

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 22768 of 2017

M/s Dalhousie Jute Company
v.
First Labour Court, Government of West Bengal & Ors.

For the petitioner : Mr. Ranjay De
Mr. Sanjay Jhunjhunwala
Mr. Basabjit Banerjee

For the respondent : Mr. Mukteswar Maity
No.3 Mr. Nupur Chaudhuri

Heard on : 3rd August, 2023.

Judgment on : **3rd August, 2023.**

Raja Basu Chowdhury, J:

1. By filing the present writ petition, the petitioner has challenged the award dated 28th June, 2017 as also the order dated 28th June, 2013, whereby the learned First Labour Court was, *inter alia*, pleased to decide the issue of validity of the domestic enquiry in favour of the respondent no.3.

2. The petitioner is a company and runs a jute mill. The respondent no.3 was employed by the petitioner as a bag checker in

the sack sewing section of the finishing department of the jute mill.

3. In course of employment, the respondent no.3 was served with a show cause notice dated 13th May, 2007, in relation to acts of omission which had been reported against him. The respondent no.3 was directed to give a written explanation within 24 hours from receipt of such show cause.

4. Following such show cause and no satisfactory explanation having been given by the respondent no.3, the petitioner had issued a charge-sheet on 14th May, 2007, thereby charging the respondent no.3 to have, *inter alia*, committed willful insubordination or disobedience, riotous and disorderly behavior during working hours at the establishment, habitual negligence and inciting others to strike work in contravention of the provisions of law, as per the provisions contained in the Certified Standing Orders, applicable to the jute mill. The respondent no.3 had responded to the said charge-sheet by denying all material allegations made therein.

5. Before the enquiry could proceed, the petitioner served a second charge-sheet on the respondent no.3, on 16th May, 2007, which was also duly responded to by the respondent no.3 by denying all material allegations made therein.

6. Following the aforesaid, a regular domestic enquiry was initiated wherein the respondent no.3 had participated, along with his co-worker. The petitioner was, however, represented by an

advocate. After completion of the enquiry, by a covering letter dated 17th June, 2008, the respondent no.3 was forwarded with a copy of the enquiry report dated 31st May, 2008, and was called upon to make his representation to the findings of the enquiry report within 7 days from the receipt of such letter.

7. The respondent no.3, however, sought for an extension of time to respond to the said enquiry report, which was considered and granted by the petitioner. Following the same, by a letter in writing dated 1st July, 2008, the respondent no.3 made a detailed representation to the enquiry report.

8. Records would reveal that by a final order dated 4th July, 2008, the petitioner having found that the dismissal of service of the respondent no.3 to be the most appropriate punishment, ordered that the respondent no.3 be dismissed from the service with immediate effect and advised to him to take final settlement of his dues.

9. Upon receipt of such order of dismissal, the respondent no.3 by a communication, in writing, dated 9th July, 2008, terming the order of dismissal to be unjustified and arbitrary, had called upon the petitioner to permit him to resume his duty by withdrawing the order of dismissal.

10. The petitioner having not adhered to such request, by a letter dated 23rd July, 2008, the respondent no.3 referred the aforesaid

matter to the Deputy Labour Commissioner, Government of West Bengal and sought for his intervention. Since, the conciliation did not fructify in a settlement, the respondent no.3 had filed an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”), thereby challenging the order of dismissal. The petitioner participated in such proceeding and had filed its written statement.

11. Following the aforesaid, by Order No.21 dated 21st September, 2010, the learned First Labour Court was, *inter alia*, pleased to frame the following issues: -

- (i) Is the present proceeding of the applicant maintainable;
- (ii) Is the dismissal of the applicant with effect from 4th June, 2008 by the management of the company/opposite party justified, legal;
- (iii) Is the domestic enquiry held against the workman valid and legal;
- (iv) To what relief, is the workman entitled to;

12. Subsequently, on the basis of an application filed by the petitioner, the learned First Labour Court, by Order No. 22 dated 15th November, 2010, decided to hear out the issue of validity of the domestic enquiry as a preliminary issue, before entering into the merits.

13. Since, then, both the parties led evidence on the issue of validity of domestic enquiry. By Order No.63 dated 28th June, 2013, the learned First Labour Court decided such issue in favour of the workman. Consequent thereupon, the learned First Labour Court proceeded to decide all the other issues, and by an award dated 28th June, 2017, which was published on 26th July, 2017, having decided the other issues in favour of the respondent no.3, allowed the said application under Section 10(1B)(d) of the said Act on contest, and held that the respondent no.3 is entitled to reinstatement in service together with full back wages and consequential benefits till the date of reinstatement.

14. As noted above, the aforesaid award as also the Order No.63 dated 28th June, 2013, whereby the learned First Labour Court had decided the issue of validity of the domestic enquiry in favour of the respondent no.3, forms the subject matter of challenge in the present writ petition.

