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2024:BHC-NAG:11862

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 837 OF 2023

Aiyaz Mohammad s/o Faiz Mohammad
Aged about 50 Years, Occupation – Nil;
R/o Nalsaheb Road, Near Lal School,
Mominpura, Nagpur – 18. ... PETITIONER

V E R S U S

Mahindra and Mahindra Ltd.
Farm Equipment Centre, MIDC Area,
Hingna Road, Nagpur.
(through its Dy. General Manager) ... RESPONDENT

Mr. S. W. Sambre, Advocate for Petitioner.
Mr. R. B. Puranik, Advocate for Respondent.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS HEARD ON : OCTOBER 17, 2024.
PRONOUNCED ON : OCTOBER 21, 2024.

ORAL JUDGMENT

. Heard Mr. S. W. Sambre, learned Counsel for the Petitioner and Mr. R. B. Puranik, learned Counsel for the Respondent.

2. The Petitioner/Workman is aggrieved by the Judgment and order dated 6/10/2022 passed by the learned Industrial Court, Nagpur in Revision (ULP) No. 02/2022, by which, the Revisional Court has remanded back the Complaint to the Labour Court, Nagpur for fresh trial from the stage of proportionality of punishment.

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3. The Labour Court, vide its Judgment and order dated 30/12/2021, in complaint filed by the Petitioner being Complaint (ULP) No. 114/2019, while allowing the Complaint partly, declared that by dismissing the services of the Petitioner vide order dated 16/5/2019, the Respondent - Employer has engaged in unfair labour practices, as envisaged in Item No.1(a) and (g) of Scheduled – IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 *(For short, 'the Act of 1971')*. Accordingly, the dismissal order was set aside and Respondent was directed to reinstate the Petitioner with continuity of service and 75% back wages with effect from 16/5/2019.

4. The Labour Court, vide order dated 5/10/2021 passed on preliminary issues, declared that enquiry conducted by the Respondent against the Petitioner was fair and proper and findings of the Enquiry Officer were not perverse. As such, the Labour Court had framed five issues, of which, first two issues were tried as preliminary issues and were answered in the manner stated above. The Labour Court then proceeded to decide the other issues. The Labour Court has taken note of the answers to the preliminary issues and since the enquiry was found to be conducted in fair manner and since no perversity was found in the order passed by the Enquiry Officer, the Labour Court proceeded to delve upon the aspect of proportionality of punishment *vis a vis* the charges proved against the Petitioner. The Labour Court found that the punishment of dismissal is shockingly disappropriate, and accordingly, held that dismissal order was illegal and that the Respondent has engaged in unfair labour practice.

5. The Labour Court noted that the accusation was that the Petitioner and other three employees instigated other employees to gather

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before the assembly line for 181 minutes thereby causing loss to the Respondent of about Rs. 2.60 Crores. These allegations/charges were made in connection with an accident that occurred on 3/9/2018 in the factory premises where one employee sustained serious injuries. The Labour Court took note of the fact that chargesheet was filed against four employees including the Petitioner. The Respondent - Employer imposed punishment of four days suspension upon the other three employees, however, when it came to the Petitioner, the Employer imposed punishment of dismissal of service. This, according to the Labour Court, is nothing but victimization of the Petitioner and the punishment imposed was held to be harsh and shockingly disproportionate. Accordingly order of dismissal from service was set aside with directions to reinstate the Petitioner.

6. Against the said order, the Respondent approached the Industrial Court under Section 44 of the Act of 1971. The Industrial Court found that though the charges levelled against four employees were same, the nature and gravity of imputations were quite different. The charges/imputations against the Petitioner were that he instigated the three co-workers who further instigated other co-workers to suspend the work. Whereas, the charge/imputation against the co-workers was of responding to the call and instigation of the Petitioner and coaxing the other co-workers to suspend the work. Accordingly, the Industrial Court observed that even though accusation of misconduct was identical, the nature and degree of imputations appears to be varying. The Industrial Court was of the view that since chargesheet of co-workers was placed on record, the Labour Court ought to have assessed the nature of imputations and enquired into the surrounding circumstances as well. The Labour Court ought to have examined whether the conduct of Petitioner was *bona fide*, in the sense, was the protest by the Petitioner,

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towards the concerns of the workmen as regards their safety or was it to show his hostility and dominance upon the management and demonstrate his nuisance value under the garb of protest.

