



2026:AHC:142886

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - C No. - 26630 of 2026**

M/S Shahi Export House (Now Known  
As Shahi Export Pvt. Ltd.)

.....Petitioner(s)

Versus

Presiding Officer, Labour Court And  
Another

.....Respondents(s)

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|----------------------------|-------------------------------|
| Counsel for Petitioners(s) | : Karshit Nigam, Sr. Advocate |
| Counsel for Respondent(s)  | : Baqer Mehdi, C.S.C.         |

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**Court No. - 36**

**HON'BLE SAURABH SHYAM SHAMSHERY, J.**

1. Heard Sri Shakti Swarup Nigam, learned Senior Advocate assisted by Sri Karshit Nigam, learned counsel for petitioner and Ms. Bushra Mariyam, learned Senior Advocate assisted by Sri Baqer Mehadi, Advocate for Respondent-2.

2. Since the issue involve in this case is purely legal, therefore, with the consent of parties, the Court proceed to decide it without exchange of

inquiry report is 28.09.2001 and order of terminated is dated 17.10.2001. The Workman raised an industrial dispute before Labour Court, Noida.

4. An issue which was to be framed as a preliminary issue, i.e., whether domestic inquiry conducted by petitioner against Workman was fair or not, was framed as an additional issue.

5. Before making adjudication to said additional issue, the evidence from side of Employer was also taken on record and by impugned order not only additional issue was decided but on basis of evidence so recorded, a finding was returned that charges levelled against Workman were not found proved. It was held that domestic inquiry was unfair as sufficient opportunity was not granted to Workman and on consideration of oral as well as documentary evidence, so led, it was further held that no proper opportunity was granted to Workman, therefore, the order dated 17.10.2001, whereby Workman was terminated from services, was held to be illegal and directed that it's legal consequence shall be followed.

6. Learned Senior Advocate appearing for petitioner has placed reliance on a judgment passed by this Court in **M/s Dwarikesh Sugar Industries Ltd. vs. Presiding Officer, Labour Court, Rampur and others, 2023:AHC:44828** wherein this Court has considered the judgments passed by Supreme Court in **Delhi Cloth & General Mills Co. Ltd. vs. Ludh Budh Singh, 1972(1) SCC 595; Cooper Engineering Ltd. vs. P.P. Mundhe, 1975(2) SCC 661; Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. vs. Firestone Tyre & Rubber Company, 1976(1) SCC 819; Shambu Nath Goyal vs. Bank of Baroda, 1983(4) SCC 491; Rajendra Jha vs. Presiding Officer, Labour Court, 1984 (Supp.) SCC 520; Neeta Kaplish vs. Presiding Officer, Labour Court and another,**

**State Road Transport Corporation vs. Gajadhar Nath, 2021(10) SCC 697.** He further submits that there is no ambiguity in position of law that if an industrial dispute is raised against the order passed on basis of domestic inquiry, the Labour Court at first instance will decide an issue, whether domestic inquiry was fair or not. In case answer is in affirmative, the dispute will not further proceed for adjudication. However, in case answer remain in negative, the Employer shall be granted an opportunity to present evidence to prove the charge and Labour Court on basis of evidence so led before it, will decide matter on merit, whether charge was proved or not. For reference, relevant part of the judgment passed by this Court in **M/s Dwarikesh Sugar Industries Ltd. (supra)** is reproduced hereinafter:

**“(ड) विश्लेषण**

**१३.** विधिक बिन्दु पर निर्णय देने के लिए वादी के विद्वान वरिष्ठ अधिवक्ता द्वारा उल्लेखित विधि दृष्टांगो पर ध्यान देना आवश्यक है।