15. Mr. De, learned advocate representing the petitioner, by drawing attention of this Court to the Order No.63 dated 28th June, 2013, submits that the order passed by the learned First Labour Court is perverse and based on no evidence. He says that the learned First Labour Court has concluded the domestic enquiry to be vitiated on the following grounds:-

- (i) In course of enquiry, the management having been permitted to be represented by a lawyer, the workman ought to have been permitted, to be represented by a lawyer in his defence and inability to be represented by a lawyer has caused him prejudice;
- (ii) The respondent no.3 was not given copies of documents along with the show-cause and charge-sheet which were relied on by the petitioner, no inspection thereof was also afforded;
- (iii) Non-consideration of objection, *inter alia*, including the enquiry proceeding not being read over and explained to the respondent no.3, in his mother tongue.

16. The learned First Labour Court on the basis of the aforesaid has concluded that the enquiry stand vitiated, as there has been violation of principle of natural justice. Mr. De submits that there never was any attempt made by the respondent no.3, to voice any grievance before the enquiry officer that he was unable to understand or appreciate the enquiry proceeding. By drawing attention of this Court to the reply given by the respondent no.3 to the charge-sheet, he submits that the reply to the charge-sheet was written in English language and was duly signed by the respondent no.3 in English. There are no contemporaneous objections raised by the respondent no.3 nor has the respondent no.3 been able to

demonstrate that he has suffered any prejudice. By further drawing attention of this Court to the enquiry proceeding, it is submitted that the proceeding of the domestic enquiry was not only counter signed by the management's representative but also by the representative of the respondent no.3. The aforesaid proceeding clearly indicate the certificate issued by the Enquiry Officer which records that the proceeding of the enquiry had been read over and explained and that the respondent no.3 had understood the contents of the document.

17. By referring to the cross-examination of the respondent no.3, it is submitted that the respondent no.3 had admitted that he had never submitted any letter before the Enquiry Officer informing him of his poor financial condition or that he was unable to afford a lawyer in his defence or that he had ever made any prayer for appointment of a lawyer or for payment of fees of such lawyer.

18. According to Mr. De, the respondent no.3 had become wiser after approaching the Tribunal and had made diverse allegations notwithstanding, there being no contemporaneous document to support the same. By relying on the aforesaid cross-examination of the respondent no.3, Mr. De submits that the respondent no.3 had admitted to have received all documents. There are no contemporaneous document whereby the respondent no.3 had sought for inspection of the documents relied on by the petitioner. In any event, no prejudice was caused to the respondent no.3 on

account of inspection of the aforesaid documents not being offered to him. At least, the respondent no.3, has not been able to identify any such prejudice.

19. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Regional Manager, UCO Bank and Another. v. Krishna Kumar Bharadwaj***, reported in **(2022) 5 SCC 695**, it is submitted that mere non-supply of documents may not be enough to vitiate the enquiry, unless the delinquent is in a position to demonstrate the prejudice caused to him, having regard to non-supply of such documents.

20. By placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Sarva Uttar Pradesh Gramin Bank v. Manoj Kumar Sinha***, reported in **(2010) 3 SCC 556**, he submits that in case the delinquent has a grievance, such grievance must be placed during the enquiry and not subsequently. On the issue of challenge to the validity of the domestic enquiry, it is submitted that the Hon'ble Supreme Court has long recognized the right of a party to question the order as regards the validity or invalidity of the domestic enquiry even after passing the final award. In support thereof, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Cooper Engineering Limited, v. Shri P. P. Mundhe.***, reported in **(1975) 2 SCC 661** and submits that unless the Labour Court decides on the validity of the domestic

enquiry, the Labour Court cannot assume jurisdiction to examine the charges of the domestic enquiry on merits. In the instant case, the very order by which the learned First Labour Court had assumed jurisdiction to examine the charges being perverse, the subsequent decision rendered by the learned First Labour Court cannot be sustained and should be set aside.

21. *Per contra*, Mr. Maity, learned advocate representing the respondent no.3, submits that the decision as regards the validity and/or invalidity of a domestic enquiry was taken way back in the year 2013. The petitioner accepted the said order and chose not to question the same. In such circumstances, the learned First Labour Court cannot be faulted for having assumed jurisdiction to hear out the charges on merit. The petitioner cannot be permitted to challenge the aforesaid Order No.63 dated 28th June, 2013 at this stage.

22. The learned First Labour Court after carefully considering the facts and examining all materials on record had concluded not only that the enquiry stood vitiated but also concluded that the petitioner was unable to prove the charges and consequentially had directed reinstatement of the respondent no.3.

23. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not called upon to re-appreciate evidence based on which the findings had been reached by the learned First Labour Court.

24. Despite the award, the petitioner had not reinstated the respondent no.3 and had also not paid any other amount, apart from what had been directed to be paid in terms of Section 17B of the said Act. In the interregnum, the respondent no.3 has already reached the age of superannuation as such he can at best be entitled to monetary benefits which should not be denied.