7. The Industrial Court noted that the incident has two sides, one is availability of statutory safety measures and medical emergency measures at workplace and the other is abrupt stoppage of production resulting in losses. The former is a valid point of view of workers and the latter is of Employer. Since the accident had occurred, the workers were agitated from their point of view of short of safety measures and medical emergency measures. The workers, accordingly, raised voice, but allegedly at the instance of Petitioner, supported by the three co-workers. In this background, the Industrial Court was of the view that the Labour Court ought to have examined the issue of proportionality of punishment on the touch stone of the reaction of the Petitioner to the incident, as to whether it was *bona fide* or unnecessary dominance. The Labour Court ought to have, thus, ascertained whether the punishment of dismissal was handed out *bona fide* or was measure to gag a voice of concern for workers' safety. Accordingly, the Industrial Court remanded the Complaint back for consideration afresh permitting both the parties to lead fresh/additional oral and documentary evidence in this regard.

8. The Petitioner is aggrieved by the aforesaid order.

9. The learned Counsel for Petitioner submits that since the charges against all the four workmen were same, there could not have been disparity in the punishment. He submits that in the evidence led before the Labour Court, the Petitioner has deposed that he had an unblemished record. In the cross-examination his attention was drawn to the dismissal order

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(Annexure-I herein). It refers to three instances of unauthorized absenteeism, for which warning letters were issued to the Petitioner. Thereafter a case was put up, which was denied by the Petitioner, that prior to passing dismissal order he (Petitioner) was served with warning letters and/or show cause notice. Thus, according to the learned Counsel for Petitioner, there is no cross-examination on the evidence of the Petitioner that his record was unblemished.

10. The learned Counsel for Petitioner further submits that the Respondent has not examined any witness in support of its stand that the warning letters were so issued. He submits that the Petitioner's service record is, thus, proved to be clean. He further submits that the Petitioner has, in categorical terms, deposed that he and other three employees faced similar charge of instigating other workers and stopping the production. However, leniency was shown to the three workers and harsh punishment was imposed upon the Petitioner. He then submits that the Petitioner has, like other three employees, submitted an apology and admitted charges levelled against him, but was not given benefit which has been given to the other three employees. Accordingly, the learned Counsel for Petitioner argued that the Respondent has intentionally victimized the Petitioner by imposing harsh and disproportionate punishment. In the circumstances, learned Counsel for the Petitioner submits that there was absolutely no scope for the Industrial Court to remand the matter back to the Labour Court, that too, permitting the Respondent to lead evidence.

11. In support of his submissions, learned Counsel for Petitioner has relied upon the Judgment of Division Bench of Delhi High Court in

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Punjab and Sindh Bank V/s Raj Kumar[1]. The facts before the Delhi High Court were identical. The action of Appellant – Bank therein in awarding higher punishment to the Petitioner – workman, compared to co-delinquents was tested on the touch stone of Article 14 of the Constitution of India as well as the binding dictum of the Hon'ble Supreme Court that those equally placed and found guilty must be treated equally, even while considering imposition of punishment. The allegation against the Petitioner/workman therein was that he in connivance with three others debited excess amount to some irrelevant accounts for personal gain and other similar charges. The departmental enquiry was, however, initiated against the three employees. The Employer/Bank, on charges being proved, imposed penalty of lowering by two stages on one employee and the other was compulsorily retired. The workman, however, was dismissed. The Division Bench of Delhi High Court has referred to various Judgments of the Hon'ble Supreme Court and held that the workman did not receive fair treatment at the hands of Employer/Bank. The co-delinquents had been given lesser punishments and the workman concerned had been awarded the harshest punishment in the service jurisprudence. The Court also took note of the fact of unblemished record of the workman. Accordingly, the Division Bench upheld the findings of the Single Bench which was pleased to convert the punishment from 'dismissal' to 'compulsory retirement'. Taking aid of this judgment, the learned Counsel for Petitioner submits that the Industrial Court ought to have upheld the findings of the Labour Court.

