REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 142 OF 2021
(Arising out of Special Leave Petition (Civil) No. 9864 of 2020)

STATE OF UTTARAKHAND & ORS. … APPELLANTS

Versus

SMT. SURESHWATI … RESPONDENT

J U D G M E N T

INDU MALHOTRA, J.

Leave granted.

1. The State of Uttarakhand has filed the present Special Leave Petition to challenge the Judgment dated 28.8.2019 passed by the High Court of Uttarakhand in W.P. No. 3439 (M/S) of 2016, whereby the High Court has reversed the Award passed by the Labour Court, and directed reinstatement of the Respondent.

2. The background facts of the present case are that the Respondent was initially engaged as an Assistant Teacher in Jai Bharat Junior High School, Haridwar (hereinafter referred to as "the School") during the period July, 1993 to 21.5.1994. Subsequently, she worked as a Clerk from 1.7.1994. On 25.3.1996, the District Basic Education Officer granted approval to the appointment of the

Teachers, Clerk and Peon in the School, including the Respondent herein w.e.f. 1.7.1994. During this period, the School was an unaided private institution.

3. From 24th May, 2005 the School started receiving grants-in-aid from the State, and came to be governed by the Uttaranchal School Education Act, 2006.

4. It is the case of the Appellants that the Respondent had abandoned her service as a clerk in the School since 1.7.1997 when she got married, and shifted to Dehradun.

5. After a period of 9 years, on 15.7.2006, the Respondent filed a complaint before the School contending that she had worked continuously upto 07.03.2006. She alleged that on 8th March, 2006 her services were illegally retrenched without granting her any hearing, or payment of retrenchment compensation.

6. The School *vide* letter dated 21.08.2006 requested the Additional District Education Officer (Basic), Haridwar to conduct an inquiry on the complaint made by the Respondent.

The Basic School Inspector vide his detailed report dated 24th August, 2006 stated that he had inspected the records of the School in the presence of both parties. He found that the Respondent had tampered and manipulated the date of appointment, by mentioning two different dates. The enquiry revealed that the employment of the Respondent was illegal, since the father of the respondent was a member of the Managing Committee, and her mother was the Chairman employed by the School. The records revealed that the Respondent had not worked in the School from July 1997 onwards, nor was there any leave application received from her on the record. On account of her continuous absence, the School engaged another clerk-Mrs. Sneh Lata in her place, who was appointed on 17.07.2002. The Respondent never made any grievance about her alleged termination till 2006, which was made only after the School started receiving grants-in-aid from the State and became a Government School.

7. The Directorate School Education, Internal Audit Division, Uttarakhand, Dehradun prepared an Audit Report of the School. The Audit Report dated 19.2.2008 has been placed on record. The Audit Report records the names of the 6 employees of the School, which comprised of the Principal, three Assistant Teachers, Smt. Snehlata-clerk, and Sh. Ram Kumar Saini-Peon.

The name of the Respondent is not mentioned in the Report of February, 2008.

8. The Respondent filed a Complaint before the Labour Commissioner, Haridwar. The Complaint was referred to the Additional Labour Commissioner to determine whether the alleged termination of the services of the workman was proper and/or valid. An ex-parte award was passed by the Labour Court on 05.02.2010 in favour of the employee. The said Award was challenged before the High Court in Writ Petition No. 1853 of 2010. The High Court vide Order dated 16.09.2015 allowed the Writ Petition, and remanded the case to the Labour Court to decide the matter *de novo* in accordance with law.

9. On remand, the Labour Court permitted the parties to lead detailed evidence.

The case of the claimant / Respondent herein was that she had been in the employment of the School from 1.7.1994 till 8.3.2006, when she was illegally terminated, without holding any enquiry, or granting her personal hearing. She contended that she had worked for not less than 240 days in the preceding year before her alleged termination. Since the work was of permanent nature, she was entitled to re-instatement with continuity of service. She placed reliance on a copy of the letter dated 25.03.1996 issued by the then District Basic Education Officer,_who had granted approval of the employees engaged by the School. The respondent has also placed reliance on a letter dated 20.06.2013 issued by the Block Education Officer, Roorkee to Chief Education Officer, Haridwar requesting for re-instatement of the respondent in compliance with the Order dated 11.8.2010 passed by the Labour Court. In the said letter it was stated that the Respondent was on leave when the Government took over the School for grants

in aid, due to which the Respondent had not drawn her salary. It is noted that one Kumari Smita Saini was given appointment to the Post of clerk by the School. It was stated that Kumari Smita Saini ought to be treated as being engaged on a supernumerary post. It was recommended that the Respondent be permitted to join the School in compliance with the Orders passed by the Labour Court on 5.2.2010.

