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APHC010324852023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE 13th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION NO: 16858 OF 2023

Between:

1. HINDUSTAN COCA - COLA BEVERAGES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956, having its Registered Office at 303 and 304, 3rd Floor, Baani Address One, Golf Course Road, Sector - 56, Gurugram - 122 011, represented by its authorised representative Mr. B.Tirupathi Rao

2. The Zonal Head-HR, (Operations and Commercial-AP) Hindustan Coca-Cola Beverages Private Limited D.No.44-69, MoulaAli, Hyderabad - 500 040

3. The Area HR Manager (AP), Hindustan Coca-Cola Beverages Private Limited Atmakur Village, Mangalgiri Mandal Guntur District

...PETITIONERs

AND

1. THE SECOND APPELLATE AUTHORITY, Under Section 48(3) of the A.P. Shops and Establishments Act, 1988 and Deputy Commissioner of Labour, Ongole, Andhra Pradesh

2. Mr Timmidi Venkateshwar Rao, S/o. Sri T.Koteswara Rao Mamillapalli Village, Ponnurii Mandal Guntur District

3. The Authority under Section 483 of the A P Shops and Establishments Act, 1988 and Assistant Commissioner of Labour, Kandukur, Andhra Pradesh

...RESPONDENTs

Counsel for the Petitioners: GP FOR LABOUR,G V S GANESH

Counsel for the Respondents: DARSI BALA RAJU

Counsel for the Respondents:GP FOR SERVICES III

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION NO: 16858 of 2023

ORDER:

This Writ Petition is filed by the Employer/Management, aggrieved by the order dated 17.03.2023 passed by the 2nd Appellate Authority in APSE 2nd Appeal No.1 of 2022, confirming the order dated 23.04.2022 passed by the 1st Appellate Authority in APSE No.1 of 2019.

2. Brief facts of the case are that:

i. Respondent No.2 herein was working as a Market Development Executive in the petitioners' organisation, having joined service in the year 2009. He was initially posted at Vetapalem, near Chirala, in Prakasam District, and thereafter worked at various places. While he was lastly working at Addanki, management issued a charge-sheet-cum-suspension order dated 17.08.2018, alleging that respondent No.2 had been utilising the services of Market Growth Developers (MGRs), who were appointed and designated to perform specific duties, for his personal purposes. In particular, it was alleged that respondent No.2 had misused the services of one such MGR, by name Mr. Hazarathaiah, by assigning him personal works such as procuring vegetables, bringing drinking water and groceries for domestic purposes, picking up and dropping his children at school, accompanying him to other up-country markets on motorcycle, and assigning him to work on non-PJP routes and making him to work for extended hours.

ii. It was further alleged that respondent No.2, being an associate of the company, had misused company's resources for his personal purposes, which amounted to unhealthy and intolerable conduct. Accordingly, disciplinary action was initiated against him under Clause 19(1)(c) of the Andhra Pradesh Shops and Establishments Rules, 1990 (for short, 'Rules, 1990'), alleging damage, theft, fraud or dishonesty in connection with the employer's business or property.

iii. Respondent No.2 denied the allegations contending that he had not committed any misconduct as alleged in the charge sheet dated 17.08.2018 and accordingly submitted explanation on 23.08.2018. Upon consideration of the explanation, Management conducted a domestic enquiry and, thereafter, passed an order of dismissal dated 24.12.2018.

iv. Aggrieved by the said order, respondent No.2 filed an appeal in APSE No.1 of 2019 before the Assistant Commissioner of Labour, Kandukur, under Section 48(1) of the Andhra Pradesh Shops and Establishments Act, 1988 (1st Appellate Authority). 1st Appellate authority, upon consideration of the matter, set aside the order of dismissal dated 24.12.2018, holding that the same was unjust and not tenable in law. Consequently, authority directed the petitioners to reinstate respondent No.2 into service with full back wages, continuity of service and all consequential benefits.

v. Aggrieved by the order of 1st Appellate Authority, petitioners herein approached 2nd Appellate Authority-cum-Deputy Commissioner of Labour, Ongole, by filing APSE 2nd Appeal No.1 of 2022 under Section 48(3)

of the Andhra Pradesh Shops and Establishments Act, 1988. However, 2nd Appellate Authority, vide order dated 17.03.2023, dismissed the appeal, thereby confirming the order dated 23.04.2022 passed by the 1st Appellate Authority. Hence, the present writ petition.

