Karnataka State Road Transport Corpn vs Lakshmidevamma & Another on 1 May, 2001

Bench: S.P.Bharucha, V.N.Khare, S.V.Patil

CASE NO.:
Appeal (civil) 2738 of 2001

PETITIONER:
KARNATAKA STATE ROAD TRANSPORT CORPN.

RESPONDENT:
LAKSHMIDEVAMMA & ANOTHER

DATE OF JUDGMENT: 01/05/2001

BENCH:
S.P.BHARUCHA & V.N.KHARE & SANTOSH N.HEGDE & Y.K.SABHARWAL & S.V.PATIL

JUDGMENT:

JUDGMENT DELIVERED BY:

SANTOSH N.HEGDE, J Y.K.SABHARWAL, J S.V.PATIL, J.

SANTOSH HEGDE,J.

This appeal is referred to a Bench of Five Judges based on the following order made by a Bench of two Judges of this Court.

In view of the conflict of decisions of this Court in Shambhu Nath Goyal vs. Bank of Baroda & Others, (1984 (1) SCR 85) and Rajendra Jha vs. Labour Court, (1985 (1) SCR

544), we are referring this matter to a larger Bench which has to be a Bench of more than three Judges. Mr. Rao, learned counsel appearing for the respondents, states that there is no conflict in the decisions. According to us, that submission is not correct. Hence, we are referring this to a larger Bench.

It is seen from the above order that the learned counsel appearing for the respondents had contended that there is no conflict between the two judgments referred to in the said order. However, the Bench thought otherwise. Since it is again contended now before us on behalf of the respondents that there is no conflict between the said judgments, we will first examine that aspect of the case.

In Shambu Nath Goyal vs. Bank of Baroda & Others (1984 1 SCR 85) this Court held:

The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under section 10 or section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it.

(emphasis supplied) This decision was rendered by the Court while deciding the stage at which the management is entitled to seek permission to adduce evidence in justification of its decision taken on the basis of a domestic enquiry.

In Rajendra Jha vs. Presiding Officer, Labour Court, Bokaro Steel City, Distt.Dhanbad & Anr. (1985 (1) SCR 544), though this Court was considering a similar question, we find the Court did not lay down any law contrary to the judgment in Shambu Nath Goyals case. A perusal of the judgment of this Court in Rajendra Jhas case shows that the Court decided the said case on the facts of that case only. This is clear from the following observations of the Court in Rajendra Jhas case :

Thus, the order passed by the Labour Court allowing the employers to lead evidence has been accepted and acted upon by the appellant. He has already given a list of his own witnesses and has cross-examined the witnesses whose evidence was led by the employers. It would be wrong, at this stage, to undo what has been done in pursuance of the order of the Labour Court. Besides, the challenge made by the appellant to the order of the Labour Court has failed and the order of the Patna High Court dismissing the appellants writ petition has become final.

Thus it is seen from the above observations of the Court in Rajendra Jhas case that same is decided on the facts of the said case without laying down any principle of law nor has the Court taken any view opposed to Shambu Nath Goyals case. Therefore, having considered the two judgments, we are of the opinion that there is no conflict in the judgments of this Court in the cases of Shambu Nath Goyal and Rajendra Jha.

This, however, does not conclude our consideration of this appeal, because on behalf of the appellant reliance is placed on some other earlier judgments of this Court which, according to the appellant, have taken a view contrary to that of Shambu Nath Goyals case. Therefore, we consider it appropriate to decide this question with a hope of putting a quietus to the same.

Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or Court is not a statutory right. This is actually a procedure laid down by

this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The geneses of this procedure can be traced by noticing the following observations of this Court in Workmen of Motipur Sugar Factory (P)Ltd. Vs. Motipur Sugar Factory (1965 (3) SCR 588) :

If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself.