12. As against, the learned Counsel for Respondent submits that the Respondent did not lead evidence because the previous conduct/record of the Petitioner was noted in the dismissal order itself and further that necessary

[1] 2024 SCC OnLine Del 6431

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evidence was led before the Enquiry Officer. He further submits that charge against the Petitioner being grievous, the Labour Court could not have entered into the aspect of disproportionate punishment under clause 1(g) of Schedule – IV of the Act of 1971. He has invited my attention to the said clause which provides that the discharge or dismissal of employee for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to shockingly disproportionate punishment, is an unfair labour practice. Thus, according to him, if the misconduct is of a minor or technical character, then only would arise scope to ascertain whether the punishment was disproportionate for the purpose of testing unfairness in imposing penalty of discharge or dismissal. If the misconduct is, however, major, there is no such scope.

13. The Counsel submits that, in the present case, the Petitioner was responsible for stoppage of work for about three hours, which resulted into huge loss of about Rs. 2.60 Crores to the Respondent, which cannot be said to be a misconduct of a minor or technical character. He further submits that the Petitioner faced prime accusation of instigating the co-workers. Accordingly, the punishment was imposed. The Labour Court committed serious error of law by going into the aspect of proportionality of punishment.

14. In support of his submissions, learned Counsel for Respondent has relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Colour-Chem Ltd. V/s A. L. Alaspurkar and Others***[2], wherein the Supreme Court held that Item 1(g) of Schedule IV deals only with misconduct of minor or technical character and not with any major misconduct, even if looking to the nature of

[2] (1998) 3 Supreme Court Cases 192

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such misconduct or past record of the service, it appears to the court that the punishment imposed is shockingly disproportionate to the charges held to be proved against the employee.

15. The learned Counsel for Respondent has referred to yet another Judgment of the Hon'ble Supreme Court in the case of ***Bharat Forgo Co. Ltd. V/s Uttam Manohar Nakate***[3] to contend that clause (g) of Item 1 of Schedule – IV will be not applicable where the misconduct is major. In the said case delinquent was found lying fast asleep on an iron plate at his working place, whereupon a disciplinary proceeding was initiated against him in terms of Model Standing Order. The delinquent was found guilty and was thus dismissed from service. It was also found that he was guilty of misconduct on three occasions earlier. Two preliminary issues were answered in the manner as answered in the present case. The Labour Court, however, despite such finding to the preliminary issues, held that punishment of dismissal imposed upon the employee was harsh and disproportionate, and accordingly, directed reinstatement of the employee. The Supreme Court, taking note of the fact that since misconduct was admitted and since the courts below were of the view that it was a major misconduct, the recourse to clause (g) of Item 1 of Schedule – IV was *ex facie* inapplicable. The Supreme Court noted that in the case before it, there was no plea of factual victimization. So far as legal victimization is concerned, the foundational fact was not laid down by the delinquent, and therefore, recourse to clause (a) of Item 1 of Schedule -IV was also not available.

16. The learned Counsel for Respondent submits that in the present case as well, the Labour Court could not have taken recourse to clause 1(g) of

[3] (2005) 2 Supreme Court Cases 489

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Schedule – IV of the Act of 1971, misconduct being major. In any case, the Industrial Court has remanded the matter back, and therefore, no prejudice will be caused to the Petitioner if he is given opportunity to lead evidence on the point of victimization.

17. Having given thoughtful consideration to the submissions made by both the sides, it appears to me that the Industrial Court, while remanding matter back and by permitting both the sides to lead evidence, has failed to consider the settled position of law as also the powers vested with it under Section 11-A of the Industrial Disputes Act, 1947 *(for short, 'the Act of 1947')*. The Hon'ble Supreme Court in the case of ***Raghubir Singh V/s General Manager, Haryana Roadways, Hissar***[4] has held that proviso to Section 11-A prohibits the Industrial Court or the Labour Court, as the case may be, from taking any fresh evidence in relation to the matter covered under the said provision, which deals with the "doctrine of proportionality". The Supreme Court has held as under :