3. Heard Sri G.V.S.Ganesh, learned counsel for petitioners, Sri Ch.Praveen, learned Assistant Government Pleader for Labour appearing on behalf of respondent Nos.1 and 3, and Sri N.Geethak Chowdary, learned counsel for respondent No.2.

4. Learned counsel for petitioners submitted that order passed by the 2nd Appellate Authority, confirming the order of the 1st Appellate Authority, is wholly misconceived as respondent No.2 was afforded ample opportunity and a proper domestic enquiry was conducted into charges of damage, theft, fraud or dishonesty in connection with employer's business or property, as contemplated under Clause 19(1)(c) of Rules, 1990, wherein enquiry officer held that charges are proved. Therefore, order of dismissal by the disciplinary authority is fully justified and does not warrant interference by appellate authorities.

5. Learned counsel further contended that conduct of respondent No.2 constituted grave and serious misconduct, as he had utilised company's resources for his personal needs by exerting pressure and coercion on employees concerned. In this regard, a complaint dated 02.08.2018 was lodged against respondent No.2, pursuant to which a charge-sheet-cum-

suspension order dated 17.08.2018 was issued. Pursuant to it, respondent No.2 submitted his explanation on 23.08.2018. After considering explanation in detail and finding the same as unsatisfactory, management decided to conduct domestic enquiry and appointed an Enquiry Officer. Respondent No.2 attended and participated in domestic enquiry, which was conducted in four sittings between 07.09.2018 and 24.09.2018. During enquiry, Management marked Exs.M1 to M7 and examined MWs.1 to 3. Said witnesses were cross-examined by respondent No.2, who also examined himself in defence. Upon considering the entire material on record, Enquiry Officer submitted a report dated 27.10.2018, holding that charges of misconduct levelled against respondent No.2 stood proved. Upon receipt of enquiry report, a final show-cause notice dated 08.11.2018 was issued, to which respondent No.2 submitted his explanation on 19.11.2018. However, as explanation was found unsatisfactory and there were no extenuating or mitigating circumstances warranting a lenient view, management passed order of dismissal dated 24.12.2018. Therefore, it is clear that enquiry was conducted in a fair and reasonable manner, as respondent No.2 had fully participated in proceedings, cross-examined Management witnesses, examined himself in defence and inspected exhibits.

6. Learned counsel for petitioners further submitted that, aggrieved by order of dismissal, respondent No.2 approached the 1st Appellate Authority by filing APSE No.1 of 2019. 1st Appellate Authority examined the entire record and recorded a finding that domestic enquiry conducted by Management

against workman in respect of charges mentioned in charge sheet dated 17.08.2018 was valid. Accordingly, matter was posted for consideration of next issue, namely, proportionality of punishment. Thereafter, the successor, taking note of the fact that his predecessor had already examined validity of domestic enquiry and held it to be valid, proceeded further. However, despite the fact that domestic enquiry was valid, he ultimately concluded that order of dismissal was unjust and accordingly set aside the same, directing reinstatement of workman into service with full back wages, continuity of service and all consequential benefits.

7. Learned counsel for petitioners further submitted that aggrieved by the order of 1st appellate authority, petitioners carried the matter to the 2nd appellate authority. However, 2nd Appellate Authority, without application of mind or independent appreciation of the evidence on record, merely reproduced the findings recorded by the 1st Appellate Authority in verbatim and dismissed the appeal preferred by the Management, thereby affirming the order of the 1st Appellate Authority.