**१४.** **नीता कपलिश (पूर्व मे उल्लेखित)** में उच्चतम न्यायालय ने पूर्व में निर्णीत **देलही क्लोथ ऐंड जनरल मिल्स को. प्रति लुधबुध सिंह, (१९७२) १ एस.सी.सी. ५९५** के प्रकरण के निर्णय के कुछ अंश का उल्लेख किया, कि जब प्रबंधन उसके द्वारा की गई जाँच पर निर्भरता जताता है और साथ ही साथ अधिकरण के समक्ष अपने उक्त तर्क में पूर्वाग्रह के बिना की गई जाँच उचित थी, साक्ष्य भी प्रस्तुत करता है, तब भी अधिकरण का विधिक दायित्व है, कि वो प्राथमिक स्तर पर ही यह विचार करे कि क्या प्रबंधन द्वारा की गई जाँच की कार्यवाही उचित व मान्य है। अगर अधिकरण संतुष्ट है कि जाँच की कार्यवाही उचित रूप से की गई है एवं मान्य है, तब प्रस्तुत साक्ष्य पर गुण दोष पर विचार करने का कोई प्रश्न ही नहीं रह जाता है व अधिकरण केवल दंड की समीक्षा कर सकता है।

**१५.** जब अधिकरण यह निर्धारित करता है कि जाँच की कार्यवाही उचित रूप से नहीं की गई थी, तभी वो उस क्षेत्राधिकार को प्राप्त करता है जहां विवाद को गुण दोष के आधार पर निर्धारित कर सकता है और उस दशा में वो प्रबंधन द्वारा प्रस्तुत साक्ष्य पर विचार करता है और विवाद को साक्ष्य के आधार पर गुण दोष पर निस्तारित करता है।

**१६.** **नीता कपलिश (पूर्व मे उल्लेखित)** मे यह भी कहा गया है कि उपरोक्त सिद्धान्त उच्चतम न्यायालय द्वारा **वर्कमैन प्रति फायर स्टोन टायर व रबड़ को. ऑफ इंडिया, (१९७३) १ एस.सी.सी. ८१३** में भी अनुसरित किया गया है।

१८. जहां तक विपक्षी द्वारा इस न्यायालय की पूर्ण पीठ के एक निर्णय **मेसर्स स्वरूप वेजीटेबल प्रोडक्ट्स इंडस्ट्रीज लि. (पूर्व में उल्लेखित)** पर बल देने का विषय है, जहां पूर्ण पीठ ने यह निर्धारित किया कि श्रम न्यायालय का यह दायित्व नहीं है कि क्या घरेलू जाँच वैधानिक व उचित है, को प्रारम्भिक बिन्दु बनाकर ही निर्णय दिया जाये व समस्त बिन्दुओं को एक साथ निर्धारित भी कर सकता है। परन्तु जैसा पूर्व में उल्लेख किया है कि पूर्ण पीठ के निर्णय के उपरान्त **एम.एल.सिंगला (पूर्व में उल्लेखित)** में यह स्पष्ट रूप से निर्धारित किया गया कि श्रम न्यायालय के प्रारम्भिक बिन्दु कि घरेलू जाँच को उचित व वैधानिक बनाना ही होगा व उसके निर्धारण के उपरान्त ही आगे की कार्यवाही कर सकता है, इस कारण से यह न्यायालय, पूर्ण पीठ के निर्णय का अनुपालन करने के लिए बाध्य नहीं है।