> *"36. Once the reference is made by the State Government in exercise of its statutory power to the Labour Court for adjudication of the existing industrial dispute on the points of dispute, it is the mandatory statutory duty of the Labour Court under Section 11-A of the Act to adjudicate the dispute on merits on the basis of evidence produced on record. Section 11-A was inserted in the Act by Parliament by Amendment Act 45 of 1971 (w.e.f. 15-12-1972) with the avowed object to examine the important aspect of proportionality of punishment imposed upon a workman if, the acts of misconduct alleged against the workman are proved. The "doctrine of proportionality" has been elaborately discussed by this Court by interpreting the above provision in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. as under : (SCC p. 829, paras 33-34)*

[4] (2014) 10 Supreme Court Cases 301

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> *"33. The question is whether Section 11-A has made any change in the legal position mentioned above and if so, to what extent? The statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the legislature wanted to achieve. At the time of introducing Section 11-A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the Tribunal should have power in cases, where necessary, to set aside the order of discharge of dismissal and direct reinstatement or award any lesser punishment. The Statement of Objects and Reasons has specifically referred to the limitations on the powers of an Industrial Tribunal, as laid down by this Court in Indian Iron & Steel Co. Ltd. v. Workmen (AIR SC at p. 138).*
>
> *34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence."*

Thus, we believe that the Labour Court and the High Court have failed in not adjudicating the dispute on merits and also in not discharging their statutory duty in exercise of their power vested under Section 11-A of the Act and therefore, the impugned judgment, order and award are contrary to the provisions of the Act and law laid down by this Court in the above case."

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Thus, the Hon'ble Supreme Court has held that while dealing with the dispute under Section 11-A of the Act of 1947, if the Tribunal i.e. Labour Court or Industrial Court is satisfied that the order of discharge or dismissal was not justified, it has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The Supreme Court then held that proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence.

18. The learned Counsel for Respondent, by taking aid of the Judgment passed by the Hon'ble Supreme Court in the case of the ***Workmen of M/s Firestone Tyre and Rubber Co. Of India (Pvt) Ltd. V/s The Management and Others***[5] submitted that there is no restriction to lead additional evidence before the Labour Court or Industrial Court. The learned Counsel has taken me through the Judgment, however, I did not find that the Hon'ble Supreme Court has held that the parties have unbridled powers to lead evidence before the Labour Court or the Industrial Court. What has been held by the Supreme Court is that the expression "materials on record" occurring in the proviso cannot be confined only to the materials which were available at the domestic enquiry, but would refer to the materials on record before the Tribunal which may include, - (i) the evidence taken in the enquiry; (ii) any further evidence led before the Tribunal; or (iii) evidence placed before the Tribunal for the first time in support of the action taken by any employer as well as the evidence adduced by the workmen contra. The Supreme Court further held that it is only on the basis of these materials that the Tribunal is obliged to consider whether the misconduct is proved and

[5] (1973) 1 Supreme Court Cases 813

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whether the proved misconduct justifies the punishment of dismissal or discharge. The Supreme Court then clarified that the proviso prohibits the Tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment.

19. The law on the point of adducing additional evidence in a proceeding before the Labour Court or Industrial Tribunal questioning the legality of order of terminating services has been dealt with in detail by the Supreme Court in the case of ***Shankar Chakravarti V/s Britannia Biscuit Co. Ltd. and Another***[6]. The Supreme Court has taken stock of various Judgments including the Judgment cited by the learned Counsel for Respondent and noted thus :

> *"**18.** In Workmen v. Motipur Sugar Factory the workmen contended before this Court that as respondent employer held no enquiry as required by the standing Orders before dispensing with the services of the appellants by way of discharge on the ground that the appellants had resorted to "go slow" in the sugar factory, the Tribunal in a reference under Section 10 of the Act way of discharge on the ground that the appellants had resorted to "go-slow" tactics and the respondent was justified in discharging them from service. The specific contention raised was that where no domestic enquiry is held before terminating services of a workman as required by the Standing Orders all that the Tribunal was concerned with was to decide whether the discharge of the workman was justified or not and that it was no part of the duty of the Tribunal to decide that there was go-slow which would justify the order of discharge. Negativing this contention, the Court held as under : (SCR pp.596-97)*
>
> > *"It is well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify*

[6] (1979) 3 Supreme Court Cases 371

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the action before the Tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the Tribunal which will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic inquiry has been properly held (see Indian Iron & Steel Co. v. Workmen) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan; Phulbari Tea Estate v. Workmen; and Punjab National Bank Limited v. Workmen. There (sic) three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Shri Jai Singh and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belcund Sugar Co. It was pointed out that 'the important effect of omission to hold an enquiry was merely this : that the Tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out'. It is true that three of these cases, except Phulbari Tea Estate case were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the Tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of dismissal or discharge was proper."