8. In support of his contention, learned counsel for petitioners had drawn the attention of this Court to paragraph Nos.34 to 62 of the order passed by 1st Appellate Authority and submitted that, when the said paragraphs are placed juxtaposed with order of 2nd Appellate Authority, it is evident that contents of paragraph Nos.34 to 62 of 1st Appellate Authority's order have been reproduced verbatim in paragraph Nos.30 to 58 of the order of 2nd

Appellate Authority. This clearly demonstrates that 2nd Appellate Authority had not independently applied its mind and had merely reproduced findings recorded by 1st Appellate Authority. It is further submitted that, from paragraph No.59 onwards, 2nd Appellate Authority observed that, after termination of his services, respondent No.2-workman could not secure alternative employment and, therefore, he was entitled to back wages in addition to reinstatement. Accordingly, 2nd Appellate Authority confirmed the order passed by 1st Appellate Authority. Therefore, impugned order is liable to be set aside.

9. Per contra, learned counsel for respondent No.2-workman submitted that disciplinary authority had failed to appreciate evidence in its proper perspective and had merely relied upon the material placed by Management. He further submitted that complaint allegedly submitted by MW.1, Mr. Hazarathaiah, does not bear his signature, is merely a typed document, and no material was placed on record to establish that the same was submitted through email. These crucial aspects were neither considered by Enquiry Officer nor by Management while passing order of dismissal. Having considered all these aspects, 1st Appellate Authority rightly held that charges under Clause 19(1)(c) of Rules, 1990 were not proved and the same was rightly affirmed by the 2nd appellate authority. He further contended that Management failed to explain as to how it arrived at the conclusion that respondent No.2 had committed theft, caused damage, or indulged in fraud or dishonesty in connection with employer's business or property.

10. Learned counsel for respondent No.2 placed reliance on the judgment of the Hon'ble Apex Court in ***Glaxo Laboratories (I) Ltd. v. Presiding Officer***[1], wherein the relevant portion reads as under:

> ***22.*** *Having examined the matter both on principle and precedent, it would clearly emerge that clause 10 of Standing Order 22 which collects various heads of misconduct must be strictly construed being a penal provision in the sense that on the proof of a misconduct therein enumerated, penalty up to and inclusive of dismissal from service can be imposed. We see no reason for departing from the well-established canon of construction that penal provisions must receive strict construction, and not extended beyond their normal requirement. The framer's intention in using the expression "committed within the premises of the establishment or in the vicinity thereof" are the words of limitation and they must receive due attention at the hands of the interpreter and the clause should not receive such broad construction as to render the last clause redundant.*
>
> ***23.*** *It was next contended that while misconduct is enumerated in Standing Order 22, the punishment is prescribed in Standing Order 23, and the expression "misconduct" in Standing Order 23 would comprehend any misconduct irrespective of the fact whether it is enumerated in Standing Order 22 or not. The preamble of Standing Order 23 reads as under:*
>
> > *"23. (a) Any workman who is adjudged by the manager on examination of the workman, if present, and of the facts to be guilty of misconduct is liable to be...."*
>
> *The submission is that the expression "misconduct" under Standing Order 23 is not qualified as the one set out in Standing Order 22 and therefore, any other act of omission or commission which would per se be misconduct would be punishable under Standing Order 23 irrespective of the fact whether it finds its enumeration in Standing Order 22. The Act makes it obligatory to frame standing orders and get them certified. Section 3(2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9*

