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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment reserved on: 15.07.2022*

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Judgment pronounced on: 24.08.2022

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W.P.(C) 2641/2016 & CM APPL. 8402/2021

M/S BENNETT COLEMAN & CO. LTD. Petitioner

Through: Mr. Raj Birbal, Sr. Advocate with
Ms. Raavi Birbal, Advocate.

versus

IRA JHA

..... Respondent

Through: Mr. Sanjay Parikh, Sr. Advocate with
Mr. N.D. Pancholi, Mr. Amit
Srivastav, Mr. Deepak Mayur and
Ms. Vertika Mani, Advocates.**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA,J :****A. Background Facts:**

1. Present writ petition has been filed challenging the impugned order dated 23.02.2016 in Old LIR no. 69/2011 (76/2004) (NEW) titled as *Ms.Ira Jha vs. M/s Bennet Coleman & Company Ltd.* The petitioner has challenged the impugned order whereby the preliminary issue was decided in favour of the respondent/workman and against the petitioner/management and it was inter alia held that the domestic enquiry was not conducted in just and fair manner.
2. Facts, in brief, are that the respondent/workman joined the Petitioner/management as a Sub-Editor in 1985 and was promoted as a



Chief Sub-Editor in 1994. A case of serious misconduct comprising of indiscipline, bad behaviour, shouting, screaming in bad language against superior officers taking their names, neglect of work and delaying the core activity of the petitioner/management was made out against the respondent/workman A charge sheet dated 15.05.202 was issued to the respondent/workman.

3. Subsequently, an enquiry officer was appointed to conduct a detailed enquiry into the charges made against the respondent/workman and a report was submitted on 24.01.2001 holding that the charges against the respondent/workman as proved.
4. The Respondent/workman thereafter raised an industrial dispute and the matter was referred to the Labour Court vide reference order dated 31.12.2004 of the GNCTD.
5. The respondent/workman also made complaints of sexual harassment against the senior officials of the respondent/management.
6. The respondent/workman filed a statement of claim on 04.02.2005 and the written statement on behalf of the petitioner/management was filed on 19.02.2015. The learned Labour Court framed the following issues on 02.08.2005:
 1. Whether inquiry conducted by the management is just and fair?
 2. As per terms of reference; whether the dismissal of Smt. Ira Jha from her service is illegal and/or unjustified and if so, to what relief is she entitled and what directions are necessary in this respect?
 3. Relief.
7. Issue no. 1 was treated as a preliminary issue and parties led their



respective evidence on the said issue. The respondent/workman tendered in evidence her affidavit before the learned Labour Court and the petitioner/management examined Sh. Ashok Srivastava, Senior-Personnel and Sh. Sushil Kumar Sharma, Manager as their witnesses.

8. The learned Labour Court vide impugned order dated 23.02.2016 decided the preliminary issue in favour of the respondent/workmen and against the petitioner/management. It was inter alia held that the domestic enquiry conducted against the respondent/workman was not conducted in a just and fair manner. The petitioner/management has challenged the impugned order on the ground that the same is contrary to the facts and law.
9. This Court vide its order dated 01.02.2022 directed both the parties to argue on the question of maintainability of the present writ challenging the finding of the learned Labour Court only on the preliminary issue in view of the judgement of this court dated 15th December 2021 in W.P.(C) 14365/2021 titled *M/s. Ryan International School v. Shri Pan Singh*

B. Contentions of the Petitioner:

- (i) The Domestic enquiry was conducted in Hindi by the petitioner/management and ran into hundreds of pages, on about 43 dates over a period of 7-8 months in the year 2000 wherein adequate opportunity of defence/ representation was duly availed by the respondent/workman, but the full-fledged enquiry has been set aside by Labour Court.
- (ii) False charges of sexual harassment were levelled by the respondent/workman against her superior officials that were later on



rejected and also specifically termed as a "protective shield" by the Division Bench of this Court and thereafter upheld by the Supreme Court

- (iii) When the management has conducted a domestic enquiry in strict compliance with the principles of natural justice, the hands of the High Court are not tied until the final award comes because otherwise; it defeats the whole purpose of conducting such a lengthy enquiry. To buttress this contention, the reliance has been placed on the plethora of cases including the judgment of the Supreme Court in ***Bharat Bhawan Trust vs Bharat Bhawan Artists Association*** (AIR 2001 SC 3348), the judgment of Division Bench of High Court of Kerala in the case of ***St. Thomas Mission Hospital v. State of Kerala & Ors*** and other such cases as ***Dy. General Manager, SBI v. Roy Samuel*** (2004 (2) KLT 923) ***Vodafone International Holdings B.V. V. UOI*** (2012 SCC (6) 757), ***VG Jagdishan v. M/s Indofos Industries Ltd.***(AIR 2022 SC), ***The management of Tube Products of India v. The Presiding officer-I Addl. Labour Court, Madras and Ors.*** (1993 LabIC 627) and ***India Hotels Company Ltd. v. Jagat Singh Gurow*** (2007 Indian MUM 1320)
- (iv) ***M/s Ryan International School*** (*supra*) was decided in view of its peculiar facts and circumstances and therefore cannot be made applicable in the present case. This Court while passing the said judgment had asked management to ascertain whether the witnesses, who had deposed in the enquiry proceedings, were available or not. An affidavit dated 13.4.2022 in this regard has already been filed in the present case by the petitioner/management.



