USHA BRECO MAZDOOR SANGH

v.

MANAGEMENT OF M/S. USHA BRECO LTD. AND ANR.

(Civil Appeal Nos. 3051-3052 of 2008)

APRIL 29, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Industrial Disputes Act, 1947 – s.11A – Jurisdiction of Labour Court under – Scope of – Held: Decision of Labour Court should not be based on mere hypothesis – It cannot overturn a decision of the Management on 'ipse dixit' – Its jurisdiction under s.11-A although is a wide one, must be judiciously exercised – Judicial discretion cannot be exercised either whimsically or capriciously – It may scrutinize and analyse the evidence but what is important is how it does so.

Application of s.11-A of the Industrial Disputes Act, 1947, as noticed by this Court in *Firestone Tyre and Rubber Co.'s* **case* in the facts and circumstances of the present case, is in question in the present appeals.**

In the instant case, the Labour Court after holding that the domestic enquiry had been made following the principles of natural justice and was legal, proceeded to record a finding that the Management had not proved the charges levelled against the workmen concerned. High Court, by the impugned judgment, held that once the Labour Court held that the Domestic enquiry was valid and proper, there was no occasion for the Labour Court to ask itself the question whether on the evidence, the charges were proved against the concerned workmen. The High Court held that the Labour Court had committed an error of jurisdiction.

The contention on behalf of the impleaded applicant is that the High Court committed a manifest error in

A passing the impugned judgment insofar as it failed to take into consideration that the jurisdiction of the Labour Court under s.11-A of the Act being a wide one, the same can be exercised not only for the purpose of determination of a preliminary issue with regard to the validity or otherwise
B of holding of the Domestic Enquiry, the Labour Court is entitled to reappreciate the evidence and alter the quantum of punishment.

Respondent, on the other hand, contended that although jurisdiction of the Labour Court under Section
C 11-A of the Act is wide, in a case of this nature where the preliminary issue was answered in favour of the Management, the Labour Court could not have gone into the merit of the decision of the disciplinary authority relying on or on the basis of the enquiry report to arrive at
D a different finding on the merit of the matter to hold that the charges of misconduct against the impleaded applicant was not proved and quantum of punishment imposed upon the impleaded applicant was excessive.

Declining to interfere with the ultimate conclusion of
E High Court, albeit for different reasons and thereafter dismissing the appeals, the Court

HELD: 1. The jurisdictional issue determined by the Labour Court was not premised on a wrong question. It
F was one thing to say that an administrative body or a quasi-judicial authority misdirected itself in determining the issue by posing unto itself a wrong question which would obviously lead to a wrong answer, but, it would be another thing to say that although the administrative authority or
G the quasi-judicial body did not lack inherent jurisdiction but committed a jurisdictional error in exercising its jurisdiction. The High Court, therefore, was not correct in its view having regard to the binding precedent operating in this behalf in *Firestone Tyre and Rubber Co.* that the
H question posed by the Labour Court amounted to a

misdirection in law. The proper issue which should have been posed was as to whether a case for interference had been made out. [Para 20] [30-C-G]

Anisminic v. Foreign Compensation Commission [1969] 2 AC 147 : (1969) 1 All ER 208 – referred to.

2. In the instant case, the Management filed an application for determination of the preliminary issue in regard to the legality or validity of the domestic enquiry. The entire records of the enquiry proceedings were produced before the Labour Court. The workmen concerned had raised all possible objections therein. They examined themselves. The Labour Court in its order dated 16.08.1990, however, determined the issue in favour of the Management and against the workmen. It not only held that the principles of natural justice have been complied with, it opined that the enquiry report was not perverse. However, the Presiding Officer of the Labour Court in the said order itself stated that the evidence would be reappreciated on merit at the time of hearing. The parties, despite the said observations, did not adduce any fresh evidence. The merit of the decision of the Enquiry Officer vis-`-vis the Disciplinary Authority was judged on the basis of the materials brought on records in the domestic enquiry. The question, therefore, although was posed correctly by the Labour Court but what was also necessary to be considered for arriving at a decision thereupon was as to whether it was a proper case where the Labour Court should exercise its discretionary jurisdiction under Section 11-A of the Act or not. Whereas the Management cannot resort to victimization and unfair labour practice so as to get rid of the Union leaders, they in turn are bound to maintain discipline. [Paras 21, 22, 23] [30-G, H; 31-A-E]

