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Editorial

GRIEVANCE REDRESSAL MACHINERY

The euphoria for creating a labour friendly atmosphere for the investors from the multi-national companies is assuming a great importance amongst the policy makers of our country. One of the major attempts have been consolidation of the existing labour laws under 4 codes with the campaign that there are more than 44 labour laws and it needs to be comprehensively codified and placed in the form of 4 codes so that there is no need for an exhaustive study of all the laws and the codification will help the workers to look into the laws affecting them within the limited number of labour codes.

The country was pursuing the policy of the welfare of the citizens above all the other considerations. Hence, there were a series of labour laws enacted since the independence to take care of the social security of the working class. The important security that the workers needed, the moment the country became independent was to ensure that their jobs are protected, they are able to get a reasonable wages, they are provided with the minimum medical requirement, the safety and welfare of the workers inside factory as well in the campus of the industries etc., In order to meet these limited objectives, the Centre has brought in several legislative pieces ensuring that the minimum welfare facilities are made available to the workers in the country.

The working class to-day are now divided into organized and unorganized sector. More than 93 percent of the working population comes under the unorganized sector and they are illiterate as regards their social status and rights amongst the workforce in the country.The remaining 7 percent of the workforce have a well knit trade unions and are still capable of striking work in order to force the management to concede their demands and meet all the parameters of the labour laws in extending the benefits available under various laws.The unorganized sector which is depenendent on the unions at the national as well as state level which are basically extended arms of the political parties and are expected to carry out their political agenda rather concentrating on their well being alone. As they enjoy a lot of clout through their political affiliation, it is the fond hope of the workers belonging to these unions that their grievances would be taken up by their trade unions through their political parties at the Centre as well as States and their interests are protected. Unfortunately, these unions are making use of the huge membership in the unorganized sector to carry forward their political philosophy and agenda rather looking into their grievances as expected by the workforce in the country.

The organised sector has a well laid machinery through the union net work to attend to their compensation system, the welfare facilities as well as the grievances arising out of the working/ conditions/regulations etc., These regulations are guided by the model standing orders approved by the Labour departments which takes care of the regulatory mechanism in the proper implementation of the labour laws in the factorories and as well workfields etc.,The State has also its own redressal machinery through the labour departments to attend to the litigations arising out of the malimplementation or violation of labour laws for the organised sector – the Labour officers will be performing the judicial role as well as in attending to the grievances of the workers. The workers have a right to approach the High Courts and above only after exhausting the labour courts available for them. The exhorbitant costs involved in the litigation in High Courts and Supreme Courts prevents the workers go go beyond the Labour courts when they feel that they are able to get justice from the Labour Courts. Further, the workers are discouraged due to the huge backlog that are now piling in the High Courts and Supreme Courts and the delay that would cause in getting the cases decided is yet another impediment in seeking justice in the High Court and Supreme Court.

With the passage of time since the introduction of so called reforms in the economic and industrial policies of the Government, these labour courts have become redundant as the State Governments have totally reduced the workforce and are influenced by the industrialists in their respective States and the Central Government has also systematically destroyed the protective umbrella that was available to the working class through the Labour courts under the Labour department in each of the States. The workers have to resort to litigations only in the court of law and a very few are capable of tapping the doors of the High Courts and Supreme Courts.

The employees working in the Central, State and various State sponsored institutions both automonomous as well funded institutions by the Centre as well as the State for whom the Government has provided an exclusive forum in the form of Administrative Tribunals both at the Centre and as well as the State level. These courts sits regularly and hears the cases pertaining to the employees working in these organisations and are headed by the High Court Judges who are equally empowered to deliver justice to the employees working in all those institutions. Thus, the Central Administrative Tribunal and the State Administrative Tribunals are able to provide justice to the workers in the Government as well as the semi-government institutions speedy justice. These Courts have been playing a very dominant role in dealing with the service matters of both State government as well as the Central Government servants.

At the time of creation of legislative machinery by the Centre Government in the form of Administrative Tribunals, the Centre retained the power of deciding the jurisdiction of these Administrative Tribunals restricting largely for the benefit of the Government servants and other automonomous bodies both under the Centre and the State. In fact, the demand for creation Banking Administrative Tribunal was not conceded by the Government so far. The Government has power to create Administrative tribunals from time to time for taking care of the grievances of the workers in the country. The workers in general to-day are not provided this benefit of an independent administrative tribunals at the gross root level.The decisions of the Administrative tribunals are binding on the authorities concerned and it can be challenged only in the High Courts and hence most of the times, the cases decided by the Administrative tribunals are not challenged by the Government authorities/institutions. Thus, the speedy justice is ensured to all those who come under the jurisdiction of the Administrative tribunals.

