



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7283 OF 2022

PETITIONER:

(Ori. Petitioner)

Ekvira Nagri Pat-Sanstha Maryadit
through its General Manager
Nitin Pandurang Band,
Near Bus Stand, Akot Road,
Anjangaon Surji, Tq. Anjangaon Surji,
Dist - Amravati.

V E R S U S

RESPONDENT :

(Ori. Respondent)

Sandeep Marotrao Pande,
Age about 38 years,
Occupation : Nil.
R/o Nerpingalai, Tq. Morshi,
Dist. Amravati.

Shri Y. N. Sambre, Advocate for petitioner.

Shri P. S. Patil, Advocate for respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED : 12/03/2024.

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. Heard learned counsel appearing for the parties, with consent for final disposal.

2. The order impugned in the present petition is dated 07/09/2022 below Exh.C-9 passed by the learned Labour Court, Amravati, thereby rejecting the application filed by the employer to permit them to conduct an enquiry / to prove the charges

before the said Tribunal on the ground that no enquiry was conducted before removal of the respondent.

3. Learned counsel for the petitioner would submit that first of all, such right is available to the petitioner. As it is settled that even if no enquiry is conducted or even defective enquiry is found to be conducted, the employer is entitled to seek permission for proving the charge in order to justify the decision taken by the employer.

4. Learned counsel for the petitioner placed reliance on 1] Workmen of the Motipur Sugar Factory Private Ltd. Vrs. The Motipur Sugar Factory, reported in (1965) 3 SCR 588, 2] (The workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vrs. The management and others, reported in (1973) 1 SCC 813) and 3] State of Uttarakhand and others Vrs. Sureshwati, reported in (2021) 3 SCC 108.

5. Per contra, learned counsel for respondent would submit that the proposition of the permission to prove the charges against the employee before the concerned Tribunal is not disputed, however, he would submit that the application has to be filed at proper and appropriate stage, which is the stage of filing of the written statement i.e. at the earliest stage, where the employer

has to make request or justify the action for proving action of the employer before the concerned Tribunal. He would submit that in the present matter, written statement filed by the employer clearly goes to show that there was no such request. The application was filed subsequently and when the matter was pending for further evidence of the employee.

6. The rival contention calls for consideration.

7. The Hon'ble Apex Court in the case of Workmen of the Motipur Sugar Factory Private Ltd. (supra) while dealing with this aspect and more particularly in Paragraph No.11 observed thus :-

"11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. v. Workmen) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sana Musa Sugar Works (P) Limited v. Shobrati Khan, Phulbari Tea Estate v. Workmen, and Punjab National Bank Limited v. Workmen. These three cases were further considered by this

Court in *Bharat Sugar Mills Limited v. Jai Singh*, and reference was also made to the decision of the Labour Appellate Tribunal in *Ram Swarath Sinha v. Belsund Sugar Co.* It was pointed out that "the important effect of omission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except *Phulbari Tea Estate* case, were on applications under Section 23 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. *Phulbari Tea Estate* case was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper."

8. The above observations of the Hon'ble Apex Court of a Bench of Four Hon'ble Judges clearly reveal that even if there is no enquiry or even if the defective enquiry is conducted, the employer is entitled to seek permission from the Tribunal to prove his action

of removal or termination by conducting enquiry before the said Tribunal.

9. In the case of The workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra) and on relying on the decision of Workmen of the Motipur Sugar Factory Private Ltd. (supra), the Hon'ble Apex Court in Paragraph No.32 culled out the principles broadly emerge in the earlier decision which reads thus :-

"32. 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 fide.

(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, had 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 evidence 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 straightaway, 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*, within the judicial decision of a Labour Court or Tribunal.

10. The Hon'ble Apex Court in Paragraph No.37 has again reiterated that even if no enquiry was held or if an enquiry held to be defective, it is open to the employer to adduce evidence for the first time before the Tribunal justifying the order of discharge / dismissal.

11. It is no doubt observed by the Hon'ble Apex Court that such plea has to be raised at the earliest stage i.e. at the time of filing of the written statement. It is clear from the said observation that even at subsequent stages, the employer is having right to seek such prayer for conducting enquiry by adducing evidence to prove its action of discharge / dismissal.

12. In the case of State of Uttarakhand and others (supra), the Bench of Hon'ble Three Judges' of the Apex Court in Paragraph No.18 and by discussing the earlier decision, reiterated the same principle which reads thus :-

"18. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified."

13. Keeping in mind the above settled proposition of law, the impugned order passed by the learned Labour Court needs to be appreciated.

14. First of all, the impugned order nowhere discusses any such right of the employer to prove its action even before the Tribunal. The application has been rejected simply on the ground that the matter or reference made by the Government in respect of termination of Party No.1 and since no enquiry was held and in absence of any charge sheet, there is no question of proving the charges levelled in the present proceedings.

15. These observations of the learned Labour Court are directly coming within the teeth of the order of the Hon'ble Apex Court as discussed above. Thus, such order cannot be sustained in the eyes of law.

16. Similarly, there is no discussion with regard to the contentions now raised by the respondent that such request was not made at appropriate stage i.e. at the time of filing of written statement. Accordingly, the contentions now raised for the first time before this Court about the aspect of appropriate stage of filing of such request, cannot be looked into. Accordingly, the impugned order needs to be quashed and set aside and the application filed by the petitioner / employer needs to be allowed.

17. Having said so, the petition succeeds. The impugned order is quashed and set aside.

18. The application for permission to prove charges filed on 10/08/2021 vide Exh.C-9 stands allowed.

19. Rule is made absolute in the above terms. No costs.

[BHARAT P. DESHPANDE, J.]