3. It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficient

A legislation in favour of the Management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by the Parliament. The court must construe the statutory provision with a view to uphold the object and purport of the Parliament. It
B is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficient construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not
C mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof. [Para 23] [31-E, F, G]

4. An enquiry against a workman is held in terms of Standing Orders certified under the Industrial Employment
D (Standing Orders) Act, 1946 or in absence thereof in terms of the Model Standing Order. The Management is not only required to scrupulously follow the procedures laid down therein but was otherwise bound to comply with the principles of natural justice. If a misconduct has been
E committed within the purview of the provisions of the Standing Order, whether certified or Model, the workmen should be punished. The gravity of the offence, the impact of the same would have on the other workmen as also the fact as to whether the same will have an adverse effect
F over the functioning of the industry are relevant considerations. [Paras 24, 25] [32-A, B, C]

5.1. Interpretation of s.11-A of the Industrial Disputes Act, 1947 came up for consideration before this Court in *Firestone Tyre and Rubber Co.'s* case. It was opined that
G s.11-A of the Act had brought about a complete change in this behalf. This Court, despite insertion of s.11-A, not only conferred jurisdiction on the Tribunal to alter the quantum of punishment imposed upon a workman, but also held that it can enter into the merit of the matter so far as
H determination of the proof of misconduct or otherwise on

the part of the workman is concerned. [Para 19] [28-G; 29-A]

5.2. Firestone Tyre and Rubber Co.'s case must be understood in the context in which it was rendered. S.11-A of the Act as interpreted by Firestone Tyre and Rubber Co. must be applied at different stages. Firstly, when the validity or legality of the domestic enquiries is in question; secondly, in the event, the issue is determined in favour of the Management, no fresh evidence is required to be adduced by it whereas in the event it is determined in favour of the workmen, subject to the request which may be made by the Management in an appropriate stage, it will be permitted to adduce fresh evidence before the Labour Court. [Para 25] [32-C, D, E]

5.3. In the event, fresh evidence is adduced before the Labour Court by the Management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the Enquiry Officer fall for re-appreciation by the Labour Court, it should be slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the Enquiry Officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and purport, the Labour Court acts as an appellate authority over the judgment of the Enquiry Officer, it would exercise appropriate restraint. It must bear in mind that the Enquiry Officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the Enquiry Officer can also summon witnesses to determine the truth. The Enquiry Officer can call for even other records. It must indisputably comply with the basic

A principles of natural justice. [Para 26] [32-F, G; 33-A, B]

5.4. While determining the issue as to whether the workman is guilty of misconduct alleged to have been committed by him or not, the workman would be entitled to raise all contentions including the contention of lack B of bona fide or unfair labour practice as also acts of victimization on the part of the Management. Even evidences in that behalf can be laid. Save and except, however, for sufficient and cogent reasons, neither the Enquiry Officer would arrive at a finding in regard to lack C of bona fide or victimization or unfair labour practice on the part of the management; the Labour Court while considering the said findings would ordinarily not do so. Such a question must be appropriately raised. Materials must be brought on records to establish the said D allegations. [Para 27] [32-F, G; 33-A, B]

5.5. It is one thing to say that the finding of an Enquiry Officer is perverse or betrays the well-known doctrine of proportionality but it is another thing to say that only because two views are possible, the Labour Court shall E interfere therewith. In other words, it is one thing to say that on the basis of the materials on record, the Labour Court comes to a conclusion that a verdict of guilt has been arrived at by the Enquiry Officer where the materials suggested otherwise but it is another thing to say that F such a verdict was also a possible view. For the aforementioned purpose, certain basic principles must be kept in mind, viz., even the first appellate court although is entitled to interfere with the findings of a Trial Court in terms of Section 96 of the Code of Civil Procedure, G ordinarily a finding of fact arrived at on the basis of the oral evidence by the Trial Court should be accepted. [Paras 28, 29] [33-E, F, G; 33-A]

5.6. Before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond H

all reasonable doubt but the standard of proof is as to whether the test of pre-ponderance of probability has been met. In the present case, the approach of the Labour Court appeared to be that the standard of proof on the Management was very high. When both the parties had adduced evidence, the Labour Court should have borne in mind that the onus of proof loses all its significance for all practical purpose. [Para 29] [34-E, F, G]