In the backdrop of the Labour Courts becoming redundant, a large number of workers grievances go unattended and they suffer in silence the injustice meted out to them by the capitalists/ industrialists in the country. The Government

being pro-industrialists and in their anxiety to take care of the so called foreign investments and provide labour free atmosphere is allergic to the grievances of the working class in the country. The failure of the Government for creation of the additional jobs, the loss of existing jobs, the hire and fire policy unchecked, has compounded the agony of the working class in the country. The reckless hire and fire, the large scale retrenchment without adequate compensation, the closure of units in the name of technology innovation etc., have created a tremendous pressure amongst middle aged workers and employees who are undergoing tremendous mental strain and agony all over the country. There is a need for independent labour grievances redressal machinery on the lines of the Administrative Tribunals in the country. The trade unions have a greater role to demand for the setting of a separate machinery to handle all the labour related cases in the courts and to ensure speedy justice to the wronged workers in the country. This is a great labour reform as for as the trade unions in the country are concerned.■

Articles

JOBS THREATENED

The year began with a bad note of serving pink slip to hundreds of employees as a new year gift in the Oyes Hotel Group who had publicly declared that they are retrenching about 1000 employees in view of certain restructuring of their hospitality group and also the advantage they are deriving from the digital technology thereby rendering a huge workforce as redundant in their organisation. The exercise was in tune with the changes that are taking place in the hospitality industry and also overwhelming encouragement given by all concerned to the digital technology to reduce the cost of establishment. Their chief executive has addressed a communication to all those employees who were served with pink slip that they should look for better avenue outside and the organisation wishes them a better opportunity elsewhere.

Yet another organisation which openly pronounced the retrenchment of the middle and senior level employees in a moderate scale not as that of Oyes Hotel Group was flipkart in view of certain changes they are proposing in the organisational structure and also reduce the cost of establishment.

These two initiatives were so blatant and shameless one with no regard to their own employees who will be thrown out will be in the street. The employment market is so highly competitive that it is very difficult for the aged middle level managers to secure alternative employment with the same, if not more emolument elsewhere. These are the trends that is now prevailing all over the country. The attrition rate is high as pronounced by each and every IT and BT companies giving an impression that the employees themselves are quitting the jobs for some or the other reason, always claiming for better opportunities elsewhere. There is no mechanism to check whether the attrition rate so declared was due to voluntary intention to quit the job or threatened retrenchment by the industries concerned in the country. The Labour Departments in the States have become totally insensitive to the grievances of the employees in the various industries. The modified or comprehensive codified laws which are being pushed in the Parliament does not provide for regulating these mishaps in the industries in particular the IT and BT companies. The merger of more than 44 labor laws into 4 codes as propagated by the Government at the Centre does not spell out the protection that is going to be guaranteed to the workforce from the undeclared " Hire and Fire" policies adopted by the various industries in the country.

The Jobs creation no doubt is a big challenge in the country. But more so it is the job losses in the existing enterprises is a greater challenge which goes unchecked by the State and Central Government and on many occasions is ignored when it comes to their notice as well. The large scale job losses in the Aviation industry is a classical example of the reforms in the recent past in our economy. The next one is the financial sector – thanks to the organised unions, the Banking Institutions had to bring exit scheme

which ensured adequate financial benefits to those who desired to leave the organisation. The Banks were not allowed to use the present format of pink slip a sophisticated word for the "Hire and Fire" The telecom has lost a huge number of jobs. The major industries which were expected to generate new jobs such as Railways, the State and the Central Governments, the Public Sector Units, the IT and BT have failed to discharge their duties and have adopted methods to outsource a major chunk of their functioning thereby creating unfair labour practices of not providing a fair and reasonable compensation to them. There is no statute to govern the contract labourers and the temporary workers who are in abundant number in the service, instrastructure, health and hospitality services etc., who are exploited day in and day out by several institutions denying their legitimate compensation which includes the social security benefit as well.

