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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 29197 OF 2014 (L-TER)

BETWEEN:

M/s TTK HEALTHCARE LTD
2B,HOSAKOTE INDUSTRIAL AREA,
HOSAKOTE-562 114
REPRESENTED BY ITS GM-OPERATIONS
SRI N BASKAR

...PETITIONER

(BY SRI. SOMASHEKAR, ADVOCATE FOR
S.N.MURTHY ASSOCIATES)

AND:

SRI P V RAVI

... RESPONDENT

(BY Ms. AVANI CHOKSHI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND OR ANY OTHER APPROPRIATE WRIT, ORDER AND QUASH THE IMPUGNED AWARD DATED 28.02.2014 PASSED IN I.D. NO.18/2012 BY THE PRL. LABOUR COURT, BANGALORE AT ANNEXURE-J AND PASS SUCH OTHER

ORDER OR ORDERS AS DEEMED FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 24.02.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this court seeking for the following relief:

> *"The petitioner humbly prays that this Hon'ble Court may be pleased to issue a writ in the nature of certiorari and or any other appropriate writ, order and quash the impugned Award dated 28.02.2014 passed in I.D. No.18/2012 by the Prl. Labour Court, Bangalore at Annexure-J and pass such other order or orders as deemed fit in the facts and circumstances of the case."*

2. The employer is engaged in the manufacture of ready to fry products and established a factory with around 60 workmen. The machinery installed are automatic requiring less manual operation and as such, the workmen are fully trained to operate the machines. The respondent was working as an Operator in the petitioner factory on G700 Gelatinizer mixing machine with the aid of a helper by name Annayachari.B.C.

3. On 10.9.2011, it is alleged that the respondent-workman tied a thin wire to the limit switch and allowed the contract worker N.Devaraj to clean the mixing machine. The contract worker while cleaning, touched the knob which started the machine and caused the accident resulting in instantaneous death of the contract worker.

4. It is alleged that if the thin wire was not tied to the limit switch, the accident itself would not have happened since the safety switch would not have allowed the machine to start. It is on this basis, a charge memo came to be issued on 22.09.2011, to both the respondent and Annayachari. The respondent workman submitted his reply and explanation, finding the same not satisfactory the Enquiry Officer was appointed.

5. The Enquiry Officer submitted a report and findings on 5.1.2012 holding the respondent guilty of the charges. A second show cause notice enclosing the report and finding of the Enquiry Officer was issued

to the respondent, the reply thereto being not satisfactory, the Disciplinary authority terminated the services of the respondent by order dt. 10.03.2012 and paid an amount of Rs.3,367/- towards other dues and Rs.1,92,733/- as gratuity which has been collected by the workman.

6. The workman raised a dispute before the Prl. Labour Court registered as I.D.No.18/2012. The labour court held the domestic enquiry to be fair and proper vide order dated 5.10.2013 and vide award dated 28.02.2014 held the findings of the enquiry officer as perverse and set-aside the termination order directing the petitioner to reinstate the respondent-workman in his original post with 50% backwages, continuity of service and all consequential benefits. It is aggrieved by the said award, the petitioner is before this Court seeking for the aforesaid reliefs.

7. Sri.Somashekhar, learned counsel for the petitioner would submit that,

7.1. Once the domestic enquiry is held to be fair and proper, the question of labour Court thereafter holding the contents of the enquiry report to be perverse would not at all arise. In this regard, he relies upon the decision **Choian Roadways -v- Sri.g.Thirugnanasambandam**[1], more appropriately paras 21 and 22 thereof, which is reproduced hereunder for easy reference:

> ***21.*** *Res ipsa loquitur is a well-known principle which is applicable in the instant case. Once the said doctrine is found to be applicable the burden of proof would shift on the delinquent. As noticed hereinabove, the enquiry officer has categorically rejected the defence of the respondent that the bus was being driven at a slow speed.*
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> ***22.*** *In Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd. [(1977) 2 SCC 745 : AIR 1977 SC 1735] this Court observed: (SCC pp. 750-51, para 6)*
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> *"6. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident*

[1] (2005) 3 SCC 241

but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident 'speaks for itself' or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence."