5.7. The Labour Court in the instant case has taken into consideration only some portion of the depositions of the witnesses and not the other portions. It merely stated that the workmen examined themselves as W.W/1 and W.W/2. Even if the finding that there had been a scuffle between the contractor and the workmen and both shouted against each other, is correct, the purported inference that the same was mere psychological and natural in such a situation and nothing untoward had happened is based on no evidence. No injury had been caused to anybody. If the workman was found to be not only abusing the contractors, even an iron rod had been taken out so as to threaten a contractor with a view to assault him, a clear case of misconduct had been made out. It was a matter of utmost importance to determine as to who started the quarrel; who started using abusive language; who started shouting; whether the workmen were more sinned against than sinning; whether there were materials on record to arrive at the findings on the said issue. These should have been the questions posed by the Labour Court. [Para 31] [35-C, D, E, F]

5.8. There might have been a power cut for some time but the Labour Court even did not enter into the question as to whether the workmen were otherwise instigated to stop work. Without there being any material on record, the Labour Court has arrived at a finding that the Management had taken side in favour of the contractors and against the workmen "probably because of their

A demand and trade union activities". The finding is based on surmises. If that be so, the Labour Court should have tried to find out as to whether the Management's witnesses were confronted with such questions and documents in the departmental proceedings or not. On what basis a B finding was arrived at that the act of Management proves victimization of the workmen had not been spelt out. [Para 32] [35-F, G; 36-A, B]

5.9. Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence C should not be spared only because he happens to be a Union leader. The Act does not encourage indiscipline. It will be a matter of some concern if the opinion of the Enquiry Officer can be totally ignored despite the fact that the Management is precluded from adducing any fresh D evidence before the Labour Court. A Union leader does not enjoy immunity from being proceeded with in a case of misconduct. [Para 33] [36-B, C]

6. The upshot of the discussion is that the decision of the Labour Court should not be based on mere E hypothesis. It cannot overturn a decision of the Management on ipse dixit. Its jurisdiction under Section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may F scrutinize and analyse the evidence but what is important is how it does so. [Para 34] [36-D, E]

Firestone Tyre and Rubber Co. v. The Management and Others [(1973) 1 SCC 813]; *Delhi Cloth & General Mills Co. v. Ludh Budh Singh* (1972) 1 SCC 595; *Tata Engineering and* G *Locomotive Co. Ltd. v. N.K. Singh* (2006) 12 SCC 554; *Delhi Transport Corporation v. Sardar Singh* (2004) 7 SCC 574; *Martin Burn Ltd. v. R.N. Banerjee* (1958) SCR 514; *State Bank of India v. R.K. Jain and Ors.* (1972) 4 SCC 304; *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy and Ors.* (2005) 2 H

SCC 481; *United Bank of India v. Tamil Nadu Banks Deposit Collectors Union and Anr.* **(2007) 13 SCALE 681;** *Chinthamani Ammal v. Nandagopal Gounder* **(2007) 4 SCC 163;** *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Ors.* **(2005) 7 SCC 764;** *North-Eastern Karnataka RTC v. Ashappa* **(2006) 5 SCC 137 and** *Government of India & Anr. v. George Philip* **(2006) 12 SCALE 122 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3051-52 of 2008.

From the final Judgment and Order dated 16.2.2004 of the High Court of Jharkhand at Ranchi in LPA No. 348 of 2004 (R) and LPA No. 9 of 2001 (R).

Ambhoj Kumar Sinha for the Appellant.

Ajit Kumar Sinha, Amitabh, S.K. Yashovardhan, Nitish Massey, Kanhaiya Priyadarshi and R.K. Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Application of Section 11-A of the Industrial Disputes Act, 1947 (for short "the Act"), as noticed by this Court in *Firestone Tyre and Rubber Co. v. The Management and Others* [(1973) 1 SCC 813], in the facts and circumstances of the present case, is in question in these appeals which arise out of a judgment and order dated 16.02.2004 passed by a Division Bench of the High Court of Jharkhand at Ranchi in Letters Patent Appeal No. 348 of 2000 and Letters Patent Appeal No. 9 of 2001.

3. Krishna Kishore Yadav, Intervenor and one R.P. Singh were employees of the respondent. They were said to be Union leaders. On or about 17.02.1984, the respondent received a complaint from one G. Natarajan with regard to acts of misconduct committed by the said workmen in the factory

A premises contending that while he was having discussions with one Shekhar Rao, representative of the contractor known as M/s. Techno Fab, the said workmen came and asked him as to whether there existed any arrangement for grant of first aid or not, whereto he replied that such a provision has to be made by B the Company and not by the Contractor. Discussion therein ensued. The workmen were informed by Natarajan that the matter should be discussed with the Personnel Manager of the Company.