- (v) The Respondent/workman has been causing the delay by filing frivolous applications such as under Section 17 B of the ID Act, concealing the fact that she was gainfully employed.
- (vi) In the matter of *State of Haryana Vs, Ratan Singh* (AIR 1977 SC1512) it has been held that all that is to be seen in enquiry proceedings is whether there is some evidence or no evidence in support of the charges and that the technical rules do not apply to enquiry proceedings. In fact, in this judgment, it was also held that there is no allergy even to hearsay evidence provided it has reasonable nexus and credibility.

B. Contentions of Respondent.

- (i) The writ petition is not maintainable against the order passed at the preliminary stage. Reliance in this regard has been placed on the judgments of the Supreme Court in *Cooper Engineering Ltd. v. Shri P.P. Mundhe* (1975) 2 SCC 661 and *D.P. Maheshwari v. Delhi Administration* (1983) 4 SCC 293.
- (ii) This Court has also followed the above-mentioned judgments of the Supreme Court at various instances including in the matter of *Municipal Corporation of Delhi v. . Jai Narain Bansal & others* (37(1989) DLT 183), *M/s Ryan International School's* case (*supra*) and *Glaxo Smithkline Consumer Health Care Limited's* case (*supra*).
- (iii) Vide impugned interim order dated 23.03.2016, learned Labour Court held that the domestic enquiry was not conducted in a just and fair manner and on the same date, by way of separate order adjourned the case to 30.03.2016 and 11.04.2016 giving an opportunity to the petitioner/management for leading the evidence. However, the



petitioner/ management instead of producing evidence on the two dates fixed by the learned Labour Court filed the present writ petition and obtained an ex-parte stay on 28.03.2016 stalling the trial court proceedings.

- (iv) The Petitioner/Management, in the affidavit dated 12.04.2022, has stated that the email was sent only on 14.07.2022 and that its two witnesses cannot come to court as one is of the age of 70 years and the other 68 years. It has been submitted that this contention is frivolous and untenable as in the present case, the respondent/workman is also above 60 years of age. Further, it is not the task of Courts to inquire whether the witnesses are available or not but it is for the parties to produce their evidences in whatever manner they chooses.

D. Analysis and Findings:

10. The Supreme Court in *Cooper Engineering Ltd.'s case (supra)*, *inter alia* held that whenever the Labour Court or the Industrial Tribunal decides the validity of the domestic enquiry conducted by the management as the preliminary issue, the writ petition challenging the said order should not be entertained. The Court observed that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court/Tribunal by questioning its decision which is a preliminary issue and the same can be agitated even after the final award. It was further observed that it will be legitimate for the High Court to refuse to intervene at this stage. In my view, the ratio of the aforesaid judgment would apply to the factual situation before this Court also, as the petitioner/ management, instead of producing evidence before the learned Labour Court filed the present writ petition



and obtained an ex-parte stay causing a delay of more than 6 years.

11. In **Vyasya Bank Ltd. vs. M.Namadeva Pai and Anr.**, 1994 – I L.L.N.417, the High Court of Karnataka has followed the ratio of **Cooper Engineering's** case (*supra*) and *inter alia* held as under:

“25. That, from an analysis of the decisions aforementioned, it is clear that this Court, in exercise of its jurisdiction under Art.226 of the Constitution, shall refuse to intervene at the stage of adjudication on a preliminary issue, except in exceptional cases. It is clear that generally whenever an order on a preliminary issue, like the validity of a domestic enquiry is entertained, the proceedings before the adjudicating authority will be stalled, which results in undue delay. This prolonged litigation chokes the voice of protest besides breaking the resistance of the workmen. This Court has interfered with the orders on preliminary issue as they relate to jurisdictional issue. It is significant to note that the facts in the cases which came up for consideration before the Supreme Court and the cases which came up for consideration before this Court are distinguishable. This Court would refuse to exercise jurisdiction under Art.226 of the Constitution on the validity of a domestic enquiry as the management can challenge the very order, if worthy, even after the final award.”

12. In **Vyasya Bank Ltd.'s** case (*supra*), earlier judgments of **Motor Industries Company Ltd. vs. D.Adinarayanappa** (1978-I-L.L.N.500) and **Rangaswamy and Company vs. D.V.Jagdish** (1990-II L.L.N.745) of the High Court of Karnataka were also discussed and distinguished.
13. Similarly, the Division Bench of the High Court of Calcutta in **Sonodyne Television Co.Employees Union & Ors. vs. Sonodyne Television Co. Employees' Union and Ors.**, F.M.A.T. No.3689 of 1994 decided on 27.03.1995 took into account the judgment of the



