Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 227 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Lakhan Juyal ……. Respondent

with

Writ Petition No. 222 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Pradeep Kumar ……. Respondent

with

Writ Petition No. 224 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Surendra ……. Respondent

with

Writ Petition No. 225 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Ankit Kumar Chauhan ……. Respondent

with

Writ Petition No. 226 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Sandeep Kumar Sharma ……. Respondent

with

Writ Petition No. 229 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Prem Singh ……. Respondent

with

Writ Petition No. 230 of 2018 (M/S)

M/s Hero Motocorp Limited ……. Petitioner

Versus

Ramesh Singh ……. Respondent

Mr. Pankaj Miglani, Advocate for the petitioner(s).
Mr. M.C. Pant, Advocate for the respondents.

List of cases referred:

1. *(2015) 5 SCC 423, Radhey Shyam vs Chhabi Nath*
2. *(2008) 5 SCC 554, Mazdoor Sangh vs Usha Breco Ltd.*
3. (1999) 1 SCC 517, Neeta Kaplish vs Presiding Officer, Labour Court
4. (1983) 4 SCC 293, D.P. Maheshwari vs Delhi Administration and others
5. Hussainara Khatoon (IV) Vs Home Secretary, State of Bihar, (1980) 1 SCC 98
6. *(1975) 2 SCC 661, Cooper Engineering Ltd. vs P.P. Mundhe.*
7. *(1973) 1 SCC 813, Workmen vs Firestone Tyre and Rubber Co. of India (P) Ltd.*
8. *1972 (1) SCC 595, Delhi Cloth & General Mills Co. vs Ludh Budh Singh*
9. AIR 1964 SC 1344, Syed Yakoob vs. K.S. Radhakrishnan and others,

Hon'ble Lok Pal Singh, J.

Since common questions of law and facts are involved in the aforementioned writ petitions, therefore, the same are taken up together and are being decided by this common judgment for the sake of brevity and convenience.

2) By means of aforementioned writ petitions, the petitioner M/s Hero Motocorp Ltd. is

seeking writ of certiorari for quashing / setting aside the impugned orders dated 24.07.2017 and 12.01.2018, passed in adjudication case no. 06 of 2017, Lakhan Juyal Vs M/s Hero Moto Corp Ltd., pending before the Labour Court, Haridwar. A further prayer has been made to direct the Labour Court, Haridwar to frame a preliminary issue with regard to the fairness and propriety of the disciplinary inquiry against the respondent, as a consequence of allowing the application of petitioner.

3) Heard learned counsel for the parties and perused the material brought on record.

4) Writ Petition no. 227 (M/S) of 2018 shall be the leading case.

5) Brief facts of the case, as mentioned in the writ petition, are that respondent / workman Lakhan Juyal was offered training as "Team Member" vide letter dated 06.06.2008. On completion of training period of two years, he was offered probationary employment for one year as Team Member vide letter of offer of probation at the Haridwar Factory dated 01.07.2010. Thereafter, he was confirmed in the services from 01.07.2011. During the course of employment, the respondent / workman was suspended from service on 06.09.2013. In furtherance to the letter of suspension, a charge sheet was supplied to him. In the charge sheet, the respondent / workman was

charged for committing twelve (12) misconducts as per the Standing Order Clause no. 27 of the Certified Standing Orders, as applicable upon the Factory and was asked to submit his explanation in writing. The respondent / workman submitted his written explanation on 22.10.2013 to the employer. Upon perusal and examination of the explanation so furnished by him, the explanation was found unsatisfactory. Thereafter, opportunity was afforded to the respondent / workman to put up his defence and proceedings of domestic enquiry was conducted in the matter of charge sheet dated 28.09.2013. It is stated in the writ petition that full opportunity to cross examine the Management witnesses, to produce documents, witnesses, if any, in his defence and also to adduce his own evidence was provided to him. Respondent / workman was also given opportunity to take the help and assistance of his co-worker to help, assist and represent him as his representative. The respondent / workman participated in the domestic enquiry. Respondent / workman produced 14 documents and had also examined himself in defence. After conclusion of domestic enquiry proceedings, the Enquiry Officer submitted his report / findings dated 27.10.2014 and found and held the respondent / workman guilty of committing all the 12 acts of misconduct as levelled against him in the charge sheet dated 28.09.2013.