One Shri Dara Singh, another contractor being M/s. S.D. C Construction also reached there. The same question was asked to Mr. Dara Singh to which also he replied that the grant of making provision of first aid was the duty of the Management and not that of the Contractor.

D The workmen started misbehaving with the said persons using indecent and unparliamentary languages. They were abused in a harsh tone whereto an objection was raised by Shri Dara Singh whereupon he was abused in filthy languages and threatened him with dire consequences. He was also assaulted by iron rod by the intervenor herein. Thereafter Shri Dara Singh E also picked up an iron rod. R.P. Singh also picked up another iron rod in his hand. With the intervention of the officers and some workers, they were separated. The said workmen thereafter instigated the workers to stop the work.

F 4. On the aforementioned allegations, a First Information Report was lodged.

A disciplinary proceeding was also initiated. The delinquent workmen were placed under suspension. In the departmental proceedings, they were found guilty. An industrial G dispute was raised whereupon the appropriate government referred the dispute for adjudication by a Labour Court, Jamshedpur. Before the Labour Court, a plea was raised by the workmen that they as Secretary and Vice-President of the workers of the Company had gone to Shri Natarajan and others H for ventilating their grievances, but the management with a view

to victimize them and by way of resorting to unfair labour practices had placed them under suspension. A

5. Several issues were framed having regard to the pleadings of the parties by the learned Labour Court.

The question as to whether the domestic enquiry has been conducted in accordance with the principles of natural justice or otherwise legal was taken up as a preliminary issue. The Enquiry Officer was examined before the Labour Court. The Presiding Officer, Labour Court by an order dated 16.08.1990 opined: B C

> "6. Perused the inquiry report. In the inquiry report, the Enquiry Officer has mentioned the evidence of all witnesses on the basis of which decision was taken in respect of the charges. The oral and the documentary evidence has been mentioned and the decision is based on them. The show cause of the workmen has also been considered. Therefore, enquiry report cannot be said to be perverse. D
>
> 7. Therefore, it is held that the domestic enquiry has been made following the principles of natural justice and is legal and the second question is answered against the workmen and in favour of the Management." E

6. However, by reason of a final award dated 17.02.1992, the Presiding Officer, Labour Court, while determining the issue as to whether the management had been able to prove the charges levelled against the workmen, upon considering the report of the Enquiry Officer, held: F

> "13. On the basis of evidences on record adduced on behalf of both the parties and discussions made above the picture comes out on the surface that in course of demanding First Aid for the workmen by these two dismissed workmen from the management and contractors caused heated discussions between the contractors and these workmen who are office bearers of G H

A the union and the management has taken side on favour of the contractors and against these two workmen such probably because of their demand and trade union activities (vide ext W/2 series and statements of W.W/1 and W.W/2 and ext. M/4 and M/7) and has made a mole
B to mountain. It has also established that the management has failed to establish any of the charges against any of the workmen successfully. Hence, issue no. (1) is answered accordingly."

7. On the aforementioned premise, the Labour Court held
C that no charge had been proved against the workmen and as such they were entitled to be reinstated in service. So far as the workman Krishna Kishore Yadav is concerned, similar finding was arrived at by the Labour Court opining:

D "...From the perusal of the evidences in the statement of W.W/1 and W.W/2 it appears that the Workmen K.K. Yadav received the c/sheet dated 18.2.84 on the same day and submitted his explanation within the time limit therein. Hence, on the basis of the evidences and the statement, noted above and the statements of the management
E witnesses and the statement as W.W/1 and W.W/2. I find that there was scuffle between the contractor and this workman and both shouted against each other which was merely psychological and natural in such a situation and nothing untoward happened nor any injury was caused to
F anybody. The record reflects that the workman K.K. Yadav has taken the c/sheet and submitted the explanation responding it and there was power cut on the day of occurrence for some time as well which caused the stopping of the factory."

G 8. A writ petition was filed by the appellant questioning the legality and validity of the said Award. A learned Single Judge of the High Court by a judgment and order dated 31.07.2000 refused to interfere with the findings of fact arrived at by the
H learned Labour Court. However, the learned Single Judge

reduced the amount of back wages to 50%.