Bearing in mind the above observations if we examine the various decisions of this Court on this question it is seen that in all the judgments this Court has agreed on the conferment of this right of the management but there seems to be some differences of opinion in regard to the timings of making such application. While some judgments hold that such a right can be availed by the management at any stage of the proceedings right upto the stage of pronouncement of the order on the original application filed either under Section 10 or Section 33(2)(b) of the Industrial Disputes Act, some other judgments hold that the said right can be invoked only at the threshold.

There are a number of judgments of this Court considering the above question but we think it sufficient to refer to the following cases only since these cases have considered almost all the earlier judgments on the question involved in this appeal.

In Delhi Cloth & General Mills Co. vs. Ludh Budh Singh (1972 (3) SCR 29) this Court after referring to most of the earlier cases on the point laid down the following principle :

When a domestic inquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management. In such a case if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead

evidence contra. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of before the proceedings were closed, the employer can make no grievance that the Tribunal did not provide for such an opportunity.

(Emphasis supplied) The words before the proceedings are closed gave rise to some doubts as to whether it is open to the management to seek this right of leading fresh evidence at any stage, including at a stage where the Tribunal/Labour Court had concluded the proceedings and reserved its judgment on the main issue.

The above judgment in D.C.M.s case came to be considered again by this Court in the case of Cooper Engineering Limited vs. Sri P.P.Mundhe (1976 (1) SCR 361), wherein this Court held :

We are, therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

As is seen from the above, this Court in Cooper Engineerings case held that when the Tribunal/Labour Court was called upon to decide the validity of the domestic enquiry same has to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce fresh evidence. But the problem did not stop at that.

The question again arose in the case of Shambu Nath Goyals case (supra) as to the propriety of waiting till the preliminary issue was decided to give an opportunity to the management to adduce evidence, because after the decision in the preliminary issue on the validity of the domestic enquiry, either way, there was nothing much left to be decided thereafter. Therefore, in Shambu Nath Goyals case this Court once again considered the said question in a different perspective. In this judgment, the Court after discussing the earlier cases including that of Shankar Chakravarti vs.

Britannia Biscuit Co. Ltd. & Anr. (1979 (3) SCR 1165), which was a judgment of this Court subsequent to that of Cooper Engineering (supra), the following principles were laid down:

We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workmans contention regarding the defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under s.10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defeat in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

While considering the decision in Shambu Nath Goyals case, we should bear in mind that the judgment of Vardarajan,J. therein does not refer to the case of Cooper Engineering (supra). However, the concurring judgment of D.A.Desai,J. specifically considers this case. By the judgment in Goyals case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under section 33 of the Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court.

Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambu Nath Goyals case need not be varied, being just and

fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyals case is just and fair.

There is one other reason why we should accept the procedure laid down by this Court in Shambu Nath Goyals case. It is to be noted that this judgment was delivered on 27th of September, 1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for nearly 18 years, in our opinion, the doctrine of stare decisis require us to approve the said judgment to see that a long standing decision is not unsettled without strong cause.

For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambu Nath Goyal vs. Bank of Baroda & Others (1984(1) SCR 85) is the correct law on the point.

In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was vitiated. Applying the aforestated principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant, hence, this appeal has to fail. The same is dismissed with costs.

Y.K. Sabharwal,J.

In this matter, in substance the question for determination is that if in proceedings before the Labour Court under Section 10 of the Industrial Disputes Act, 1947, the employer does not make a prayer in the written statement filed in answer to the statement of claim of the workman, indicating that the employer would adduce evidence to prove the charge of misconduct against the workman in the event of Labour Court coming to the conclusion that the enquiry conducted by the employer which was the basis of the order of termination of the services of the workman was illegal,but such a prayer is more before close of proceedings, does it require to be considered on merits by the Labour Court or it deserves outright rejection.

In Shambu Nath Goyal v. Bank of Baroda & Ors. this Court held that to avail the opportunity as aforesaid the employer should make a proper request at the time

when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking either permission to take certain action or seeking approval of the actin taken by it and if it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing an application for that purpose.

