



2024:DHC:3203



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 24th April, 2024**

+ **W.P.(C) 3489/2007**

M.C.K.R. HOSPITAL & AYURVEDIC R Petitioner

Through: **Dr. M.Y. Khan, Advocate**

versus

SATISH KUMAR Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of Constitution of India has been filed on behalf of the petitioner seeking quashing of the impugned orders dated 30th July, 2004 and 9th May, 2006 passed by the learned Presiding Officer, Industrial Tribunal – II, Karkardooma Courts, New Delhi in O.P. No. 67/2005 (Old O.P. No. 12/2002).

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a. The petitioner is a hospital established in the year 1959, which operates under a trust for non-profit purposes.
- b. The respondent, initially employed as a Ward boy and later



- as an ECG Attendant, faced several charges of misconduct for which charge sheets were issued on various occasions.
- c. Subsequently, a charge sheet dated 15th September, 1998 was issued against the respondent workman and the same detailed numerous charges against the respondent, including supporting violent agitations, obstructing hospital operations, participating in *gherao*, blocking ingress and egress of other employees not supporting the agitation, staging *dharna* and threatening the officials of the hospital including the doctors. The respondent did not submit an explanation even after publication of notice, leading to an *ex-parte* domestic enquiry by Sh. Rajesh Narang (enquiry officer) whereby the respondent workman was found guilty of the charges levelled against him.
- d. Another charge sheet dated 6th January, 2000 was issued to the respondent workman levelling charges similar to the earlier one and pursuant to the same, another domestic enquiry, headed by an enquiry officer namely Sh. S.K Jha was conducted and the respondent also participated in the said enquiry. Conclusively, the enquiry was decided against the respondent workman.
- e. Since, the respondent workman was found guilty in both the enquiries, he was dismissed from services vide letter dated 21st November, 2000. Thereafter, the petitioner management



filed an approval application bearing OP No. 67/2002 under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter “the Act”) seeking validation of the dismissal.

- f. In the above said application, the learned Industrial Tribunal framed a preliminary issue regarding the validity of the enquiries.
- g. The first enquiry, led by AW-1, i.e., Sh. Rajesh Narang, was found to be flawed due to incomplete publication and procedural errors. Consequently, the same was deemed invalid. Similarly, the second enquiry overseen by Sh. S.K. Jha was also deemed flawed. As a result of these shortcomings, both the enquiries were invalidated by the learned Tribunal, leading to a ruling against the petitioner and in favor of the respondent workman vide the impugned order dated 30th July, 2004. Accordingly, vide the said order, the domestic enquiries were set aside and the learned Tribunal proceeded to frame issues which read as under:

“..i) Whether the respondent has committed the alleged misconduct? OPA

ii) Whether the applicant has complied with the provisions of section 33 (2) (b) of the Industrial Dispute Act? OPA

iii) Relief...”

- h. Thereafter, both the parties led their evidence before the



learned Industrial Tribunal and vide the impugned order dated 9th May, 2006, the learned Tribunal held that due to lack of independent corroboration and the delayed submission of petitioner witness's affidavit, there wasn't sufficient evidence to establish the alleged misconduct by the respondent workman on the specified date, and as such the dismissal order dated 21st November, 2000 was held to be invalid. Vide the said impugned order, the petitioner was instructed to reinstate the respondent workman with continuity of service, and also to pay arrears of salary w.e.f. 21st November, 2000 till reinstatement.

i. Being aggrieved by the above, the instant petition was filed by the petitioner.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders are bad in law and have been passed without taking into consideration the entire facts and circumstances.

4. It is submitted that the learned Tribunal erroneously proceeded to adjudicate the approval application as an industrial dispute which is contrary to the settled position of law as per which in a proceeding under Section 33 (2)(b) of the Act, the powers of the Tribunal are restricted. Therefore, the learned Tribunal was only required to decide whether a *prima facie* case is made out and cannot adjudicate on the merits of the case as in an industrial dispute.

5. It is submitted that the petitioner cannot be termed an industry within



the meaning of Section 2(j) of the Act. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court in *State of U.P v. Jai Bir Singh*, (2005) 5 SCC 1.

6. It is submitted that the learned Tribunal erred by not appreciating that notices of enquiry were sent to the workman by registered AD Post at his address which have also been admitted by him to be correct.

7. It is further submitted that the enquiry notice was also published in the newspaper, however, despite notices being served through various modes, the workman failed to appear in the enquiry proceedings and as such, the learned Tribunal committed an error of law in holding the enquiry vitiated.

8. It is submitted that when notice is sent by registered AD post at the correct address, it is proper and valid compliance of law and is deemed to be served. It is further submitted that in his letter dated 18th November, 1999, the workman objected to the holding of the above enquiry and as such, it could not be said that he had no intimation of the enquiry being held against him.

9. It is submitted that the learned Tribunal failed to examine that no prejudice had been caused to the workman in presenting his defence, as admittedly he had participated in the enquiry proceedings, copies of the proceedings and copies of statements of the witnesses along with documents were given to him, all the witnesses of the management were cross examined by the workman and that he was also given an opportunity to lead his evidence in defence.

10. It is further submitted that in the absence of any prejudice being



shown, the enquiry cannot be said to be vitiated merely on the ground that the workman was not allowed to bring an outsider as his defence assistant, more particularly when he had no right for the same.

11. It is submitted that the learned Tribunal erred in observing that the affidavit of Sh. M. K. Kaushik and Sh. S. K. Sagar should have been filed with the approval application. It is further submitted that the approval application was filed on 11th December, 2002, when the issue regarding fairness of enquiry was treated as a preliminary issue and the evidence was being led on the enquiry issue, therefore, an affidavit regarding misconduct which is to be proved on merit shall only be filed at a later stage.

12. It is also submitted that there are neither any provisions in law nor practice to file affidavits of witnesses along with approval application, therefore, the learned Tribunal committed an error of law in observing that the management has not filed the affidavit of witness AW-3 along with the approval application to improvise their stance at a later stage.

13. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs, as prayed for, may be granted.

14. *Per Contra*, the learned counsel for the respondent vehemently opposed the instant petition submitting to the effect that the same is devoid of merit and is liable to be dismissed.

15. It is submitted that the enquiries conducted by the petitioner were illegal as the workman has been denied an opportunity to be heard, the same being in violation of the principles of the natural justice makes the enquiries



liable to be vitiated as has rightly been held by the learned Tribunal.

16. It is also submitted that the respondent never participated in any strike, therefore, the action of dismissal of the workman is an unfair labour practice on the part of the petitioner.

17. It is submitted that the learned Industrial Tribunal has rightly dismissed the approval application of the petitioner management on the ground that the management has failed to prove the charges levelled against the respondent.

18. It is submitted that on the face of it, since the enquiries were found defective, there was no reason for the learned Tribunal to delve into the enquiry records. The impugned order dated 30th July, 2004 attained finality once the learned Industrial Tribunal set the enquiries aside and the petitioner preferred not to challenge the same. Moreover, the petitioner had continued with the enquiry conducted by the learned Industrial Tribunal and thus, the petitioner cannot be allowed to touch the issue of setting aside the enquiries at this stage.

