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W.A.No.1276/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1276 of 2023

N.Shankar

...

Appellant

-VS-

The Managing Director,
M/s.Hindustan Unilever Ltd.,
Detergent Factory,
Pondicherry-605 102.

...

Respondent

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 19.01.2023, passed in W.P.No.8003 of 2021, on the file of this Court.

For Appellant : Mr.P.R.Thiruneelakandan

For Respondent : Ms.T.Madhumitha,
for M/s.King & Partridge.



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JUDGMENT
(By *S.Vaidyanathan,J.*)

This appeal is preferred against the order, dated 19.01.2023, passed in W.P.No.8003 of 2021.

2. In the Industrial Dispute No.14 of 2015 before the Labour Court/Industrial Tribunal, Puducherry, the management/respondent herein had filed a Memo stating that the fairness of the domestic enquiry was to be decided as a preliminary issue and, when such a Memo was pending, an application viz., I.A.No.162 of 2019 was also filed by the management, requesting the Labour Court to permit the management to let in oral evidence to prove the fairness of the domestic enquiry conducted by the management against the workman. The Labour Court allowed the said application on 27.02.2020 and the plea of the management to permit them to let in oral evidence with regard to the fairness of the domestic enquiry alone was acceded. It was made clear in the order that the management would not be permitted to let in oral evidence on merit or with regard to perversity of the domestic enquiry.

3. Aggrieved over the order of the Tribunal, dated 27.02.2020, the workman/appellant herein preferred a Writ Petition, contending that the fairness of the domestic enquiry can be restricted only with regard to the documents, both oral and documentary, tendered before the Enquiry Officer, and that the same cannot once again be marked before the Labour Court by means of oral evidence unless there are



objections to the same. The plea of the workman was rejected by the learned single Judge, holding that the management was empowered to let in evidence with regard to fairness of the domestic inquiry and that the management cannot be deprived of the same. Further aggrieved over the order in the Writ Petition, that confirmed the order of the Labour Court, the present Writ Appeal has been preferred.

4. Ms.T.Madhumitha, learned counsel for the management/respondent, would contend that the documents relied upon in the enquiry have been objected to by the workman and that those documents have got to be marked in the preliminary issue. According to her, though initial consent for marking of the documents has been given by the workman, in the subsequent hearing, the same was objected to. She relied upon a decision of a Division Bench of the Nagpur Bench of the Bombay High Court in *Gulam Mustaffa Kureshi v. Member, Industrial Court, and Others*, 2005 (2) Bom CR 124, wherein, a decision of the Supreme Court in *Neeta Kaplish v. Presiding Officer, Labour Court, and Another*, 1999 (I) LLJ 275 SC, has been referred to, to contend that there was an observation that the parties can be allowed to let in evidence. Paragraphs 22 and 23 of the said decision read as under :

"22. In our view the position of law is now well crystalised particularly in light of the latest judgment of the Apex Court in the case of Neeta Kaplish v. Presiding Officer, Labour Court and another (supra) that the enquiry proceedings before the Tribunal is in two stages firstly the Tribunal is required to consider the preliminary issue whether the



said enquiry is commenced in consonance with the said provisions and whether it is just and fair and not perverse. While considering the aforesaid enquiry it is not open to the Tribunal to permit the party to lead oral evidence in the matter on merits of the case. The Tribunal can permit parties to lead oral evidence to a limited extent to establish that there is any breach of the principles of natural justice. It is, therefore, clear that it is nor permissible for the Tribunal to permit the parties to lead oral evidence in support of the issue of perversity of charges. It is settled law that perversity has to be decided on the basis of the material and evidence available before the departmental proceedings. It is because the perversity is an inference which has to be drawn by the Court on the basis of material available before the Tribunal or the Labour Court and by such inference it can be held that whether findings given in the departmental proceedings are perverse or not. It is also possible for the Court to draw an inference of perversity if it has been found on record that on evidence available no prudent person could have arrived at such a conclusion as has been drawn by the Enquiry Officer in the departmental proceedings. We are not impressed by the argument of the learned Counsel for the respondent-workman that he is entitled to lead evidence even at the state of preliminary issue and establish perversity by leading additional evidence before the Industrial Court. The law as laid down is that after the enquiry is conducted at the preliminary stage and if the Labour Court comes to the finding that the enquiry is vitiated either by virtue of non-compliance of the provisions of natural justice and/or it is vitiated by virtue of perversity that the Labour Court can call upon the management to lead evidence before the Labour



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Court itself for establishing the guilt of the respondent-workman. In our view, therefore, to contend that there are two stages of complete round of litigation available for the workman first to lead evidence and establish that he is not guilty even at the preliminary stage and thereafter re-conduct the matter by leading fresh evidence in rebuttal if the enquiry is held to be invalid in law. In our view such a course is not open for the respondent workman. In our view, the law is clearly laid down by the judgments of the Apex Court that the Labour Court does not jurisdiction to go into the merits of the complaint till and until a finding is recorded in respect of the validity of the enquiry before the enquiry proceedings. In the aforesaid view of the case, we find that the order passed by the Labour Court dated 27-3-2003 and by the Industrial Court in revision dated 15-11-2003 permitting the workman to lead oral evidence even in respect of the preliminary issue of perversity of findings before the departmental proceedings is unsustainable in law. We do not find any merits in the argument advanced by the learned Counsel for the appellant that he is entitled to establish so called charge of victimisation even before the validity of the enquiry can be established before the Labour Court.