9. The matter was taken to the Division Bench of the High Court by way of Letters Patent Appeals preferred by both the appellant and the respondent. The said appeal was allowed as regards the question posed by the Labour Court as to whether the management had been able to prove the charges levelled against the workmen on the basis of the evidences brought on records. Having regard to the fact that no evidence was laid by the parties before the Labour Court, it was observed:

> "...Obviously, it was because of its own conclusion that the Domestic Enquiry was valid and proper. So, no occasion arose for the Labour Court to ask itself the question whether on the evidence, the charges have been proved. In fact, as we have earlier noted, the very finding on 16.8.1990 was to the effect that the findings of the Domestic Enquiry was supported by the evidence taken at that Enquiry. Thus, in our view, the Labour Court had asked itself a wrong question when it posed the first question for decision. Thereafter it has proceeded to record a finding that the Management has not proved the charged levelled against the workmen. When a Tribunal has asked itself a wrong question and even if it has answered that question correctly, it acts outside its jurisdiction attracting the certiorari jurisdiction of this Court (see Anisiminic). Here, the Labour Court has committed such an error of jurisdiction."

10. Before us, Krishna Kishore Yadav got himself impleaded as a party and the learned counsel appearing on behalf of the original appellant was permitted to withdraw.

11. Mr. Ambhoj Kumar Sinha, learned counsel appearing on behalf of the impleaded party, would submit that the Division Bench of the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the jurisdiction of the Labour Court under Section 11-A of the Act being a wide one, the same can be

A exercised not only for the purpose of determination of a preliminary issue with regard to the validity or otherwise of holding of the Domestic Enquiry, the Labour Court is entitled to reappreciate the evidence and alter the quantum of punishment. Strong reliance in this behalf has been placed on *Delhi Cloth &* B *General Mills Co. v. Ludh Budh Singh* [(1972) 1 SCC 595] and *Firestone Tyre and Rubber Co.* (supra).

12. Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of the respondent, on the other hand, would submit that although the jurisdiction of the Labour Court under Section 11- C A of the Act is wide, in a case of this nature where the preliminary issue was answered in favour of the Management, it could not have been gone into the merit of the decision of the disciplinary authority relying on or on the basis of the enquiry report to arrive at a different finding on the merit of the matter to hold :

D

(a) that the charges of misconduct against the impleaded applicant has not been proved;

(b) the quantum of punishment imposed upon the impleaded applicant was excessive.

E Reliance in this behalf has been placed on *Tata Engineering and Locomotive Co. Ltd. v. N.K. Singh* [(2006) 12 SCC 554] and *Delhi Transport Corporation v. Sardar Singh* [(2004) 7 SCC 574].

F 13. An order of punishment meted out to a workman indisputably can be a subject matter of reference by the appropriate government in terms of Section 10 of the Act.

14. Validity or legality of a Domestic Enquiry as also the question as to whether the principles of natural justice had been G complied or not could be determined by way of a preliminary issue. What would be the extent of jurisdiction of the Labour Court in this behalf, had come up for consideration before this Court in a large number of decisions. The view taken by this Court was that if the conclusion arrived at by the enquiry officer H on the materials placed before it was a possible view, the Labour

Court would have no jurisdiction to substitute its own judgment although it could itself have arrived at a different conclusion on the same materials. [See *Martin Burn Ltd. v. R.N. Banerjee* (1958) SCR 514 and *State Bank of India v. R.K. Jain and Others,* (1972) 4 SCC 304]

15. In *Delhi Cloth & General Mills Co.* (supra), this Court inter alia relied upon the aforementioned decisions amongst others to opine that the propriety of a domestic enquiry held by the Management should be gone into as a preliminary issue and in the event the same is decided against it, a request could be made to the tribunal to permit it to adduce fresh evidence before it. [See also *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy and Others* (2005) 2 SCC 481]

16. Keeping in view the diverse opinion rendered by different High Courts which had been noticed by this Court in *Delhi Cloth & General Mills Co.* (supra), the Parliament inserted Section 11-A in the Act by Act No. 45 of 1971 which came into force with effect from 15.12.1971.

17. In the statement of objects and reasons for inserting Section 11-A of the Act, it was stated:

> "In *Indian Iron and Steel Company Limited* v. *Workmen* (AIR 1958 SC 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.
>
> The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative to the employer, adopted in June 1963, has recommended that a worker aggrieved

A by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons B given in the termination of employment and that other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the C termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is D considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct E reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any letter punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-F A is proposed to be inserted in the Industrial Disputes Act, 1947...."