१९. प्रतिवादी के द्वारा अन्य निर्णयों के आधार पर यह कथन किया गया है कि अगर प्रारम्भिक बिन्दु न बनाकर कोई त्रुटि की भी हो, तब भी वादी/ प्रबंधक को समस्त साक्ष्य श्रम न्यायालय के समक्ष रखने की पूर्ण स्वतंत्रता थी, जिसका उसने लाभ भी उठाया और प्रबंधन ने वर्तमान याचिका में ऐसा कोई भी कारण का कथन नहीं किया है, कि साक्ष्य न रख पाने के कारण उसके साथ कोई पक्षपात हुआ हो। इसके अतिरिक्त प्रतिवादी ने पुरजोर बल उच्चतम न्यायालय की संवैधानिक पीठ के निर्णय **लक्ष्मी देवम्मा (श्रीमती) (पूर्व में उल्लेखित)** पर दिया है कि श्रम न्यायालय, प्रारम्भ में ही, घरेलू जाँच उचित है या नहीं, के बिन्दु पर विचारण करने के लिए बाध्य नहीं है, और यह बिन्दु बाद में भी निर्धारित किया जा सकता है, इसके लिए प्रतिवादी के वरिष्ठ अधिवक्ता ने समक्ष पीठ द्वारा **रिजिनल मैनेजर यू.पी.एस.आर.टी.सी. (पूर्व में उल्लेखित)** के मामले में दिये गये निर्णय पर भी बल दिया।

२०. उपरोक्त तर्क पर निर्णय लेने से पूर्व मैंने संविधान पीठ द्वारा दिये गये निर्णय का परिशीलन ध्यानपूर्वक किया। संविधान पीठ के समक्ष यह विवाद था कि उच्चतम न्यायालय की दो पीठों द्वारा दिये गये **शम्भूनाथ गोयल प्रति बैंक ऑफ बडौदा, (१९८३) ४ एस.सी.सी. ४९१** व **राजेन्द्र झां प्रति पीठासीन अधिकारी, लेबर कोर्ट, १९८४ (सप्पली) एस.सी.सी. ५२०**, के निर्णयों में अगर कोई विरोधाभास है, तो कौन सा निर्णय उचित है, कि प्रबंधन द्वारा साक्ष्य प्रस्तुत करने की प्रार्थना किस स्तर पर कर सकता है। क्या उसको प्रारम्भिक बिन्दु, कि क्या घरेलू जाँच अवैधानिक व मान्य है, के निस्तारण का इन्तजार करना चाहिये या प्रारम्भ में ही प्रति उत्तर के साथ ही साक्ष्य प्रस्तुत करने की प्रार्थना कर देनी चाहिये। इस नाते संविधान पीठ ने बहुमत से यह निर्धारित किया कि उपरोक्त दोनों निर्णयों में कोई विरोधाभास नहीं है कि नियोक्ता को जवाब के साथ ही यह प्रार्थना पत्र भी दाखिल करना चाहिये कि वो साक्ष्य भी प्रस्तुत करना चाहता है, जिससे वाद निस्तारण में देरी न हो व यह प्रार्थना क्योंकि वैकल्पिक है, तो नियोक्ता पर कोई भी प्रतिकूल प्रभाव नहीं होगा। संविधान पीठ ने **कूपर इंजी. लि. प्रति पी.पी.मुंथे, (१९७५) २ SCC ६६१** को अनुमोदित करते हुए प्रस्तर १४ में यह निर्णित किया कि घरेलू जाँच की निष्पक्षता पर यदि प्रश्न उठे तो उसे प्रारम्भिक बिन्दु के रूप में ही निर्णित किया जाये व उसके बाद ही साक्ष्य के आधार पर वाद निर्णित किया जाये। विवाद केवल साक्ष्य देने के प्रार्थना पत्र के समय पर था, जिस पर संविधान पीठ ने निर्धारित किया कि वो प्रथम स्तर

(पूर्व मे उल्लेखित) में यह भी निर्धारित किया कि घरेलू जाँच निष्पक्ष नहीं है, का बिन्दु प्रारम्भिक रूप से बनाना आवश्यक नहीं है, परन्तु न तो संविधान पीठ के समक्ष यह बिन्दु विचाराधीन ही था और न ही ऐसा संविधान पीठ ने निर्णय में कही भी निर्धारित किया है। ऐसा प्रतीत होता है कि **रिजिनल मैनेजर (पूर्व मे उल्लेखित)** के प्रस्तर २३ के आखिर में संविधान पीठ के निर्णय में उक्त कहा गया है, अभिलेख के विपरीत है।

