

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 1821 of 2025

M/s. Waxpol Industries Limited, a Company incorporated under the Companies Act, 1956, through its Manager (Legal) Dipankar Ghosh, aged about 56 years, Son of late Sabit Ghosh, working at the Registered & Head Office at 9, Mitter House, 71, Ganesh Chandra Avenue, P.O., P.S. & District – Kolkata – 700013

... .. **Petitioner**

Versus

Narendra Nath Tiwari, Son of Shri Prasad Tiwari, resident of Indrapuri, Road No.12, Ratu Road, P.S. Sukhdeonagar, P.O. & District – Ranchi - 834001

... .. **Respondent**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Nipun Bakshi, Advocate
	: Mr. Shubham Sinha, Advocate
For the Respondent	: Mr. Vishal Kumar Tiwary, Advocate

CAV on 29.04.2026

Pronounced on 27.08.2026

1. This writ petition has been filed for the following reliefs:

“(i) For a writ of Certiorari for quashing/setting aside the order dated 17.01.2025, passed by Shri Gopal Pandey, Presiding Officer, Labour Court, Ranchi, in B.S. Case No.02/2005 (Annexure – 15), directing reinstatement of the Respondent in the service of the petitioner – company with 50% back wages, without application of mind, and by overlooking the evidence on record that proved the grave charge of theft and dishonesty which was even partially admitted by the respondent himself.

(ii) For any other appropriate writ/rule/direction for setting aside the finding in the order impugned regarding validity of the disciplinary enquiry which has been erroneously decided by adopting incorrect standards of proof and by overlooking the settled law that the strict technicalities of procedure are inapplicable to enquiry proceedings.

(iii) For any other relief(s) to which the Petitioner may be found to be entitled to in law be also granted for doing conscionable justice to the Petitioner.

(iv) For stay of the operation and implementation of the order/judgement dated 17.01.2025 passed in B.S. Case No.02/2025.”

2. The petitioner is an establishment under the provisions of Jharkhand Shops and Establishment Act. The respondent employee was subjected to disciplinary proceedings by the petitioner by issuing a charge sheet and was ultimately terminated from service. The employee challenged the action of the petitioner before the learned Labour Court. The learned Labour Court framed the following issues for consideration: -

“(1) Whether the petition filed by the applicant u/s. 26(2) of B.S.E. Act read with Rule 21 of Jharkhand Shops Establishment Rules is maintainable.?”

(2) Whether the management/employer/opposite party have been able to establish the charges of misconduct against the applicant?

(3) Whether the applicant is entitled to get any relief?”

3. The learned Labour court has set-aside the order of termination and directed reinstatement of the Respondent-employee in the service of the petitioner – company with 50% back wages. The final order of the learned Labour Court is under challenge in this writ petition.

4. This is the 2nd round of litigation before this court. The learned labour court had earlier passed an order dated 27.04.2009 setting aside the order of termination which was challenged by the petitioner in writ petition being W.P.(L) No. 3759 of 2009 and the order impugned in the said writ petition was set-aside and the matter was remanded before the learned Labour Court for fresh consideration. The paragraphs of the order of remand relevant for the present case are quoted as under: -

“8. After hearing the learned counsel for the parties and considering the facts and circumstances of this case, this Court finds that the application was filed by the private respondent under Section 26(2) of the Bihar Shops and Establishment Act challenging his order of dismissal dated 03.02.2005. On the basis of pleadings, the learned court framed the issues as mentioned above which included the issue of maintainability.

The learned court decided the issue no. 1 by holding that the case was maintainable. The said finding is not under challenge during the course of hearing and accordingly the findings with regard to issue no. 1 does not call for any interference.

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11. This Court finds that while deciding issue no. 2, the learned court has not deliberated upon the various materials on the basis of which conclusion has been arrived at issue no. 2. The order does not reflect as to how the court has arrived at conclusion at paragraph no. 10. The paragraph 10 refers to one statement of opposite party no.2 said to have been corroborated by one statement of opposite party no.4. The materials on record reveal that as many as 3 witnesses were examined by the applicant employee and numerous documentary evidences were placed on record and as many as 4 witnesses were examined by the petitioners-employer and many documents were exhibited. A grievance has been raised by the petitioners that the written explanation of the concerned employee Exhibit 4/C also has not been considered and the evidence of the security guard, who was examined as a witness O.P. No.1 has also not been considered along with other materials placed on record while arriving at the conclusion in paragraph 10 of the impugned order.