18. We may, however, notice that new Section 11-A was not noticed by this Court in *Delhi Cloth & General Mills Co.* (supra) although the same was inserted on 15.12.1971.

G

19. Interpretation of Section 11-A of the Act came up for consideration before this Court in *Firestone Tyre and Rubber Co.* (supra). It was opined that Section 11-A of the Act had brought about a complete change in this behalf. This Court, despite insertion of Section 11-A, not only conferred jurisdiction

H

on the Tribunal to alter the quantum of punishment imposed upon a workman, but also held that it can enter into the merit of the matter so far as determination of the proof of misconduct or otherwise on the part of the workman is concerned.

Two extreme views, viz., that the entire law has been re-written and despite insertion of Section 11-A, the Management neither could raise the legality or validity of the Domestic Enquiry as a preliminary issue or request the Tribunal to allow it to adduce evidence before it even if no enquiry has been held or as to whether such a right can still be exercised by the management came up for consideration in *Firestone Tyre and Rubber Co.* (supra).

One of the questions posed by Vaidialingam, J. was as to whether Section 11-A has made any changes in the legal position as regards the principles which had emerged from various decisions and as noticed in *Delhi Cloth & General Mills Co.* (supra). Rejecting both the extreme contentions and starting on the premise that the Act is a beneficial piece of legislation enacted in the interest of the employees, it was held that although the legal right of the Management to raise such a preliminary issue and in the event the same was determined in favour of the workmen to lead evidence for the first time before the Tribunal/ Labour Court could not be denied, opining:

> "...The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

It was furthermore held:

> **"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

A 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 B 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."

[See also *United Bank of India v. Tamil Nadu Banks Deposit Collectors Union and Anr.* 2007 (13) SCALE 681]

C

20. The legal principle, in our opinion, is neither in doubt nor in dispute. The question is that of its application.

We at the outset must, with respect, observe that the jurisdictional issue determined by the Labour Court was not D premised on a wrong question. It was one thing to say that an administrative body or a quasi-judicial authority misdirected itself in determining the issue by posing unto itself a wrong question which would obviously lead to a wrong answer, but, it would be another thing to say that although the administrative E authority or the quasi-judicial body did not lack inherent jurisdiction but committed a jurisdictional error in exercising its jurisdiction. *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147 : (1969) 1 All ER 208, to which reference has been made by the Division Bench says so. The High Court, F therefore, in our opinion, was not correct in its view having regard to the binding precedent operating in this behalf in *Firestone Tyre and Rubber Co.* (supra) that the first question posed by the Labour Court amounted to a misdirection in law. The proper issue which should have been posed was as to whether a case G for interference had been made out.

21. The Management filed an application for determination of the preliminary issue in regard to the legality or validity of the domestic enquiry. The entire records of the enquiry proceedings were produced before the Labour Court. The workmen H concerned had raised all possible objections therein. They

examined themselves. The Labour Court in its order dated 16.08.1990, however, determined the issue in favour of the Management and against the workmen. It not only held that the principles of natural justice have been complied with, it opined that the enquiry report was not perverse. A

22. We may, however, notice that the Presiding Officer of the Labour Court in the said order itself stated that the evidence would be reappreciated on merit at the time of hearing. The parties, despite the said observations, did not adduce any fresh evidence. The merit of the decision of the Enquiry Officer vis-à-vis the Disciplinary Authority was judged on the basis of the materials brought on records in the domestic enquiry. B C

23. The question, therefore, although was posed correctly by the Labour Court but what was also necessary to be considered for arriving at a decision thereupon was as to whether it was a proper case where the Labour Court should exercise its discretionary jurisdiction under Section 11-A of the Act or not. D

Whereas the Management cannot resort to victimization and unfair labour practice so as to get rid of the Union leaders, they in turn are bound to maintain discipline. E

It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficient legislation in favour of the Management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by the Parliament. The court must construe the statutory provision with a view to uphold the object and purport of the Parliament. It is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficient construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof. F G H

A 24. An enquiry against a workman is held in terms of Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946 or in absence thereof in terms of the Model Standing Order.

B 25. The Management is not only required to scrupulously follow the procedures laid down therein but was otherwise bound to comply with the principles of natural justice. If a misconduct has been committed within the purview of the provisions of the Standing Order, whether certified or Model, the workmen should be punished. The gravity of the offence, the impact the same C would have on the other workmen as also the fact as to whether the same will have an adverse effect over the functioning of the industry are relevant considerations.