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23. *In Delhi Cloth & General Mills Co. v. Ludh Budh Singh the appellant company questioned the correctness of the decision of the Industrial Tribunal refusing permission to dismiss the respondent as he was held guilty of misconduct in a domestic enquiry conducted by the appellant. The question of seeking permission arose because Section 33 was attracted as an industrial dispute between the appellant company and its workmen was then pending before the Industrial Tribunal. Before the Tribunal pronounced its order rejecting the application for permission under Section 33, an application was made on the day next after the date on which the respondent filed his written statement before the Tribunal requesting in clear and unambiguous terms the Tribunal that in case the Tribunal held that the enquiry conducted by it was defective, it should be given an opportunity to adduce evidence before the Tribunal to justify the action proposed to be taken against the respondent. Neither party examined any witness before the Tribunal. The appellant merely produced the papers of enquiry. The Tribunal reached the conclusion that the enquiry proceedings had not been conducted against the respondent in accordance with the principles of natural justice and that the findings recorded by the enquiry officer were not in accordance with the evidence adduced before him. In accordance with these findings the Tribunal concluded that the appellant had not made out a case for permission for dismissing the respondent and the application was rejected. It may be noticed that there was no reference to the application made by the appellant for adducing additional evidence in the order rejecting permission and no order appears to have been made on the application whether it was granted or rejected. Before this Court the appellant contended that the Tribunal was in error in law in not permitting the appellant to adduce evidence before it, to justify the action proposed to be taken against the respondent. After an exhaustive review of the decisions bearing on the question and affirming the ratio in R. K. Jain case this Court extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion. They are as under : (SCC pp. 616-17)*

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"(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 finding 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

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making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed 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 motu the employer to adduce evidence before it to justify the action taken by it."

25. *Reference was next made to Workmen v. Firestone Tyre and Rubber Company of India (P) Ltd. Contention raised therein was that by the introduction of Section 11-A with its proviso in the Act the legislature has once and for ever put its final seal upon the controversy whether the employer who has failed to hold proper, legal and valid domestic enquiry before taking punitive action, was entitled to adduce fresh evidence when the matter is brought before the Labour Court or the Industrial Tribunal either under Section 10 or under Section 33 of the Act. The proviso to Section 11-A provides that the Labour Court or the Industrial Tribunal in a proceeding under Section 11-A shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. This contention was in terms negatived by this Court observing that at the time of introducing Section 11-A in the Act the legislature must have been aware of the long line of decisions of this Court enunciating several principles bearing on the subject and therefore it is difficult to accept that by a single stroke of pen by the expression used in the proviso to Section 11-A all these principles were*

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set at naught. This Court then exhaustively reviewed all the previous decisions bearing on the subject and formulated the principles emerging therefrom. The relevant principles are 4, 6 7 and 8. They read as under : (SCC p. 828, Para 32)

> *"(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, has 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.*
>
> *(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."*

35. *Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. Case to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while*

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> *adjudication upon a penal termination of service of a workman either under Section 10 or under Section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. Case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges."*
>
> **(Emphasis now)**

20. As could be seen, the Hon'ble Supreme Court referred to its Judgment in the case of ***Motipur Sugar Factory*** *(supra)* in paragraph No.18, wherein it was held that if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper.

21. In paragraph No.23, the Supreme Court referred to the case of ***Delhi Cloth & General Mills Co.*** *(supra)*, wherein, while dealing with the procedure to be followed by the Tribunal, the Court held that 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

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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.