*12. As held by the Hon'ble Supreme Court in (2010) 9 SCC 496 **Kranti Associates Private Limited and Another versus Masood Ahmed Khan and Others**, paragraph 47 that the reasons in support of decisions must be cogent, clear and succinct. A valid decision-making process must be backed by adequate and intelligent reasons.*

13. This Court finds that material evidences placed on record have not been considered while arriving at the conclusion in paragraph 10 of the impugned order, although the evidences have been mentioned in the earlier portion of the impugned order. The materials placed on record are not only required to be mentioned but are also required to be deliberated upon before arriving at a conclusion/finding and such deliberations must also reflect in the order. The findings at paragraph 10 lacks such an exercise of judicial mind. Accordingly, the impugned order is perverse calling for interference under writ jurisdiction. The impugned order is hereby set-aside.

14. Consequently, the matter is remitted back to the concerned court to give well-reasoned findings in connection with issue no. 2 and consequential relief in issue no. 3 after hearing the

parties and based on the materials already available on record.”

5. Thus, the finding that the case was maintainable has attained finality and the matter was remanded for fresh consideration of the remaining two issues, that is issue nos. (ii) and (iii).

6. By the impugned order, the issue nos. (ii) and (iii) have been again decided in favour of the respondent employee by setting aside the order of termination and by directing reinstatement with 50% back wages.

7. **Arguments of the petitioner – management**

Learned counsel for the petitioner submits that the order has been passed under the provisions of Jharkhand Shops and Establishment Act and has pointed out the following perversities: -

- (i) The learned counsel has referred the Annexure-2 which is Ext.4/c and has submitted that-

The concerned employee had admitted his guilt that he had taken away the company's goods and the same was to be used in his Motorcycle;

The reply of the concerned employee clearly reveals that he was all set to use the one litre or two bottles of shocker oil which were handed-over to a co-employee, Budhan Munda if the medical bill and estimate for repair of motorcycle was not sanctioned;

It was clearly a preparation for theft and since the goods were taken into custody before the employee could use, as such, the order of punishment was proper; The employee was confronted with his reply i.e. Ext.-4/c during his cross-examination and here, the employee has clearly admitted that he had given three jars of rubbing compound to Budhan Lal Munda and also admitted that he had taken out shocker oil for use in his bike;

There is clear admission on the part of the employee that he had taken out goods of the petitioner-company for his own use without any permission.

- (ii) He has then referred to Annexure-10/2 which is the deposition of the concerned employee who was examined as AW.3 and submitted that during his cross-examination also, the employee had admitted his guilt, but this has also not been considered;
- (iii) The approach of the learned Labour Court is itself incorrect inasmuch as the learned Labour Court was of the view that the Management was required to prove their case to the hilt; Such approach is perverse. The standard of proof is preponderance of probabilities and there was no requirement for the Management to prove the case against the employee to the hilt. The admitted fact needs not to be proved and the admission of the concerned employee having not been taken into consideration makes the impugned order perverse.
- (iv) Grant of 50% back-wages is also perverse as there is no foundational plea from the side of the concerned employee that he was not gainfully employed elsewhere and no evidence as such has been dealt with.
- (v) Once the allegation of theft is admitted, dismissal was the only punishment which could have been given, as theft in an industry leads to complete loss of confidence.
- (vi) Learned counsel referred to Rule 20 of the Jharkhand Shops and Establishment Rules and submitted that list of acts which could be termed as misconduct has been mentioned therein and referred to Clause –1(d) which deals with the *“theft, fraud or dishonesty in connection with the employer's business property.”* Learned counsel submitted that aforesaid clause would cover the preparation of the employee to dishonestly use the company's property.
- (vii) It is submitted that the action of the respondent-employee is also a misconduct under the Standing Orders 8 and 9 of the

company as annexed at Annexure-4, Clause -8, 9 and 10 read as under: -

8.Theft within the factory or fraud or dishonesty in connection with the Company's business.

9. Taking out of the works any article or material belonging to the Company without a Gate-Pass issued by the Company.

10. Hiding away or attempting to hide away any article or material.

(viii) The learned counsel for the petitioner has referred to the judgement reported in ***(2008) 5 SCC 554 (Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited and Another)*** paragraphs 33 and 34 to submit that the standard of proof in matters arising out of departmental proceedings or domestic enquiry is that of preponderance of probability and the entire approach of the learned labour court is erroneous. As per the impugned order, the management has not been able to prove the misconduct to the hilt and such approach is incorrect. He then referred to the judgement reported in ***(2007) 1 SCC 222 (A.P. SRTC Vs. Raghuda Siva Sankar Prasad)*** and submitted that in a case of theft, the dismissal is the appropriate punishment.

