IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 228 of 2018

Employers in relation to the management of M/s ACC Ltd., Sindri Cement Works through its Director namely Vaibhav Dixit son of Anand Prakash Dixit having its office at ACC colony, Sindri, P.O. & P.S. Sindri, Dist. Dhanbad

… … Petitioner

Versus

Sarita Devi, W/o Late Manoj Singh, resident of Qr. No. G-20, ACC Colony, P.O. & P.S. Sindri, District Dhanbad **… … Respondent**

With

W.P. (L) No. 7203 of 2017

Employers in relation to the management of M/s ACC Ltd., Sindri Cement Works through its Director namely Vaibhav Dixit son of Anand Prakash Dixit having its office at ACC colony, Sindri, P.O. & P.S. Sindri, Dist. Dhanbad

… … Petitioner

Versus

Sri Ranjendra Prasad, son of Shyamdhari Prasad, resident of Qr. No. G-24-A, ACC Colony, P.O. & P.S. Sindri, District Dhanbad **… … Respondent**

With

W.P. (L) No. 201 of 2018

Employers in relation to the management of M/s ACC Ltd., Sindri Cement Works through its Director namely Vaibhav Dixit son of Anand Prakash Dixit having its office at ACC colony, Sindri, P.O. & P.S. Sindri, Dist. Dhanbad

… … Petitioner

Versus

Sri Ajit Singh, son of Late Shravan Kumar, resident of Qr. No. SRT-19, & 20, ACC Colony, P.O. & P.S. Sindri, District Dhanbad **… … Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Rajiv Ranjan, Sr. Advocate
Ms. Komal Tiwary, Advocate
Ms. Sonal Jaiswal, Advocate

For the Respondents : Mr. Pradip Modi, Advocate
Mr. Sarvendra Kumar, Advocate

25/26th June 2024

1. Heard the learned counsel for the parties.

2. **W.P. (L) No. 228 of 2018** has been filed for the following reliefs: -

> *"a. For the issuance of appropriate writ/writs, direction/directions, order/orders for the quashing of the part of the award dated 29.8.2017 passed in Ref. Case No. 51/12 so far as it relates to the present respondent whereby and whereunder the reference so made by the competent authority has been answered in favor of the workman and the workman has been awarded reinstatement with complete back wages, after relying on the evidences lead before the learned Labour Court, even when the Labour court held the enquiry to be fair and proper.*
>
> *And/Or*
>
> *b. During the pendency of the present writ application, the impugned award be kept in abeyance.*
>
> *And/Or*
>
> *c. For the issuance of appropriate writ/writs, direction/directions, order/orders as the Hon'ble Court may deem fit and proper in the present case."*

3. **W.P. (L) No. 7203 of 2017** has been filed for the following reliefs: -

> *"a. For the issuance of appropriate writ/writs, direction/directions, order/orders for the quashing of the part of the award dated 29.08.2017 as Annexure-9 passed by Mr. R. K. Saran, Presiding Officer, CGIT-cum-Labour Court No. 1, Dhanbad in Ref. No. 48/12, so far as it relates to the present respondent whereby and whereunder the reference so made by the competent authority has been answered in favor of the workman and the workman has been awarded reinstatement with complete back wages, after relying on the evidences lead before the learned Labour Court, even when the Labour court held the enquiry to be fair and proper.*
>
> *And/Or*
>
> *b. During the pendency of the present writ application, the impugned award be kept in abeyance.*
>
> *And/Or*
>
> *c. For the issuance of appropriate writ/writs, direction/directions, order/orders as the Hon'ble Court may deem fit and proper in the present case."*

4. **W.P. (L) No. 201 of 2018** has been filed for the following reliefs: -

> *"a. For the issuance of appropriate writ/writs, direction/directions, order/orders for the quashing of the part of the award dated 29.8.2017 passed in Ref. Case No. 50/12 so far as it relates to the present respondent whereby and whereunder the reference so made by the competent authority has been answered in favor of the workman and the workman has been awarded reinstatement with complete back wages, after relying on the evidences lead before the learned Labour Court, even when the Labour court held the enquiry to be fair and proper.*
>
> *And/Or*
>
> *b. During the pendency of the present writ application, the impugned award be kept in abeyance.*

And/Or

c. For the issuance of appropriate writ/writs, direction/directions, order/orders as the Hon'ble Court may deem fit and proper in the present case."