19. It is submitted that the learned Industrial Tribunal has rightly exercised its jurisdiction and has passed a well-reasoned order. The learned Tribunal had firstly set aside the enquiries of the petitioner and thereafter, adjudicated upon the allegations of the petitioner and subsequent to the same, the learned Tribunal passed the order dated 9th May, 2006 dismissing the approval application of the petitioner.

20. It is submitted that the learned Tribunal has passed the impugned orders in accordance with the law and there is no illegality or infirmity of



any kind thereto.

21. Therefore, in view of the foregoing submissions, it submitted that the instant petition may be dismissed.

22. Heard the learned counsel for the parties as well as perused the material placed on record.

23. It is the case of the petitioner that the learned Tribunal wrongly decided the preliminary issue in favour of the respondent workman as the petitioner had taken all the steps to serve the notice upon the workman during the first enquiry despite which he failed to appear. Therefore, the enquiry conducted by Sh. Rajesh Narang is right and there is no error. Furthermore, it is submitted that the learned Tribunal erred in holding the enquiry conducted by Sh. S.K Jha as illegal since there are no prescribed rules and regulations which needed to be made part of the enquiry and further the respondent workman was provided with sufficient opportunities to present his defence. It has been contended that in the absence of any prejudice being shown, the enquiry cannot be said to be vitiated merely on the ground that the respondent workman was not allowed to bring an outsider as his defence assistant during enquiry, more particularly, when he had no right for the same. Therefore, the impugned order dated 30th July, 2004 is bad in law and liable to be set aside.

24. The petitioner contends that the impugned order dated 9th May, 2006 is also in contravention to the law as the adjudication of the approval application as an industrial dispute by the learned Industrial Tribunal goes against the established legal precedents under Section 33(2)(b) of the



Industrial Disputes Act, 1947. It has been submitted that the learned Industrial Tribunal does not have the jurisdiction to assess the merits of a case under the said provision. Furthermore, there are no legal provisions mandating filing the affidavits of the witnesses along with the approval application. Therefore, the aforementioned impugned order may be set aside.

25. In rival submissions, the respondent workman whilst refusing the averments made by the petitioner argued that he was not engaged in any strike activities as alleged by the petitioner and the same is a baseless allegation advanced without any shred of evidence. It has been further contended that during the enquiries, the petitioner had violated principles of natural justice which the learned Tribunal rightly vitiated. Therefore, the learned Tribunal passed the impugned orders after considering the entire facts and circumstances available on its record as well as in accordance with the law, and the same make the instant petition devoid of any merit.

26. The question which now falls for adjudication before this Court is whether the impugned orders merit interference under the limited scope of the writ jurisdiction of this Court wherein only errors which are apparent on the face of the record are grounds for intervention.

27. At the outset, it is pertinent to state that the petitioner had contended that it being a hospital is not an industry within the meaning of Section 2(j) of the Act. The law regarding the inclusion of a hospital within the ambit of the Act is no longer *res integra* and the same has been observed by the Hon'ble Supreme Court as well as this Court in a catena of judgments.

28. It is crystal clear that even though the hospitals are considered to be



non-profit institutions, the very fact that they render services make them part of an industry as defined under Section 2(j) of the Act and the same can be ascertained from the observation made in the judgment of ***Bangalore Water Supply & Sewerage Board v. A. Rajappa***, (1978) 2 SCC 213. Therefore, the said contention of the petitioner is out rightly rejected being legally unsustainable.

29. In order to decide the issues raised before this Court, it is imperative to first peruse the impugned order dated 30th July, 2004. The said impugned order reads as under:

“...1. The applicant has filed the present application under Section 33 (2)(b) of I. D. Act for approval of its action to remove the respondent from services. In application it is submitted that respondent indulged in various acts of serious misconduct and acts of subversive of discipline for which he was issued charges dated 15.9.98 and 6.1.2000. He did not submit reply to the chargesheets. The applicant initiated a domestic enquiry and appointed Sh. Rajesh Narang and Sh. S.K. Jha as enquiry officers to enquiry into charges contained in chargesheets dated 15.9.98 and 6.1.2000. The enquiry officer had given sufficient opportunity to the workman to defend himself. The enquiry officers found all the charges fully established against the workman. The enquiry officers submitted their reports. After going through the report of enquiry officers, disciplinary authority dismissed the workman from services vide letter dated 21.11.2000. An amount of Rs. 4522/- was transferred in the bank account of respondent and thereafter Rs. 500/- were also paid, in lieu of one month pay.

2. Respondent has filed the reply to the approval application, it is submitted that letter dated 6.1.2002 narrating the incident of 15.1.99, 18.1.99 and 21.1.99 cannot be regarded as



chargesheet. The chargesheet was issued late. The management and enquiry officers were biased. On merits, it is denied that workman indulged in various acts of serious misconduct and acts supersive of discipline. The applicant got involved in unfair labour practice. No chargesheet dated 15.9.98 was ever supplied to workman. Due opportunity was given to workman during the enquiry. It is denied that enquiries conducted by applicant are fair and proper.

*3. Thereafter applicant has filed the rejoinder. On the basis of pleading of parties following issue was framed on 16.1.2003 :-
"Whether the management has conducted a valid and fair enquiry?" OPA*

5. The first enquiry was conducted by AW-1 Sh. Rajesh Narang who appeared in the witness box and filed his affidavit dated 28.8.2003. He was cross examined at length. In cross examination he admitted that enquiry conducted by him was exparte on the basis of publication dated 5.12. 98. He did not know whether the newspaper was sent to delinquent official or not. He also admitted that the publication does not bear the parentage and address of workman. From the totality of the evidence led with regard this enquiry, it is established that the publication was not done in accordance with the due procedure. As per the Delhi High Court rules the publication has to be done in newspaper having its wide circulation particularly having the circulation in the locality where the defendant/ respondent/ delinquent official had been residing. In the present case, even the parentage and address of delinquent official has not been mentioned, what to say locality. In such a circumstances there is no possibility of sending the newspaper to workman by publication agency and then to send the report to enquiry officer with regard to due publication. Consequently, I am of the considered opinion that publication made in the



present case was not proper and the enquiry officer proceeded exparte without having sufficient material on the record, which vitiates the enquiry proceedings. Consequently I am of the considered opinion that the enquiry proceedings in the enquiry conducted by Sh. Rajesh Narang deserves to be vitiated and accordingly hold so.

6. The next enquiry was conducted by Sh. S.K. Jha who filed his affidavit dated 23.5.2003. He was also cross examined at length. He could not tell who appointed him as enquiry officer. He also admitted that delinquent official demanded the copy of rules and regulations but he was not aware whether the copies were supplied to delinquent official or not. He also admitted that rules and regulations were not even made the part of enquiry proceedings. He did not remember whether the workman had asked for defence assistant and he refused the same. The proceedings conducted and the testimony of AW-2 Sh. S. K. Jha, enquiry officer shows that enquiry officer did not follow the norms for conducting the enquiry. It is evidence from the record that the rules and regulations were not even made the part of enquiry proceedings, what to say supply to delinquent official. It is also matter of record that due opportunity to have defence assistant was not given to workman. In the facts and circumstances the enquiry conducted by Sh. S.K. Jha is held to be vitiated.