(ix) The learned counsel has submitted that the specific case of the petitioner is that there was an attempted theft inasmuch as the company's property was hidden in the residential quarter of a co-employee, who informed this fact to the management and ultimately the goods were recovered. He has submitted that the act amounts to hiding away company's property leading to loss of confidence, and therefore, the punishment of dismissal could be the appropriate punishment.

(x) The learned counsel has also submitted that 50% back wages has been awarded without citing any material and without citing any reason. On this count also the award requires interference.

- (xi) He submits that impugned order be set aside and it be held that the petitioner has proved the case against the employee by applying the standard of proof based on the preponderance of probabilities and consequently the order of termination be not interfered by this Court.
- (xii) The learned counsel has referred to the discussion of evidence by the learned labour court from paragraph 22 onwards of the impugned order and submitted that irrespective of any ocular evidence, the employee had himself admitted that he had moved the company's property and kept it in the residence of the co-employee and on his admission, the charge stood proved against the employee.

8. Arguments of the respondent -employee

- A. The learned counsel for the respondent-employee has submitted that the alleged date of occurrence is 27.05.2004 and charge sheet has been issued on 18.06.2004. He has further submitted that as per the management, a complaint was received by the co-employee Budhan Lal Munda on 05.06.2004 and 2nd complaint by the security guard on 14.06.2004 but as per the respondent-employee, the alleged complaints were dated 05.09.2004 and 14.09.2004 respectively, and consequently, the charge sheet was issued prior to any complaint.
- B. He has then referred to the charge sheet at Annexure – 1 and has submitted that the charge sheet itself reveals that as per the allegation Budhan Lal Munda had taken the material to his quarter as per the advice of the respondent -employee. It was alleged that the materials were taken out from finished goods godown of Ranchi without any authorization from the competent authority, but the records, including the evidence of the management witness, would show that there was nothing to demonstrate that the goods were taken out from the finished goods godown. Rather, the evidence of Sudhir Chatterjee, Finance Manager, would show that he had asked the petitioner

to explore the possibility of selling these rejected goods to persons outside.

- C. The learned counsel submits that once the concerned goods were rejected goods, there is no scope to keep such rejected goods in finished goods godown.
- D. Learned counsel for the respondent has referred to the reply filed by the concerned employee and has submitted that entire gamut of affairs has been explained therein.
- E. Learned counsel has referred to the standing order contained in Annexure-4 and referred to clauses 8, 9 and 10, which have already been referred by the counsel for the petitioner, and has submitted that none of the clauses have been attracted as there has been no theft. Further no article has been taken out from the company's premises and there is no question of any hiding away or attempting to hide away any article or material in as much as it was duly known to Budan Lal Munda that under the instructions of the concerned employee the goods were kept in his residence for the purposes of inspection by the garage mechanic who might use those rejected goods for useful purpose.
- F. The learned counsel has then referred to Rule 20 of Jharkhand Shops and Establishment Rules, 2001 which gives the list of acts which have been termed as misconduct and submitted that the alleged act of the employee does not come under Rule 20(1) (d) which has been relied upon by the learned counsel for the petitioner.
- G. The finding of the enquiry report has been placed which is containing in paragraph 33 to 35 at page 39 of the writ petition. The learned counsel submitted that in the enquiry report also there is no such finding that the finished goods were removed from the godown nor there is any finding that the employee had committed theft or had attempted to commit theft. The learned counsel submits that as per enquiry report the employee was

held guilty in part and whatever explanation was furnished by the employee has been reiterated.