२२. उपरोक्त विश्लेषण का परिणाम है कि श्रम न्यायालय का दायित्व है कि प्रारम्भिक रूप से "क्या घरेलू जाँच निष्पक्ष है" का बिन्दु निर्धारित करे और उसके निर्णय के उपरान्त ही आगे की कार्यवाही करे। नियोक्ता, श्रम न्यायालय में उत्तर दाखिल करते समय प्रारम्भिक बिन्दु पर भी अपना स्पष्टीकरण व साथ ही साथ साक्ष्य देने की प्रार्थना भी कर सकता है। वर्तमान प्रकरण में नियोक्ता द्वारा प्रारम्भ में ही यह प्रार्थना की गई थी कि प्रारम्भिक बिन्दु कि "घरेलू जाँच निष्पक्ष है" बनाया जाये, परन्तु श्रम न्यायालय ने प्रार्थना निरस्त करते हुए साक्ष्य आमंत्रित किया तथा जो साक्ष्य श्रम न्यायालय के समक्ष प्रस्तुत किये गये उसके अतिरिक्त घरेलू जाँच में प्रस्तुत साक्ष्य पर भी विचार करते हुए यह निर्धारित किया कि न केवल घरेलू जाँच दूषित थी वरन् पदच्युति भी अवैधानिक थी।

२३. श्रम न्यायालय अगर यह निर्धारित करता है कि घरेलू जाँच निष्पक्ष नहीं है, तो केवल उस साक्ष्य पर जो उसके समक्ष लेख बद्ध किये गये व पत्रजात को पत्रावली पर लाये गये है, के आधार पर ही यह निर्धारित करेगा कि क्या आरोप साबित होता है, या नहीं, परन्तु वर्तमान प्रकरण में श्रम न्यायालय ने दोनो साक्ष्य (जो घरेलू जाँच में कार्यवाही के दौरान व श्रम न्यायालय के समक्ष आये) पर विचार किया, जो पूर्ण रूप से अवैधानिक है। (देखें **नीता कपलिश (पूर्व मे उल्लेखित)** के प्रस्तर संख्या २७ व २८) कर्मकारों के वरिष्ठ अधिवक्ता द्वारा प्रस्तुत अन्य विधिक दृष्टांगों का कोई लाभ कर्मकारों को नहीं मिल सकता है। अतः इस स्तर पर आक्षेपित आदेश के निम्न अंश महत्वपूर्ण है कि श्रम न्यायालय ने उपरोक्त वैधानिक त्रुटि करी:-

"इस बैंक डेटिंग के सम्बन्ध में सर्वोत्तम साक्ष्य केवल सम्बन्धित किसानों का ही हो सकता था, जिनके गन्ने की तौल दिनांक 24.11.2016 को होना दर्शायी गयी है, लेकिन किसी भी किसान से न तो पूछताछ की गयी और न ही उनको घरेलू जांच में और न ही न्यायालय में प्रस्तुत किया गया। अतः मात्र सेवायोजक के इस कथन में विश्वास नहीं किया जा सकता कि श्रमिक अर्जेन्द्र कुमार ने उपरोक्त 24परिचियों में बैंक डेटिंग करके दिनांक 24.11.2016 दर्शायी हो।"

"जहां तक दिनांक 24.11.2016 को श्रमिक द्वारा अन्य तौल लिपिकों के साथ हड़ताल पर जाने का प्रश्न है तो इसमें घरेलू जांच के दौरान गवाह राजकुमार द्वारा लिखित कथन (ई-13), विजेन्द्र सिंह का लिखित कथन (ई-14), औंकार सिंह का लिखित कथन (ई-15), नीरज कुमार का लिखित कथन (ई-16), योगेन्द्र कुमार का लिखित कथन (ई-17), रमेश परसुरामपुरिया का लिखित कथन (ई-18), अशोक कुमार शर्मा का लिखित कथन (ई-19), जितेन्द्र कुमार का लिखित कथन (ई-20) प्रस्तुत किये गये हैं। इन तथ्यों को स्वयं सेवायोजक