In the cross-examination, the respondent has admitted that her mother was the President of the School, and her father was a Member of the Managing Committee at the time of her engagement in the School. She has further admitted that there was only one Register of Attendance being maintained for all the employees in the School. She has admitted that she got married in May, 1997 and was residing with her in-laws in Vikram Nagar, Dehradun.

10. The School filed its written statement wherein it was inter alia contended that the claimant had since 01.07.1997 remained continuously absent from the School, since she had got married and was residing in Dehradun. It was specifically averred that she had never joined back the School. At that time, the School was not receiving grants-in-aid from the State. It was submitted that the allegation made by the claimant that her services were illegally terminated on 08.03.2006, was completely false and baseless. It was further submitted that the School was not an “industry”, and would not be covered by the Industrial Disputes Act, 1947.

The School led evidence of the Head Master, two Assistant Teachers, and Peon of the School. The Head Master refuted the allegations made by the claimant, as being completely false and devoid of any truth. He has deposed that the averment of the claimant that her services were allegedly terminated on 08.03.2006 without any prior notice, was false and baseless. It is the unequivocal case of the School that the claimant had not worked after her marriage in 1997, when she shifted to Dehradun. The School then engaged Smt. Sneh Lata on 17.7.2002 as a clerk. It was only after the School became an aided School in 2005, that she filed a false Complaint before the Assistant Labour Commissioner, Haridwar in 2006. The enquiry conducted by the Basic School Inspector on

24.8.2006 revealed that she was the daughter of the President and Member of the Managing Committee which was running the School at the time of her engagement.

Rajinder Kumar, Assistant Teacher deposed that the allegation of the Respondent that she was working on the post of clerk upto 08.03.2006 was incorrect and false. The School forwarded the names of all the staff /employees working in the School to the Government of Uttarakhand on 01.07.2005 for approval, at the time when the grants-in-aid was started. The said list does not contain the name of the claimant. The list contained the name of only one clerk viz Sneh Lata.

Ram Kumar Saini-the Peon in the School deposed that the Respondent was initially appointed as a teacher, and later on worked as a Clerk. It was stated that the teachers appointed to the School, were required to have the qualification of B.Ed. and Teacher training.

11. The Labour Court vide Award dated 22.08.2016 answered the reference against the Claimant/Respondent herein. It was held that the claimant was not entitled to get any relief as there was sufficient evidence adduced by the Management to prove her continued absence from the School since 01.07.1997. The claimant failed to produce any evidence to prove that she had been terminated on 08.03.2006. The onus to prove the alleged illegal termination was on the workman. The applicant failed to summon the Attendance Register and the Accounts Books of the School to prove that she had been continuously working till 08.03.2006. Consequently, she failed to discharge the onus of her employment till 8.3.2006. After the School started receiving grants-in-aid, she filed the present application after over 9 years. The contention of the claimant that her appointment had been illegally terminated on 08.03.2006 was unreliable, and devoid of any truth. It was held that the claimant had concealed material facts, and had not approached the Court with clean hands.

12. Aggrieved by the Judgment of the Labour Court, the Respondent filed W.P. No. 3439 of 2016 before the High Court. The learned Single Judge of the High

Court allowed the Writ Petition on the Singular ground that the employer had admitted in the cross-examination that no enquiry was conducted, or disciplinary proceedings initiated regarding the abandonment of service by the employee. Even though the School had submitted in the written statement that the employee had abandoned her job in 1997, there was no such plea to the contrary with respect to the dispensation of her service on 08.03.2006.

13. We have heard the learned Counsel for the parties, and perused the record. We find that the High Court has set aside the Award dated 22.8.2016 passed by the Labour Court on the sole ground that no disciplinary enquiry was held by the School regarding her alleged abandonment of service.

14. 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.

A four Judge Bench of this Court in ***Workmen of the Motipur Sugar Factory Private Ltd.*** **v.** ***Motipur Sugar Factory***[1] 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 property held (see *Indian Iron & Steel Co.* v. *Workmen*[2]) 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 *Sana Musa Sugar Works (P) Limited* v. *Shobrati Khan*[3] , *Phulbari Tea Estate* v. *Workmen*[4] , and *Punjab National Bank Limited* v. *Workmen*[5] . These three cases were further considered by this Court in *Bharat Sugar Mills Limited* v. *Jai Singh*[6] , and reference was also made to the decision of the Labour Appellate Tribunal in *Ram Swarath Sinha* v. *Belsund Sugar*

1 AIR 1965 SC 1803.
2 AIR: 1958 SC 130.
3 AIR 1959 SC 923.
4 AIR 1959 SC 1111.
5 AIR 1960 SC 160.
6 (1962) 3 SCR 684.

Co.[7] . It was pointed out that "the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except *Phulbari Tea Estate case* , were on applications under Section 23 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* 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."