7.2. Relying on the above, he submits that principle of *Res Ipsa* Loquitor would apply inasmuch as the incident speaks for itself and the fact that the incident has occurred and a person has died establiishes the negligence on part of the workman and consequently justifies the action taken by the employer. Though the workman has sought to contend that it is under the instructions of the employer that a wire has been tied to the limit switch, there is no document produced to establish the same nor is there any oral evidence led by any witness in support of the same. In such a background,

the mere contention of the workman ought not to have believed by the labour court.

7.3. It is the workman who has resorted to tying the limit switch with a wire which was his own doing for which the employer cannot be held to be at fault. There is no dispute as regards the limit switch (safety switch) being tied by a thin wire, there is no dispute as regards the respondent-workman being incharge of and operating the machine. There is also an admission made by the workman that the thin wire was tied, the only defence sought to put across is that the wire was tied as per the instructions of the Management. This evidence on record ought to have been taken into consideration by the labour Court, not doing so, is contrary to the decision in the case of **KSRTC –v- A.T.MANE[2],** more particularly para 9 and

[2] (2005)3 SCC 254

10 thereof which are reproduced hereunder for easy reference:

> ***9.*** *From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] is not a condition precedent. We may herein note that the judgment of this Court in Rattan Singh [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] has since been followed by this Court in Devendra Swamy v. Karnataka SRTC [(2002) 9 SCC 644 : 2002 SCC (L&S) 1093] .*
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> ***10.*** *Since the only ground on which the finding of the domestic tribunal has been set aside being the ground that the passengers concerned are not examined or their statements were not recorded, in spite of there being other material to establish the misconduct of the respondent, we are of the opinion, the courts below have erred in allowing the claim of the respondent. In our opinion, the ratio laid down in the above case of Rattan Singh [(1977) 2 SCC 491 : 1977 SCC (L&S) 298] applies squarely to the facts of this case.*

7.4. Relying on the above, learned counsel submits that the labour Court on the earlier occasion

having come to a conclusion that the domestic enquiry was fair and proper could not have while coming to a conclusion that the enquiry was not fair and proper.

7.5. The labour court has wrongly come to a conclusion that the death was due to an accident and not due to negligence. The accident would not have occurred if thin wire was not tied to the limit switch and furthermore, if the workman had not allowed the deceased to go into the machine room for the purpose of cleaning. The labour court has not taken into account the fact that if the doors of the machine had been opened, the machine would have stopped which could have saved the life of the deceased.

7.6. When this evidence has not been taken into consideration by the labour Court, the labour Court could not have come to the conclusion

that the report of the enquiry officer is perverse, bad in law and not sustainable. It was the duty on part of the workman not to allow anyone near the machine, which duty is that of a machine operator. The said duty not having been discharged, the death has occurred and in view thereof, the management has rightly terminated the services of the said workman.

7.7. In the above ground, he submits that the order passed by the labour Court is required to be set-aside the order passed by the domestic enquiry be confirmed.

8. Ms.Avani Choksi, learned counsel for the respondent-workman would submit that,

8.1. The workman has been working with the employer for the last 27 years, during all this time there has been no complaint against him or action taken against him. The workman was not near the machine, when the incident

occurred, he was near the panel board since the shift was going to be completed. It is at that time after hearing the loud noise that he went near the machine when he saw the contract labour got caught in the machine.

8.2. She submits that though initially charge sheet was submitted against both the respondent and Annayachari and a joint enquiry was held, the Enquiry Officer has submitted a report that it is only the respondent-workman against whom charges are proved and not against Annayachari.

8.3. There is no legal or probable evidence on record which would support the claim of the employer that the respondent-workman has been negligent and or responsible for the accident.

8.4. The labour Court has rightly come to a conclusion that serious charges against the respondent-workman has not been established

and it is for this reason that the labour Court has come to a conclusion that the report of the Enquiry Officer is perverse and bad in law.

8.5. Though the workman could have filed a petition challenging the award passed by the labour Court, they have not done. If the workmen had so filed a petition, she submits that the entire back wages would have to be paid to the petitioner since the Labour Court has categorically come to the conclusion that the death is due to an accident.