- H. The learned counsel submits that prior to imposing punishment, a copy of the enquiry report was never furnished to the employee. The order of termination is at Annexure-5.
- I. The learned counsel has further submitted that as per the order of termination the enquiry officer found the employee guilty of charges but the enquiry report itself reveals that he was only found partly guilty of the charges and there is no finding of any attempted theft or theft of the company's goods.
- J. The learned counsel submits that since the enquiry report was not furnished and even the termination letter was not furnished, the concerned employee served the legal notice dated 16.05.2005. After the order of termination, the enquiry report and the termination letter were simultaneously supplied to the employee in response to the legal notice and thereafter, the employee filed the case under Bihar Shops and Establishment Act challenging his order of termination.
- K. The learned counsel for the respondent has referred to the evidence of the employee, para 8 onwards, and submitted that one S.S. Bhattacharya joined the establishment and he told the employee that since the employee is engaged in lot of purchase, he wanted some commission to which the employee refused and thereafter the employee was subjected to a number of charge sheets one after another and in none of the charge sheets Shri S.S. Bhattacharya succeeded and ultimately the charge sheet involved in the present case was issued at the instance of S.S. Bhattacharya. The learned counsel submits that in paragraph 32 the employee submitted that Shri Bhattacharya issued charge sheet to the employee on 18.06.2004 without any complaint from any corner. He has stated in paragraph 35 that no such reference was made of any particular clause of standing order in the charge sheet.

- L. The learned counsel has referred to paragraph 86 of the deposition and has submitted that reference was made to the letter dated 05.09.2004 which was said to have been filed by Budhan Lal Munda to S.S. Bhattacharya. It was already exhibited as exhibit-13. The learned counsel has referred to paragraph 92 of the deposition to submit that huge amount of responsibility in connection with purchase of goods and licensing, taxation and liaisoning was being handled by the concerned employee. During the cross examination also in paragraph 117 and 118, the concerned employee has stated that S.S. Bhattacharya had demanded commission to the extent of 10% with respect to the purchase of goods. The learned counsel refers to paragraph 125 of cross examination of the concerned employee and has submitted that exhibit-4(c), which was the reply filed by the employee, was referred to and certain alleged admission was recorded, but the exhibit does not reflect such admissions. He submits that Budhan Lal Munda was examined as P.W. 2.
- M. The evidence of security guard has been annexed at page no. 127 of the writ petition. The learned counsel has referred to paragraph 20 of his cross examination and has submitted that he has admitted that the finished goods were kept in the godown and he was in possession of the keys of the godown. He has further referred to paragraph 24 and has submitted that the authority to take out goods was with N.N. Tiwari. In paragraph 33 this witness has admitted that alleged goods were not kept in the godown but it was outside the godown. The learned counsel submits that on the face of these witnesses the charge itself is not proved. He has referred to paragraph 45 of the cross examination of Mr. Srikant Pandey and has submitted that he has stated that exhibit-c carries the date 14.06.2004 and as the pen stopped writing therefore, he used another pen to make it nine. The learned counsel has thereafter referred to the evidence of Budhan Lal Munda at page no. 143 of the writ petition and

has referred to paragraphs 16 and 17 of his cross-examination to say that he admitted that the goods were not kept in the godown.

- N. The learned counsel has referred to paragraphs 27, 28 and 29 of the cross-examination of Budhan Lal Munda and it is submitted by the learned counsel for the respondent that the said witness has clearly deposed that he had lodged the complaint only in the month of September. He submits that this itself goes to show that the complaint was lodged in the month of September and charge-sheet was issued prior to that. The learned has further referred to paragraph 30 of cross-examination of Budhan Lal Munda to submit that the cutting in the written complaint was done on the day when he went to give his deposition and in paragraph 31, he has stated that no charge-sheet was issued to him in connection with the recovery made from his house.
- O. Learned counsel for the respondent has then referred to the deposition of manager (finance) namely, Shri Sudhir Chatterjee and has in particular referred to his statement at paragraph 11 to submit that this witness has clearly deposed that the goods were rejected goods and he had given the permission to sell it off.
- P. The learned counsel for the respondent has then referred to the impugned order and has submitted that the learned court has also taken note of the fact that even in the domestic enquiry, the employee was not found guilty of theft or taking goods from finished goods godown.
- Q. The learned counsel submits that this finding is apparently based on the materials on record which has already been placed by the learned counsel. He submits that detailed discussion with respect to all the documents etc., both oral and documentary evidences, have been made and ultimately, the learned court summarized its findings in paragraph 27 of the impugned order and held in paragraph 29 that the management has not been able to prove the charges against the employee and therefore, the termination of the employee was not proper.

9. At the end of the argument, it has come to light that the concerned employee has already attained the age of superannuation and therefore, there is no question of taking him back to service.

Findings of this Court

10. The charge-sheet issued to the respondent -employee by the management at Annexure-1 is quoted as under: -

“It has been alleged that you have kept about 5 Ltr. of shocker oil in one poly container in Mr. Budhan Lal Munda’s quarter inside the Ranchi Office premises. In addition, three poly containers containing 3 Kgs each of Rubbing Compound Green was also found in the quarter of Mr. Budhan Lal Munda.