7. As discussed above in detail both the enquiries conducted are hereby vitiated and the issue is accordingly decided against the applicant and in favour of respondent...”

30. As per paragraph no. 4 of the impugned order dated 30th July, 2004, the preliminary issue before the learned Tribunal was to decide whether the management had conducted a valid and fair enquiry and vide the said



impugned order, both the enquiries being vitiated, resulted in a decision in favor of the respondent workman.

31. Upon perusal of the above extracts of the impugned order *qua* the first enquiry (Sh. Rajesh Narang being the enquiry officer here), it is made out that the learned Tribunal determined that as per the testimony of AW-1, i.e., Sh. Rajesh Narang, he had made certain admissions which prove that the enquiry conducted by him was not proper since he did not follow the rules of publication in the newspaper and the same is against the law.

32. With regard to the above dispute, this Court does not find any force in the petitioner's case. Admittedly, in the enquiry conducted by Sh. Rajesh Narang, the basic general rules as well as the prescribed norms were not followed. The petitioner management had although published the notice in a newspaper, however, it failed to provide the complete and proper address of the respondent workman therein.

33. As per the settled rules of publication of a notice in a newspaper, complete and detailed address is to be provided by the party and the said publication has to be mandatorily published in a newspaper which is widely circulated in the area of the person to whom the said notice is to be issued.

34. In the instant case, during the first enquiry, the above stated procedure was neglected by the enquiry officer and therefore, the same has rightly been vitiated as the said enquiry completely violated the principles of natural justice by not providing the respondent workman with an opportunity to defend the allegations levelled against him.

35. Upon further perusal of the above stated impugned order *qua* the



second enquiry (Sh. S.K. Jha being the enquiry officer here), it is inferred that in the opinion of the learned Tribunal, AW-2, i.e., Sh. S.K. Jha, the enquiry officer, demonstrated a failure to adhere to the norms of conducting the inquiry. The absence of inclusion of rules and regulations in the enquiry proceedings, coupled with the denial of a proper opportunity for the workman to have a defense assistant, led to the conclusion that the enquiry conducted by Sh. S.K. Jha is improper and hence, the same was vitiated.

36. Insofar as the second enquiry is concerned, it is observed by this Court that Sh. S.K. Jha had not followed the basic principles which needed to be adhered to while conducting a domestic enquiry.

37. Whilst rendering its decision *qua* the second enquiry, the learned Industrial Tribunal observed that Sh. S.K. Jha deposed that the respondent workman demanded a copy of the rules and regulations of the enquiry conducted against him, however, the said enquiry officer, as per his testimony, was not aware if any copy of such rules was provided to the workman. Moreover, the said officer also deposed that no such copy of rules was made part of the enquiry proceedings. Further, observing that the respondent workman was not provided with any defence assistant, it held the above said enquiry to be in contravention to the law and hence, the same was vitiated.

38. This Court is of the view that in a domestic enquiry, certain rules ought to be followed to set out general practice in order to conduct a fair enquiry within the four corners of law. The department concerned with conducting an enquiry must have a set of norms and provide adequate



opportunity to the person against whom enquiry is being conducted, to defend his case and the proceedings so conducted have to mandatorily abide by the principles of natural justice.

39. Similar principle of law has also been observed by the Division Bench of High Court of Bombay in the judgment titled ***Ghatge Patil Transport (Private) Ltd. v. B.K. Etale, 1984 SCC OnLine Bom 321***, wherein, it was held that even if there is no provision in the standing orders or in the law, if in an enquiry before a domestic committee/department, the workman is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant the same would amount to violation of principles of natural justice. Relevant portion of the said judgment is as follows:

“..6. As held by the Supreme Court in the latest case, i.e., Board of Trustees of Port of Bombay v. Dilipkumar Raghavendranath, [1983—I L.L.N. 314] (vide supra), apart from the provisions of law, it is one of the basic principles of natural justice that the inquiry should be fair and impartial. Even if there is no provision in the standing order or in law, where in an inquiry before the domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. In the present case, apart from the request to be represented by a legal practitioner, the employee has also prayed for being represented by some well-wisher from outside or by some union representative from outside, this request was also not granted. While dealing with this contention, in Para, 16 of his order, the Presiding Officer of the Labour Court has



come to the conclusion that the person who appeared as a representative of the employers was the Personnel Officer and from the way in which he handled the case of the first party in the inquiry, it would have to be said that he had considerable experience and acumen in the matter of handling such cases. Such experience was lacking on the part of the employee. He ultimately came to the conclusion that the inquiry officer was not justified in refusing permission in the circumstances of the case. We have gone through the evidence of the inquiry offices adduced before the Labour Court and from it also it is quite clear that the inquiry officer was also of the view that the bailiff's evidence would be quite helpful in the matter. However, according to him, it was the duty of the employee to produce the witness in the domestic inquiry. The inquiry officer was of this view obviously for the reason that the charge referred to a document with which the bailiff was ultimately concerned. Irrespective of the fact on whom the burden lay for examining the bailiff, the fact remains that in the absence of assistance from an expert the employee was handicapped in this respect. Therefore, though we generally agree with the reasons given by the Presiding Officer for holding the inquiry as vitiated on that count, we do not agree with the Presiding Officer when he says that it was only a technical defect. In the matters of domestic inquiries, if the employee is refused a fair opportunity of putting forward his case. i.e., his request for being represented by an outsider or a union representative or a legal practitioner, then it cannot be termed only as a technical defect. However, this will depend on facts and circumstances of each case. Having regard to the facts and circumstances of this case, in our opinion, prejudice was considerable and is writ large. In any case, by this finding the employer's case is not prejudiced in any way. Before the Labour Court, he is entitled to lead evidence and prove the guilt of the employee. His case is not shut out. On the other hand, if the parties are permitted to adduce evidence before the Labour Court, it will help the



course of justice since in the trial before the Labour Court, the bailiff also could be examined. Therefore, taking a cumulative view of the whole matter, in our opinion, this is not a fit case in which we should exercise the extraordinary jurisdiction under Art. 226 of the Constitution of India at this stage...”

40. Therefore, bearing the above in mind, it is observed by this Court that the learned Tribunal rightly decided the vitiation of the enquiries as on the face of its record, the same shows utter disregard to the settled principles of law of conducting a domestic enquiry as discussed herein above. Furthermore, this Court is of the considered view that the enquiries conducted by the petitioner, by virtue of which the workman was dismissed, violates the principles of natural justice since the same was not conducted as per a set of norms and also that the petitioner failed to provide the workman with an opportunity to represent his case by having a defence assistant.

41. Hence, the petitioner's averments *qua* the impugned order dated 30th July, 2004 do not hold any water and the same has been rightly passed in favour of the respondent workman.

42. Now adverting to the impugned order dated 9th May, 2006, the relevant portion of the same read as under:

“...8. The said enquiry issue was treated as preliminary issue and both the parties have led their respective evidence in the issue of enquiry. Vide order dated 30. 7 .04 was decided against the management and in favour of the workman, holding thereby that the enquiry conducted was not proper and valid and thereafter the following further issues were framed :-

1. Whether the respondent has committed the alleged



misconduct? OPA.