8.6. Based on the above, she submits that the petition is required to be dismissed. She relies upon the following Judgments:

8.7. **Laxmi Devi Sugar Mills -v- Nand Kishore Singh[3],** more particularly para No.18 thereof, which is reproduced hereunder for easy reference:

[3] AIR 1957 SC 7

> ***18.*** *The charge-sheet which was furnished by the appellant to the respondent formed the basis of the enquiry which was held by the General Manager and the appellant could not be allowed to justify its action on any other grounds than those contained in the charge-sheet. The respondent not having been charged with the acts of insubordination which would have really justified the appellant in dismissing him from its employ, the appellant could not take advantage of the same even though these acts could be brought home to him. We have, therefore, come to the conclusion that the order made by the Labour Appellate Tribunal was correct even though we have done so on grounds other than those which commended themselves to it.*

8.8. Relying on the above, she submits that the charges against the workman being that he has been negligent in carrying out his duties, the disciplinary authority could not have considered any other aspect other than that.

8.9. **Jugal Kishore Haldar -v- Dy. Chief Commercial Supdt.[4],** more particularly para No.9 thereof, which is reproduced hereunder for easy reference:

> ***9.*** *The other argument advanced by Mr. Bhattacharyya is, however, of substance. The petitioner was charged with misconduct viz., that he accepted a sum of Rs. 40]- from Biseswar Das as*

[4] [MANU/WB/0404/1965]

illegal gratification by holding out that he would manage to get the arrears of T.A. bills of Biseswar Das passed expeditiously. The petitioner was not charged with taking illegal gratification from anybody else on any other pretext. The Enquiry Committee found that the charge of accepting illegal gratification for the purpose of helping Biseswar Das in passing his T.A. bills was not established. The Enquiry Committee, therefore, generally found the petitioner guilty of having accepted illegal gratification of Rs. 40/- from Shri B. Das on November 1, 1961, in the sweetmeat shop of M/s. B.B. Nag and G.C. Dutta. In my opinion this sort of finding cannot be sustained. The petitioner came to meet a charge that he accepted illegal gratification from Biseswar Das on a definite pretext. He was not asked to show cause against acceptance of illegal gratification from Biseswar Das on any other pretext. Since the Enquiry Committee was not satisfied about the pretext, as stated in the charge sheet, it could not find the petitioner guilty of accepting illegal gratification on any other pretext, although it did not go to the length of stating what the other pretext was. To charge a man with a definite misconduct, to ask him to show cause against that definite misconduct and thereafter to find him guilty of another misconduct, which the delinquent was not called upon to explain, is certainly violative of the principles of natural justice. I am therefore unable to sustain the finding of the Enquiry Committee and also the notice served upon the petitioner to show cause why he should not be penalised for a misconduct with which he had not been charged and which he had no opportunity to meet.

8.10. **State of Assam -v- Mohan Chandra Kalita**[5], more particularly para No.11 thereof, which is reproduced hereunder for easy reference:

> ***11.*** *As we said earlier, there was no charge against the respondent that he had not paid the full amounts to those entitled to compensation or that he had authorised anyone to collect any fee. This enquiry into extraneous allegations with which the respondent was not charged must have certainly prejudiced the enquiry officer against the respondent. Even if we were to ignore this aspect, there is no evidence to connect the respondent with the allegation that he had authorised the collection of gari bhara much less can it be said, as averred in the charge, that he realised from those persons to whom compensation was being paid, certain percentage of compensation money due to them for payment of hire charges of the vehicle in which he had visited the office of the Mauzadar from Dhekiajuli.*

8.11. Relying on the **Jugal Kishore Haldar case** and **Mohan Chandra Kalita's case,** she submits that charges having been levied against two workman, one of them could not have been exonerated and the proceedings continued against the other.

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[5] AIR 1972 SC 2535

8.12. **Rajindra Kumar Kindra -v- Delhi Administration[6],** more particularly para No.17 to 20 thereof, which are reproduced hereunder for easy reference:

> ***17.*** *It is equally well settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The Industrial Tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence.*
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> ***18.*** *Between appraisal of evidence and total lack of evidence there is an appreciable difference which could never be lost sight of and the High Court ought not to have short-circuited the writ petition.*

[6] AIR 1984 SC 1805

> ***19.*** *If there is absolutely no evidence in support of the only allegation of misconduct namely negligence in not keeping one's private cheque-book in safe custody, the conclusion is not only not a plausible one but it is wholly perverse and we are in complete agreement with findings recorded by Mr G.C. Jain that the findings of enquiry officer were perverse and the enquiry was wholly vitiated.*
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> ***20.*** *Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non-application of mind the only course open to us is to set it aside and consequently relief of reinstatement must be granted and nothing was pointed to us why we should not grant the same.*