It is a memorable occasion for all of us in the Trade Unions belonging to the Banking Sector – that one of the major issue slated in the present strike notice is that the Equal Wages for equal work for contract employees/Business Correspondents – it is a good beginning and let us participate in the responsibility of providing support to the unorganised sector through our organised platform and take up their legitimate cause for ensuring a fair compensation system and to oppose exploitation of these category of workers from exploitation by the Managements as well as the Government authorities.■

THE REAL UNEMPLOYMENT CHALLENGE

On December 31, 2019, CMIE completed the 18th Wave of the Consumer Pyramids Household Survey. This included the 12th Wave of questions related to employment and unemployment. This survey was executed over a period of four months from September through December 2019 on a sample of 174,405 households. In the paras below, we discuss population estimates of the unemployment rate during this period.

The unemployment rate rose to 7.5 per cent during September-December 2019. This was the seventh consecutive Wave to record an increase in the unemployment rate since May-August 2017 when the unemployment rate was 3.8 per cent.

As usual, the unemployment rate in rural India was lower at 6.8 per cent than it was in urban India, which scaled up to 9 per cent.

Rural India has a large, 66 per cent share in the overall estimate of India's unemployment rate. Rural India has a low unemployment rate and this has a big impact on lowering India's overall unemployment rate. But, rural employment is of poor quality. And grown ups, those over 30 years of age, have a similarly large 66 per cent share in the total population that is over 15 years of age. After the age of 30, people take whatever job is available and so the unemployment rate among people of more than 30 years of age falls very sharply. But, these have a high share in the total unemployment estimate for the country.

What matters most is the unemployment rate in the urban youth and in particular, the urban educated youth.

The unemployment rate is very high among the youth. It is 45 per cent for those between 15 and 19 years of age. But, arguably, this is not the age at which youngsters should be looking for jobs. Ideally, they should be still studying at this age. However, if, for any reason, they do look for jobs, it is evident that they find it very difficult to find one.

Employment prospects for youngsters between 20 and 24 years of age who are looking for jobs are not much better. The unemployment rate for these has more than doubled from 17 per cent in May-August 2017 to 37 per cent in September-December 2019. Similarly, it has risen from 8 per cent in May-August 2017 to 11 per cent for youngsters between 25 and 29 years of age. It is this high and growing unemployment among the youth of the country that is very worrisome. The situation gets worse in the cities.

An urban youngster in his early twenties had a discouragingly high unemployment rate of 44 per

cent during September-December 2019. It was never so difficult in the past. A wait till these urbanites reached their late twenties improved the unemployment rate they face to 14.8 per cent. But, even this is the worst experience of this age-group. The unemployment rate drops dramatically from the age of 30. It falls to 2.5 per cent for the age group 30-34 years and then it falls to close to 1 per cent and then less than 1 per cent. The problem, evidently is severe for the youth who are looking for jobs. The sudden sharp fall in unemployment after 30 years of age implies that beyond a point in age, people settle for whatever jobs become available. A wait for a job cannot be infinite.

Matters get worse for the educated youth. The educated young report a much higher unemployment rate. This indicates that the educated are looking for better quality jobs but are unable to find them.

While youngsters in the age group of 20-24 years reported an unemployment rate of 37 per cent, graduates among them reported a much higher unemployment rate of over 60 per cent. 2019 was the worst year for these young graduates. The average unemployment rate for them during 2019 was 63.4 per cent. This is much higher than the unemployment rate they faced in any of the preceding three years. The unemployment rate they faced in 2016 was 47.1 per cent. In 2017 it was 42 per cent and in 2018 it was 55.1 per cent. 2019, therefore saw a very severe worsening of conditions for the young graduates.

Similarly, while the age group 25-29 years reported an unemployment rate of 11 per cent, graduates in this age group faced an unemployment rate of 23.4 per cent. They too found 2019 to be the worst of the past four years with an average unemployment rate of 23.7 per cent. The rate in 2016, 2017 and 2018 were 21.3 per cent, 18.3 per cent and 20.5 per cent, respectively.

The unemployment rate for post-graduates is also similarly high but it has not deteriorated since 2016, when it was 24.6 per cent. In 2017 it rose to 25.4 per cent, then fell to 22.3 per cent and rose again to 23 per cent in 2019.

