

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18127 of 2024

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1. The Dy. General Manager and Circle Development Officer-cum-Appellate Authority State Bank of India, Local Head Office, West Gandhi Maidan, Patna - 800001.
 2. The Assistant General Manager (O.A.D.) and Disciplinary Authority, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001.

... .. Petitioner/s

Versus

1. The Union of India through the Dy. Chief Labour Commissioner (Central), Maurya Lok Complex, A-block, 2nd floor, Patna- 800001.
2. The Central Industrial Tribunal, Patna through its Presiding Officer
3. The Presiding Officer, Central Industrial Tribunal, Patna.
4. Vijay Kumar Roy, S/o Late Raj Kumar Roy, resident of Allahabad Bank Colony, Khajpura, Maurya Path, P.S. Rajiv Nagar, Patna- 800014.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ankit Katriar, Advocate
For the Respondent/s : Mr. Additional Solicitor General

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

6 30-04-2025 Heard learned counsel for the parties.

2. The present writ petition has been filed for the
following relief(s):-

*“.....for quashing the
impugned order, dated 28.08.2024,
passed by the learned Industrial
Tribunal, Patna in Reference Case
No. 16(c) of 2023, inasmuch as the
learned Industrial Tribunal has relied
on four perfunctory ‘findings’ to
erroneously hold that a properly*



conducted domestic enquiry was vitiated in terms of its fairness, propriety, legality, and adherence to principles of natural justice.”

3. Learned counsel for the petitioners has stated that the Industrial Tribunal Patna without appreciating the facts in a proper perspective has passed the impugned order dated 28.08.2024 whereby it was held that the domestic enquiry conducted against the petitioner was not done in a fair and proper manner. The Tribunal did not follow the well settled principles of law, while passing the impugned order. Learned counsel for the petitioner has stated that the finding given by the Industrial Tribunal is perverse and against the record. That the impugned order dated 28.08.2024 should be set aside and the matter remanded back to the authority concerned for passing orders afresh duly taking into consideration the materials available on record.

4. Learned counsel has raised the following points for consideration of this Court:-

(i) The finding of the Tribunal that the Enquiry Proceeding Report (EPR) has not been brought on record is contrary to the record. That there is ample evidence to show that the EPR is part and parcel of the record and the tribunal failed to see the same. The EPR was filed by the



Workman himself along with the other documents filed by him and the same is at Sl. No. 10 of the list of documents.

(ii). That the complainant only reported about the incident which occurred at LHO without naming any person and the conclusion arrived by the Industrial Tribunal is without any legal basis. That not mentioning the name of the Workman cannot be a ground for dis-believing the complaint or doubting the enquiry when the enquiry done reveals that the Workman was involved in the occurrence.

(iii). The finding of the Tribunal that the incident occurred in the basement of the LHO and the name does not form part of the office is perverse and contrary to the Bihar Building Bye Laws.

(iv). The finding that the employee was not issued any show cause notice before action was taken is contrary to the procedure applicable to the petitioner Bank.

5. Learned counsel for the petitioner has relied on the following Judgments of Hon'ble Supreme Court in support of his case :

1. ***Shankar Charkravarti vs Britannia Biscuit Co. Ltd*** reported in ***AIR 1979 SC 1652***.
2. ***Delhi Cloth and General Mills Co. vs. Ludh Budh Singh*** reported in ***AIR 1972 SC 1031***.



3. *M.L. Singla vs. Punjab National Bank and Ors.* reported in *AIR 2018 SC 4668*.

4. *M/s Bharti Airtel Limited Vs A.S. Raghavendra* reported in *2024 (2) PLJR (SC) 297*.

5. *Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh* reported in *(2008) 3 SCC 729*

6. *Jitendra Prasad Singh and Ors. Vs. Tata Engineering & Locomotive Co. and Ors.* reported in *1998 (3) PLJR 277*.

6. Per contra, the learned counsel appearing on behalf of the respondent has vehemently opposed the very maintainability of the present writ petition and stated that the Industrial Tribunal has passed the order dated 28.08.2024 only on the preliminary point and given a finding with regard to the domestic enquiry conducted by the authority. That nothing prevents the management from leading evidence in the main case and the main case is pending adjudication before the Industrial Tribunal. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition. The Learned counsel for the Respondent Advocate has relied on the following judgments:

1. *Cooper Engineering Limited vs. Shri P.P. Munde*



reported in 1975 AIR 1900.

2. National Council for Cement & Building Materials vs. State of Haryana & Ors. Reported in **1996 SCC (3) 206.**

7. Admitted in the present case the Tribunal has passed the order on the preliminary issue as to whether the domestic enquiry conducted by the employer was done in a fair and proper manner and held against the employer. The main case is still pending adjudication and the management is free to lead evidence to substantiate the dismissal of the employee.

8. The Hon'ble Supreme Court in **Cooper Engineering Limited vs. Shir P.P. Munde** reported in **1975 AIR 1900** as held as under:-

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary



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

9. Further in ***National Council for Cement & Building Materials vs. State of Haryana & Ors.*** Reported in ***1996 SCC (3) 206*** the Hon’ble Supreme Court has held as under :-

“13. This Court in *Cooper Engineering Lld. v. P.P. Mundhe (ja)*, 1975 (2) Labour Law Journal 379 = 1976 (1) SCR 361, in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits all together so that there may not be any further litigation at the interlocutory



stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

14. Again in S.K. Verma v. Mahesh Chandra, (1983) Labour and Industrial Cases 1483 = 1983 (3) SCR 799, this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.

15. In D.P, Maheshwari v. Delhi Administration, 1983 Labour and Industrial Cases 1629 1983 (3) SCR 949, this Court speaking through O, Chinnappa Reddy, J. observed that the policy to decide the preliminary issued required a reversal in view of the “unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of Civil Courts”. The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same effect is the decision in Workmen employed by Hindustan Lever Ltd. vs. Hindustan Lever Ltd. (1984) Labour



& Industrial Cases 1573 = 1985(1) SCR 641.

10. Though the counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of ***Shankar Chakravarti vs. Britannia Biscuit Co. Ltd.*** reported in ***AIR 1979 SC 1652*** it is to be noted that the Hon'ble Supreme Court has held as under:-

“wherein it was inter alia held that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame a preliminary issue and proceed to see the validity or otherwise of the enquiry.”

11. Further, in the case of ***Delhi Cloth and General Mills Co. vs. Ludh Budh Singh*** reported in ***AIR 1972 SC 1031*** has held as under:

“ From the above decisions the following principles broadly emerge:

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously



adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the



management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the rendering of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the



Act.

12. In so far as the other judgments of the Supreme Court relied by the petitioner cited supra are concerned, it is to be noted that they are distinguishable from the facts of this case and therefore not applicable.

13. The order of the Tribunal is in consonance with the well enunciated law laid down by the Hon'ble Supreme Court in the above cited judgments. Even if the Tribunal holds that the domestic enquiry conducted by the management of the petitioner company is not proper and fair, no prejudice would be caused to the petitioner as they will have ample opportunity to lead evidence justifying the termination of the employee.

14. Having regard to the above, this Court does not find any merit in the present writ petition which warrants any interference at this stage. The present writ petition is disposed of with a direction to the Industrial Tribunal to complete the proceeding pending before it as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order.

15. With the above direction, the present writ petition stands disposed of.

16. However, it is made clear that the Tribunal shall not be influenced with any of the findings recorded in the



impugned order dated 28.08.2024 and shall deal with the case
based on the evidence led by both the parties.

(A. Abhishek Reddy, J)

Raj Ranjan/-

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