In this connection our Ranchi Office Security Guard Mr. Srikant Pandey has been informed by Mr. Budhan Lal Munda that these materials were taken to Mr. Budhan Lal Munda’s quarter as per the advice of you.

We were surprised to find this since the materials were taken out from the finished goods godown of Ranchi Office without any authorization from the competent authority and would therefore like to have an explanation from you on the above immediately.”

11. The show cause reply of the concerned employee reveals that he has disclosed the entire events from beginning with respect to Rubbing Compound and also Shocker Oil as to how and in what manner the alleged goods were waste material and not capable of being put to any use and that they were never kept in the finished goods godown. It was also stated that the bike repairing bill and medical bill of the concerned employee was pending for approval with the management and hence the concerned employee stated that as to why he would use old shocker oil for his bike. He also stated he had thought of using the shocker oil in his bike but his intention was never bad and if it was bad then he would have acted in a different manner. The show cause reply has been placed on record.

12. The domestic enquiry proceeded; three witnesses of the management were examined and statement of the employee was

recorded and the enquiry report was prepared with following findings:-

“33. Considering the aforementioned documents and materials and the evidences/statements of the management as well as the charge sheeted employee I came to the conclusion that as stated by the Management Representative Rubbing compound was entrusted to Mr. Tiwari to sell the same in the market because the same was rejected materials and the management’s witness told that socker oil was lying in the management’s office since last 2-3 years. This socker oil which was found inside Budhan Lal Munda’s quarter was without any authorisation from the management Although Mr. Budhan Lal Munda's quarter was inside the Ranchi Office campus but the material was supposed to have been inside the office premises and not inside the quarter of Budhan Lal Munda.

34. On the contrary as delinquent employee Mr. N.N. Tiwari has himself accepted in his written reply of the charge sheet and as well as in his statement during the course of enquiry he said that he had given 3 Poly containers containing 3 Kgs. each of Rubbing compound and 5 Ltr. Socker oil container to Mr. Budhan Lal Munda for keeping in his quarter and as he has not filed any sanctioned/permission letter in the enquiry for doing so, therefore he is guilty to the charges that the materials were taken to Mr. Budhan Lal Munda's quarter as per the advice of Mr. N.N. Tiwari without any authorisation/sanction from the competent Authority.

35. I hereby conclude and hold that Mr. Narendra Nath Tiwari is guilty in part of having committed the guilt of keeping the materials 5 Ltr. of Socker oil in one poly container and three poly containers, containing 3 Kgs. each of Rubbing compound green which were taken to Mr. Budhan Lal Munda's quarter as per the advice of him.”

13. Thus, the enquiry officer recoded that the employee was guilty in part but the management issued a letter observing that the employee was guilty of the charges levelled against him and ultimately terminated his services. The employee moved the learned court and challenged the action of the management.

14. Before the learned Presiding Officer, Labour Court, Ranchi, the employee adduced evidences of 3 witnesses including himself and filed numerous documents. So far as the management is concerned, 4

witnesses were examined on their behalf and documentary evidences were also produced.

15. The learned court, after discussing the materials on record at length, both oral and documentary evidences, has recorded in paragraph 16 of the impugned order that it is an admitted fact that the concerned employee was appointed on 19.02.1993 on the post of Stenographer-cum-Office Assistant and he was in continuous service prior to his termination. Further, it has been established that the concerned employee was given the work of dispatch of finished products and was authorized to keep in touch with the government department, as and when required.

16. Further finding has been recorded in paragraph 17 of the impugned order that the concerned employee had also challenged the legality and validity of the domestic enquiry and the court found that as per the report of the enquiry officer (exhibit-F), the concerned employee was found guilty to the extent that under his instruction the alleged goods were kept in the house of Budhan Lal Munda. The learned court further recorded that the enquiry officer did not find the concerned employee guilty of taking out the alleged goods from finished goods godown and theft of such goods.

17. The learned Court further recorded in paragraph 18 that the enquiry officer in paragraph 16 to 17 of his cross-examination has stated that he did not pass any order on the applications filed by the concerned employee and after response of the management, the enquiry proceeded further and also stated that concerned employee was not provided a copy of the preliminary enquiry. The Court has also recorded that during the cross-examination of the enquiry officer, it has come that a copy of the standing order was also not provided to the concerned employee.