Firestone Tyre and Rubber Co. (supra) must be D understood in the context in which it was rendered. Section 11-A of the Act as interpreted by *Firestone Tyre and Rubber Co.* (supra) must be applied at different stages. Firstly, when the validity or legality of the domestic enquiries is in question; secondly, in the event, the issue is determined in favour of the E Management, no fresh evidence is required to be adduced by it whereas in the event it is determined in favour of the workmen, subject to the request which may be made by the Management in an appropriate stage, it will be permitted to adduce fresh evidence before the Labour Court.

F 26. Indisputably, in the event, fresh evidence is adduced before the Labour Court by the Management, the Labour Court will have the jurisdiction to appreciate the evidence. But, in a case where the materials brought on record by the Enquiry Officer fall for re-appreciation by the Labour Court, it should be G slow to interfere therewith. It must come to a conclusion that the case was a "proper" one therefor. The Labour Court shall not interfere with the findings of the Enquiry Officer only because it is lawful to do so. It would not take recourse thereto only because another view is possible. Even assuming that, for all intent and H purport, the Labour Court acts as an appellate authority over

the judgment of the Enquiry Officer, it would exercise appropriate restraint. It must bear in mind that the Enquiry Officer also acts as a quasi-judicial body. Before it, parties are not only entitled to examine their respective witnesses, they can cross-examine the witnesses examined on behalf of the other side. They are free to adduce documentary evidence. The parties as also the Enquiry Officer can also summon witnesses to determine the truth. The Enquiry Officer can call for even other records. It must indisputably comply with the basic principles of natural justice.

27. While determining the issue as to whether the workman is guilty of misconduct alleged to have been committed by him or not, the workman would be entitled to raise all contentions including the contention of lack of bona fide or unfair labour practice as also acts of victimization on the part of the Management. Even evidences in that behalf can be laid. Save and except, however, for sufficient and cogent reasons, neither the Enquiry Officer would arrive at a finding in regard to lack of bona fide or victimization or unfair labour practice on the part of the management; the Labour Court while considering the said findings would ordinarily not do so. Such a question must be appropriately raised. Materials must be brought on records to establish the said allegations.

28. It is one thing to say that the finding of an Enquiry Officer is perverse or betrays the well-known doctrine of proportionality but it is another thing to say that only because two views are possible, the Labour Court shall interfere therewith. In other words, it is one thing to say that on the basis of the materials on record, the Labour Court comes to a conclusion that a verdict of guilt has been arrived at by the Enquiry Officer where the materials suggested otherwise but it is another thing to say that such a verdict was also a possible view.

For the aforementioned purpose, certain basic principles must be kept in mind, viz., even the first appellate court although is entitled to interfere with the findings of a Trial Court in terms of Section 96 of the Code of Civil Procedure, ordinarily a finding

A of fact arrived at on the basis of the oral evidence by the Trial Court should be accepted.

In *Chinthamani Ammal v. Nandagopal Gounder* [(2007) 4 SCC 163], this Court observed:

B **"18.** Furthermore, when the learned trial Judge arrived at a finding on the basis of appreciation of oral evidence, the first appellate court could have reversed the same only on assigning sufficient reasons therefor. Save and except the said statement of DW 2, the learned Judge did not C consider any other materials brought on record by the parties.

19. In *Madholal Sindhu* v. *Official Assignee of Bombay* it was observed: (AIR p. 30, para 21)

D "It is true that a judge of first instance can never be treated as infalliable in determining on which side the truth lies and like other tribunals he may go wrong on questions of fact, but on such matters if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, the appeal court should not lightly interfere with the E judgment."

(See also *Madhusudan Das* v. *Narayanibai*.)"

29. Before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond all F reasonable doubt but the standard of proof is as to whether the test of pre-ponderance of probability has been met. The approach of the Labour Court appeared to be that the standard of proof on the Management was very high. When both the parties had adduced evidence, the Labour Court should have G borne in mind that the onus of proof loses all its significance for all practical purpose.

30. In *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and Others* [(2005) 7 SCC 764], a Three-Judge Bench of this Court opined: H

"...It is well settled that the burden of proving *mala fide* is on the person making the allegations and the burden is "very heavy". (vide *E.P. Royappa* v. *State of T.N.*) There is every presumption in favour of the administration that the power has been exercised *bona fide* and in good faith. It is to be remembered that the allegations of *mala fide* are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility."