6) The employer vide show cause notice dated 03.11.2014 supplied the copy of said report /

finding to the respondent / workman. An opportunity was given to him that, in case, he wanted to submit any explanation in writing in respect to report / finding of the Enquiry Officer and the proposed punishment as contained therein, he could submit the same. Respondent / workman submitted his written explanation dated 14.11.2014 to the employer. The same was also not found satisfactory. Finally, the respondent / workman was dismissed from services of the employer vide letter dated 25.11.2014. One month's wages were also paid to him and for full and final settlement he was called upon to contact the Accounts Department of the employer.

7) Feeling aggrieved, the respondent / workman raised an industrial dispute which was referred for adjudication by the State Government through the Dy. Labour Commissioner, Uttarakand, Dehradun. The point of determination to be adjudicated by the Labour Court is as under:

> "Whether the termination of services of the skilled workman Sri Lakhan Juyal s/o Sri Pitambar Juyal by the employer, who was dismissed on 25.11.2014, is proper and / or justifiable? If not, then to what benefit / relief the workman is entitled?

8) The reference was referred to the Labour Court, Haridwar for adjudication, which was registered as Adjudication Case no. 06 of 2017, Lakhan Juyal vs M/s Hero Moto Corp Ltd. After summons were issued to the petitioner, M/s Hero Moto Corp. Ltd. filed its written statement. In paragraph no. 18 of the written statement it has

been specifically prayed that a preliminary issue with regard to the proceedings of domestic enquiry held in the matter of the respondent / workman were just, fair and proper. The respondent / workman also filed his written statement, alleging therein, that it is established principle of natural justice that if a charge sheet is filed against any workman in respect of misconduct, the same should not be vague, but should be detailed and clear and the person charge sheeted should necessarily be provided copies of entire proofs / documents / evidence along with the charge sheet on the basis of which charges were levelled against him, so that there should be no difficulty in presenting his case and to prove his innocence. The proceedings of domestic enquiry should be transparent and the Enquiry Officer should not be biased. It is contended in the written statement that the entire proceedings of domestic enquiry is biased against the workman and the objections raised by the workman from time to time were overlooked. It is also contended that the employer has already make up its mind to dispense with the services of the workman along with others and the second cause notice issued to the workman was simply a formality. In other words, the workman has challenged the legality of the domestic enquiry in paragraphs nos. 9, 12 and 17 in its written statement.

9) It is alleged in the writ petition that since no preliminary issue was framed by the Labour

Court, the petitioner moved an application no. D-17 with regard to the framing of preliminary issue regarding the fairness and propriety of the domestic enquiry. Labour Court vide its order dated 24.07.2017, rejected the said application. The petitioner is aggrieved by the order dated 24.07.2017, passed by the Labour Court, to the extent of rejection of his application D-17. It is further alleged in the writ petition that the learned Labour Court has erred in law in rejecting the application moved by the petitioner holding that since the preliminary issue raised by the petitioner is inherent in the reference, hence there is no requirement to frame the same separately. It is also alleged that the Labour Court proceeded in the matter treating it as a civil suit where strict principles of Code of Civil Procedure, 1908 are attracted and completely lost sight of the fact that the matter before it is an industrial dispute. It is contended that the recall / review application moved by the petitioner for recalling the order dated 24.07.2017 was also dismissed by the Labour Court vide its order dated 12.01.2018 without proper application of mind. It is further contended that the term 'issue' include the term 'preliminary issue' and the meaning of preliminary issue is that it has to be decided at the preliminary stage. Lastly, it is contended that the impugned orders are totally against the fact of the case and the laws on the subject and hence deserve to the set aside on that score alone.