An overall unemployment rate of around 7.5 per cent does not reflect the real challenges faced by India. Graduates between 20 and 29 years of age, face a much higher unemployment rate of 42.8 per cent. This is India's real challenge. An equally important challenge is that graduates of all ages put together also have a very high unemployment rate of 18.5 per cent.■

The author is managing director & CEO, CMIE.
Mahesh Vyas
Source:: Business Standard 21.01.2020

YEAR OF GIG WORKERS

It's widely known as the "Uberification" of work. And various studies and surveys suggest that as much as 60 per cent of millenials are interested to work as gig workers who are more keen on flexibility and a better work-life balance. The changing business models of many companies also suggest that a growing number of people will be hired on an asneeded basis.

So it is certain that the buzz around the gig economy is set to grow louder in the new year. But companies will be wrong to assume that only drivers or delivery boys or hotel roles such as bar staff will be part of the gig economy. Technology work such as software testing or web design, or legal work and auditing activities have already become part of the new ecosystem and will gain traction. The new year could also see more specialized jobs coming in as organisations choose to hire contingent workers to fill a skill requirement that is not typically available in the permanent workforce.

So how are companies gearing up for this new environment? Are employers ready to handle the challenges of the inevitable shift in labour models? Very few would be the answer to both the questions. This is surprising as most companies and their HR professionals already know (unless they have cut themselves off from the real world) that a significant portion of their workforce would soon be made up of contractors and temporary

workers, and that the gig economy presents advantages to both employers presents advantages to both employers (cost savings) and employees (flexibility and freedom).

According to a PwC report, The future of work, only about half the companies provide training to casual workers and a mere third offer them performance appraisals. And despite worries over such workers' lack of engagement less than half the employers bothered to include them in internal communications or considered them for recognition awards.

That's probably because most companies are not confident about the commitment levels and quality delivered by the outsiders. Also they are not sure about how and from where to source this talent. After all, many of the talented independent professionals often have client waitlists, spanning over several months. So the idea should be to build a gig-friendly branding so that such people want to work with you.

There is economic logic, too. Gallup's data finds that 21 per cent higher profitability comes from selecting the top 20 per cent of candidates based on a scientific assessment, and temporary talent is as important to the work as full-time talent.

One of the problem is that most companies are still stuck in fixed half-yearly or annual performance reviews. But with people coming in for shorterterm opportunities, annual reviews may no longer be relevant, and the need is to move to more outcome-based objectives associated with specific tasks or deliverables. The feedback has to be fast as even temporary workers, especially those with higher skills, want to know whether their work has been to the satisfaction of their clients. So the leadership culture must shift to more collaboration and partnership.

The other aspect is to address the concerns of full-time workers who should not feel threatened by the induction of freelance professionals. The immediate response from the full-time employee would be resistance. So the need is to educate existing employees about the transformation-that the outsider is not coming in to replace him.

This is important as in a blended workforce, there could be teams of permanent and freelance workers in different places working on the same projects. To ensure that they work seamlessly, there must be systems to ensure that each worker is connected to each other, with visibility of work documents and timelines. While full cultural integration between the two types of staffers may prove too idyllic at times to be credible, efforts have to be made to engage them as much as possible.

The short point is that 2020 could be the year of the gig workers. For companies, it makes ample sense to adopt the new staffing module, as according to Mercer, the gig model offers more flexibility, reduced fixed costs, and the capacity to react much faster to market changes. It is also an opportunity to tap into a new international talent pool and access expertise on demand. Tomorrow's winners would be companies who would have a robust on-boarding system in place for gig workers.■

Business Standard 27-12-2019

MORE EVIDENCE CAN BE ALLOWED IN APPEAL

Typically, all the evidence has to be laid before the court when the case is initially filed and tried. In an appeal, the appellate court usually evaluates whether the lower court has appreciated the evidence properly or not and whether the law has been interpreted correctly. As a rule, additional evidence is not permitted to be produced in appeal. The question whether it could be allowed in certain circumstances was examined recently.

Advocate Shekhar Prabhavalkar contended that it would not be desirable to take a procedurally technical view, which would deprive a party from producing evidence in its favour. Consumer fora are required to observe the principles of natural justice and are not bound to follow the strict rules of the Civil Procedure Code. Hs stated that when a party satisfactorily explains why he could not produce the evidence earlier, he should be permitted to file the

additional evidence later. He added that a procedure that comes in the way of rendering justice should be given the go by.