**घरेलू जाँच में दाखिल कर दिये। अतः मात्र इसके आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि श्रमिक अर्जेन्द्र कुमार किसी हड़ताल में शामिल हुआ हो। वैसे भी इस बात की पुष्टि हो चुकी है कि दिनांक 24.11.2016 को श्रमिक द्वारा अपने क्रय केन्द्र पर 24 किसानों के गन्ने की तुलाई की थी और उन्हें भुगतान भी सेवायोजक द्वारा किया गया। अतः न तो इस बात की पुष्टि होती है कि दिनांक 24.11.2016 को श्रमिक किसी हड़ताल में शामिल रहा हो और न ही इस तथ्य की कि दिनांक 24.11.2016 को गन्ने की तुलाई न की गयी हो।"**

### **(च) निष्कर्ष**

**२४.** उपरोक्त विचार विमर्श के परिणामस्वरूप विचारार्थक विधिक बिन्दु का निस्तारण किया जाता है कि, श्रम न्यायालय को प्रारम्भिक रूप में ही "क्या घरेलू जाँच निष्पक्ष व मान्य है" के विधिक बिन्दु बनाकर उसका निस्तारण करना चाहिये और परिणाम के फलस्वरूप ही आगे की कार्यवाही विधिक रूप से करनी चाहिये कि अगर घरेलू जाँच निष्पक्ष पाई जाती है, तो श्रम न्यायालय मात्र सजा के समानुपात की जाँच कर सकता है, परन्तु यदि श्रम न्यायालय यह पाता है कि घरेलू जाँच दूषित है, तो नियोक्ता को श्रमिक के विरुद्ध आरोप साबित करने के लिए साक्ष्य देने की अनुमति प्रदान करनी चाहिये और यदि साक्ष्य पूर्व में ही नियोक्ता द्वारा दिया जा चुका है तो उक्त साक्ष्य के आधार पर यह निर्धारित करेगा कि आरोप साबित होता है या नहीं, इस स्तर पर श्रम न्यायालय घरेलू जाँच में दिये गये साक्ष्य को अपने निर्णय का आधार नहीं बना सकता।

**२५.** उच्चतम न्यायालय ने एक नवीन निर्णय **उत्तर प्रदेश स्टेट रोड ट्रांसपोर्ट कोर्प. प्रति गजाधर नाथ, (२०२२) ३ एस.सी.सी. १९० में वर्कमेन प्रति फायर स्टोन टायर (पूर्व में उल्लेखित)** के निर्णय में सिद्धान्तों का पुनः उल्लेख किया कि, यदि नियोक्ता द्वारा की गयी घरेलू जाँच दूषित पायी जाती है, तो अधिकरण को नियोक्ता को साक्ष्य प्रस्तुत करने का अवसर देना ही होगा, कि उसके द्वारा कर्मकार के विरुद्ध की गयी कार्यवाही उचित है। इसी प्रकरण में संविधान पीठ के **लक्ष्मी देवम्मा (पूर्व में उल्लेखित)** के निर्णय का भी उल्लेख किया कि उपरोक्त स्थिति में नियोक्ता का साक्ष्य देने का अधिकार प्रक्रियात्मक है न कि वैधानिक, जो वाद के त्वरित निस्तारण के लिये है।

**२६.** वर्तमान प्रकरण में श्रम न्यायालय ने दो वैधानिक त्रुटि करी है। पहली उसने घरेलू जाँच निष्पक्ष है को न तो प्राथमिक बिन्दु बनाया और न ही उसका निस्तारण प्रारम्भ में किया तथा दूसरी उसने अन्तिम निर्णय में जहाँ एक ओर यह निर्धारित किया कि घरेलू जाँच दूषित है, वहीं दूसरी ओर वो साक्ष्य जो उसके सामने लेखबद्ध हुए के साथ-साथ घरेलू जाँच के दौरान दिये गये साक्ष्य पर भी विचार किया। इन दो वैधानिक त्रुटियों के कारण आक्षेपित आदेश अवैधानिक हो जाता है।