23. In that view of the matter, we allow the present writ petition and quash and set aside the order passed by the Industrial Court in revision application and allow the revision application. We further direct the Labour Court to decide the preliminary issue only on the basis of the record available and permit the respondent workman to lead oral evidence only to the extent of issue pertaining to violation of the principles of natural justice and not on the issue of perversity of the



departmental proceedings. We further direct the Labour Court to decide the perversity of the enquiry on the basis of the record which has already been filed before the Labour Court."

5. The above averment with regard to objection to marking of the documents, more-so as regards one more document, has been denied by Mr.P.R.Thiruneelakandan, learned counsel for the workman/appellant. He would submit that when all the documents, according to the management/respondent, were marked through consent with regard to the fairness of the domestic enquiry before the Labour Court, there is no need for letting in any oral evidence on the preliminary issue. He relied upon the following decisions of the Bombay High Court :

(1) Gulam Mustaffa Kureshi v. Member, Industrial Court & Others, CDJ 2004 BHC 1950.

(2) Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. v. Vasant Ambadas Deshpande, CDJ 2014 BHC 083.

(3) Maharashtra State Road Transport Corporation v. Syed Saheblal Syed Nijam, CDJ 2014 BHC 1014.

(4) Maharashtra State Road Transport Corporation v. Nilkanth Tukaram Koli, CDJ 2015 BHC 2392.

(5) State Transport Co-op. Credit Society Ltd. v. Rajendra Sudhakar Mahalpure, CDJ 2018 BHC 1814.



6. In the decision relied upon by the learned counsel for the management/respondent in *Neeta Kaplish*, cited supra, the Apex Court has categorically held that there are two stages in the trial of an industrial dispute. One is with regard to the preliminary issue on the fairness of the domestic enquiry and the second with regard to perversity. Perversity cannot be an issue at the preliminary stage. The Apex Court has permitted the Tribunal to lead the evidence to establish that there is a breach of principles of natural justice. The said principle laid down is applicable only if the documents are not marked by consent or if there are any objections by the workman. Take a case where an employee has been set ex parte and a detailed enquiry has been conducted by the employer and an order of dismissal passed. In an industrial dispute raised by him, while questioning the fairness of the enquiry, if the employee refuses to accede to the marked documents, it is essentially required for the employer to get into the box to let in evidence on the preliminary issue to substantiate the stand that there was a domestic enquiry conducted complying with the principles of natural justice. That is not the case here.

7. In the case on hand, the employee and the employer admit that there was an enquiry and the fairness of the enquiry alone is in dispute. That being the case, based on the material available on record, the Labour Court is duty bound to decide the issue on the fairness of the enquiry, which has been taken up as a preliminary issue.

8. Though we agree with the learned single Judge as to the order impugned,



we say that the principle laid down therein is applicable only if any of the documents or all the documents, including verbal evidence, that form part of the domestic enquiry, are objected to be marked as evidence by the employee.

9. In this case, Mr.P.R.Thiruneelakandan, learned counsel for the workman/appellant, has stated across the Bar that none of the documents marked in the domestic enquiry has been objected to and, therefore, the question of letting in oral evidence on the preliminary issue does not arise.

10. Hence, we are of the view that based on the documentary evidence available before it, the Labour Court/Tribunal shall decide the fairness of the enquiry and, in case the management/employer had taken a plea that they must be given an opportunity to let in evidence if the domestic enquiry is held to be not fair and proper by the Labour Court, such an opportunity may be given to the management/employer. Accordingly, the orders of the learned single Judge and also that of the Tribunal are interfered with and the matter is remanded to the Labour Court/Tribunal for deciding the matter, as stated above. Parties are permitted to address arguments. We make it clear that while dealing with the preliminary issue, merits of the matter cannot be gone into and the parties are not permitted to let in evidence on merits. Also, if the domestic enquiry is held to be fair and proper or if it is given up by the employer, it is open for the parties to lead evidence pertaining to victimization, whether the employer is an industry or not, whether the employee is a workman or not, and also about the gainful



employment, as additional evidence. That stage will come only after determination of the preliminary issue. Both the parties request that the Labour Court/Tribunal may be directed to decide the issue at the earliest point of time. We expect the Labour Court to decide the fairness of the enquiry within a period of two months from the date of receipt of a copy of this order.

11. Writ Appeal is allowed. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (K.R.S.,J.)
20-06-2023

To

The Presiding Officer,
Labour Court/Industrial Tribunal,
Puducherry.



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S.VAIDYANATHAN,J.
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