2. Whether the applicant has complied with the provisions of Section 33 (2) (b) of the ID Act? OPA.

3. Relief.

12. Learned AR of the management Sh. D.M. Sharma has submitted that the workman during the employment of the management on 01.08.1998 misconduct himself along with his associates Mr. Ashok Kumar, Kiran Pal, Kiran Singh and some other employees who gheraoed of Smt. Veena Talwar and used filthy language against her and Mr. M. K. Kaushik Personal Manager, and blocked the entry and exit point of the main office and also gheraoed Dr. Rajan Mathew, Dr. M.K. Mehra, Col. M.S. Murnal and Dr. J.S. Arora till about 1.15 AM (11.08.1998) and shouted on Dr. J.S. Arora and Ms. Baishali Singh Assistant Manager (Admn.) on 20.08.1998. Learned AR of the management further submitted that workman again misconducted "himself by misbehaving, gheraoing and assaulting to Mr. V.K. Chandel on 15.01.1999 and giving threats, abused and shouted to the witness who was to appear in the Court of Sh. R.K. Tiwari, IT-III in Tis Hazari Court, Delhi on 18.01.1999 and blocking the management officials Col. M.S. Murnal- General Manager (Operations) along with Dr. N.K. Rastogi and Dr. S.K. Trehan into the aforesaid Court on 21.01.1999.

13. The alleged incident is supported by the statement of the witness who were present at the spot and the act of the workman is serious misconduct as a result of which, domestic enquiries were conducted and the management after agreeing with the report of the enquiry officer, dismissed the services of the workman and hence, the present approval application.

14. On the other hand, Learned AR of the workman- Mr. R.K.



Modi has submitted that there is no evidence against the workman and the version given by the management is cooked up story and the workman is a victim of the management's policy of reduction of regular employees.

15. The management in support his claim has examined AW1- Rajesh Narang, AW2- S.K. Jha, AW3- S.K. Saggat and AW4- M.K. Kaushik. The workman- Satish Kumar examined himself as RW1.

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17. The management did not examine Mr. V.K. Chandel, Dr. N.K. Rastogi, Col. M.S. Murnal and Dr. S.K. Trehan and the Court officials, where the incident was alleged to be taken place. The affidavit of Aw4- Mr. M. K. Kaushik is of dated 12.10.2004, whereas, the present approval application is if dated 11.12.2002. There is M-1 explanation on record, why the said affidavit is / not filed at the time of filing of the complaint. There is no complaint alleged to be made by Mr. V.K. Chandel proved on record that he was assaulted and there is no document to show infact AW4- Mr. M.K. Kaushik was present with Mr. V.K.Chandel on 15.01.1999 in the Court of Sh. R.K. Tiwari, POIT-III on the day of incident.

18. The perusal of the present approval application does not show the presence of Mr. M.K. Kaushik with Mr. V.K. Chandel on 15.01.1999. the charge sheet Ex.AW4/55 also does not show his presence at the spot i.e. the Court of Sh. R.K.Tiwari, POIT-II on 15.01.1999. His filing of affidavit at the time of recording of evidence after a gap of more than two years, which showing the presence of Mr. M.K. Kaushik on the day of incident i.e. 15.01.1999 with Mr. V.K. Chandel is the after thought version.



Therefore, the management failed to bring the sufficient evidence against the respondent/workman on the charge sheet dated 15.09.1998.

19. With regard to the incident of dated 01.08.1998, 10.08.1998, 20.08.1995 and 25.08.1998, the management has examined Mr. S.K.Saggar as AW3 who proved his affidavit Ex.AW3/A, which is of dated 01.10.2004, whereas the approval application filed by the management is of dated 21.11.2000.

20. The management has not filed the affidavit of AW3- S.K. Saggar along with the approval application to avoid the material improvement in the version of the management at the later stage. Mr. S.K. Saggar in his affidavit has stated that he was working as Manager (Finance) on the date of the incident of dated 01.08.1998, the workman along with Ashok Kumar Sethi, Kiran Pal, Kiran Singh and some other employees at about 01: 15 pm entered into his office and threatened him with the dire consequences, if he did not issue the orders for giving tea @ 50 paisa per cup. At that point of time, these workers gheraoed Mr. Veena Talwar in the adjoining room and gherao was called off at about 7 pm.

24. Photocopy of letter Ex.AW3/1 addressed to the chairman of the Moolchand Khairati Ram Hospital, which does not show any office endorsement number of Chairman of the Moolchand Khairati Ram Hospital and also further shows that the carbon copy was sent to the SHO, Lajpat Nagar, New Delhi. The management has not examined any of the police on behalf of the SHO, Lajpat Nagar, New Delhi that they have received the carbon copy of Ex.AW3/l. the management also has not examined any of the witness from the Chairman of Moolchand Khairati Ram Hospital that they Ex.AW3/1.



25. Admittedly, both the parties are putting allegations and counter allegations on each other since their demand of implementation of Vth Pay Commission is pending prior to the present approval application. Mr. S.K. Saggar is himself, the then Manager (Finance) and the strike and gheraoed are against him and his colleagues, his statement needs to be carefully examined in the light of the facts and circumstances of the present case. There is no explanation on record, how the photocopy of Ex.AW3/1 remained with AW3 Mr. S.K. Saggar, particularly, when the original of the said document was already sent to the Chairman of Moolchand Khairati Ram Hospital and carbon copy was sent to the SHO, Lajpat Nagar, New Delhi. There is no explanation on record that why the photocopy of Ex.AW3/1 is not mentioned in his affidavit Ex.AW3/A. The management has not examined any of the witness from the Chairman of the Moolchand Khairati Ram Hospital and the police station Lajpat Nagar, New Delhi to show that in fact, Mr. S.K. Saggar made a complaint on the day of incident. As per the version of AW3 Mr. S.K. Saggar, the workman with the help of his associates gheraoed to Mrs. Veena Talwar on 01.08.1998, but, both of them have not been examined. Further, on 10.08.1998, they gheraoed Dr. Rajan Mathew, Dr. M.K. Mehra, Col. M.S. Murnal and Dr. J.S. Arora till 01:15 am, but none of them have been examined in the present case. Further, on 20.08.1998, Dr. J.S. Arora and M.K. Mehra were gheraoed for about five hours, but none of them also been examined by the management.

26. The only affidavit of AW3- Mr. S.K. Saggar required independent corroboration to show that in fact. It was the workman/ respondent who participated in the alleged incident. There is no independent corroboration and the version given in the affidavit by Mr. S. K. Saggar is after a gap of more than two years of the incident, that too, is after the filing of the present approval application, which ought to have been filed



along with the present approval application. Therefore, I hold that there is no sufficient evidence on record to show that the workman misconducted himself on the aforesaid dates as alleged against him. As such, this issue is decided in favour of the workman/ respondent and against the management/ applicant.