Supreme Court in ***Cooper Engineering's*** case (*supra*) and ***D.P. Maheshwari's*** case (*supra*) as well as the judgment of High Court of Calcutta in ***Peerless Employees' Union vs. Peerless General Insurance and Investment Co. Ltd.***, F.L.R. 1991 (62) page 596 and *inter alia* held as under:

“5. Considering the facts and circumstances of the case we are of the view that the scope of preliminary issuers quite limited. It is not necessary to consider the correctness of the decision made in the domestic enquiry on merits at that stage. The tribunal is required to decide the dispute and ultimately give his award. For deciding the preliminary issue the correctness of the ultimate decision made by the tribunal is not required to be considered at this stage. Whatever may be the merits of the case, in our view, this is not an appropriate stage where the writ court should interfere and/or entertain the writ application when all the questions that are decided by the tribunal in the preliminary form or in the final form can be adjudicated after the award is passed and the aggrieved party comes up to the High Court. We are unable to appreciate the arguments made by Mr. Sen that the decisions of the Cooper Engineering's case as well as of the Maheshwari's case are only confined to the management and management only and the principles laid down therein have no application whatsoever in case the writ application is filed by the workman. One reason for which the Supreme Court had laid down the law was that such course of action would result delay in disposing of the industrial disputes. Delay may be caused by the management or by the workman and that in order to avoid delay and multiplicity of proceedings the matter should not be entertained at this stage but after the final award is made.....”

14. The learned Single Judge of Rajasthan High Court in ***Manager, Poddar Spinning Mills vs. The learned Labour Court of Rajasthan and Ors. S. B. Civil Writ Petition No.18 of 1978*** decided on 25.01.1980 has *inter alia* held as under:



“10.The paramount object of the Act is industrial peace. Piecemeal decision of issues in such cases is likely to protract or prolong the litigation ad infinitum. It would not be in the interest of justice to allow a party to obtain a decision on a preliminary point, challenge the same before this Court and thereafter before the Supreme Court to the great disadvantage of the workmen. Taking a conspectus of the circumstances of the case I am of the view that it is not a fit case in which this Court, in exercise of its extraordinary jurisdiction, should interfere with the proceedings pending before the Labour Court at this stage and quash the impugned order. It is, however, made clear that it would be open to the petitioner to challenge the decision of the Labour Court regarding the preliminary issue after the final decision of the case through on appropriate writ proceeding if so advised.”

15. This court in the case of ***Municipal Corporation of Delhi v. Jai Narain Bansal & others*** (37(1989) DLT 183), while relying on ***Cooper Engineering Ltd.***’s case (supra), had *inter alia* held as under:

“5. In support of this submission, learned counsel for the respondent has placed reliance on a Judgment reported as The Cooper Engineering Ltd. V. P.P.Mundhe, AIR 1975 SC 1900. The relevant observations of the Supreme Court on this aspect are reproduced below:

" 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 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, it will not thereafter be permissible in any proceedings, 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.

6. The observations of the Supreme Court fairly and squarely apply to the facts and the findings of the present case. Even though the enquiry proceedings have been set aside being not in conformity with the principles of natural justice, but the petitioner/management has been given another opportunity to prove the alleged misconduct by leading evidence before the Labour Court. The impugned order, thus, is an interlocutory order against which writ is not maintainable. After the parties are allowed to lead evidence, the final order will be passed by the Labour Court.”

16. Further, in the case of ***M/S Ryan International School v. Shri Pan Singh***(*supra*) , this court while dealing with a challenge to the order passed by the learned Labour court in which the enquiry report of the petitioner/school against the respondent/workman was held to be in violation of the principles of natural justice, *inter alia* held as under:

“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].”

17. I am afraid that in view of the above discussion, the arguments advanced by the learned counsel of the petitioner/management cannot



be accepted. The proposition of law as laid down in judgments of this court in *Jai Narain Bansal's case* (*supra*) and *M/S Ryan International School's case* (*supra*) hold ground as of now.

18. It is pertinent to mention here that the Industrial Dispute Act, 1947 is a piece of beneficial legislation meant to protect the interest of the workman. The duty of the court is to interpret the provisions of this Act in the manner that it fulfills its object and purpose. The court is also required to strike a balance while conducting the proceedings for resolving the dispute between the employer and the workman. The procedure which is favourable of the workman and weaker of the two should be adopted.
19. I consider that there is no reason to interfere with the order of Learned Labour Court at this stage and do not find any substance in the contentions of the petitioner/management.
20. The petitioner/management should be at liberty to prove the charges against the respondent/workman before learned Labour Court in accordance with law. The learned Labour Court has already granted an opportunity to the petitioner/management to lead the evidence. Merely because some of the witnesses of the petitioner/management are expressing their inability to appear for any reasons, the petitioner/management cannot be absolved of their duty to prove the charges against the respondent/workman.
21. This Court has not examined the merits of the case. Any expression made herein shall not tantamount to be an expression on the merits of the case. It will also be open to the petitioner to challenge the decision of the Labour Court regarding the preliminary issue after the final



decision of the case through an appropriate court proceedings.

22. The present writ petition along with the pending application is, therefore, dismissed.

DINESH KUMAR SHARMA, J

AUGUST 24, 2022

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