The National commission constituted a unique five-member bench, headed by its President, Justice R.K.Agrawal, a retired Supreme Court judge. The bench observed that even under the Civil Procedure Code, a party was allowed to produce additional evidence at the appellate stage, as ruled by the Supreme Court in Jiten Ajmera versus Tejas Co-operative Housing Society. The only requirement was that the party seeking to file additional evidence in appeal proceedings would have to establish it had exercised due diligence but was still unable to produce the evidence on record. The discretion to allow evidence at a later stage could be used when a party did not know of the existence of some document or evidence, or those documents were subsequently made available. The Commission observed that the principles laid down by the Supreme Court for allowing additional evidence at the appellate stage would also apply to consumer cases as the Consumer Protection Act did prohibit the filing of further evidence during the appeal.

The Commission noted that the documents, which were sought to be produced were a subsequent communication sent by the local authority, giving the reason for refusal to issue the occupancy certificate. Since this document was not available earlier but had a material bearing, the Commission held it was necessary to allow its production.

By its order of January 21, 2020 delivered by Justice R. K. Agrawal, the National Commission clarified that in normal circumstances additional evidence could not be filed in an appeal. Still, in exceptional circumstances, it would be permissible to make a departure from the general rule and allow additional evidence in appeal.■

Jehangir Gai
The writer is a consumer activist
Business Standard 23-01-2020

MINIMUM WAGE HIKES MAY BOOST PRODUCTIVITY

One of the defining features of the global economy in recent years has been a stagnation in productivity growth. Nowhere is the issue bigger than in Japan, where a rapidly ageing population is worsening the challenge of low productivity.

According to new research, one potential solution for the productivity slowdown in Japan and other countries could be to raise the minimum wage.

In a recent article, economist Keisuke Kondo examines the potential effects of a minimum wage hike on productivity in the context of Japan. He suggests that minimum wage changes affect productivity at both the firm-level and economy-level in two different ways. First, a wage hike could make companies more productive by compelling management to implement reforms that boost productivity. The improved productivity among firms could, in turn, boost overall economic productivity.

Alternatively, a minimum wage increase could also affect aggregate productivity in the economy by making it too costly for unproductive firms to operate. The exit of unproductive firms from the economy increases average productivity levels.

If the workers who lose their jobs in the unproductive firms are absorbed by the more productive firms then overall economic welfare could increase. But this may not be the case since more productive firms may not expand production and employ more workers - at least immediately.

He argues that ultimately the effect of a minimum wage increase on productivity will vary across countries and firms. In different countries, the effects of minimum wage changes will depend on firm characteristics and market structure.

Also read: Productivity impacts of minimum wage hikes

Snap Fact features new and interesting reads from the world of research.■

Subhi Bhatia
Source: MINT 22.01.2020

Judicial Verdict

[2019 (163) FLR 594]
(MADHYA PRADESH HIGH COURT)
Smt. NANDITA DUBEY,J.
W.P. No. 19400, 19301, 19300,19212 and 7935 of 2014
February 28, 2019
Between
M.P.ROAD TRANSPORT CORP. and another
And
RAJENDRA TIWARI

Industrial Disputes Act, 1947-Section 10 and 11- Dismissal of respondent/employee-Quashed by Labor Court-Instant petitions against same award-Held, the jurisdiction of the Labor Court in a case where the departmental enquiry was found to be illegal much wider and extends not only to the appreciation of evidence but to record its own findings to its own satisfaction and it may by its award,set aside the order of discharge or dismissal and direct reinstatement of the employee in such terms and conditions as it thinks fit-Employee was neither supplied with the documents nor given opportunity to cross-exmine the witnesses nor given any opportunity to produce his defence – Despite his presence the statements of witnesses were recorded ex parte-No interference warranted-Writ petition dismissed. [Paras 15 to 25]

JUDGMENT

Smt NANDITA DUBEY, J.- Writ Petition Nos.19400/2014, 19301/2014, 19300/2014 and 19212/2014 are filed by the Corporation for setting aside the award dated 11.9.2012 and 24.12.2013 passed by the Labour Court, whereas W.P.No. 7935/2014 is filed by employees Hari Dubey and another for grant of back wages.

2. As all these petitions arise out of the same award, they are analogously heard and decided by a common order. The facts are taken from W.P.No. 19400/2014.

3. The petitioner is aggrieved by the award dated 11.9.2012 and 24.12.2013, whereby the Labour Court has quashed the order of dismissal of the respondent/employee and directed the Management of the petitioner/ Corporation to reinstate the respondent / employee within one month without back wages.