Arguments of the petitioner

5. Learned senior counsel for the petitioner submits that by the impugned award three different references have been disposed of with respect to three different workmen. He has submitted that the workmen were subjected to disciplinary proceedings by the Management and a common enquiry report was prepared vide enquiry report dated 01.07.2011 and they were dismissed from service.

6. Upon raising industrial dispute in terms of sub-Section 1 and sub-Section 2A of Section 10 of the Industrial Disputes Act, 1947, the matter was referred to Central Government Industrial Tribunal No. 1, Dhanbad for deciding the reference numbered as Reference Case Nos. 48 of 2012, 50 of 2012 and 51 of 2012. The domestic enquiry was held to be fair and proper and the learned Tribunal was entitled to scrutinize the case of the respective parties within the parameters of Section 11A of the Industrial Disputes Act, 1947.

7. The learned senior counsel has submitted that the learned Tribunal has exceeded its jurisdiction while examining the case and has set-aside the orders of dismissal with a direction of reinstatement with full back wages and with respect to one of the workmen having expired during the pendency of the case, there is a direction to give full back wages during the period of his dismissal and a further direction to give employment to his legal heir on compassionate ground within 30 days after publication of the award in the official Gazette.

8. The learned senior counsel while referring to the impugned award has submitted that in paragraph 20 of the award itself, the learned Tribunal has recorded that the Tribunal can even act as an appellate authority of the enquiry officer. He submits that this itself indicate the approach of the learned Tribunal and the learned Tribunal while scrutinizing the materials before the enquiry officer has referred to certain portions of cross-examination of three management witnesses who had deposed at the stage of enquiry and has set-

aside the order of dismissal without recording any finding that the findings recorded in the enquiry report were perverse or there was no material to come to a finding which was recorded in the enquiry report.

9. By referring to the scope of appreciation of materials on record under Section 11-A of the Industrial Disputes Act, 1947, the learned senior counsel has referred to the judgment passed by the Hon'ble Supreme Court reported in ***(1973) 1 SCC 813 (Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. vs. Management & Others)*** and has in particular referred to paragraph 32(3) of the said judgment. He has further referred to the judgment passed by the Hon'ble Supreme Court in the case reported in ***(2021) 19 SCC 281 (Standard Chartered Bank vs. R. C. Srivastava),*** paragraph 18 to 20.

He has also relied upon the judgment passed by this Court in L.P.A No. 348 of 2000 (R) ***[Management of M/s Usha Breco and Anr. vs. Presiding Officer, Labour Court, Jamshedpur & Others]*** in the case reported in ***2004 (4) L.L.N. 1066*** and has referred to paragraph 4 thereof. He has submitted that the aforesaid judgment passed by this Court was subject matter of consideration before the Hon'ble Supreme Court in the judgment reported in ***(2008) 5 SCC 554 (Usha Breco Mazdoor Sangh vs. Management of Usha Breco Limited and Anr.).*** He submits that the Hon'ble Supreme Court has relied upon the judgment passed in the case of ***Firestone Tyre and Rubber Co. of India (P) Ltd. (supra).*** He has referred to paragraph 28 to 31, 33 of the judgment reported in ***(2008) 5 SCC 554 (supra)*** and has submitted that the view expressed in the case of ***Firestone Tyre and Rubber Co. of India (P) Ltd. (supra)*** has been followed in the aforesaid judgment of the Hon'ble Supreme Court.

10. The learned senior counsel has placed the enquiry report as well as the charge memo issued to the concerned workmen.

<u>Arguments of the respondent(s)</u>

11. Learned counsel appearing on behalf of the respondent in all the three cases has opposed the prayer and has submitted that there is no illegality or perversity in the impugned award and the fact that the transit challan was not

produced is admitted and therefore the pilferage of the raw material entering into the factory premises cannot be said to have been established and therefore the impugned award does not call for interference.