ISSUE NO. 2

27. Thus onus to prove the issue no. 2 was upon the management. The management in para '11' of the approval application has stated that the amount of Rs. 4522/- has been transferred in the Saving Bank Account no. 132641 of the workman / respondent as one month salary at Allahabad Bank Extension Counter, Moolchand Hospital, Lajpat Nagar, New Delhi. The management in support of its contention examined Mr. M.K. Kaushik as AW4 who has proved the bank certificate Ex.AW4/58 dated 17.08.2002 certifying that a sum of Rs. 4522/- being one month salary was deposited in the Saving Bank Account No. 132641 of the workman on 21.11.2000, and the present approval application is filed on 22.11.2000. As such, I hold that the management has complied with the provisions U/Sec. 33(2)(b) of the ID Act. This issue is decided in favour of the management and against the workman.

28. Keeping in view the facts and circumstances and discussions made above, the management failed to prove the charges leveled against the workman in the charge sheets, therefore, the dismissal order of the management dated 21.11.2000 is bad and set aside.

29. No evidence on behalf of the management has come that the workman has joined employments somewhere else. Thus, in view of the judgment DELHI TRANSPORT CORPORATION V. GORDHAN DASS 2005 III AD(DELHI)P-418, the management



is directed to reinstate the workman in service with continuity of service within one month and to pay the entire arrears of salary to the workman w.e.f. 21.11.2000 till his reinstatement, excluding the amount already deposited in the saving bank account of the workman. The approval application is dismissed. It is ordered, accordingly..."

43. Upon perusal of the above extracts of the impugned order dated 9th May, 2006, it is made out that the learned Tribunal had observed that the petitioner failed to substantiate the charges levelled against the respondent workman in the charge sheets dated 15th September, 1998 and 6th January, 2000.

44. Consequently, the dismissal order issued by the management on 21st November, 2000 was held invalid and revoked. The reasoning provided by the learned Tribunal while holding the dismissal order invalid was that the management had failed to produce material evidence to prove its case against the respondent workman.

45. Furthermore, since no evidence was led by the management to demonstrate that the workman had secured alternative employment, the petitioner management was directed to reinstate the workman with continuity of service. Additionally, the petitioner management was directed to pay the full arrears of salary w.e.f. 21st November, 2000 the workman until the date of his reinstatement, excluding any amount already deposited in his savings bank account.

46. As a result, the petitioner's approval application filed under Section 33 (2) (b) of the Act was dismissed vide the impugned order dated 9th May,



2006.

47. The dispute in the instant petition pertains to the issue where the petitioner alleges that the learned Tribunal erroneously exercised its jurisdiction under Section 33 (2) (b) of the Act. Therefore, it is pertinent to discuss the said provision and the same reads as follows:

“...[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings—

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer...”

48. Perusal of the above said provision states that an employer has the



power to discharge/dismiss its workman who is involved in an industrial dispute for any misconduct which is not connected with the pending dispute. However, the employer is required to pay one month wages to the workman and make an application for *post-facto* approval to the authority before whom the industrial dispute is pending. Thus, the *de facto* relationship of the employer and the employee ends after the order of discharge/dismissal, but the *de jure* relationship ends after the approval is granted.

49. In the instant matter, the petitioner has contended that the learned Tribunal exceeded its jurisdiction by holding the workman's dismissal illegal whereas it ought to decide only the approval application filed under Section 33(2)(b) of the Act without going into the merit.

50. Before delving into the merit of the issue at hand, it is imperative for this Court to acquaint itself with the settled position of law.

51. As per the settled law, in an application filed under Section 33(2)(b) of the Act seeking approval, the Industrial Tribunal initially has limited jurisdiction and is only permitted to decide as to whether a *prima facie* case is made out in respect of the misconduct alleged against the workman. In the event, the Tribunal concerned finds that the domestic enquiry suffers from any legal defect which could either be violation of principles of natural justice or any other law, it may give opportunity to the parties before it to adduce evidence and on the basis of such evidence, the Tribunal may arrive at a conclusion on merit. The said view of this Court is in consonance to the observations made by the Hon'ble Supreme Court in ***Bharat Iron Works v. Bhagubhai Balubhai Patel***, (1976) 1 SCC 518. The relevant paragraphs of



which are reproduced herein below for reference:

“..2. When an application under Section 33 whether for approval or for permission is made to a tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any, and also to the workman to rebut it if he so chooses. In the latter event the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the tribunal, then, will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's findings in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits.

3. There is a two-fold approach to the problem and if lost sight of, it may result in some confusion. Firstly, in a case where there is no defect in procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal on one or other of the following conditions:

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at a conclusion of guilt on the charge levelled against the employee on the evidence recorded against him in the domestic enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic



enquiry but there is no prima facie case of guilt made out against the person charged for the offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the Condition 1 above. A prima facie case is not, as in a criminal case, a case proved to the hilt.

5. Secondly, in the same case i.e. where there is no failure of the principles of natural justice in the course of domestic enquiry, if the Tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficiency.

16. On the principles of law laid down by this Court even though there was no defect in the domestic enquiry the tribunal was entitled to examine the evidence in the domestic enquiry in order to find out whether a prima facie case was made out or if the findings are perverse. The Tribunal was not, however, competent to reappreciate or reappraise the evidence. The Tribunal referred to the evidence of the three witnesses recorded in the enquiry with regard to the incident. Two of the three persons viz. Ratilal Nathubhai Chowdhari and Vasant Babulal Patil, were the assaulted workmen and the third witness, Gokulkumar Devidas, was a permanent worker of the company. The Tribunal extracted the material part of the evidence from the domestic enquiry and we may now refer to the same. The case appears to be that two unnamed persons, who are not charge-sheeted, first threatened the assaulted workers and a little later about 25 persons came and gave them



fist-blows. The assaulted workers were newly employed after a lay-off of the permanent workers had been raised. Ratilal Nathubhai Chowdhari joined the Company in October 1972 i.e. only a few days before the assault when the workmen concerned were admittedly not working in the Company. Ratilal Nathubhai Chowdhari's evidence recorded in the domestic enquiry is as follows:

“That he does not know these workers... That when he came out at that time workers from Bharat Iron Works assaulted him and other workers with him and were beaten by fist-blows.”

Vasant Babulal Patil, who was working in the Company from October 6, 1972

“deposed that he does not know if the workers present at the enquiry are company's workers that on October 11, 1972 at noon in the recess five persons were going to Manisha Hotel for lunch, that they were sitting in the hotel. That persons of the union were present there. These charge-sheeted workers were present there in the crowd. That two persons came and threatened us as to ‘why we were going on work, go away from here immediately leaving the work or else you would be beaten’. That when he came out after lunch the persons of the union beat him and other persons with him were also beaten, that the persons who were beaten with him were Ratilal Nathu, Jivan Iddas, Eknath Ramesh. They were also beaten by the workers who are here at present, that then they came to the company and informed the clerk”.

He also stated “that 20 to 25 persons had come to beat him but he did not know all”. He further

“deposed that he complained against the persons of the union, who are not present here (at the enquiry) but from those 25 persons of crowd these persons present at enquiry were there”....”