In Rajendra Jha v. Presiding Officer, Labour Court, Bokaro Steel City, Distt. Dhanbad & Anr. this Court was concerned with a case where the Labour Court held that departmental enquiry was vitiated and by the same order allowed the employers to lead evidence, the Labour Court cannot be said to have acted without jurisdiction. It has been noticed in the judgment that the employer did not ask for an opportunity to lead evidence simultaneously with the filing of the application under Section 33(2)(b) but when the hearing of that application was nearing completion but before the final order were passed therein, the employers asked for an opportunity to lead evidence to justify the order of dismissal.

In the present case, a Bench of two Judges, acting conflict of decisions in the aforesaid two cases, referred the matter to a larger Bench of more than three Judges rejecting the contention urged on behalf of the respondents that there is no such conflict. There are other decisions as well taking view contrary to that of Shambu Nath Goyal's case (supra) and holding that the employer to avail opportunity to adduce evidence has to make a request before the proceedings are closed.

The circumstances under which the present case has arisen in brief are these:

The respondent was charge-sheeted for misconduct. Consequence upon an enquiry, she was dismissed from service in October, 1977. The legality of the order of dismissal was challenged before the Labour Court in a reference under Section 10 of the Industrial Disputes Act. The Labour Court by order dated 27th October, 1984 decided the preliminary issue and held that the domestic enquiry conducted by the management was not fair, proper or reasonable and it was not sustainable in law. Soon, thereafter, on 19th November, 1984, an application was filed by the appellant/employer seeking permission to adduce evidence before the Labour Court to prove the charge of misconduct against the respondent. In view of the decision of this Court in Shambu Nath Goyal's case, (supra), the Labour Court by order dated 10th December, 1984 held that the management should have asked for an opportunity to lead evidence in the counter statement itself and that not having been done, it cannot be permitted to adduce evidence on merits after finding is given on the preliminary issue. Ultimately by award dated 26th December, 1984, the order of dismissal was set aside and order of reinstatement with 50% back wages was passed. The award was challenged in writ petition. In view of the decision in Shambu Nath Goyal's case, the writ petition was dismissed by the High Court on 3rd August, 1990. Dealing with the contention urged on behalf of the management that if it is deprived of an opportunity of adducing the evidence before the Labour Court, liberty should be

reserved to it to held a fresh enquiry, the Division Bench of the High Court referring to the decision of this Court referring to the decision of this Court in Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh [1962 Supp. (1) SCR 315] held that if an order of dismissal is set aside in a reference on the ground that the domestic enquiry held by the management pursuant to which removal from service of the workman was passed was invalid and the management is prevented from adducing evidence before it on the ground that the management had not made the request for adducing evidence in the written statement, all that happens is that instead of the enquiry going on before the Labour Court, an enquiry can take place at the discretion of the management before the competent authority. The judgment and order of the High Court dated 3rd August, 1990 is under challenge in this appeal, the notice on special leave petition having been issued on 26th August, 1991 and the order of reference having been made on 6th January, 1995.

I have gone through the draft judgment proposed by Hob'ble Mr. justice N. Santosh Hedge. The opinion expressed therein is that the procedure laid down in Shambu Nath Goyal's case (supra) is just and fair. That means that the employer can be permitted to adduce evidence before the Labour Court to justify the misconduct of the workman only if it had reserved such a right in the application made by it under Section 33(2)(b) of the Industrial Disputes Act or in the objection and written statement filed in reference under Section 10 of the Act and not at any time thereafter during the proceedings before the Labour Court/Industrial Tribunal. With utmost respect, I am unable to agree. Such an interpretation of procedure takes away the discretion of the Labour Court/Industrial Tribunal. To allow or not to allow the prayer of the management to adduce evidence in such a matter should essentially lie within the discretion of Labour Court/Industrial Tribunal to be exercised on well settled judicial principles. If any illegality is Committed in exercise of that discretion, it can be corrected in higher forums. There are no compelling reasons to limit the power and jurisdiction of the Labour Court and debar consideration of the request to adduce evidence if not made at the initial stage but made before close of proceedings before the Labour Court/Industrial Tribunal.