12. The learned counsel in particular referred has to paragraph 25 of the impugned award wherein it has been recorded that the workmen had no hand in the theft or pilferage and the materials were guarded by the security personnel and weighment were made and to calculate the exact loss the transit challan was to be filed. The learned counsel has submitted that the cross-examination of the management witnesses who had deposed during the enquiry proceeding has been recorded by the learned Tribunal primarily to show that the challans were not produced to establish the role of the workmen.

13. The learned counsel submits that many facts and findings have been recorded in the enquiry report including the fact that on three or four dates there was abnormal increase in arrival of the truck which was not the charge against the workmen. He has further submitted that primarily the charge against the workmen was that they had wrongly entered the arrival of raw materials in the register and the same could not have been proved by any means without production of the corresponding challan under which cover the materials had arrived in the factory premises.

Findings of this Court

14. After hearing the learned counsel for the parties and considering the facts and circumstances of this case and in order to appreciate rival contentions, it would be useful to refer to the charge-sheet issued to the concerned workmen which is contained at Annexure-2 to the writ petition and also forms a part of the records received from the concerned court.

15. Upon perusal of the charge-sheet, it has been mentioned that altogether five persons were said to be the workmen at the Weighbridge under Cement Dispatch Section and were responsible for checking the weighment of inbound and outbound trucks of materials, recording them in company's register and any other work incidental thereto. It has been specifically alleged that on 8th & 9th November 2010, a surprise audit of the incoming trucks loaded with Clinker

and physical stock verification of Clinker at site was carried out by a team. The stock verification was for the Clinker received between 30.10.2010 and 10.11.2010 and upon comparison, the figures mentioned in the company's register maintained by the workmen in their respective shifts during the aforesaid period, there was a huge difference between the weight of Clinker as recorded by the workmen in the company's register maintained at Weighbridge in different shifts and quantity of the Clinker found during physical stock verification. The mismatch has been shown in a form of chart, which is as follows: -

Date	**Book Stock**	**Physical verified quantity**	**Difference**
As on 30.10.2010	6911.00 Tns.	6790.00 Tns.	121.00 Tns.
As on 10.11.2010	6084.00 Tns.	4236.11 Tns.	1847.89 Tns.
Total Difference			1968.89 Tns.

16. With the aforesaid background, it was alleged that the difference of quantity of Clinker as recorded by the workmen in the Company's register along with M/s Rajendra Prasad, Ajit Singh, Shamim Ansari and Subinder Ram in different shifts manned by them during the said period and quantity of Clinker as per physical stock verification was not received at all at Sindri Works. The quantity of Clinker actually received was less than what was shown in the Company's register. So the allegation was falsification of entries of weighment of Clinker in Company's record in different shifts and consequently this has resulted in making excess payment towards transportation charges to the party which had supplied Clinker to Sindri Works which has caused huge financial loss to the petitioner-company. The workmen were alleged of acting dishonesty and causing financial loss. The following clauses of Certified Standing Order of the Company was referred to in the charge-sheet: -

"15(4) Theft, Fraud, or dishonesty in connection with the Company's business or property.
15(5) Taking or giving bribes or any illegal gratification whatsoever.
15(13) Causing willful damage to work in process or any other property of the Company.
15(21) Commission of any action subversive of discipline or good behaviour on the premises of the establishment."

17. The workmen had participated in the domestic enquiry conducted by the petitioner and ultimately, they were dismissed from service. A copy of the enquiry report has been produced during the court proceedings.

18. The enquiry report reveals that altogether five persons were charge-sheeted in connection with the allegation and four management witnesses were produced to substantiate the charges. The charge-sheeted workmen upon being asked as to whether they would like to represent their case through a co-worker, they agreed to present their case themselves. The enquiry was held on various dates in which the charge-sheeted workmen duly participated. It was observed in the enquiry report itself that the observations and findings were based on proceedings of enquiry, cross-examination of the charge-sheeted employees by the management representative, cross-examination of the management representative by the charge-sheeted employees, deposition and cross-examination of management witnesses, documentary evidences as adduced by the management representative during enquiry.