[1] (1984) 1 SCC 1

of the Schedule provides "suspension or dismissal for misconduct, and acts of omissions which constitute misconduct". It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act of omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the face of the statutory provision it would be difficult to entertain the submission that some other act of omission which may be misconduct though not provided for in the standing order would be punishable under Standing Order 23. Upon a harmonious construction, the expression "misconduct" in Standing Order 23 must refer to those acts of omission or commission which constitute misconduct as enumerated in Standing Order 22 and none else. However, in this connection, Mr Shanti Bhushan drew our attention to Mahendra Singh Dhantwal v. Hindustan Motors Ltd. [(1976) 4 SCC 606 : 1977 SCC (L&S) 20 : AIR 1976 SC 2062 : (1976) 2 LLJ 259] In that case in a second round of litigation between the parties the Industrial Tribunal set aside the order of dismissal of the workmen and ordered reinstatement with full back wages. In a writ petition filed by the company under Article 226 of the Constitution, a learned Single Judge of the High Court declined to interfere with the award holding that "the reason might have been the old reason of dismissal" and that the "circumstances relied on by the Tribunal cannot be characterised as unreasonable". The company carried the matter to the Division Bench of the High Court which accepted the appeal observing that unless contravention of Section 33 of the Industrial Disputes Act is established, the Industrial Tribunal would have no jurisdiction to entertain an application under Section 33-A. In terms it was held that unless it is established that there has been discharge for misconduct, the Industrial Tribunal had no jurisdiction to set aside the order of termination in an application under Section 33-A. In the appeal by certificate granted by the High Court, the workman contended that Section 33 may be contravened in varieties of ways and the only question that needs to be examined is whether there was a contravention by the employer in that it did not make any application to the Tribunal for the approval of the order of termination of service of the workman. It is in this context that while allowing the appeal of the workman this

Court observed as under: [SCC para 23, pp. 611-12: SCC (L&S) pp. 25-26]

"Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily, the standing orders may limit the concept but not invariably so."

Relying on these observations. Mr Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What stared in the face of the Court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Section 33-A was not maintainable. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees' Union [AIR 1966 SC 808 : (1966) 2 SCR 498 : (1966) 1 LLJ 443] this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to the employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot (sic can) be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India Match

Company Ltd. v. Workmen [(1974) 3 SCC 330 : 1973 SCC (L&S) 531 : (1974) 1 SCR 434 : (1973) 2 LLJ 403] in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court: [SCC para 10, p. 334: SCC (L&S) p. 536]

"In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith."

Lastly we may refer to Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. [38 FJR 342 : (1970) 20 FLR 243] This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh [AIR 1966 SC 1471 : (1966) 2 LLJ 330 : 29 FJR 76] the Court held that everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under Standing Order 23 must be rejected.

11. Placing reliance on the aforesaid judgment, learned counsel for respondent No.2 submitted that Management had failed to place any material on record to establish misconduct falling within the categories specifically

enumerated under the relevant rule. He contended that Clause 19(1)(c) of Rules, 1990 specifically deals with damage, theft, fraud or dishonesty in connection with employer's business or property, whereas the allegation against respondent No.2 is only that he had utilised services of a subordinate employee for his personal purposes. Such an allegation does not fall within any of the misconducts enumerated under the said provision. Therefore, in the absence of any material establishing misconduct contemplated under Clause 19(1)(c) of Rules, 1990, the said provision cannot be invoked against respondent No.2.

12. Learned counsel for respondent No.2 also placed reliance on the judgment of the Hon'ble Apex Court in ***A.L. Kalra v. Project & Equipment Corpn***[2]., wherein the relevant portion reads as under:

> ***22.*** *Rule 4 bears the heading "General". Rule 5 bears the heading "Misconduct". The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if*

[2] (1984) 3 SCC 316

> *necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut [(1984) 1 SCC 1 : 1984 SCC (L&S) 42] where this Court held that "everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty". Rule 4 styled as "General" specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct.*

13. Placing reliance on the aforesaid judgment, learned counsel submitted that to constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that an ex post facto interpretation of some incident may not be camouflage as misconduct and everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet to be taken into account as varying what is

prescribed and it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty. He further submitted that as the alleged misconduct against the respondent No.2 is nowhere enumerated under Clause 19(1)(c) of the Rules, 1990, the same cannot be treated as a misconduct warranting imposition of capital punishment of dismissal from service.

14. Learned counsel for respondent No.2 also placed reliance on judgment of the Hon'ble Apex Court in ***Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd***[3]., wherein the relevant portion reads as under:

> ***32.*** *From those decisions, the following principles broadly emerge:*
>
> *"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.*
>
> *(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*
>
> *(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*

[3] (1973) 1 SCC 813

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

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

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

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

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

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

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmens [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal."

