the proceedings before the Labour Court, and for deciding the said issue as a preliminary issue was partly allowed.
3. In this matter, the Respondents-Workmen (*hereinafter "Workmen"*), who were working with the Petitioner at various ATMs, were terminated after a disciplinary inquiry was held by the Petitioner. The said termination was challenged by the Workmen before the Labour Court. In the said claims filed by the Workmen, the terms of reference were framed on 3rd October, 2019. The matter was thereafter proceeded before the Labour Court. On 1st October, 2021, the following issues were framed:

"(1) Whether the workman is not covered under definition of a "workman" as defined under Section 2 (s) of I.D. Act? OPM.

(2) Whether the services of workman have been illegally and unjustifiably terminated by the management? OPW.

(3) If the answer to the aforesaid issue is in affirmative, then as to what monetary or any other consequential relief and benefits, the workman is entitled? OPW.

(4) In terms of reference.

(5) Relief.”

4. Since the Workmen had been terminated after a proper internal inquiry which was held by the Management, an application was moved by the Management seeking framing of a preliminary issue in respect of the validity and legality of the inquiry. The case of the Management was that as per the settled legal position, the Labour Court ought to frame an issue in respect of the said inquiry and thereafter treat the same as a preliminary issue. The Management relied upon various decisions of the Supreme Court in this regard. In the said application, the following order was passed by the Labour Court:

“An application has been filed by the management to frame preliminary issue with respect to validity of inquiry. Reply of the application is filed by the workman denying the contentions and praying to dismiss the application.

Arguments heard on the application and gone through the judgment relied by the management in support of contentions. The issues in this case were framed on 01.10.2021. Though the issue raised regarding the inquiry is well covered under the issue no. 2 regarding illegal termination of the workman by the management but in view of the specific objections of the management in the written statement, an additional issue vide issue no. 1 A is framed as under:

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Issue No. 1A:

***Whether the inquiry conducted against the workman by the management was biased, unfair and not in consonance with the principles of natural justice?
OPW***

As regards, the prayer to frame the issue of inquiry as preliminary issue, the request is disallowed as the issue pertains to issue of law and facts.

Application is disposed off accordingly.

Affidavit of the workman by way of evidence filed. Copy supplied to the AR for the management.

Put up for examination and cross-examination of the workman on 20.01.2022.”

5. Mr. Arun Mehta, Id. Counsel appearing on behalf of the Management, submits that the grievance of the Management is that if the inquiry related issue now framed as issue no.1A, is not decided as a preliminary issue and if the matter is adjudicated upon together finally by the Labour Court, the Management may lose an opportunity to lead evidence in the matter if for any reason, the Labour Court holds that the inquiry was not in accordance with law. He submits that as per the judgments of the Supreme Court in ***Cooper Engineering Limited v. Shri P.P. Munde, 1975 AIR 1900*** and in ***M.L. Singhla v. Punjab National Bank, AIR 2018 SC 4668***, the settled position is that the validity of the domestic inquiry has to be decided as a preliminary issue in the proceedings before the Labour Court. He therefore submits that if the said issue is decided against the Management, the Management ought to be afforded the opportunity to lead independent evidence before the Labour Court to support their case.

6. Advance copies of these petitions have been served upon Mr. Rajesh Khanna who is the Authorized Representative for the Workmen in all these matters. Mr. Mehta, Id. Counsel submits that he had a telephonic

conversation with Mr. Khanna who has confirmed the receipt of these petitions. However, none appears for the Workmen.

7. The issuance of further notice in this matter is not deemed appropriate inasmuch as the same would entail further costs for the Workmen. The legal position is settled in this regard in the decisions which have been relied upon by Mr. Mehta. In **Cooper Engineering**(*supra*), the Supreme Court observed as under:

“ xxx xxx xxx
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. Similarly, in **ML Singhla** (*supra*), the Supreme Court has observed that the error of the Labour Court was to not decide the validity and the

legality of the domestic inquiry in the first place. The observation of the Supreme Court in the said judgment are also set out below:

“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) against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits.”

9. This position has also been upheld by the Supreme Court in ***Kurukshetra University v. Prithvi Singh, AIR 2018 SC 973*** and by this Court in ***M/s Ryan International School v. Sh. Pan Singh [W.P. (C.) 14365/2021, decided on 15th December, 2021]***.

10. A perusal of the reply filed by the Workmen also shows that the Workmen conceded to this position. The relevant portion of the said reply is extracted herein below:

“1. That the application of the Management is totally unjustified. The submissions of the Management is correct to the extent that issue with respect to validity of Enquiry be treated as preliminary issue and should be disposed of at preliminary stage. But this statement of the Management is completely wrong that the onus to prove the issue regarding validity of enquiry is upon the Workman

---- it is stated in the Written Statement of the Management that the Management has terminated the workman on the basis of Domestic Enquiry, therefore the onus is upon the Management to prove the validity of the said enquiry. Thus the issue may be framed as under:-

"Whether the enquiry conducted by the management was fair and proper and the same was as per the principle of natural justice? OPM."

--- Therefore the issue to prove the validity of enquiry be framed as stated above and the onus be put upon the management to prove it by leading evidence by the management."

11. This Court is of the opinion that, in view of the settled legal position, the normal procedure that ought to be adopted by the Labour Courts is to first decide the validity of the domestic inquiry as a preliminary issue and if the said issue is decided against the Management, the Management is then to be afforded an opportunity to lead evidence supporting the termination of the Workmen, before the Labour Court.

12. Under such circumstances, the Labour Court ought to have decided the issue of the validity of the domestic inquiry as a preliminary issue. It is accordingly directed that the said issue no.1A shall now be adjudicated by the Labour Court in the first place and depending upon the outcome of the said issue, the matter would proceed further before the Labour Court, in accordance with law.

13. A copy of this judgment be sent to the Court of Ld. ADJ, Labour Court, Rouse Avenue Courts, Delhi in ***LIR No.2920/19, 2921/19, 2922/19, 2023/19, 2925/19 & 2926/19***. The present judgment be circulated to all the Labour Courts by the worthy Registrar-General of this Court, so that a uniform practice is followed by the Labour Courts in respect of deciding the inquiry related issue as a preliminary issue.

14. The writ petitions are disposed of in these terms. All pending applications are also disposed of.

15. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

DECEMBER 23, 2021
Rahul/MS