4. Brief facts, which led to filing of the present petition are: the petitioner is Madhya Pradesh Road Transport Corporation. The respondent/employee was working as Booking Clerk at the Sagar Depot of the petitioner/Corporation. He and other employees were transferred from Sagar to Bairagarh Depot vide order dated 2.9.2008. This order of transfer was challenged by way of Writ Petition No. 10829/2008 (s) and the writ Court vide order dated 05.9.2008, stayed the order of transfer and further directed that the respondent shall be permitted to work at the present place of posting Sagar until further orders. On 19.9.2008, the petitioner/ Corporation issued yet another order closing down the Sagar Depot with immediate effect and shifting/transferring/posting all the employees to the Divisional Office, Bhopal. This order was also challenged by the respondent/employee and this Court vide order dated 25.9.2008 stayed the same directing the Corporation to maintain status-quo with regard to the service condition the respondent/ employee.

5. On 25.10.2008, an inspection of Sagar Depot was made by Shri R.K.Sharma and A.K.Saini, Officers of the petitioner/Corporation where respondent and 5 other employees were found unauthorizedly working and collecting commission from the transporters and a sum of ' 33,185/- along with other documents were seized from one Mr. R.M.Tripathi. Pursuant to the inspection report dated 25.10.2008 respondent was served with charge sheet on 31.10.2008 alleging that he was found unauthorizedly working and collecting 2% commission from the bus operators in utter disregard of the relieving order dated 23.9.2008 and without the permission of the competent authority even though the Sagar Depot was closed on 19.9.2008. The 2% amount illegally collected by him was not deposited by him in the account of petitioner/ Corporation but kept with R.M.Tripathi for personal gain with intent to cause financial loss to the petitioner/Corporation. The action of respondent in deliberately disobeying the order of the Superior

Officers and illegal collection funds in the name of Corporation is a major misconduct under Sthariya Sthayi Adesh 12 (1)(b)(d)(f) and (n).

6. Respondent submitted his explanation the authority however not being satisfied with his explanation initiated an enquiry against the respondent. The Enquiry Officer in his report found the respondent guilty for committing misconduct. The petitioner/Corporation accordingly decided to dismiss him from service vide order dated 26.11.2008.

7.Aggrieved by the order of dismissal the respondent/employee raised an industrial dispute before the Labor Court Sagar. The Labor Court vide award dated 24.12.2013 quashed the order of dismissal and directed the management of the petitioner/Corporation to reinstate the respondent within one month without back wages. Being aggrieved the present petition has been preferred.

8. The learned Counsel for the petitioner/ Corporation contended that the Labor Court Sagar has no territorial jurisdiction to decide the matter as the Sagar Depot was closed on 19.9.2008. It was further argued that quashing of enquiry report will not automatically result in the reinstatement of the respondent/employee and the proceedings shall continue from the stage where it stood vitiated. According to him, the award of Labor Court reinstating the respondent is contrary to the decision of the Supreme Court Reliance is placed on Managing Director ECIL Hyderabad v. B.Karunakar Etc, Union of India v. Y.S.Sadhu Ex-Inspector and chairman Life Insurance Corporation of India and others v. A. Masilamani.

Per contra the learned Counsel for the respondent/ employee contended that the Labor Court after appreciation of all the facts has come to the conclusion that the enquiry was arbitrary, biased and illegal and quashed the order of dismissal. It is contended that Labor Court was justified in reinstating the respondent/employee. On behalf of petitioners in W.P.No. 7935/2014 it is urged that the Labor Court ought to have granted the backwages since the enquiry was found vitiated and misconduct was not proved.

9. No other point has been raised by the parties.

10. I have carefully considered the rival contentions and perused the impugned award and other materials on record.

11. The charge against the respondent pertains to his unauthorized attending the office at Sagar Depot without the permission of Superior Officers and disobeying the order of relieving and also of illegally collecting 2% commission for Corporation and keeping it with R.M.Tripathi for personal gain instead of depositing it in the account of petitioner/ Corporation.

12. On perusal of order dated 5.9.2008 and 25.9.2008 passed in W.P.No. 10829/2008 (s) it is evident that respondent was working at the Sagar Depot pursuant to the orders of the High Court whereby the transfer orders of respondent dated 2.9.2008 and 19.9.2008 were stayed by the High Court directing the petitioner/Corporation that respondent/employee shall be permitted to work at the present place of posting at Sagar and to maintain status quo with regard to service condition of respondent. Hence the contention of Shri Pranjal Diwakar that the Labour Court, Sagar lacks territorial jurisdiction has no substance and therefore rejected.