19. By detailed analysis of the materials on record, the workman, namely, Rajendra Prasad was found guilty as follows: -

"The CSE-1 is found guilty on the charges of 1. "Theft, Fraud, or dishonesty in connection with Company's business or property" 2. Causing wilful damage to work in process or any other property of the Company" 3. Commission of any act subversive of discipline or good behaviour on the premises of the establishment and the Charge "Taking or giving bribes or any illegal gratification whatsoever" could not however be proved beyond doubt."

20. The workman, namely, Manoj Kumar Singh was found guilty as follows:

"The CSE-2 is found guilty on the charges of 1. "Theft, Fraud, or dishonesty in connection with Company's business or property" 2. Causing wilful damage to work in process or any other property of the Company" 3. Commission of any act subversive of discipline or good behaviour on the premises of the establishment and the Charge "Taking or giving bribes or any illegal gratification whatsoever" could not however be proved beyond doubt."

21. The workman, namely, Ajit Kumar Singh was found guilty as follows: -

> *"The CSE-3 is found guilty on the charges of 1. "Theft, Fraud, or dishonesty in connection with Company's business or property" 2. Causing wilful damage to work in process or any other property of the Company" 3. Commission of any act subversive of discipline or good behaviour on the premises of the establishment and the Charge "Taking or giving bribes or any illegal gratification whatsoever" stands dropped."*

22. The findings of the enquiry report reveal that the allegations were partly proved. The management had dismissed the workmen involved in this case vide order dated 26.09.2011.

23. Thereafter upon raising industrial dispute the matter was referred for adjudication. The terms of reference is as under: -

> *"SCHEDULE*
>
> *"Whether the action of the management of M/s ACC, Sindri Cement Works, Sindir in dismissing the services of Shri Rajendra Prasad, Clerk vide order dated 26/09/2011 is legal and justified? What relief the workmen is entitled to?"*
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> ***Reference No. 50/2012***
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> *Order No. L-29012/33/2012/IR (M) dated 11/10/2012*
>
> *SCHEDULE*
>
> *"Whether the action of the management of M/s ACC, Sindri Cement Works, Sindir in dismissing the services of Shri Ajit Kumar Singh, Tally Checker vide order dated 26/09/2011 is legal and justified? What relief the workmen is entitled to?"*
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> ***Reference No. 51/2012***
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> *Order No. L-29012/32/2012/IR (M) dated 11/10/2012*
>
> *SCHEDULE*
>
> *"Whether the action of the management of M/s ACC, Sindri Cement Works, Sindir in dismissing the services of Shri Manoj Singh, Tally Checker vide order dated 26/09/2011 is legal and justified? What relief the workmen is entitled to?"*

24. It is not in dispute that after evidence on the point of preliminary issue, the domestic enquiry was held to be fair and proper and the matter was required to be taken up in terms of Section 11A of the Industrial Disputes Act,1947.

25. This Court finds that the learned Tribunal while considering the matter recorded that the workmen had pleaded that they were innocent and the management had indicated that the scope of enquiry before the learned

Tribunal was limited as to whether the punishment was proportionate to the charges proved or not.

26. The learned Tribunal recorded that while seeing the proportionality of the punishment, the tribunal has authority to scrutinize the evidence of the parties. The learned Tribunal has also recorded in the impugned award that even the Tribunal can act as an appellate authority of the enquiry officer.