8.13. **Anil Kumar -v- Presiding Officer[7],** more particularly para No.5 thereof, which are reproduced hereunder for easy reference:

> ***5.*** *We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the enquiry officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the enquiry officer has a duty to act judicially. The enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit*

[7] AIR 1985 SC 1121

that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not creditworthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India [AIR 1966 SC 671 : (1966) 1 SCR 466 : (1966) 1 SCJ 204] this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad Santosh Kumar v. State of U.P. [AIR 1966 SC 671 : (1971) 1 SCR 201] this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a more gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

8.14. Relying on **Rajindra Kumar Kindra case** and **Anil Kumar case,** she submits that once the Tribunal has come to a conclusion that the enquiry was not fair and proper, the only option available for the labour Court was to set-aside the punishment imposed which is what has been done and as such, cannot be found fault that.

8.15. **Director General of Police -v- G.Dasayan[8],** more particularly para No. 8, 10 and 11 thereof, which are reproduced hereunder for easy reference:

> ***8.*** *On the second ground that the Superintendent of Police, Tirunelveli District, was not the competent authority, the learned counsel for the appellants submitted that the Tribunal was not right in assuming that the transfer was for administrative purpose and during the pendency of enquiry as the Police Standing Orders enabled the transfer of Constable of one district to another district. The relevant PSO was produced which reads that a Police Constable is liable to serve anywhere in the State. The order of transfer from Kanyakumari District to Tirunelveli District at the relevant time was not challenged. Therefore, this ground of the Tribunal in setting aside the order of dismissal*

[8] (1998)2 SCC 407

cannot also be supported. The third ground that the co-delinquents except the Head Constable were let off though the charges were identical, it is stated by the learned counsel for the appellants that the Disciplinary Authority did not agree with the findings of the Enquiry Officer so far as those two delinquents were concerned. However, the Head Constable, who was also charged along with the respondent, was compulsorily retired by the Disciplinary Authority.

10. *We have perused the order of the Tribunal and the relevant documents. We find merit in the arguments of the learned counsel for the appellants. At the same time, we are of the view that as pointed out by the learned counsel for the respondent that a punishment of compulsory retirement in the case of the respondent as well would meet the ends of justice on the facts and circumstances of this case.*

11. *Accordingly, we set aside the order of the Tribunal and in the place of order of dismissal passed by the Disciplinary Authority, the order of compulsory retirement is substituted. The appeal will stand disposed of accordingly with no order as to costs.*

8.16. Relying on the above, she submits that the labour Court had the power to modify the order of punishment which is what has been done which cannot be found fault with by the employee.

8.17. **State of Mysore -v- K.Manche Gowda**[9], more particularly para No. 7 thereof, which is reproduced hereunder for easy reference:

> ***7.*** *Under Article 311(2) of the Constitution, as interpreted by this Court, a government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the government servant must be told of the grounds on which it is proposed to take such action : see the decision of this Court in the State of Assam v. Bimal Kumar Pandit [Civil Appeal No. 882 of 1962 decided on 12-2-1963] . If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment : he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the government servant. It would be no answer to suggest that every government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or*

[9] AIR 1964 SC 506

that he knew of his past record. This contention misses the real point, namely, that what the government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show-cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

8.18. Relying on the above, she submits that whenever Articles of Charge is issued to a workman, an enquiry has to be limited to the same. If the Articles of Charge indicate that two persons are responsible, that means there should have been a proceedings initiated against both of them. If proceedings were dropped against one of them, the proceeding against the other is also required to be dropped.

8.19. **G.M.Tank -v- State of Gujarat[10],** more particularly para No.30 and 31 thereof, which are reproduced hereunder for easy reference:

> ***30.*** *The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material*

[10] (2006)5 SCC 446

collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. *In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of*

> *the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC (L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.*

9. Heard Sri.Somashekar, learned counsel for the petitioner and Ms.Avani Chokshi, learned counsel for the respondent. Perused papers.

10. The points that would arise for consideration are:

i. Whether once a domestic enquiry is held to be fair and proper, whether the labour Court thereafter while taking up the matter on merits set-aside the order and decide the case on merits?

ii. Whether the defence of the workman that a thin wire was tied to the limit switch (safety switch) on the instructions of the employer without there being anything on record could have been accepted by the labour Court?

iii. What order?

