



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12 / 01 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.1792 OF 2004

The Deputy General Manager
Canara Bank
Madurai - 625 001.

... Petitioner

Vs.

1.Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
1st Floor, "B" Wing,
26, Haddows Road, Shastri Bhavan,
Chennai - 600 006.

2.P.Kalaimani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the order passed by the first respondent in its order dated 15.09.2003 in I.D.No.44 of 2002 quash the same.

For Petitioner : Mr.P.R.Raman
Senior Counsel for Mr.C.Seethapathy
For Respondent-2: Mr.K.V.Ananthakrushnan

O R D E R

This Writ Petition is directed against the Award passed by the first respondent / Tribunal.

2.According to the Writ Petitioner, the second respondent in the writ petition was working as a Peon in the Tisaiyanvillai Branch of their Bank during the period between 14.03.1988 and 30.01.1996. He was placed under suspension on 30.01.1996 for certain serious irregularities observed in the Branch and a charge memo was issued to him on 07.05.1996 levelling two charges. An enquiry was held and item (i) and (iii) of Charge-I were held proved and item (ii) of Charge-I was held not proved. The Enquiry Officer submitted his report on



05.04.1997 and it was forwarded to the second respondent / workman for his explanation. After receipt of his explanation, a personal hearing was given to him and the punishment of compulsory retirement was imposed on him on 30.08.1997. The second respondent preferred a departmental appeal and the same was also dismissed on 04.03.1999. Thereafter, the second respondent raised an industrial dispute and on submission of the failure report by the Assistant Labour Commissioner of Central Government and it was referred to the first respondent Tribunal, wherein it was numbered as I.D.No.44 of 2002. The second respondent filed a claim petition challenging the order of compulsory retirement. Before the Tribunal, the petitioner / Management filed a counter reserving their right to adduce additional evidence. However, without providing any opportunity to adduce additional evidence, the first respondent/ Tribunal straight away set aside the punishment order and directed reinstatement of the second respondent with 50% backwages. Challenging the same, the present Writ Petition has been preferred.

3. Heard the submissions made on either side and perused the materials available on record.

4. The Hon'ble Supreme Court in M.L.SINGLA VS. PUNJAB NATIONAL BANK AND ANOTHER [2018 (18) SCC 21] has categorically held that the Labour Court shall examine the charges on merits only after affording an opportunity to the Management to adduce evidence on merits to prove charges and after completion of the same, it can decide the matter on merits. The relevant portions of the judgment reads as under:-

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

17. 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.

18. 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



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like an Appellate Court, appreciated the evidence adduced before the Enquiry Officer and the one adduced before it and then came to a conclusion that the findings of the Enquiry Officer are perverse. This the Labour Court could not do.

25. Assuming that the Labour Court had the jurisdiction to direct the parties in the first instance itself to adduce evidence on merits in support of the charges yet, in our opinion, it was obligatory upon the Labour Court to first frame the preliminary issue on the question of legality and validity of the domestic enquiry and confined its discussion only for examining the legality and propriety of the enquiry proceedings.

26. Depending upon the finding on the preliminary issue on the legality of the enquiry proceedings, the Labour Court should have proceeded to decide the next questions. The Labour Court while deciding the preliminary issue could only rely upon the evidence, which was relevant for deciding the issue of legality of enquiry proceedings but not beyond it.

27. In other words, the Labour Court failed to see that it would have assumed the jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and secondly, the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted he had led the evidence."

5. The Hon'ble Supreme Court in DELHI CLOTH AND GENERAL MILLS CO. VS. LUDH BUDH SINGH [1972 (1) SCC 595] has observed as under:

"61. From the above decisions the following principles broadly emerge :

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced



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before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be,



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under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been



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held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under s.10 or by way of an application under s.33 of the Act.

6. Same rationale has been followed by the Hon'ble Supreme Court in KURUKSHETRA UNIVERSITY VS. PRITHVI SINGH [2018 (4) SCC 483]. In para 20 of the said judgment it is observed as under:

"20. We are constrained to observe that first, the Labour Court committed an error in not framing a "preliminary issue" for deciding the legality of domestic enquiry and second, having found fault in the domestic inquiry committed another error when it did not allow the appellant to lead independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence the respondents' termination is bad in law. "

The judgments of the Hon'ble Supreme Court referred above squarely apply to the case on hand.

7. In the instant case also, the first respondent / Tribunal after holding that the disciplinary enquiry is violative of principles of natural justice, ought to have given an opportunity to the petitioner / Management to adduce additional evidence. In so far as that procedure is not followed, the order of the first respondent / Tribunal stands



vitiated and accordingly, the impugned order dated 15.09.2003 passed in I.D.No.44 of 2002 by the first respondent / Tribunal stands set aside and the matter is remitted back to the first respondent / Tribunal to proceed on merits and in accordance with law, after due notice to the parties.

8.In fine, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

TK

To

The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
1st Floor, "B" Wing,
26, Haddows Road, Shastri Bhavan,
Chennai - 600 006.

+1 cc to Mr.K.V.Ananthakrushnan, Advocate Sr.NO. 2905

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kv(CO)
A.SK(31/05/2022)