52. Whether an Industrial Tribunal is allowed to assess the merits of a case under Section 33(2)(b) of the Act was also discussed by the Hon'ble Supreme Court in ***John D'Souza v. Karnataka SRTC***, (2019) 18 SCC 47, wherein, the Hon'ble Supreme Court held that if it is clear that the domestic enquiry suffers from a legal defect, then the Tribunal shall allow the parties to adduce their respective evidences. The relevant part of the above said judgment is as follows:

"....18. Section 11-A of the Act unequivocally empowers the Labour Court, Tribunals and National Tribunals to set aside the order of discharge or dismissal of a workman and direct his reinstatement on such terms and conditions, as it thinks fit, or to award any lesser punishment in lieu of such discharge or dismissal, provided that the Labour Court or the Tribunal, as the case may be, is satisfied that the order of discharge or dismissal, was not justified.

20. The composite scheme of the statute bears out that when an "industrial dispute" pertaining to "discharge or "dismissal" of workmen including reinstatement of or "grant of relief" to workmen wrongfully dismissed" arises (see Sl. No. 3 of Second Schedule), such dispute is referable for adjudication to the Labour Court in exercise of the jurisdiction vested in it under Section 10(1)(c) of the Act. The Labour Court shall have the powers of civil court to secure evidence for deciding such dispute. Most importantly, the doctrine of proportionality is statutorily embedded in Section 11-A of the Act, which further empowers the Labour Court, subject to its satisfaction, to set aside the order of discharge or dismissal and reinstate a workman on such terms and conditions as it thinks fit or to award a lesser punishment in lieu thereof. All such awards or orders are enforceable under the Act.



21. The legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and 11-A of the Act, for adjudication of an “industrial dispute” stemming out of an order of discharge or dismissal of a workman. Having done so, it can be safely inferred that neither the legislature intended nor was there any legal necessity to set-up a parallel remedy under the same statute for adjudication of the same “industrial dispute” by the same forum of Labour Court or Tribunal via Section 33(2)(b) of the Act. To say it differently, Section 33(2)(b) has been inserted for a purpose other than that for which Sections 10(1)(c) and (d) have been enacted. Section 33(2)(b), thus, is neither meant for nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman.

22. Having held so, it should not take long to trace out the legislative object behind incorporation of Section 33, including sub-section (2) thereof. The caption of Section 33 itself sufficiently hints out that the primary object behind this provision is to prevent adverse alteration in the conditions of service of a workman when “conciliation” or any other proceedings in respect of an “industrial dispute” to which such workman is also concerned, are pending before a Conciliation Officer, Board, Arbitrator, Labour Court or Tribunal. The legislature, through Sections 33(1)(a) and (b) has purposefully prevented the discharge, dismissal or any other punitive action against the workman concerned during pendency of proceedings before the arbitrator, Labour Court or a Tribunal, even on the basis of proven misconduct, save with the express permission or approval of the Authority before which the proceedings is pending. Sub-section (2) of Section 33 draws its colour from sub-section (1) and has to be read in conjunction thereto. Sub-section (2), in fact, dilutes the rigours of sub-



section (1) to the extent that it enables an employer to discharge, dismiss or otherwise punish a workman for a proved misconduct not connected with the pending dispute; in accordance with Standing Orders applicable to the workman or in absence thereof, as per the terms of contract; provided that such workman has been paid one month wages while passing such order and before moving application before the Authority concerned “for approval of the action”. In other words, the Authority concerned (Board, Labour Court or Tribunal, etc.) has to satisfy itself while considering the employer's application that the “misconduct” on the basis of which punitive action has been taken is not the matter sub-judice before it and that the action has been taken in accordance with the standing orders in force or as per the terms of the contract. The laudable object behind such preventive measures is to ensure that when some proceedings emanating from the subjects enlisted in Second or Third Schedule of the Act are pending adjudication, the employer should not act with vengeance in a manner which may trigger the situation and lead to further industrial unrest.

23. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct.

25. The scope of enquiry vested in a Labour Court or Tribunal under Section 33(2)(b) has been the subject-matter of a catena of decisions by this Court. In Martin Burn Ltd. v. R.N.



Bangerjee [Martin Burn Ltd. v. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79] , a three-Judge Bench of this Court considered the scope of enquiry under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 whereunder also permission to discharge a workman was required to be obtained in the manner which was somewhat similar to Section 33(2)(b) of the 1947 Act. This Court, thus, held : (AIR p. 85, para 27)

“27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.”

(emphasis supplied)

26. A three-Judge Bench of this Court in Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160] , considered and interpreted the scope of Section 33 to lay down that the jurisdiction of the Tribunal in dealing with such applications is limited. It was held that : (AIR p. 170, paras 24-25)

“24. Where an application is made by the employer for the



requisite permission under Section 33 the jurisdiction of the Tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the Tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the Tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it accordingly as it holds that a prima facie case is or is not made out by the employer.

25. But it is significant that even if the requisite permission is granted to the employer under Section 33 that would not be the end of the matter. It is not as if the permission granted under Section 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of Section 33 is thus substantially different from the effect of compliance with Section 240 of the Government of India Act, 1935, or Article 311(2) of the Constitution. In the latter classes of cases, an order of dismissal passed after duly complying with the relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of Section 33 the removal of the ban merely enables the employer to make an order of dismissal and



thus avoid incurring the penalty imposed by Section 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of the Tribunal.”

(emphasis supplied)

27. In *Punjab National Bank [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160]*, this Court relied upon *Automobile Products of India Ltd. v. Rukmaji Bala [Automobile Products of India Ltd. v. Rukmaji Bala, AIR 1955 SC 258]*, and further opined that : (*Punjab National Bank case [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160]*, AIR pp. 170-71, para 27)

“27. In Automobile Products of India Ltd. v. Rukmaji Bala [Automobile Products of India Ltd. v. Rukmaji Bala, AIR 1955 SC 258], this Court was dealing with a similar problem posed by the provisions of Section 22 of Act 48 of 1950 and Section 33 of the Act. Dealing with the effect of these sections this Court held that the object of Section 33 was to protect the workmen against the victimisation by the employer and to ensure the termination of the proceedings in connection with the industrial disputes in a peaceful atmosphere. That being so, all that the tribunal, exercising its jurisdiction under Section 33, is required to do is to grant or withhold the permission, that is to say, either to lift or to maintain the ban. This section does not confer any power on the tribunal to adjudicate upon any other dispute or to impose conditions as a prerequisite for granting the permission asked for by the employer. The same view has been expressed in Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup [Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup, AIR 1957 SC 82].”