Subsequently in ***Delhi Cloth and General Mills Co.*** v. ***Ludh Budh Singh***[8] this Court held that ***:***

"(*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.

….

(*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.

Reliance is also placed on the judgment of this Court in ***Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd.*** **v.** ***The Management of Firestone Tyre & Rubber Co. of India (P) Ltd and Others.***[9] wherein the broad principle regarding holding of the enquiry were spelt out as:

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

7 (1954) LAC 697.
8 (1972) 1 SCC 595.
9 (1973) 1 SCC 813.

"(*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 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*[10] within the judicial decision of a Labour Court or Tribunal.

…….

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 arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

10 (1971) 1 SCC 742.

> 41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a 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 re-appraise 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."

15. We have perused the Award passed by the Labour Court, and find that a full opportunity was given to the parties to lead evidence, both oral and documentary, to substantiate their respective case. The High Court has not even adverted to the said evidence, and has disposed of the Writ Petition on the sole ground that the School had not conducted a disciplinary enquiry before discharging the respondent from service. The School has led sufficient evidence before the Labour Court to prove that the Respondent had abandoned her service from 01.07.1997 when she got married, and moved to another District, which was not denied by her in her evidence. The record of the School reveals that she was not in employment of the School since July 1997.

16. The initial employment of the Respondent as a teacher from July 1993 to 21.5.1994 was itself invalid, since she was only inter-mediate (as reflected in the letter dated 25.3.1996 issued by the District Basic Education Officer, Haridwar), and did not have the B.Ed. degree, which was the minimum qualification to be appointed as a teacher.

17. The Respondent has failed to prove that she had worked for 240 days during the year preceding her alleged termination on 8.3.2006. She has merely made a bald averment in her affidavit of evidence filed before the Labour Court. It was open to the Respondent to have called for the records of the School i.e. the

Attendance Register and the Accounts, to prove her continuous employment till 8.3.2006. Since the School was being administered by the Government of Uttarakhand from 2005 onwards, she could have produced her Salary Slips as evidence of her continuous employment upto 08.03.2006. However, she failed to produce any evidence whatsoever to substantiate her case.

The reliance placed by the Respondent on the letter dated 20.6.2013 from the Block Development Officer, Roorkee cannot be relied upon. The letter acknowledges that the Respondent was on leave when the Government took over the School, and started receiving grants in aid. The Block Development Officer's recommendation to the Chief Education Officer, Haridwar to act in compliance with the Order dated 5.2.2010 passed by the Labour Court cannot be relied on, as the Award dated 5.2.2010 was set aside by the High Court.

18. On the basis of the evidence led before the Labour Court, we hold that the School has established that the Respondent had abandoned her service in 1997, and had never reported back for work.

The Respondent has failed to discharge the onus to prove that she had worked for 240 days' in the preceding 12 months prior to her alleged termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge.

A division bench of this Court in ***Bhavnagar Municipal Corpn.* v. *Jadeja Govubha Chhanubha***[11] held that :

> "7. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B(2)(*a*)(*ii*). The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in *Range Forest Officer* v. *S.T. Hadimani* [12], *Municipal Corpn., Faridabad* v. *Siri Niwas* [13], *M.P. Electricity Board* v. *Hariram*[14], *Rajasthan State Ganganagar S. Mills Ltd.* v. *State of Rajasthan*[15],: 2004 SCC (L&S) 1055] , *Surendranagar District*

11 (2014) 16 SCC 130.
12 (2002) 3 SCC 25.
13 (2004) 8 SCC 195.
14 (2004) 8 SCC 246.
15 (2004) 8 SCC 161.

Panchayat v. *Jethabhai Pitamberbhai*[16],and *R.M. Yellatti* v. *Executive Engineer*[17] unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in *Municipal Corpn., Faridabad* v. *Siri Niwas* and *M.P. Electricity Board* v. *Hariram* [*M.P. Electricity Board* v. *Hariram*, ,_reiterated in *RBI* v. *S. Mani*[18]. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it."

19. In view of the aforesaid discussion, we allow the present Appeal, and set aside the Judgment of the High Court. The Award dated 22.8.2016 is restored.

There will be not Order as to Costs.

Pending applications, if any, are accordingly disposed of.

.....J.
(L. NAGESWARA RAO)

.....J.
(NAVIN SINHA)

.....J.
(INDU MALHOTRA)

New Delhi;
January 20, 2021.

16 (2005) 8 SCC 450.
17 (2006) 1 SCC 106.
18 (2005) 5 SCC 100.