27. Thereafter, the learned Tribunal referred to the evidences recorded in the domestic enquiry and quoted the cross-examination portion of Management witness No. 1 who had deposed that the workmen had never worked under him and the materials were weighed from inside the factory. The learned Tribunal had also quoted the cross-examination of management witness No. 2 and 3 and recorded its finding in paragraph 23, 25 and 26 of the impugned award in the following manner: -

> *"23. From the above evidence of the witness, The materials are loaded in chaibasa and unloaded at sindri at the premises of factory, and weigment is also done at sindri factory premises, and factory premises is under security coverage. It is also admissible that 5% loss is admitted at receiving point. Material comes in open truck without any security. As per admission by witnesses of management, it is also admitted that the workman has only to check weight of material. In our factory premises there is no chance of theft. In the security coverage how the workmen steal the material. It is felt that workmen is dismissed intentionally, without examining the merit of the case and enquiry was done.*
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> *25. It is crystal clear that the workmen have no hand in theft or pilferage. The materials are guarded by security personnel and weighment are made. To calculate the exact loss, the Transit challan is to be filed and the same has not been filed in the case as told by MW-2 MW-3.*
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> *26. Hence the workmen had no role during loading of the materials, and inside the factory, the materials are kept under security cover and workmen are not allowed to visit there. This may be the situation, the dismissal is totally illegal and they are to be reinstated. In the meantime one of the workmen has expired. Therefore the dismissal is totally bad. It is set aside. The workmen who is alive be reinstated with full back wages and the deceased workmen be given full back wages during the period of dismissal, and his heir be given job in compassionate ground."*

28. This Court finds from paragraph 20 of the impugned award that the learned Tribunal has recorded that the tribunal could act as an appellate authority of the enquiry officer and thereafter appreciated only the cross

examination of the three management witnesses and came to its own findings recorded in paragraphs 23 to 26 as quoted above and the learned tribunal recorded that it felt that workmen were dismissed intentionally, without examining the merit of the case.

29. In the judgment passed by the Hon'ble Supreme Court reported in ***(1973) 1 SCC 813 (supra)*** paragraph 32, it has been held that when a proper enquiry is held by an employer and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the, findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide. The Hon'ble supreme court further considered the impact of introduction of section 11A of the Industrial Disputes Act, 1947 and held in paragraph 36 that where the employer has held a proper domestic enquiry, the tribunal has the power to reappraise the evidences and be satisfied that the finding of misconduct was correct and could differ with the finding if a proper case is made out. Paragraph 32 to 36 of the aforesaid judgement is quoted as under: -

> "**32.** From those decisions, the following principles broadly emerge:
> "(*1*) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.
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> (*2*) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
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> (*3*) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.
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> (*4*) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy

itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(*5*) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(*6*) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(*7*) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(*8*) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(*9*) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(*10*) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *Management of Panitole Tea Estate* v. *Workmens* within the judicial decision of a Labour Court or Tribunal."

32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

33. The question is whether Section 11-A has made any changes in the legal position mentioned above and if so, to what extent? The Statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an

indication as to what the legislature wanted to achieve. At the time of introducing Section 11-A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of Objects and Reasons has specifically referred to the limitations on the powers of an Industrial Tribunal, as laid down by this Court in *Indian Iron and Steel Co. Ltd. case*.

34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does indicate that a change in the law, as laid down by this Court has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has been effected giving power to the Tribunal only to alter the punishment, after having held that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has been re-written.

35. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the

decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron & Steel Co. Ltd. case* existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation of unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd. case*, can no longer be invoked by an employer. 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."

30. In the judgment passed by this Court in L.P.A No. 348 of 2000 (R), it has been held at paragraph No. 4 as under: -

" 5. Even while considering the quantum of punishment, the Labour Court has proceeded on the basis that the Management has failed to prove the charges levelled against the workmen. This again, in our view, is not the correct approach to the question, the Labour Court had to consider, in exercise of its jurisdiction under S. 11(A) of the Industrial Disputes Act. The jurisdiction under S. 11(A) of the Industrial Disputes Act was to consider whether on the charges proved and the punishment awarded was not reasonable or was too harsh. In that process, the Labour Court could have taken note of all the relevant materials on record. But, that would not mean that it could sit in appeal over the findings of the Enquiry Officer disagreeing to that finding and find the punishment to be disproportionate to the charges proved. Here, what has happened is that the Labour Court has actually found that no punishment was liable to be awarded since the charges against the workmen were not proved. The conclusion is directly against what has been found by the enquiry officer, at the enquiry, the validity of which had already been upheld by the Labour Court."