22. The Supreme Court then, in paragraph No.25, referred to the case of ***Firestone Tyre and Rubber Company of India (P) Ltd.*** *(supra)*, wherein it is found that even if no enquiry has been held by an employer or if the enquiry held was defective, the Tribunal has to give an opportunity to the employer and employee to adduce evidence. The Supreme Court further observed that the 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, but if it is not, the Tribunal ought not to afford such opportunity.

23. The Supreme Court then summarized the principles of law on adducing additional evidence in paragraph No.35 and held that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudication upon a penal termination of service of a workman either under Section 10 or under Section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. The Court reiterated that permission to adduce additional evidence should be granted only upon seeking opportunity to lead evidence.

24. As could be seen, if the enquiry is defective or if no enquiry has been held the entire case would be open before the Industrial Tribunal or the Labour Court and the employer will have to justify the order of dismissal or

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discharge by leading evidence, if he chooses to do so. If the preliminary issue is answered in favour of the management, then no additional evidence be cited by the management. Thus, it is for the employer to take a call, that too, depending upon the decision on the preliminary issue. If the employer chooses to not adduce evidence, the Industrial Court or the Labour Court need not *suo motu* call upon the employer to adduce evidence to substantiate the charges. Thus, it will not be proper to contend that by introducing Section 11-A there is absolutely no restriction to adduce additional evidence before the Labour Court or the Industrial Court.

25. The learned Counsel for Respondent has also raised a ground that provisions of Section 11-A of the Act of 1947 are not available to the Labour Court while hearing the complaint. In support, he has relied upon Judgment passed by the Division Bench of this Court in the case of ***Mohan Sugan Naik & Ors. V/s National Textile Corporation (South Maharashtra) Ltd. & Ors.***[7], wherein the High Court accepted the submissions of the employer that provisions of Section 11-A of the Act of 1947 are not available to the Labour Court while hearing the complaint but principle analogous to provisions of Section 11-A are always available.

26. There are two reasons why this Judgment is of no relevance, – first is that, the Supreme Court in the Judgment referred to in earlier paragraph, while dealing with Section 11-A, categorically held that the Labour Court or the Industrial Court, as the case may be, has power to set aside the order of discharge or dismissal in terms of Section 11-A of the Act of 1947; and secondly that, the Division Bench has, in a way, said the same thing by

[7] 1994 II CLR 443

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noting that principle analogous to the provisions of Section 11-A are always available to the Labour Court.

27. So far as the contention of the learned Counsel for Respondent that recourse to clause 1(g) of Schedule – IV could not have been taken to, even though is correct, the fact remains that the Petitioner has laid down the foundation of victimization through his complaint and evidence both, and thus, recourse to Clause – 1(a) was available. Even otherwise it appears to me that the Labour Court was right in holding that, once it is found that the employer has engaged in unfair labour practice, Section 30 of the Act of 1971 read with Section 11-A of the Act of 1947 would empower the Labour Court to set aside the order of dismissal and to direct reinstatement or to award lesser punishment.

28. In the present case, the preliminary issues were answered in favour of the employer. The Labour Court declared that the enquiry conducted by the employer was fair and proper and that the findings of the Enquiry Officer were not perverse. The Respondent/employer accordingly chose to lead no additional evidence. The Petitioner has examined himself. Accordingly, the Labour Court has considered the materials available on its record and rendered a finding.

29. In these circumstances, the Industrial Court ought to have examined the legality and correctness of the finding on the basis of the materials on record, instead it has relegated matter back to the Labour Court for fresh trial from the stage of proportionality of punishment and to allow either party to lead additional (oral and documentary) evidence. This finding is contrary to the settled principles of law, as discussed hereinabove, and

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therefore, is unsustainable. Resultantly, the impugned Judgment and order passed by the Industrial Court, Nagpur is liable to be quashed and set aside.

30. The Writ Petition is accordingly allowed. The Judgment and order dated 6/10/2022 passed by the learned Industrial Court, Nagpur in Revision (ULP) No. 02/2022 is hereby quashed and set aside.

31. The Revision (ULP) No. 02/2022 is remanded back to the Industrial Court, Nagpur for consideration afresh in accordance with law.

32. Parties shall appear before the Industrial Court, Nagpur on 12th November, 2024.

33. Writ Petition stands disposed of in above terms. No order as to costs.

(ANIL L. PANSARE, J.)

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