

Form No.J(2)

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

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 25857 of 2018

Debaprasad Chakrabarti

v.

7th Industrial Tribunal, West Bengal, Kolkata and Ors.

For the petitioner : Mr.Aninda Lahiri,

For the respondent nos. 2 : Mr. Swarup Paul,
& 3. Mr. D.Saha,
Mr. G.S.Dutta,
Mr. Anish Roy,
Ms. S. Das,

Heard on : 24.08.2023

Judgment on : 24.08.2023

Raja Basu Chowdhury, J:

1. It is noticed that 7th Industrial Tribunal, West Bengal, New Secretariat Building, Kolkata has been made a party respondent in the present writ petition.
2. Mr. Lahiri, however, on instruction submits that the 7th Industrial Tribunal has wrongly been arrayed as a respondent in the present proceeding and prays for leave to delete the same.
3. Having heard learned advocate for the petitioner and learned advocate representing the respondents, I am of the view that the

name of the 7th Industrial Tribunal should be deleted from the array of respondents. In view thereof, leave is granted to the petitioner cause the aforesaid correction in the cause title.

4. The present writ application has been filed, *inter alia*, challenging the order dated 10th October, 2018 passed by the 7th Industrial Tribunal, West Bengal, Kolkata in case No.36 of 2016. The petitioner is a workman and had joined the Themis Chemicals Ltd. later name changed Themis Medicare Ltd., (hereinafter referred to as the said company) sometimes on 13th March, 1989 as a Trainee Medical Representative, at its Headquarters at Burdwan. It is the petitioner's case that at the relevant point of time he was paid a consolidated remuneration of Rs. 850. Subsequently, however, upon completion of the probationary period his service was confirmed in the said company, with effect from 1st January, 1990.
5. While discharging his duties in the sales promotional job, sometimes on 8th March, 2016, the petitioner was transferred to Mumbai. The petitioner had initiated a conciliation proceeding in relation to the aforesaid transfer. The petitioner contends that in the interregnum, however, by a letter dated 7th April, 2016, the said company had purported to issue a show cause notice-cum-suspension order on the petitioner.
6. Although, the petitioner had sent a reply on 15th April, 2016, to the said show cause notice, the said company by a communication in

writing dated 5th May, 2016 had informed the petitioner that they had decided to hold an enquiry into the charges leveled against the petitioner. The petitioner was also, *inter alia*, informed by the aforesaid notice that an enquiry officer has been appointed and the enquiry proceedings shall be held on 20th May, 2016 at Patna.

7. Subsequently, on the basis of an *ex parte* enquiry conducted by the said company at Patna, the service of the petitioner was terminated with effect from 12th July, 2016 without providing him with retrenchment compensation.
8. Challenging the order of dismissal, an industrial dispute was raised by the petitioner and a case under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") was filed before the 7th Industrial Tribunal, Kolkata which was registered as case No. 36 of 2010 under Section 10(1B)(d) of the said Act.
9. In such proceeding, not only the petitioner but the said company filed their respective written statements. As would appear from the pleadings, the petitioner had sought for following reliefs:
 - a) Order of reinstatement of the applicant/workman in the Company with same status.
 - b) Order of payment of back wages including as payable by the Company from the date of termination to the date of actual reinstatement along with interest as admissible;

c) Order of payment of interim reliefs;

And

d) To pass such other/further order/orders as to Your Honour may deem fit and proper.

10. In connection with the aforesaid proceeding, the said company had filed an application on 22nd February, 2018, *inter alia*, praying for an order that the validity of the departmental enquiry be decided first, before entering into the merits of the case. The said application was contested by the petitioner and by an order dated 10th October, 2018 the 7th Industrial Tribunal was, *inter alia*, pleased to direct that the issue as regards validity of the domestic enquiry to be taken up first, as a preliminary issue while the remaining issues would be taken up and decided subsequently. Accordingly, the petitioner was called upon to lead evidence in respect of the preliminary issue.

11. Mr. Lahiri, learned advocate representing the petitioner, submits that the challenge in the proceeding before the learned Tribunal is not limited to the manner of conduct of the domestic enquiry but also to the final order of termination. The petitioner is governed by the provisions of Sales Promotion Employees (Condition of Service) Act, 1976. No rules were followed for holding the enquiry that was conducted in Patna, *ex parte*. By placing reliance on Section 6 of Sales Promotion Employees (Condition of Service) Act, 1976, it is submitted that the model standing orders and certified standing orders, as provided in the Industrial Employment

(Standing Orders) Act, 1946 insofar as the sales promotion employees are concerned, despite being required to, were not followed. The proceeding is invalid, contrary to legal procedure and as such the learned Tribunal ought to have quashed both the enquiry as also the final order.

12. He further submits that the learned Tribunal ought not to have directed the issue of validity of the domestic enquiry to be decided as a preliminary issue first, since, West Bengal Industrial Disputes Rules, 1958 do not define a preliminary issue. Further according to him, as per settled law, a Tribunal is also required to decide on all the issues. In the facts stated as hereinabove, he submits that the order impugned in the present application should be set aside and the Tribunal should be directed to hear out all the issues including the issue of validity of domestic enquiry in one go.