31. The Labour Court, on the one hand, has taken into consideration only some portion of the depositions of the witnesses and not the other portions. It merely stated that the workmen examined themselves as W.W/1 and W.W/2. Even if the finding that there had been a scuffle between the contractor and the workmen and both shouted against each other, is correct, the purported inference that the same was mere psychological and natural in such a situation and nothing untoward had happened is based on no evidence. No injury had been caused to anybody. If the workman was found to be not only abusing the contractors, even an iron rod had been taken out so as to threaten Shri Dara Singh with a view to assault him, a clear case of misconduct had been made out.

It was a matter of utmost importance to determine as to who started the quarrel; who started using abusive language; who started shouting; whether the workmen were more sinned against than sinning; whether there were materials on record to arrive at the findings on the said issue. These should have been the questions posed by the Labour Court.

32. There might have been a power cut for some time but the Labour Court even did not enter into the question as to whether the workmen were otherwise instigated to stop work. Without there being any material on record, the Labour Court has arrived at a finding that the Management had taken side in favour of the contractors and against the workmen "probably because of their demand and trade union activities". The finding

A is based on surmises. If that be so, the Labour Court should have tried to find out as to whether the Management's witnesses were confronted with such questions and documents in the departmental proceedings or not. On what basis a finding was arrived at that the act of Management proves victimization of
B the workmen had not been spelt out.

33. Assault, intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be a Union leader. The Act does not encourage indiscipline. It will be a matter of some
C concern if the opinion of the Enquiry Officer can be totally ignored despite the fact that the Management is precluded from adducing any fresh evidence before the Labour Court. A Union leader does not enjoy immunity from being proceeded with in a case of misconduct.

D

34. The upshot of our discussion is that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn a decision of the Management on ipse dixit. Its jurisdiction under Section 11-A of the Act although is a wide one, must be judiciously exercised. Judicial discretion, it is trite,
E cannot be exercised either whimsically or capriciously. It may scrutinize and analyse the evidence but what is important is how it does so.

35. It is also of some significance that the co-delinquent
F workman R.P. Singh who came to the aid of the impleaded applicant Krishna Kishore Yadav has accepted the finding of the High Court.

36. Before us, Mr. Ajit Kumar Sinha, has relied upon a decision of this Court in *Sardar Singh* (supra). We do not find
G that any legal principle has been laid down therein. It was a case of habitual unauthorized absence which was found to have been proved.

37. Reliance has also been placed on *Tata Engineering and Locomotive Co. Ltd.* (supra) where the question was as to
H

whether on the basis of a relief granted to one of the workmen a direction for reinstatement with half of the back wages could be issued. In the fact of the said case, it was held:

> **"10.** We find that the Labour Court has found the inquiry to be fair and proper. The conduct highlighted by the management and established in inquiry was certainly of a very grave nature. The Labour Court and the High Court have not found that misconduct was of any minor nature. On the contrary, the finding on facts that the acts complained of were established has not been disturbed. That being so, the leniency shown by the Labour Court is clearly unwarranted and would in fact encourage indiscipline. Without indicating any reason as to why it was felt that the punishment was disproportionate, the Labour Court should not have passed the order in the manner done. The case of R.P. Singh was not on a similar footing. He was one of the persons instigating whereas the respondent was the person who committed the acts. Therefore, the orders of the Labour Court as affirmed by the High Court cannot be sustained and are set aside. The order of dismissal from service in the disciplinary proceedings stand restored."

38. The said decision again was rendered on its facts and no legal principle can be culled out therefrom.

39. We may, however, notice that this Court in *North-Eastern Karnataka RTC v. Ashappa* [(2006) 5 SCC 137] opined:

> **"8.** Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The appellant runs a fleet of buses. It is a statutory organisation. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The respondent had been given opportunities to resume his duties. Despite such notices, he remained

A absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the B respondent herein has to be treated lightly."

40. In *Government of India & Anr. v. George Philip* [(2006) 12 SCALE 122], overstay of leave and absence from duty was held to be not only an act of indiscipline but also subversive of the work culture in the organization, stating:

C

"...Article 51A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and D achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution has the tendency to negate or destroy the same."

E

41. We, therefore, are of the opinion no case has been made out for interfering with the ultimate conclusion of the High Court, albeit for different reasons.

42. For the reasons aforementioned, the appeals are F dismissed. No costs.

B.B.B. Appeals dismissed.