10) Before further discussion it would be worthwhile to mention here Order XIV of the Code of Civil Procedure, 1908, which stipulates settlement of issues and determination of suit on issue of law or on issues agreed upon. The same reads as under:

> "1. Framing of issues
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> (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.
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> (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
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> (3) Each material proposition affirmed by one-party and denied by the other shall form the subject of distinct issue.
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> (4) Issues are of two kinds:
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> (a) issues of fact,
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> (b) issues of law.
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> (5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.
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> (6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.
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> [2. Court to pronounce judgment on all issues
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> (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.
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> (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or

any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

3. Materials from which issues may be framed

The Court may frame the issues from all or any of the following materials :-

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

4. Court may examine witnesses or documents before framing issues

Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5. Power to amend and strike out, issues

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Questions of fact or law may by agreement be stated in form of issues

Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,-

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that are of them be declared entitled to some right or subject some liability specified in the agreement:

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgement

Where the Court is satisfied, after making such inquiry as it deems proper,-

(a) that the agreement was duly executed by the parties;

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court.

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced a decree shall follow.

11) Learned counsel for the petitioner drew attention of this Court toward the judgment rendered by Hon'ble Supreme Court in **Delhi Cloth**

and General Mills Co.[8], wherein it has been held that 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 opportunity to adduce evidence before the Tribunal, if the finding of 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.

12) Learned counsel for the petitioner placed reliance upon a judgment passed by Hon'ble Apex Court in **Firestone Tyre and Rubber Co. of India**[7], wherein it has been held as under:

> **32.** From those decisions, the following principles broadly emerge:
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> "(*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.
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> (*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.
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> (*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.
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> (*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* within the judicial decision of a Labour Court or Tribunal."

13) Reliance is also placed upon a judgment in the case of **Mazdoor Sangh**[2], wherein the Hon'ble Supreme Court in para 28 of said judgment has categorically laid down the law as under:

"28. Firestone Tyre and Rubber Co.[7] must be understood in the context in which it was rendered. Section 11-A of the Act as interpreted by Firestone Tyre and Rubber

> Co. must be applied at different stages. Firstly, when the validity or legality of the domestic enquiries is in question; secondly, in the event, the issue is determined in favour of the Management, no fresh evidence is required to be adduced by it whereas in the event it is determined in favour of the workmen, subject to the request which may be made by the Management in an appropriate stage, it will be permitted to adduce fresh evidence before the Labour Court."

14) Placing further reliance upon **Cooper Engineering Ltd.**[6], it has been stated that in said judgment Hon'ble Supreme Court has observed 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. Para 21 and 22 of said judgment are excerpted hereunder:

> **"21.** Propositions (4), (6) and (7) set out above are well-recognised. Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be

reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The inference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see Section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. 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 the Labour Court by questioning its decision with regard to 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."

15) Learned counsel for the petitioner has also cited a case law pronounced in the case of **Neeta Kaplish**[3], wherein Hon'ble Apex Court has held thus:

"18. In *Delhi Cloth & General Mills Co.* v. *Ludh Budh Singh*[8] the Court held that where no enquiry was conducted by an employer or the enquiry itself was found to be defective, the employer shall have to be given a chance to adduce evidence

before the Tribunal for justifying his action provided the employer asks for the permission of the Tribunal to adduce fresh evidence to justify its action. Such request has to be made "*while the proceedings are pending*" and not after the proceedings had come to an end. The following propositions were laid down:

> "(*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.
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> (*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.
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> (*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.
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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 with, 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 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.

(*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."

19. These principles were adopted in *Workmen* v. *Firestone Tyre & Rubber Co. of India (P) Ltd.*[7] which was decided after the introduction of Section 11-A in the Act. In *Cooper Engineering Ltd.* v. *P.P. Mundhe*[6] in which *Workmen* v. *Firestone Tyre & Rubber Co. of India (P) Ltd.*[7] was followed, the Court observed:

"In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been

followed by the management before passing the order of dismissal."

The Court further observed:

"*22*. 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."