(emphasis supplied)

28. Another three-Judge Bench of this Court in *Mysore Steel*



Works (P) Ltd. v. Jitendra Chandra Kar [Mysore Steel Works (P) Ltd. v. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] , held an in-depth scrutiny in the scope of jurisdiction vested in an Industrial Tribunal under Section 33(2)(b) of the Act and ruled as follows : (LLJ para 10)

“10. The question as to the scope of the power of an Industrial Tribunal in an enquiry under Section 33(2) of the Industrial Disputes Act has by now been considered by this Court in a number of decisions and is no longer in dispute. If the Tribunal comes to the conclusion that the domestic enquiry was not defective, that is, it was not in violation of the principles of natural justice, it has only to see if there was a prima facie case for dismissal, and whether the employer had come to a bona fide conclusion that the employee was guilty of misconduct. In other words, there was no unfair labour practice and no victimisation. It will then grant its approval. If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the dismissal was justified. If it comes to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified it would give its approval to the order of dismissal made by the employer in a domestic enquiry. (See P.H. Kalyani v. Air France [P.H. Kalyani v. Air France, (1964) 2 SCR 104 : AIR 1963 SC 1756] .) Where, therefore, the domestic enquiry is conducted in violation of the principles of natural justice evidence must be adduced before the Tribunal by the employer to obtain its approval. Such evidence must be adduced in the manner evidence is normally adduced before the Tribunal, that is, witnesses must be examined and not by merely tendering the evidence laid before the domestic enquiry, unless the parties agree and the tribunal



given its assent to such a procedure. (See K.N. Baruah v. Budla Beta Tea Estate [K.N. Baruah v. Budla Beta Tea Estate Civil Appeal No. 1017 of 1965, decided on 9-3-1967 (SC)] , decided on 9-3-1967.) It is clear, therefore, that the jurisdiction of a tribunal under Section 33(2) is of a limited character. Where the domestic enquiry is not defective by reason of violation of principles of natural justice or its findings being perverse or by reason of any unfair labour practice, the tribunal has only to be satisfied that there is a prima facie case for dismissal. The tribunal in such cases does not sit as an appellate court and come to its own finding of fact.”

(emphasis supplied)

29. The view taken in Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. v. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] was reiterated in Lalla Ram v. DCM Chemical Works Ltd. [Lalla Ram v. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] , where this Court analysed Section 33(2)(b) of the Act and held as follows : (Lalla Ram case [Lalla Ram v. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] , SCC p. 9, para 12)

“12. The position that emerges from the abovequoted decisions of this Court may be stated thus : In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee



regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. Ltd. v. Ram Probesh Singh [Bengal Bhatdee Coal Co. Ltd. v. Ram Probesh Singh, AIR 1964 SC 486 : (1964) 1 SCR 709] , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar, (1961) 1 LLJ 511 : (1960-61) 19 FJR 15 (SC)] , Hind Construction & Engg. Co. Ltd. v. Workmen [Hind Construction & Engg. Co. Ltd. v. Workmen, AIR 1965 SC 917 : (1965) 2 SCR 85] , Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813 : 1973 SCC (L&S) 341] and Eastern Electric & Trading Co. v. Baldev Lal [Eastern Electric & Trading Co. v. Baldev Lal, (1975) 4 SCC 684 : 1975 SCC (L&S) 282] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee; and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If, however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence



adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

(emphasis supplied)

30. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise ratio decidendi of the decisions of this Court in (i) Punjab National Bank Ltd. [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160] , (ii) Mysore Steel Works (P) Ltd. [Mysore Steel Works (P)



Ltd. v. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] and (iii) Lalla Ram [Lalla Ram v. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] cases.

31. A Division Bench of this Court in Cholan Roadways Ltd. v. G. Thirugnanasambandam [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , also went into the issue of jurisdiction exercisable under Section 33(2)(b) of the Act and relying upon Martin Burn Ltd. [Martin Burn Ltd. v. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79] , it has opined as follows : (Cholan Roadways Ltd. case [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , SCC p. 248, para 18)

“18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. v. R.N. Bangerjee [Martin Burn Ltd. v. R.N. Bangerjee, 1958 SCR 514 : AIR 1958 SC 79]. While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act.”

(emphasis supplied)

The Court then observed that : (Cholan Roadways Ltd. case [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , SCC p. 249, paras 19-20)



“19. It is further trite that the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different. Whereas in the former, “preponderance of probability” would suffice; in the latter, “proof beyond all reasonable doubt” is imperative. 20. The Tribunal while exercising its jurisdiction under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently.”

32. The three-Judge Bench decisions of this Court in Punjab National Bank [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806 : AIR 1960 SC 160] and Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. v. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] , as well as the Division Bench judgment in Lalla Ram [Lalla Ram v. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] were unfortunately not cited before this Court in Cholan Roadways Ltd. [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] There is yet no conflict of opinion as in Cholan Roadways Ltd. [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] also this Court reiterated the past consistent view that while exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see only whether a prima facie case has been made out as regard to the requirement of domestic enquiry. Cholan Roadways [Cholan Roadways



Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] nonetheless deals with only first phase of the jurisdiction exercisable under Section 33(2)(b) and it falls short to elucidate as to whether, in the event of a defective domestic enquiry, the Labour Court/Tribunal can also the parties to adduce evidence. The second phase of jurisdiction exercisable under Section 33(2)(b) was not debated in Cholan Roadways [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] apparently for the reason that on facts this Court was satisfied that the delinquent workman was guilty of the misconduct attributed and proved against him in the domestic enquiry. On the other hand, Mysore Steel Works (P) Ltd. [Mysore Steel Works (P) Ltd. v. Jitendra Chandra Kar, (1971) 1 LLJ 543 SC] and Lalla Ram [Lalla Ram v. DCM Chemical Works Ltd., (1978) 3 SCC 1 : 1978 SCC (L&S) 396] have gone a step ahead to hold that the Tribunal can permit the parties to adduce evidence if it finds that the domestic enquiry suffers from any defect or was violative of the principles of natural justice or was marred by unfair labour practice, it may then independently examine the evidence led before it to embark upon the question whether or not the punitive action deserves to be accorded approval....”

53. Perusal of the above judgment makes it evident that Section 33(2)(b) of the Act contemplates enquiry by way of summary proceedings and the Tribunal tasked with adjudicating upon an application thereunder is to see whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workman and whether reasonable opportunity to defend himself in consonance with the principles of natural justice has been afforded to the workman or not.

54. Further, whilst deciding the scope of the power of an Industrial



Tribunal under the above said provision, the Hon'ble Supreme Court categorically held that if the Tribunal arrives at a conclusion that the domestic enquiry was not defective, i.e., it was not in violation of the principles of natural justice, it has only to see if there was a *prima facie* case for dismissal, and whether the employer had come to a *bona fide* conclusion that the workman was guilty of misconduct. However, if the Tribunal arrives at a finding that the enquiry is defective for any reason, in such case, it has to consider, on the basis of evidence adduced before it, whether the dismissal was justified.

55. Now adverting to the matter at hand.

56. Whilst adjudicating upon the approval application, the learned Tribunal decided that the domestic enquiries conducted by the petitioner *prima facie* suffer from legal infirmity and hence, the same are liable to be vitiated. Thereafter, it proceeded to decide whether the respondent workman had committed the alleged misconduct and whether the petitioner management had complied with the provisions of Section 33(2)(b) of the Act.

57. With regard to the first issue, i.e., whether the respondent workman had committed the alleged misconduct, the petitioner had stated before the learned Tribunal that during the employment with the management, on 1st August, 1998, the respondent workman misconducted himself along with his associates namely Sh. Ashok Kumar, Sh. Kiran Pal, Sh. Kiran Singh and some other employees. It was stated by the petitioner that on 11th August, 1998, the workman along with his associates did *gherao* of Smt. Veena



Talwar and used filthy language against her and Sh. M. K. Kaushik, Personal Manager, and further blocked the entry and exit point of the main office and also *gheraoed* Dr. Rajan Mathew, Dr. M.K. Mehra, Col. M.S. Murnal and Dr. J.S. Arora till about 1:15 AM. Other allegations included shouting by the workman at Dr. J.S. Arora and Smt. Baishali Singh, Assistant Manager (Admn.) on 20th August, 1998.