The right of the employer to adduce evidence before the Labour Court/Industrial Tribunal to justify the termination of the services of a workman has been recognised in various judgements of this Court delivered in last more than four decades. Such a right is not in dispute. In M/s. Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors. this Court said that the Tribunal rightly allowed the management to adduce evidence before it in support of its application for permission to dismiss even though the domestic enquiry held by it was highly defective. That was a case under Section 33(2) of the Industrial Disputes Act. In Management of Ritz Theatre (P) Ltd. v. Its Workmen which appeal arose out of reference under Section 10 of the Industrial Disputes Act, this Court again reiterated that if the finding on the preliminary issue is against the employer, permission will have to be given to the employer to adduce additional evidence.

In Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory while reiterating that the employer could adduce evidence before the Tribunal, the Court noticed that if the employer is given an opportunity to justify the impugned dismissal on merits of his case being considered by the Tribunal, for itself that would be to the benefit of the employee and that is why this Court has consistently held that if domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so that tribunal tries the merits itself. This view, it was said, is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. It was noticed that if such a right is not granted, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again and this course would mean delay and would further entitled the employer to flaim benefit of the domestic enquiry. It has been consistently held that in principle, there is no difference whether the matter comes before the Labour Court/Industrial Tribunal under Section 33 or on a reference under Section 10 of the Industrial Disputes Act. in either case, the employer would have to justify that the order of dismissal or discharge was proper. In either case, the employer will have right to adduce evidence where the employer, dismisses an employee without holding an enquiry or enquiry is found to be defective.

In none of the aforesaid cases, however, the question as to which stage the employer should make a prayer for adducing evidence came up for consideration. This question came to be considered in Delhi Cloth and General Mills Co. v. Ludh Budh Singh. It was held therein that the management should avail of the opportunity to adduce evidence by making a suitable request to the Tribunal before the proceedings are closed. The principles laid down in DCM's case insofar as relevant for the present purposes are contained in sub-paras 4 and 5 of para 61 of the report which read as under :

> "(4)When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry.If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management.But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken it is proper. It will not management or to the workman that the tribunal

> should refuse to take evidence and thereby ask the management to make a further application, after holding, a proper the benefit of the Tribunal itself of the alleged misconduct. (5) The management has got a right to attempt to sustain its order by adducting independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request of the Tribunal before the proceeding are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the Tribunal did not grievance that opportunity, The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held property and the findings recorded therein are also proper."

(emphasis supplied) After laying down the aforesaid principles, the court held that in the said case the appellant did not ask for an opportunity to adduce evidence when the proceedings were pending nor did it avail itself of the right given to it in law to adduce evidence before the Tribunal during the pendency of the proceedings. It further held that if such an opportunity had been asked for and refused or if the Tribunal had declined to receive evidence, when it was sought to be tendered on behalf of the managements, when the proceedings were still pending, the position would have been entirely different. In such a case, it can be held that the appellant had been deprived of the opportunity which should have been afforded to it, in law, or adducing evidence on merits before the Tribunal if the domestic enquiry was held to be defective.

In the Workmen of M/s. Firestone Tyre and Rubber co. of India (Pvt.) ltd. v. The management & Ors. the four principles relevant for the present purpose are as contained at sub-paras 4,6,7.and para 32 of the report. The said principles are"

> "(4) Even if no enquiry has been held by an employer or of the enquiry held by him is found to be defective, the Tribunal is 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. (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.
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> (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.
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> (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 stages. 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."