### **(छ) आदेश**

**२७.** आक्षेपित चारों आदेश दिनांकित ०३.११.२०२० निरस्त किये जाते हैं तथा चारों वाद श्रम न्यायालय को प्रतिप्रेषित कर आदेशित किया जाता है कि श्रम न्यायालय सर्व प्रथम प्रारम्भिक बिन्दु 'क्या घरेलू जाँच दूषित है' को निर्धारित करेगा व उसके निर्णय के आधार

7. Learned Senior Advocate appearing for Respondent-Workman has placed reliance on a judgment passed by a Coordinate Bench of this Court in **Shashi Export Private Limited vs. State of U.P. and others, 2018:AHC:22600**, wherein a similar issue was involved between parties to this Court and Labour Court concerned has adopted similar procedure and Coordinate Bench has dismissed writ petition filed by petitioner.

8. During argument it is informed that aforesaid judgment in **Shashi Export Private Limited (supra)** was challenged at the behest of petitioner before Supreme Court, being Special Leave to Appeal (C) No. 11076 of 2018 (Shahi Exports Ptv. Ltd. vs. State of U.P. and another), which was dismissed on 07.05.2018. For reference paras 9, 10 and 11 of aforesaid judgment in **Shashi Export Private Limited (supra)** is reproduced hereinafter:

*“9. I have considered the arguments of the counsel for the petitioner and examined the record. In view of plea raised by the petitioner in paragraph-19 of written statement, Labour Court framed an additional issue on 28.03.2007 "Whether domestic inquiry was fair and proper and has been done in consonance of principles of natural justice?". Labour Court also directed that this issue would be decided along with main issue referred to it. The petitioner has not only examined V.K. Solanki (Inquiry Officer) as EW-1, on 13.09.2007 but also filed entire papers relating to domestic inquiry from the stage of suspension on 16.08.2001 to dismissal on 27.10.2001, to prove that inquiry was fair and proper. The petitioner also examined Rajendra Ahuja (Manager Karmik & Administration) as EW-2, on 22.07.2010, Neeraj Harjani (Assistant General Manager) as EW-3, on 21.09.2016 and Promod Kumar Gupta (senior supervisor) as EW-4, on 23.03.2017, to prove the charges as leveled against respondent-3, in domestic inquiry. After close of the evidence, the petitioner filed written arguments on 03.05.2017 and never demanded any further opportunity for additional evidence. Arguments that the petitioner was not given opportunity to prove charges against respondent-3 is misconceived.*

*10. A copy of the charges sheet of domestic inquiry has been filed as*

*not be able to stand on his leg. It is admitted that the petitioner was not engaged in production work rather she was checker of finished material and posted in Finishing Department. Rajendra Ahuja (Manager Karmik & Administration) EW-2, in his cross examination has admitted that there is no evidence to prove that respondent-3 had participated in go slow move. Neeraj Harjani (Assistant General Manager) EW-3, in his cross examination has admitted that respondent-3 has not assaulted any person. Promod Kumar Gupta (senior supervisor) EW-4, in his cross examination admitted that Ranjana Jha was working in finishing department and had not assaulted any workman or the officer of management. Thus charges of domestic inquiry was not proved before Labour Court. Finding in this respect does not suffer from any illegality.*

*11. V.K. Solanki (Inquiry Officer) EW-1, in his cross examination admitted that envelope, in which notices were sent to respondent-3 did not contain her correct address. Smt. Ranjana Jha in her statement has stated that Inquiry Officer conducted inquiry inside factory premises and she or other employees were not permitted to enter factory premises. This statement has been believed by Labour Court. Finding that domestic inquiry was not fair and proper does not suffer from any illegality. ”*