25. Lastly, it is submitted that the present writ petition has been filed with the sole object to deny the fruits of the award to the respondent no.3. The same should be dismissed with exemplary costs.

25. Heard the learned advocates appearing for the respective parties and considered the materials on record. From a perusal of the writ petition, it would be apparent that the petitioner has not only challenged the award dated 28th June, 2017 but has also challenged the Order No.63 dated 28th June, 2013. The respondent no.3, however, says that the aforesaid order has reached finality. Having regard to the aforesaid, it is necessary to consider the aforesaid objection first.

26. In the instant case, as noted above, an enquiry was held wherein the respondent no.3 participated with his co-worker. On the basis of the aforesaid domestic enquiry, the respondent no.3 was dismissed from service. Subsequently when the proceeding was initiated before the Tribunal, at the instance of the petitioner, the

tribunal had embarked upon the enquiry to consider the validity and or invalidity of the domestic enquiry, as a preliminary issue. Such fact would corroborate from the Order No.22 dated 15th November, 2010. It must be noted that depending on the findings of the aforesaid preliminary issue, that the the learned Labour Court/tribunal, assumes jurisdiction to decide the next question. As such, unless, the learned Labour Court decides on the preliminary issue, the learned Labour Court could not have embarked upon an enquiry to examine the charges on merits.

27. Admittedly, by Order No.63 the learned First labour Court upon deciding on the preliminary issue of invalidity of the domestic enquiry in favour of the respondent no.3, had subsequently proceeded to enquire into the merits of the charges. The aforesaid Order No.63 dated 28th June, 2013, in my view, merged with the final Award and therefore, is subject to challenge by the petitioner. The Hon'ble Supreme Court in the case of **Cooper Engineering Limited** (supra) in paragraph 22 thereof, in no uncertain terms has observed as follows: -

“22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no

difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

28. Having regard to the aforesaid, I find that the petitioner has a right to challenge the said order even after passing of the final award. In this case it appears that the Tribunal has concluded the domestic enquiry to be invalid based on the following grounds: -

- (i) In course of enquiry, the management having been permitted to be represented by a lawyer, the workman ought to have been permitted, to be represented by a lawyer in his defence and inability to be represented by a lawyer has caused him prejudice;
- (ii) The respondent no.3 was not given copies of documents along with the show-cause and charge-sheet which were

relied on by the petitioner, no inspection thereof was also afforded;

- (iii) Non-consideration of objection, *inter alia*, including the enquiry proceeding not being read over and explained to the respondent no.3, in his mother tongue.

29. From the records of the proceeding, it would be apparent and clear that the respondent no.3 was represented by a co-worker. The respondent no.3 had never issued any letter intimating the Enquiry Officer with regard to his financial inability or his intention to appoint a lawyer. It is not the case of the respondent no.3 that despite the petitioner being represented by a lawyer, in his case such opportunity was declined. I also find that the respondent no. 3, in course of cross-examination, had admitted that all documents had duly been supplied to him to prove the charges. Although, the respondent no.3 has contended that inspection had not been afforded, no attempt has been made to demonstrate whether any prejudice was caused to him, for failure on the part of the petitioner to afford inspection of the documents. The learned First Labour Court despite recording that the respondent no.3 had deposed that he had been served with all the documents which were exhibited, had returned a finding that all documents were not supplied to the respondent no.3.

30. From the documents on record it appears that the respondent no.3 was conversant in English language. The reply to the charge-sheet is in English language. The respondent no.3 all along was represented by his co-worker who has also put his signature on the records of the proceeding. The records of the enquiry proceeding also contain a certificate that the same was read over and explained to the respondent no.3. There is no contemporaneous document/objections relied on by the respondent no.3 to demonstrate that he did not understand the proceeding or put his signature without understanding the same.

31. Having regard to the aforesaid and in the aforesaid conspectus, I find that the decision arrived at by the learned First Labour Court on the issue of invalidity of the domestic enquiry to be perverse. It is well-settled that unless the Tribunal and/or the Labour Court decides that the domestic enquiry is invalid by reasons of failure of natural justice or otherwise, the Tribunal does not assume jurisdiction to enquire into the validity or invalidity of the charges and or proof thereof.

32. In view thereof, the Order No.63 dated 28th June, 2013 and the final award dated 26th June, 2017, passed by the learned First Labour Court cannot be sustained, the same are accordingly set aside and quashed.

33. The petitioner, however, is directed to make payment of all admissible dues of the respondent no.3, if not already paid, within a period of two weeks from the date of communication of this order along with interest computed at the rate of 12 per cent per annum.

34. With the aforesaid observations/directions the writ petition is allowed. There shall be no order as to costs.

35. The department is directed to return the original records of case no. 12 of 2008 under Section 10(1B)(d) of the said Act, to the learned First Labour Court, West Bengal, forthwith.

36. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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