The Court has recorded a finding that the evidence of the enquiry officer reveals that the concerned employee, during enquiry proceedings, had raised objection and for which he also filed applications, but no order was passed on such applications and the enquiry proceeded. In support of this finding, a reference has been

made to the order-sheet of enquiry proceedings dated 03.12.2004. Thereafter, the learned court has referred to the two applications filed by the concerned employee before the enquiry officer that were marked exhibit- 4/e and 4/f whereby the concerned employee raised objection and asked for certain reports, but the same was neither provided to the concerned employee, nor any order was passed on such applications and the enquiry proceeded which was apparent from the examination of the enquiry officer. The Court further recorded that exhibit-D was the proceeding sheet of the domestic enquiry which was completed by the enquiry officer, who was an advocate, during the period from 14.08.2004 to 11.12.2004.

18. The learned court recorded that during the enquiry, on behalf of the management altogether three witnesses were examined and cross-examined by the concerned employee; On 04.12.2004 the evidence of the management was closed and on the next date, i.e., on 11.12.2004, the statement of the concerned employee was recorded but the management did not cross-examine the concerned employee and on the very same day, the evidence of the concerned employee was closed. The court recorded that in this manner the concerned employee was granted only one day which was not sufficient opportunity for the concerned employee to defend himself.

In paragraph 20 of the impugned order, the learned court has concluded that the domestic enquiry was not held in accordance with the principles of natural justice, inasmuch as, the objections raised by the concerned employee were not disposed of and the enquiry proceeded without disposing of the objections and the employee was not granted adequate opportunity to present his case. The learned court further recorded that the enquiry officer has given his findings without properly appreciating the evidence of the witnesses. The enquiry report was set-aside.

19. After having recorded the aforesaid instances of violation of principles of natural justice during the domestic enquiry in paragraph 18 of the impugned order, the learned court considered the oral evidences of the management witnesses threadbare. Thereafter, the

learned court discussed the evidence of the concerned employee. The learned court noted that this witness during his evidence-in-chief has denied the allegation and has also referred to his show-cause reply dated 05.07.2004. With respect to shocker oil, he has stated that the goods were received from Raipur factory in damaged and leaked condition and he had given due information about these damaged goods to the head office. On account of damaged goods, he and his staff, Budhan Lal Munda, with the help of Shrikant Pandey, poured the goods in 5 litre jar, but this good was not fit for sale and therefore, it was not kept in the finished goods godown, rather it was kept near the almirah in the office way back in September, 2000 and it was lying there till 21.05.2004. He has further stated that on 16.04.2004 he had to go to Sales Tax office, but on his way, he met with an accident. Consequently, he was on medical leave from 16.04.2004 to 26.04.2004 and since he had met with an accident while doing office work, he was asked to submit his medical bill and estimate of bike repairing which he duly submitted, but the same were not yet approved in spite of his repeated requests. The mechanic had also told him that apart from other goods, shocker oil would also be required. The concerned employee was of the view that since the management has to pay the bill of bike repairing so this shocker oil can be used and consequently, on 21.05.2004, he gave the shocker oil to Budhan Lal Munda to keep it in his quarter, so that the mechanic could test it, but during the period from 21.05.2004 to 27.05.2004, he did not take the shocker oil to show to anybody. From 26.05.2004 to 28.05.2004, Budhan Lal Munda was on leave. With respect to 3 jars of rubbing compound, he had asked Shrikant Pandey that one 5 litre jar of rubbing compound was lying in the house of Budhan Lal Munda and he had asked Shrikant Pandey to bring the same and keep it in the godown and informed the management about it. After 4-5 days, the factory manager came for enquiry to Ranchi office and he disclosed the entire things to him which he had also disclosed in his show-cause reply and it was within the knowledge of Shrikant Pandey.

20. The learned court, after discussing the evidence of the concerned employee, has recorded its finding in paragraph 19 that the concerned employee, in his show-cause, had denied the allegation made against him and had given details of the entire incident in his show-cause reply. The learned court was of the view that the evidence of the concerned employee revealed that under the instruction of the concerned employee, the alleged goods were kept in the house of Budhan Lal Munda, but the concerned employee had no ill intention and he had explained the entire facts and circumstances.

21. The learned court considered the evidences placed on record and specifically considered the plea of the petitioner-management that the concerned employee had admitted his guilt by way of reply to the charge-sheet. The charge-sheet was Exhibit-3/c and the reply to the charge-sheet was Exhibit-4/c.