9. I have considered above submissions and perused the record.
10. So far as position of law is concerned, even a Coordinate Bench has passed a different order, this Bench can still follow the judgment passed in **M/s Dwarikesh Sugar Industries Ltd. (supra)** wherein several judgments passed by Supreme Court on the issue was considered, however, the same were not considered or placed on record for consideration before Coordinate Bench in **Shashi Export Private Limited (supra)**.
11. Coordinate Bench in **Shashi Export Private Limited (supra)** has placed reliance on **Lakshmiddevamma (supra)**, however, the same was only with regard to legal consequence of an ex parte inquiry and the aspect of procedure to be undertaken was not considered. Whereas, this

12. Learned Senior Advocate for petitioner has placed reliance on a judgment passed by Supreme Court in **State of Uttarakhand and others vs. Sureshwati, 2021(3) SCC 108** that position of law as referred above was reiterated and for reference relevant part of said judgment is reproduced hereinafter:

*“18. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified.*

*19. A four-Judge Bench of this Court in Workmen v. Motipur Sugar Factory (P) Ltd. AIR 1965 SC 1803 held that :*

*“11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. Ltd. v. Workmen [Indian Iron & Steel Co. Ltd. v. Workmen, AIR 1958 SC 130] ) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan [Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan, AIR 1959 SC 923] , Phulbari Tea Estate v. Workmen [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] , and Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, AIR 1960 SC 160] . These three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Jai Singh [Bharat Sugar Mills Ltd. v. Jai Singh, (1962) 3 SCR 684] , and reference was also made to the decision of the Labour Appellate Tribunal in*

*Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111], were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case [Phulbari Tea Estate v. Workmen, AIR 1959 SC 1111] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”*

**20.** *Subsequently in Delhi Cloth & General Mills Co. v. Ludh Budh Singh [Delhi Cloth & General Mills Co. v. Ludh Budh Singh, (1972) 1 SCC 595] this Court held that : (SCC pp. 615-16, para 61)*

*“60. ... (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 straightway 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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*(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*

*the management and decide the matter on the basis of such evidence.”*

*21. Reliance is also placed on the judgment of this Court in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813 : 1973 SCC (L&S) 341] wherein the broad principle regarding holding of the enquiry were spelt out as : (SCC pp. 827-29 & 831-32, paras 32 & 40-41)*

*“32. From those decisions, the following principles broadly emerge:*

*‘(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.*

*(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*

*(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*

*(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*

*(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 Panitole Tea Estate v. Workmen [Panitole Tea Estate v. Workmen, (1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal.'*

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*40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct*

*Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A.”*

13. In aforesaid circumstances, when law on issue is very clear and reiterated by Supreme Court time and again, the procedure undertaken by Labour Court concerned, being contrary and in the teeth of judgments passed by Supreme Court, cannot be sustainable. For sake of repetition the principle enunciated by Supreme Court in **Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. (supra)** is again taken into consideration that even a Workman is dismissed or any adverse action is taken against a Workman even without conducting an inquiry, in such case the Labour Court after making a declaration that no inquiry was conducted, an opportunity should be granted to Employer to prove, whether charge can be proved or not and that further proceeding will be initiated only after the Labour Court has taken a decision, whether domestic inquiry was fair or not.

charge was made out or not. The Court is not interfering with the decision of Labour Court that domestic inquiry was unfair. The matter is remitted back with direction that Labour Court concerned will provide an opportunity to produce evidence including fresh evidence also from the side of Employer with further opportunity to Workman to cross-examine the same, if so advised. The entire proceedings shall be concluded within a period of three months from today. It is also directed that no party will take any unnecessary adjournments.

15. With aforesaid directions/ observations, the writ petition is disposed of.

**July 15, 2026**  
AK

**(Saurabh Shyam Shamsheery,J.)**