16) Per contra, learned counsel for the workman/respondent drew attention of this Court towards a judgment rendered by three Judges of Hon'ble Apex Court in **D.P. Maheshwari**[4], wherein in the opening paragraph of said judgment it has been held as under:

"It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that Policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who

> can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

17) Having gone through the judgments (supra), this Court is of the view that the three judges bench of Hon'ble Apex Court has considered the framing of preliminary issue elaborately and has observed that certain employers in order to avoid decision of industrial disputes on merits, has a tendency to raise various preliminary objections, invite decision on those objections at the first instance and then carry the matter to the High Court under Article 226 of the Constitution of India and thereafter to the Apex Court, which unnecessarily delay the disposal of the matters. Since the ratio of the three judges judgment is that the matter should be decided at once, therefore, the principle of law laid down in **D.P. Maheshwari's**[4] case has preponderance over the other judgments. This Court is of the view further that since the legality of the disciplinary proceedings is to be

answered by the Labour Court at the time of adjudication of the reference made to it, the same reference cannot be splitted by framing a preliminary issue which ultimately would result in causing injustice to the poor workman.

18) A perusal of the order impugned rejecting the (paper no. D-17) moved by the petitioner for framing of preliminary issue regarding fairness and validity of domestic enquiry proceedings and for deciding the same in a preliminary manner in accordance with law would show that the revisional court has assigned reasons for rejecting the application that the said application has been moved to prolong the proceedings and is an attempt to escape proving its own case, which is not justifiable in the eyes of law and is not in consonance with the principles of natural justice. There should not be two times trial by the Labour Court, otherwise, it will waste the valuable time of the Court and would result in unnecessary delay in hearing of the case in exercise of writ jurisdiction.

19) Though the provisions contained in the Code of Civil Procedure are strictly not applicable, but as the Labour Court or Tribunal adjudicate the rights of the parties at their respective pleadings and evidence after framing the issues, therefore, the provisions contained in the Code of Civil Procedure and Evidence Act does apply. The criteria of deciding a preliminary issue in view of the provisions contained under Order 14 Rule 1 of CPC

is that the Court or Tribunal can decide an issue as preliminary issue, when the issue is to be decided without taking evidence of the parties which is purely a legal issue, but when the Court or Tribunal cannot decide a preliminary issue without taking evidence of the parties, on whom the burden of proof lies, the Court should refrain itself from deciding the preliminary issue. In other words, if the Court or Tribunal starts to decide a preliminary issue in regard to finding out the factum or truthfulness or correctness of the enquiry conducted by the employer and decide the preliminary issue against the employer and thereafter direct the workman to adduce the evidence in support of his claim, then certainly it would lead unnecessary delay in adjudicating the *lis*.

20) Therefore, this court is of the firm view that deciding a preliminary issue will not only waste the valuable time of the Court, but it will lead to unnecessary delay in the disposal of cases, which is against the constitutional mandate envisaged under Article 21 of the Constitution of India.

21) Speedy justice is one of the fundamental rights of a person guaranteed under Article 21 of the Constitution of India. Hon'ble Apex Court in **Hussainara Khatoon (IV)**[5], has observed thus:

> "Speedy trial is an essential ingredient of "reasonable, fair and just" procedure guaranteed by Article 21 and it is the constitutional obligation of the State to device such a procedure as would ensure

> speedy trial to the accused. The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial."

22) A Division Bench of this Court while deciding Review Application MCC No. 1276 /2018, arising out of Writ Petition No. 438 (S/B) of 2016, Tara Nath Pandey vs.Union of India & others, decided on 17.06.2019, has relied upon the principle of law laid down by Hon'ble Apex Court in **Syed Yakoob**[9] and observed that the scope of interference in certiorari proceedings is extremely limited. The relevant paragraphs of said judgment are excepted hereunder:

> "3. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where the order is passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings (**Syed Yakoob**[9]) as it is in the province of a court of appeal.
>
> 4. If the tribunal has erroneously refused to admit admissible and material evidence, or has erroneously admitted inadmissible evidence, or if a finding of fact is based on no evidence, it would be an error of law which can be

corrected by a writ of certiorari. Where the conclusion of law by the Tribunal is based on an obvious mis-interpretation of the relevant statutory provisions, or in ignorance of it or even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Whether or not an error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provisions which is alleged to have been misconstrued or contravened. (**Syed Yakoob**[9]).