36. *We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of*

punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. case existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation of unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. case, can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

15. Placing reliance on the above said judgment, learned counsel for respondent No.2 submitted that the right to initiate disciplinary action and determine the quantum of punishment primarily falls within the domain of Management. However, before imposing any punishment, employer is required to conduct a proper enquiry in accordance with provisions of the Standing Orders and principles of natural justice, and such enquiry should not be an empty formality. He further submitted that 1st Appellate Authority, having found that domestic enquiry was not conducted in conformity with principles of natural justice, rightly set aside the order of dismissal. It is well

settled that where findings recorded by Enquiry Officer are found to be unsupported by any evidence, it is always open to the Appellate Authority or the tribunals to delve into the findings. Accordingly, 1st Appellate Authority had gone into the aspect of the findings recorded by the enquiry officer and found that they are not based on any evidence. Therefore, contention of the learned counsel for petitioners that the 1st appellate authority ought not to have gone into the findings of the enquiry officer cannot be countenanced. As such, order of the 2nd Appellate Authority is fully justified and no interference is warranted by this Court.

16. Considered the submissions made on either side and perused the entire material on record.

The principal contention advanced by the learned counsel for petitioners is that 2nd appellate authority without application of mind had simply reproduced the findings recorded by the 1st appellate authority in verbatim and dismissed the appeal. To appreciate the said contention, it is required to peruse the orders passed by the 1st appellate authority as well as 2nd appellate authority.

17. On a keen perusal of the orders passed by the 1st Appellate Authority as well as 2nd Appellate Authority, it is evident that the 2nd Appellate Authority had not independently examined the correctness of the findings recorded by the 1st Appellate Authority. Instead, it had reproduced paragraphs 34 to 62 of the order passed by the 1st Appellate Authority in

verbatim in paragraphs 30 to 58 of its order and, thereafter, proceeded to discuss about the aspect of subsequent employment of respondent No.2-workman and his entitlement to back wages. It is incumbent upon the 2nd Appellate Authority to independently examine the findings recorded by the 1st Appellate Authority, duly taking into consideration all the material on record as well as contentions raised on either side, and arrive at its own decision by recording appropriate reasons. However, 2nd Appellate Authority, without undertaking such an exercise or recording any independent findings, merely reproduced the findings of the 1st Appellate Authority. Such an exercise cannot be construed as proper consideration of the appeal in exercise of its statutory appellate jurisdiction. Therefore, this Court is of the view that the impugned order suffers from non-application of mind and is liable to be set aside. Accordingly, the matter requires to be remitted to the 2nd Appellate Authority for fresh consideration and disposal in accordance with law.

18. In regard to the argument by the learned counsel for 2nd respondent that the misconduct alleged against the 2nd respondent is not enumerated misconduct under the rules, as such, imposing punishment under the said non-enumerated misconduct is not permissible under law is concerned, it is left open to the 2nd appellate authority to examine in light of the law laid down by the Hon'ble Apex Court in ***A.L. Kalra v. Project & Equipment Corpn*** (cited supra).

19. In view of the foregoing reasons, the order passed in APSE 2nd Appeal No.1 of 2022 dated 17.03.2023 is hereby set aside, and the matter is remitted back to respondent No.1/ 2nd appellate authority - cum – Deputy Commissioner of Labour, Ongole for fresh disposal.

20. Accordingly, respondent No.1/ 2nd appellate authority is directed to dispose of the appeal in APSE 2nd Appeal No.1 of 2022 within a period of three months from the date of receipt of a copy of this order strictly in accordance with law, duly providing an opportunity of hearing to either side and taking into consideration the entire material on record, as well as the case laws relied upon by the petitioners as well as respondent No.2.

21. Accordingly, this Writ Petition is disposed of. No order as to costs.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

JUSTICE BALAJI MEDAMALLI

Date: 13.11.2026
Dvs

Whether the order is:

Speaking	☑	Reasoned	☑
Reportable		Non-reportable	☑

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

WRIT PETITION: 16858 OF 2023

Date: 13.11.2026

Dvs