58. Furthermore, the Authorized Representative of the petitioner management also submitted before the learned Tribunal that the workman again misconducted himself by misbehaving, *gheraoing* and assaulting Sh. V.K. Chandel on 15th January, 1999 and also threatened, abused and shouted at the witness who was to appear in the Court of Sh. R.K. Tiwari, IT-III in Tis Hazari Court, Delhi on 18th January, 1999, and further indulged in blocking the way/passage of management's officials namely Col. M.S. Murnal- General Manager (Operations) along with Dr. N.K. Rastogi and Dr. S.K. Trehan into the aforesaid Court on 21st January, 1999.

59. During the domestic enquiry proceedings, the alleged incident was supported by the statement of the witnesses who were present at the spot and accordingly, the workman was found guilty of the misconduct leading to his dismissal followed by filing of the approval application under Section 33(2)(b) of the Act.

60. Since the learned Tribunal initially was of the opinion that the domestic enquiry suffered from legal infirmities, it deemed fit to let the parties adduce evidence and decide the validity of the workman's dismissal. During evidence, in order to prove the alleged incident pertaining to which



the charge sheets were issued by the petitioner management against the respondent workman, the petitioner management did not examine Sh. V.K Chandel, Dr. N.K. Rastogi, Col. M.S. Murnal and Dr. S.K. Trehan and the other Court officials before the learned Tribunal.

61. Pursuant to adducing the evidence, the learned Tribunal reached to the conclusion that there is insufficient evidence on its record to prove the allegations advanced against the respondent workman. The reasoning provided by the learned Tribunal was that the petitioner management did not file the affidavit of evidence of its witness namely Sh. S.K. Saggar along with the approval application and the same, having being filed in the year, 2004, i.e., after a gap of more than two years is an attempt on behalf of the petitioner to change its stance and to make material alterations in its statement against the respondent workman. Other reasoning given by the learned Tribunal was that the petitioner failed to examine other persons such as Dr. J.S. Arora, Dr. Rajan Mathew, Dr. M.K. Mehra etc. against whom the workman had allegedly misconducted. Hence, on the basis of insufficient evidence, the charges levelled against the workman were not proved and thus the issue was decided against the petitioner management and in favour of the respondent workman.

62. As far as the second issue is concerned, the learned Tribunal held that since the petitioner had paid certain amount to the workman, the provisions of Section 33(2)(b) stood complied with, accordingly the said issue was decided in favour of the petitioner management.

63. This Court is of the view that the essence of a judicial approach is



objective exclusion of extraneous materials or considerations and observance of rules of natural justice. Fairplay is the basis and if perversity or arbitrariness, or bias; vitiate the conclusions reached, such finding, even though of a domestic tribunal cannot be upheld and must be set aside. Absence of any evidence in support of a finding must be looked into by the Courts because it amounts to an error of law apparent on the record.

64. As long as there is some material before the enquiry officer, whereby, reasonable and logical conclusion of guilt could be arrived at, it cannot be said that such material is not sufficient. However, in view of the basic jurisprudence of law of evidence and principles of natural justice, in the absence of any sufficient evidence *qua* the charges, the enquiry officer must not decide against the workman since the same would tantamount to perversity in arriving at such conclusion which is against the settled position of law.

65. It must be made clear that during adherence to the above principles, the Tribunal does not sit as a Court of appeal, and does not get into weighing or re-appreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is in order to find out either whether there is a *prima facie* case or if the findings are perverse.

66. It, thus stands out that though the Tribunal while exercising their jurisdiction under Section 33(2)(b) of the Act are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence



would be taken into consideration by the Tribunal only if it is found that the domestic enquiry conducted by the management on the scale that the standard of proof required therein can be “preponderance of probability” and not a “proof beyond all reasonable doubts” suffers from inherent defects or is violative of principles of natural justice. In other words, without first examining the evidence led in the domestic enquiry, an Industrial Tribunal cannot jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act.

67. However, the satisfaction of the Tribunal while adjudicating under the said provision has to be judicious and based upon some reliable and cogent evidence on record.

68. As the petitioner management herein had failed to place on record any cogent and proper evidence before the learned Tribunal to substantiate its plea that the enquiry was fair and proper for coming to the conclusion that charges against the workman were proved, the finding recorded by the learned Tribunal and declining of approval prayed for cannot be faulted with. Thus, the view of the learned Industrial Tribunal does not call for any interference.

69. Hence, the petitioner’s averments *qua* the impugned order dated 9th May, 2006 are rejected being devoid of any merit.

70. At this juncture, this Court shall briefly revisit the scope of its power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked is limited. It is a well



settled proposition of law that since the concerned authority is constituted under special legislations to resolve the disputes of a particular kind, it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below.

71. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred upon it, the Court below or the Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene unless the Court observes that there has been a gross violation of the principles of natural justice.

72. With regard to the facts of the instant matter, it is observed that the learned Tribunal had rightly passed the impugned orders, whereby, the enquiries conducted by the petitioner stood vitiated and the workman was reinstated as his dismissal was found unjustified.

73. *Qua* the impugned order dated 30th July, 2004, whilst adjudicating upon the preliminary issue with regard to the validity of the domestic enquiries, the learned Tribunal was of the considered opinion that the same are irregular as not conducted in a proper manner.



74. There is no error of any kind thereto since the learned Tribunal rightly observed that the notice was not published as per the prescribed norms. This Court also finds no error in the decision of the learned Tribunal holding the second enquiry vitiated as it rightly appreciated the law behind the jurisprudence of conducting a domestic enquiry wherein certain rules and regulations must be followed.

75. As per the settled law, in case a Tribunal finds any kind of legal error in the conduction of the domestic enquiry, it can permit the parties to adduce evidence and upon appraisal thereof, the concerned Tribunal may decide as to whether the dismissal or any other punishment was justified or not. Therefore, *qua* the impugned order dated 9th May, 2006, it is further observed by this Court that the learned Industrial Tribunal did not make any error in assessing the petitioner's case on merits as the same is in accordance with the law.

76. In light of the above, this Court is of the considered view that as it was found that the enquiries suffered from legal defects, therefore, the learned Tribunal rightly passed the impugned order dated 9th May, 2006 by deciding the dispute on its merits. The same has been done in accordance with the law and the petitioner has been unable to put forth any propositions to the contrary.

77. In view of the aforesaid observations of this Court, it is held that the impugned orders do not suffer from any illegality warranting intervention from this Court. The petitioner has not been able to make out a case in his favour, therefore, this Court finds no error apparent on the face of the record.



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78. In light of the foregoing discussions on facts as well as the settled law, this Court upholds the impugned orders dated 30th July, 2004 and 9th May, 2006 passed by the learned Presiding Officer, Industrial Tribunal – II, Karkardooma Courts, New Delhi in O.P. No. 67/2005 (Old O.P. No. 12/2002).

79. Accordingly, the instant petition stands dismissed along with pending applications, if any.

80. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 24, 2024

dy/ryp/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 26.04.2024
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