11. I answer the above points as under:

12. **<u>ANSWER TO POINT No.1</u>: Whether once a domestic enquiry is held to be fair and proper, whether the labour Court thereafter while taking up the matter on merits set-aside the order and decide the case on merits?**

12.1. Whenever any matter comes up before the labour Court either on a reference by the Government order or on a claim petition filed by the workman challenging the punishment which has been imposed by the employer, the first question that is required to be framed and answered by the labour adjudicator is as regards whether the enquiry proceedings has been fair and proper. It is only when a finding is arrived at that the enquiry is fair and proper that the matter may be taken up on merits in relation to the offence alleged and the punishment awarded.

12.2. Whenever a finding on the preliminary question is in the negative, in such event the employer is required to be provided with an opportunity to establish the offence alleged against the workman and in that regard, the employer would get another opportunity to establish the

charges against the workman. Needless to say that the workman would be entitled to cross-examine any witness who deposed on behalf of the employer. It is only thereafter that the labour adjudicator could decide on the aspect of the charges being established or not. This being so, in order to provide an opportunity to the employer to establish the allegation.

12.3. In the present case, the labour Court initially had come to a conclusion vide its order dated 5.10.2013 that the domestic enquiry was fair and proper, however, while passing the final award on 28.02.2014 the labour Court came to a conclusion that the enquiry was perverse and set-aside the termination order directing the reinstatement of the workman by the employer with 50% back wages, continuity of service and all consequential benefits.

12.4. In my considered opinion it is not open for the labour Court to change its position as regards

the fairness or otherwise of the enquiry at the time when the final award passed in the event of the labour court intending to change the finding insofar as the enquiry being fair and proper is concerned, then the labour Court would have to provide an opportunity to the employer to lead evidence to establish the charges alleged against the workman. In the present case, that has not been done. The labour Court having on 5.10.2013 come to a conclusion that the enquiry was fair and proper, in the final award dated 28.02.2014 it held the findings of the enquiry officer to be perverse, thereby meaning that the enquiry was not fair and proper though the words used is that the finding of the enquiry officer is perverse, it is one and the same, the result being one and same.

12.5. The decision relied upon by Ms.Avani Choksi in order to prove that the enquiry is not fair and proper viz., in the cases of **Nand Kishore**

Singh, Jugal Kishore Haldar, Mohan Chandra Kalita, Rajendra Kumar Kindra, Anil Kumar, G.Dasayan, K.Manche Gowda and G.M.Tank, referred to supra, are all decisions which ought to have been considered by the labour Court at the time of giving a decision on the preliminary issue. Be that as it may, even at the later stage of the award even by applying the aforesaid decisions, the labour Court had come to a conclusion that enquiry is not fair and proper, opportunity was required to be granted to the employer to establish the Articles of Charge which has not been done.

13. ANSWER TO POINT NO.2: **Whether the defence of the workman that a thin wire was tied to the limit switch (safety switch) on the instructions of the employer without there being anything on record could have been accepted by the labour Court?**

13.1. Though this question is rendered academic, in view of the finding above, since the issue has been raised, the same is being answered.

13.2. The contention of the workman is that a wire had been tied to the limit switch (safety switch) at the instructions of the employer. Except this oral assertion no other document or instructions was placed on record. This aspect has been considered by the labour Court at the time of the final award to also to come to a conclusion that the enquiry was not fair and proper. There is no opportunity provided to the employer to place its say on record. Hence, the finding which has been arrived at by the labour Court without an opportunity being provided to the employer, in my considered opinion is not sustainable.

14. **ANSWER TO POINT NO.3: What order?**

14.1. In view of the finding as regards the above, I pass the following:

ORDER

i. The writ petition is allowed.

ii. The award dated 28.02.2014 passed by the Prl. Labour Court, Bangalore, in I.D. No.18/22 at Annexure-J is set-aside.

iii. The matter is remanded to Prl. Labour Court, Bangalore, for fresh disposal by providing an opportunity to the employer to lead evidence to establish the charges against the workman.

iv. Considering that the matter is of the year 2012, the labour Court is directed to dispose of the matter as early as possible within a period one year.

v. The submission of the counsel for the petitioner and the respondent that they will cooperate with the labour Court for expeditious disposal and they would not take any unnecessary adjournment is placed on record.

Sd/-
JUDGE

LN
List No.: 1 Sl No.: 120