(emphasis supplied) The question as to what is the appropriate stage came to be considered in Cooper Engineering Ltd. V. Shri P.P.Mundhe. In this case, after noticing the aforequoted propositions from DCM's case and from Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.'s case it was held:

"Propositions (4). (6) and (7) set out above are well-recognised. Is it, however, fair and in accordance with the principles of natural justice for the labour court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequence of a default on its part in not asking the court to given an opportunity to adduce additional evidence at the commencement of the proceeding or, at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involved determination of the larger issue of discharge of dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? This is neither going to achieve the paramount object of the Act namely industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

We are, therefore, clearly of opinion that when a case of dismissal of discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

(emphasis supplied) It is evident from the above that on pronouncement of the decision of the preliminary issue as to whether the domestic enquiry has violated the principles of natural justice, the management was to decide whether it will adduce any evidence before the labour Court. That was held to be the appropriate stage. All these decisions again came to e examined in Shankar Chakravarti v. Britannia Biscuit co. Ltd. & Anr. and the decision in Cooper Engineering Ltd.'s case indicating the stage of opportunity was cited with approval and it was further opined that such an opportunity had to be asked for. The Bench held that if request is made in the statement of claim or written statement, depending upon whether the proceedings were under Section 23 or Section 10 of the Industrial Disputes Act, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the labour Court/Industrial Tribunal should ordinarily grant an opportunity to adduce evidence. It was further held that if no request is made at any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity.

In the present case, we are not called upon to decide a case where no request to adduce evidence is made by the employer. we are concerned with the question that in a case where request is made to adduce evidence immediately after the decision of the preliminary issue but such a request was not made in the written statement filed in reply to the statement of claim of the workman in proceedings under Section 10 of the Industrial Disputes Act, does it require outright rejection without being considered on merits? The opinion expressed in Shankar Chakravarti's case reads as under:

> "When read in the contest of the propositions culled out in Delhi Cloth & General Mills Co. case and the Firestone Tyre & Rubber Co. of India (P) of Ltd. case, the decision in Cooper Engineering Ltd. case merely indicates the stage at which an opportunity is to be give but it must not be overlooked that the opportunity has to be asked for. Earlier clear-cut pronouncements of the Court in R.K.Jain case and Delhi Cloth & General Mills Co. case that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate stage and there is no duty in law cast on the Industrial Tribunal or the Labour Court suo motu to give such an opportunity notwithstanding the fact that none was ever asked for are not even departed from. When we examine that matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their right more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action by it. If such a request is made in the statement of claim. application or written statement the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceeding are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at

> any stage of the proceedings, there is no duty in law on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings."

(emphasis supplied) It appears that earlier to Shambu Nath Goyal's case (supra), it was not doubted that the employer could ask for an opportunity to adduce evidence before the proceedings are closed before the Labour Court/Industrial Tribunal. The departure came up only in Shambu Nathu Goyal's case.

In Shambu Nath Goyal, the main judgment does not refer to the decision of Cooper Engineering Ltd.'s case. The said judgment after reproducing the paragraph from Shankar Chakravarti's case which held that if the request is made before the proceedings are concluded, the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence' observes that the management is made aware of workman's contention regarding the defect in domestic enquiry by the written statement of defence filed by him in the application filed by the management under Section 33 of the Act or in statement of claim filed by the workman under Section 10 of the Act. Noticing that the defect in domestic enquiry in pointed out by the workman in the written statement filed in the Labour Court or Industrial Tribunal and the management has the opportunity to look into that statement has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or the Industrial Tribunal and, therefore, the management could make the request for opportunity in the written statement itself. Then, the opinion expressed is that if the management does not choose to do so at that stage, it cannot be allowed to do it at any latter stage of proceedings by filling any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do. The only reason which seems to have weighed for coming to the conclusion that the management is barred from making such an application at later stage is the likely delay to the proceedings.