31. The judgment passed in L.P.A. No. 348 of 2000 (R) was subject matter of consideration before the Hon'ble Supreme Court in the judgment reported in ***(2008) 5 SCC 554 (supra),*** wherein it has been held in paragraph 28 to 31, 33 of the judgment as under: -

> *"**28.** Firestone Tyre and Rubber Co. must be understood in the context in which it was rendered. Section 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.*
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> ***29.** 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 reappreciation 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 principles of natural justice.*
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> ***30.** 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 fides or unfair labour practice as also acts of victimisation 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 fides or victimisation 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 record to establish the said allegations.*
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> ***31.** 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.

33. *Before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of preponderance 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 borne in mind that the onus of proof loses all its significance for all practical purpose."*

32. In the judgment reported in ***(2021) 19 SCC 281 (supra),*** the Hon'ble Supreme Court in paragraph 18 to 20 has held as under: -

*"**18.** The Tribunal after reappraisal of the record of domestic enquiry held it to be fair and proper, has a very limited scope to interfere in the domestic enquiry to the extent as to whether there is any apparent perversity in the finding of fact which has been recorded by the enquiry officer in his report of enquiry obviously, based on the evidence recorded during the course of enquiry and as to whether the compliance of the Bipartite Settlement which provides the procedure of holding enquiry is violated or the punishment levelled against the workman commensurate with the nature of allegation proved against him and if it is grossly disproportionate, the Tribunal will always be justified to interfere by invoking its statutory power under Section 11-A of the 1947 Act.*

19. *In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a court of appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while interfering with the finding recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned.*

20. *The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the 1947 Act although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may*

scrutinise or analyse the evidence but what is important is how it does so."

33. This Court finds that as per the charge and what was proved in the enquiry, the allegation was that there was a mismatch with regard to the entry made in the Company's register and what was available on the physical verification of the stock and after having gone through the enquiry report, this Court is of the view that the findings arrived at by the enquiry officer is based on materials produced before the enquiry officer and was certainly one of the plausible view and the learned Tribunal has interfered with the order of dismissal without recording any finding that the finding of the enquiry officer was perverse or the view taken by the enquiry officer was not a plausible view or was otherwise erroneous by referring to the materials on record.

34. This Court finds that the learned Tribunal while interfering with the orders of dismissal of the three concerned workmen has not recorded any finding of perversity or any finding that the view taken by the enquiry officer or the employer was not a plausible view at all on the basis of materials which were produced before the enquiry officer. The learned Tribunal has not recorded that non-production of transit challan was fatal to the enquiry proceedings and the charge could not have been proved without production of the transit challan. In view of the aforesaid judgements , the law is well settled that the decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on ipse dixit. Its jurisdiction under Section 11-A of the 1947 Act although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinise or analyse the evidence but what is important is how it does so.

35. This Court is of the considered view that the learned Tribunal has exceeded its jurisdiction while interfering with the order of dismissal passed by the petitioner management with respect to all the three workmen and accordingly the common impugned award with respect to all the three workmen calls for interference. The learned Tribunal has exceeded its

jurisdiction while setting aside the orders of dismissal passed by the petitioner management in a proceeding where the enquiry was held to be fair and proper.

36. This Court also finds that the allegation of pilferage having been proved at the stage of enquiry, there was no scope for interference with the order of dismissal after reappreciating the materials selectively i.e. cross examination of the three management witnesses who had deposed before the domestic enquiry and come to a different finding when the finding of the enquiry report was certainly a plausible view based on due appreciation of the materials on record after full compliance of the principles of natural justice and fair play on which the employer had acted while dismissing the concerned workmen. Further, the order of dismissal cannot be said to be disproportionate to the charges proved against the concerned workmen. Consequently, the impugned award is hereby set-aside.

37. These writ petitions are accordingly allowed.

38. Pending I.A., if any, is closed.

39. Let a copy of this order be communicated to the court concerned through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Mukul