13. *Per contra*, Mr. Pal, learned advocate representing the said company, has taken me through the pleadings of the parties. By drawing attention of this Court to paragraph nos. 9 and 10 of the written statement filed by the petitioner, he submits that the petitioner has questioned the validity of the domestic enquiry and it is for such reason the learned Tribunal was, *inter alia*, pleased to frame the issue, whether the termination of service of the petitioner/workman is illegal. It is submitted that since, the learned Tribunal exercises its jurisdiction within the four corners of the Industrial Disputes Act, 1947, the learned Tribunal can not only

look into the validity of the domestic enquiry but also can permit both the parties to lead evidence to prove the charges, both for and against the workman, provided the learned Tribunal at the first instance finds the domestic enquiry to be invalid.

14. In the event, the learned Tribunal finds the enquiry to be valid, it can still go into the question of proportionality of the quantum of punishment inflicted on the workman. If, however, the learned Tribunal is of the view that the enquiry stands vitiated, the learned Tribunal can certainly permit both the petitioner as also the said company to lead evidence, both against and in support of the charges.

15. Thus, unless the Tribunal adjudicates on the issue of validity of the domestic enquiry and finds the domestic enquiry to be invalid, the Tribunal has no power or jurisdiction to consider whether the charges of the domestic enquiry stood proved or not.

16. In support of the aforesaid contention reliance has been placed on the following judgments delivered by the Hon'ble Supreme Court and this Hon'ble Court in the cases of :

- 1) ***M. L. Singla v. Punjab National Bank and another***, reported in **AIR 2018 SC 4668**
- 2) ***Kurukshetra University v. Prithvi Singh***, reported in **AIR 2018 SC 973**.

- 3) ***The Indian Cable Co. Ltd. v. The 5th Industrial Tribunal West Bengal & Ors.***, reported in **(1989) 1 CHN 204.**
- 4) ***Delhi Cloth and General Mills Co. vs. Ludh Budh Singh***, reported in **(1972) 1 SCC 595.**
- 5) ***The Cooper Engineering Ltd. v. Shri P.P. Mundhe***, reported in **(1975) 2 SCC 661.**
- 6) ***The workmen of M/s. Firestone Tyre & Rubber Co. of India Pvt. Ltd.***, reported in **1973 I LLJ 278.**

17. Having regard to the aforesaid, it is submitted that the Tribunal did not commit any irregularity in procedure and this Court in exercise of its extraordinary writ jurisdiction is not called upon to interfere, at this stage when a final decision is yet to be taken by the Tribunal.

18. Heard learned advocates appearing for the respective parties and considering the materials on record, I find that Mr. Lahiri, learned advocate representing the petitioner, has strenuously argued that the judgments relied on by Mr. Paul had not been rendered in relation to cases which are governed by the Sales Promotion Employees (Condition of Service) Act, 1976 and as such are distinguishable. I, however, notice that Section 6 of the Sales Promotion Employees (Condition of Service) Act, 1976, not only makes the provisions of Minimum Wages Act, 1948, and the

Workman Compensation Act, 1923 applicable but also the provisions of the Industrial Disputes Act, 1947 are equally made applicable. I also notice that Hon'ble Supreme Court in the case of ***M/s. Firestone Tyre and Rubber Company of India (Pvt.) Ltd.***

(supra) in paragraph 29 has been, *inter alia*, observed as follows :

"29. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fides.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an

opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the

interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in the Management of Panitole Tea Estate v. The Workmen, (supra) within the judicial decision of a Labour Court or Tribunal. The above was the law as laid down by this Court as on 15-12-1971 applicable to all industries adjudication arising out of orders of dismissal or discharge.”

19. Similar view has also been taken by the Hon’ble Supreme Court in the case of **Delhi Cloth and General Mills Co. (supra)** and the other judgments relied on by the petitioner.

20. Having regard to the same and taking into consideration that an Industrial Dispute, as noted above, had been raised by the petitioner within the meaning of the said Act, I have no doubt in mind that the learned Tribunal was obliged to consider the validity and or invalidity of the domestic enquiry at the first instance, for it to proceed further in the matter. Simply because the petitioner claims to be governed by the provisions of the Sales Promotion Employees (Condition of Service) Act, 1976, or by reasons of the

West Bengal Industrial Disputes Rules, 1958 not defining preliminary enquiry, the same does not denude the Tribunal of its obligation to decide on the validity or invalidity of the domestic enquiry as a preliminary issue.

21. The petitioner has also not been able to demonstrate any jurisdictional error committed by the Learned Tribunal. No case for interference has also been made out.
22. The writ application fails and is accordingly dismissed.
23. There shall be no order as to costs.
24. Urgent photostat certified copy of this order if applied for be given to the learned advocate for the parties on usual formalities.

(Raja Basu Chowdhury, J.)