The learned court also considered that even in the enquiry report (Exhibit-F), the enquiry officer did not find the concerned employee guilty of the charges levelled against him and found that he was only partly guilty.

The learned court considered that as per the enquiry report also, the concerned employee was not found guilty of taking out any goods from the godown and the enquiry officer did not find the concerned employee guilty of taking out any goods from godown without permission of the competent authority. The enquiry officer only found the concerned employee guilty of keeping the goods in the house of Budhan Lal Munda.

The learned court recorded that in spite of the fact that the enquiry officer found the concerned employee only partly guilty, the Management while passing the order of termination recorded that the concerned employee was found guilty of the charges levelled against him which was of serious misconduct and terminated the services of the concerned employee vide termination letter as contained in Exhibit-15/a. Even in reply to the legal notice, sent by the Management to the concerned employee, the Management had mentioned that the concerned employee was found guilty of the

charges in the enquiry, but the fact remains that the enquiry officer had found the concerned employee partly guilty, which indicated that the Management was acting with a pre-conceived notion and even the enquiry report, whereby the concerned employee was held to be partly guilty of the charges, has not been considered by the Management while passing the order of termination.

22. The argument of the Management that the concerned employee had admitted his guilt has been considered at the end of paragraph 25 onwards of the impugned order. The learned court upon perusal of the show-cause reply (Exhibit-4/c) filed by the concerned employee found that the complete reading of Exhibit-4/c revealed that he was entrusted to sell the useless goods and the alleged goods, that is, 5-liter shocker oil and 3 liter rubbing compound were also entrusted to the concerned employee, which has been stated by Sudhir Chatterjee in his evidence. It was also clear from his reply that the concerned employee has not drawn any benefit out of the alleged goods. The learned court also considered the cross-examination of the concerned employee, paragraph 125, wherein he admitted that he had given three containers of rubbing compound to Budhan Lal Munda and had taken out shocker oil for use in his bike, but such evidence is only a part of his evidence and the same cannot be read in isolation to say that the concerned employee had admitted his guilt. The learned court also recorded that it was the case of the Management that when the concerned employee in his show cause reply denied the allegation, they decided to initiate domestic enquiry and observed that if the show cause reply was an admission of his guilt, there was no need to constitute domestic enquiry on the charges levelled against the concerned employee. The learned court also took note of the fact that the Management neither produced the Standing Order nor the same has been exhibited and all the Management Witnesses had stated that the concerned employee had denied the allegations made against him and there was no dispute that the concerned employee had denied the allegation made against him. The learned court ultimately held that the

concerned employee did not accept his guilt in his reply to show cause vide Exhibit-4/c.

23. The learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2008) 5 SCC 554 (*supra*)** to submit that the standard of proof in the matter arising out of departmental proceeding or domestic enquiry is that of preponderance of probability and the entire approach of the learned labour court was erroneous and as per the impugned order, the Management has not been able to prove the misconduct to the hilt and such approach was incorrect.

Upon going through the impugned order as discussed above, this Court is of the view that the learned court has not applied the yardstick of proof of misconduct to the hilt. The learned court recorded that the enquiry itself was in violation of principles of natural justice and otherwise also the Management proceeded to pass the order of termination by observing that the concerned employee was held guilty of the charges levelled against him, although even as per the enquiry report, the concerned employee was found partly guilty. Accordingly, the aforesaid judgment does not help the petitioner in any manner.

24. The 2nd judgment which has been relied upon by the learned counsel for the petitioner is reported in **(2007) 1 SCC 222 (*supra*)** to submit that in a case of theft, dismissal is the appropriate punishment. However, at the same time, the learned counsel has submitted that the case of the Management is that there was an attempt to commit theft as the company's property was hidden in the residential quarter of the co-employee, who informed the Management and ultimately the goods were recovered. The aforesaid fact that the goods were kept in a hidden condition in the residential quarter of the co-employee was also not proved, inasmuch as, the learned court recorded that the other employees also knew that it was kept there. The learned court has considered the entire gamut of affairs and the facts and circumstances of the case and also observed that the goods were neither misused by the concerned employee nor the same were used by the concerned employee for his own purpose and the goods were within the

boundary of the establishment and these goods being damaged and non-useable goods were never kept in finished goods godown, but were kept initially in the office/veranda.

The aforesaid judgment also does not help the petitioner in any manner.