5. Unlike an appellate authority which can re-appreciate the evidence on record, the High Court, in the exercise of its certiorari jurisdiction, would not substitute its views for that of the Tribunal, nor would it re-appreciate the evidence on record to arrive at a conclusion different from that of the Tribunal whose order is impugned before it. Even if two views are possible, and the Tribunal has taken one of the possible views, the High Court would not interfere, in the exercise of its certiorari jurisdiction, even if it were to be satisfied that the other possible view, canvassed before it, is more attractive. A finding of fact reached, on the appreciation of evidence, cannot be reopened or questioned in writ proceedings save a finding of fact which is either perverse or is based on no evidence. If a provision is reasonably capable of two constructions, and one construction has been adopted by the authority, its conclusion may not always be open to correction in writ proceedings. (**Syed Yakoob**[9]).

6. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior tribunals. A writ can similarly be issued where, in exercise of the jurisdiction conferred on it, the tribunal acts illegally or improperly, as, for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is

opposed to principles of natural justice. (**Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. : (2008) 14 SCC 171** ; **Syed Yakoob vs. K.S. Radhakrishnan and others : AIR 1964 SC 1344**). A writ of certiorari can be issued in the case of illegal exercise of jurisdiction, and also to correct errors of law apparent on the face of the record, even though they do not go to jurisdiction. It is only errors of law apparent on the face of the record, and not errors of fact though they may be apparent on the face of the record, which can be corrected, (**Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Ors : AIR 1961 SC 970** ; **Rex vs Northumberland Compensation Appeal Tribunal : (1952) 1 KB 338**; and **Nagendra Nath Bora and Ors. Vs. The Commissioner of Hills Division and Appeals, Assam and Ors : AIR 1958 SC 398)**, and not every error either of law or fact which can be corrected by a Court of appeal or revision**.** (**T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Ors.: AIR 1965 SC 111**; **Bachan Singh and Ors. Vs. Gauri Shankar Agarwal and Ors : (1972) 4 SCC 257**; **Nagendra Nath Bora and Ors. Vs. The Commissioner of Hills Division and Appeals, Assam and Ors : AIR 1958 SC 398**).

7. Further an error of law, which can be corrected by a writ of certiorari, must be self-evident. It should not need an elaborate examination of the record (**Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Ors : AIR 1961 SC 970**), or require a detailed examination or an elaborate argument to establish it (**Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. : (2008) 14 SCC 171**; **Hari Vishnu Kamath Vs. Respondent:Syed Ahmad Ishaque and Ors. : AIR 1955 SC 233** ; **Batuk K. Vyas Vs. Surat Borough Municipality and Ors : AIR 1953 Bom. 133**). An error cannot be said to be apparent if one has to travel beyond the record to see whether the judgment is correct or not. It is an error which strikes on the mere looking,

> and does not need a long-drawn out process of reasoning on points where there may conceivably be two opinions. Such an error would not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. (**Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd. : (2008) 14 SCC 171** ; **Sant Lal Gupta and Ors. Vs. Modern Co-operative Group Housing Society Ltd. and Ors. : (2010) 13 SCC 336).**

23) The jurisdiction under Article 227 of the Constitution of India is a limited jurisdiction. In **Radhey Shyam**[1], it has been held by Hon'ble Apex Court that proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a

manner which tantamounts to overstepping the limits of jurisdiction.

24) Unless the petitioner succeeds in convincing this Court in regard to the three ingredients as mentioned above necessary to invoke the jurisdiction of this Court under Article 227 of the Constitution of India as held by the Hon'ble Apex Court in **Radhey Shyam**[1], Court should be loath to exercise such jurisdiction to differ with the reasons and the conclusion arrived at by the competent authority or court of law. In the case in hand, no prejudice has been caused to the petitioner by the impugned order as the petitioner will always be at liberty to adduce evidence before the Labour Court on all the issues framed by it, including the reference.

25) In view of the above discussion, the aforementioned writ petitions lacks merit and are hereby dismissed. Parties shall bear their own costs.

(Lok Pal Singh, J.)

Dt. July 16, 2019.
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