As already noticed, the Cooper Engineering Ltd.'s case (supra) has not been considered in the main judgment delivered by justice Varadarajan in Shambu Nath Goyal's case. In Cooper Engineering Ltd.'s case which was also a decision by a Bench of three judges, it was held that the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice and on that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. It has to be borne in mind that grant of opportunity to an employer to adduce evidence for the first time before the Labour Court/Tribunal is in the interest of both the management and the employee. It is also to be borne in mind that non-grant of such an opportunity may in the ultimate analysis adversely affect the workman. Except the main judgment of Shambu Nath Goyal's case, no other decision of this Court was cited before us wherein may have been that the prayer of the management to adduce evidence is to be rejected if not made either in the written statement filed to the statement of claim in reference under section 10 or at the initial stage of proceedings under Section 33(2)(b) of the Industrial Disputes Act. Even justice Desai in the concurring judgment does not go that far and

opines that if such an application is made it would be open to Labour Court to examine the question whether it should be granted or not.

In various decisions rendered by this Court, it was been held that such a request can be made before the proceedings are closed the Labour Court/Tribunal. There is no compelling reason to limit the exercise of discretion by the Labour Court/Industrial Tribunal to examine such a prayer on its own merit and decline it if not considered to be bone fide and made to delay the proceedings and to wreck the moral to delay the proceedings and to wreck the morals of the workman an compel him to surrender, to use the language of, Shambu Nath Goyal's case (supra). Ordinarily such a request when made immediately after the decision of the preliminary issue deserves to be allowed of the preliminary issue deserves to be allowed as held in Shankar Chakravarti's case prior to its elaboration by justice Desai in Shambu Nath Goyal's case. If such a request is made soon after the enquiry is held to be invalid and the Labour Court holds it to be bona fide and further holds that no prejudice would be caused to the workman, there is no reason still to shut the employer when it has been rightly held, time and again, that the employer has a right to adduce evidence before the Labour Court in case of no enquiry or invalid enquiry. In such proceedings, pleadings do not deserve to be strictly construed.

For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to statement of claim in proceedings under Section 10 cr. when an application is filed for approval under section 33(2)(b) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request. when made before close of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/Tribunal will exercise discretion on well settled judicial principles and would examine the bona fides of the employer in making such an application.

The doctrine of stare decision has also no applicability. In decisions earlier to Shambu Nath Goyal's case (supra), the consistent view was that the prayer for adducing evidence could be made before the close of proceedings. Soon after Shambu Nath Goyal's case, in Rajendra Jha's case, similar view was expressed. The procedure laid down in Shambu Nath Goyal's case would not be just, fair and reasonable both to the employer and the workman. The said decision has no acquired the status attracting the doctrine of stare decisis. Shabhu Nath Goyal represents highly technical view. Considering that we are considering the rule of convenience, expediency and procedure which promotes the cause of both employer and workman deserves to be laid down.

In view of above, I am of the opinion that the Shambu Nath Goyal's case (supra) does not lay down correct law. The law has been correctly laid in Shankar chkravarti's case and Rajendra Jha's case. The correct procedure is as stated in Shankar Chakravarti's case subject to further safeguards for workman as already indicated above.

Despite above conclusions, in so far as the present appeal is concerned, considering that the award was made by the Labour Court more than 16 years back and also that the employee has already retired as we are informed, it would not be appropriate to interfere in exercise of power under

Article 136 of the Constitution. In this view, I would dismiss the appeal leaving the parties to tear their own costs.

Shivaraj V. Patil J.

After going through the draft judgment prepared by N.Santosh Hedge J., we respectfully agree with the same. Having gone through the draft judgement prepared by Y.K. Sabharwal J., received later, we felt the necessity of adding the following few lines.

The question as to at what stage the management should seek leave of the labour court / tribunal to lead evidence / additional evidence justifying its action is considered in the draft judgement of Hedge J. and not the power of the court / tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short the 'Act') a court / tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the Rules framed thereunder and in accordance with the principles of natural justice. Under Section 11(3), labour court / tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.

It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before labour court / tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour courts / tribunal have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court / tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court / tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before the year concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.