25. The learned court, after discussing the entire materials placed on record and also holding that there was violation of principles of natural justice in conducting the domestic enquiry and also considering that the reply filed by the concerned employee was not his admission of guilt, ultimately summarized the findings in paragraph 27 of the impugned order, whose English translation is as under: -

- i. The alleged goods of the company i.e. rubbing compound was received from Tatisilwai office two-three years back in damaged and useless condition for selling in the market/garage. Shocker oil was received from Raipur in useless/leaking condition.
- ii. The aforesaid goods were not kept in the finished goods godown, but that were kept in the office/Veranda.
- iii. The concerned employee was authorized by the Tatisilwai Office to sell the aforesaid goods in market/garage.
- iv. The applicant has been selling the useless goods of the company in market/garage with the permission of the competent authority from Tatisilwai office.
- v. The applicant did not accept his guilt in his show cause reply (Exhibit-4/c).
- vi. The applicant has not misused the alleged goods nor has used the same for his own benefit.
- vii. The alleged goods were never taken out from the office premises, but it was kept within the office premises in the residence of Budhan Lal Munda with due knowledge to others and was kept in safe condition.
- viii. The Management has not issued any show cause to Budhan Lal Munda [*from whose house the goods were recovered*] nor has

issued any charge-sheet to the person who had given the permission to the concerned employee to sell the goods.

- ix. The applicant had no intention to misuse the alleged goods.
- x. The Management did not serve the order of termination to the concerned employee nor any such publication was made in the newspaper.
- xi. The concerned employee was not served with any notice prior to termination nor was given any compensation for termination.

26. The learned court also held that under the Jharkhand Shops and Established Rules, 2001, a list of misconduct has been provided in Rule 20, but the conduct of the concerned employee does not fall under any of the items in Rule 20. Earlier in the judgment, the learned court has recorded that the standing order of the establishment was not produced or exhibited before the learned court.

27. After having held as aforesaid, the learned court concluded that the Management has failed to establish the alleged misconduct against the concerned employee and therefore the order of termination dated 03.02.2005 was not sustainable and was fit to be set-aside and consequently the order of termination was set-aside. The issue no. (ii) was accordingly decided in favour of the concerned employee. While deciding the issue no. (iii), the learned court directed reinstatement of the concerned employee from the date of termination and also directed 50% back wages and consequently allowed the case of the concerned employee.

28. This Court finds that the learned court, after remand vide order passed in W.P. (L) No. 3759 of 2009 directing to pass fresh order in connection with issue nos. (ii) and (iii), has considered the materials on record threadbare and, *inter alia*, came to specific findings as recorded above that the enquiry was held in violation of principles of natural justice, inasmuch as, the objections raised by the concerned employee were not disposed of ; the concerned employee was not given adequate opportunity to defend himself; the enquiry officer found that the concerned employee was only partly guilty, but the Management proceeded with a pre-conceived mind that the charges

levelled against the concerned employee were proved as per the enquiry report and terminated the concerned employee by alleging serious misconduct; the concerned employee never admitted his guilt through his reply vide Exhibit-4/c; the concerned employee neither misused the alleged goods nor used the alleged goods for his own benefit *and* the Management failed to prove the alleged misconduct.

29. This Court finds no perversity in the impugned order passed by the learned court, so far as its findings are concerned and accordingly, the same does not call for any interference. Further, upon reading of the show cause reply of the concerned employee it cannot be said that the employee had admitted his guilt, rather he had explained the entire circumstances since beginning and that his action did not reveal that he had any bad intention. Even the learned court has taken into consideration all the materials into consideration to come to a finding that the concerned employee did not admit his guilt in the show cause reply or even in his evidence which is required to be read as a whole and held that domestic enquiry was bad on account of violation of principles of natural justice and that the management failed to prove the charges against the concerned employee. The findings are well reasoned and do not call for any interference in writ jurisdiction.

30. So far as the award of 50% back wages is concerned, there is not much discussion by the learned court. However, the manner in which the concerned employee has been terminated pursuant to domestic enquiry conducted in violation of principles of natural justice and even the management mis-read the findings of the enquiry officer by wrongly observing that the employee was found guilty of charges [although the employee was held partly guilty by the enquiry officer] , ***the award of 50% back wages of his last drawn salary [he was terminated way back on 03.02.2005]*** does not call for any interference. Admittedly, the concerned employee has attained the age of superannuation in the year 2018. In such circumstances, the concerned employee would be entitled to the back wages only till he attained the age of superannuation.

31. This writ petition is accordingly **dismissed**.

32. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

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