13. As regards the contention of learned Counsel that award of Labor Court is contrary to the law of Supreme Court, it is observed that the case laws relied by the Counsel for the petitioner are not one under the Labour Law/Industrial Law hence not applicable to the facts of the instant case. In the case laws cited by the petitioner the employee never raised an industrial dispute nor invoked the jurisdiction of Labour/Industrial Court as has been done in the instant case. In the case laws cited by the petitioner, the employee had directly moved the High Court for exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India for challenging the order of dismissal, primarily on the ground that it was violative of natural justice, which requires that public employment should not be terminated without giving an opportunity to defend himself.

14. As the question of reinstatement of employee, with or without back-wages depends upon a finding of fact to be arrived at on the basis of evidence, the High Court in absence of finding of fact is only entitled to quash the impugned order of dismissal and cannot ordinarily order reinstatement which is not the case here.

15. In the instant petition, a dispute was raised before the Labour Court under section 10 of the Industrial Disputes Act. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination order of an employee/worker in reference proceedings is no more res integra. The Supreme Court in the case of Delhi Cloth and General Mills Co. v. Ludh Budh Singh has explained the legal position:

> "(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 the 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 cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been had made by the management to the Tribunal during the course of the proceedings and before the trial 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 by it is proper. It will not be just and fair either to the 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 enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it, that he was or was not guilty of the alleged misconduct.
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> (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. 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 available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.
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> (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the valididity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

The aforesaid principles were approved by the Supreme Court in the cases of Karnataka State Road Transport Corporation v. Lakshmidevamma (Smt) and another and Kuruksheta University v. Prithvi Singh.

16. It is thus clear that the jurisdiction of the Labour Court in a case where the departmental enquiry is found to be illegal is much wider and extend not only to the appreciation of evidence but to record its own findings to its own satisfaction and it may by its award, set aside the order of discharge or dismissal and direct reinstatement of the employee in such terms and conditions as it think fit.

17. It is seen from the record that the first issue,

> "whether the departmental enquiry held against the employee is illegal and wrong?If yes, then its effect? Was decided as preliminary issue by the Labour Court on 11.9.2012. The Labour Court after going through the entire record/documents produced by the employee as well as the Corporation recorded a finding that the enquiry

proceedings were conducted arbitrarily and concluded only in three hearings. The Labour Court has observed that on 24.11.2008, the employee had asked for supply of documents and on the same day submitted his objections before the Enquiry officer and despite he being present before the Enquiry Officer, the statement of Departmental witnesses were recorded ex-parte and the employee was neither supplied with the documents" or given any opportunity to cross-examine the witnesses nor given any opportunity to produce his defence. The Labour Court has also observed that no preliminary enquiry was conducted before initiating the departmental enquiry and held the enquiry conducted against the employee as illegal and improper. The matter was thereafter listed for evidence on the remaining issue on 05.11.2012. Pursuant to which, evidence of Arivind K.Saini (D.W-1) was recorded and documents Ex. D-1 to D-8 were exhibited.

18. A categoric conclusion that misconduct against the respondent is not proved has been arrived at by the Labour Court of the basis of evidence on record. The Labour Court has referred to the evidence of D.W.-1 Arvind Kumar Saini, who inspected the Sagar Depot on 25.10.2008 with Mr. R.K.Sharma. He has admitted that the High Court on 5.9.2008 and 2.9.2008 in W.P.No.10829/2008 (s) has stayed both the transfer orders dated 2.9.2008 and 19.9.2008 (Ex.D-2) and the respondent was working at Sagar Depot pursuant to these stay orders. The Corporation also failed to prove that relieving order (Ex.D-4)was served on the respondent/employee.

19. Mr. A.K.Saini (D.W-1) has also admitted that 2% commission was collected as per the order of the District Magistrate, Sagar and deposited by the respondent with Depot Incharge, R.M.Tripathi. Rajendra Tiwari (P.W-1) has stated that after collection he used to deposit the amount as per practice with the Depot Incharge R.M. Tripathi, which is not controverted by the petitioner/Corporation, in fact the inspection report shows that 33,185/-was seized from R.M.Tripathi. The documents i.e.register/ copy etc. seized along with the cash amount of ' 33,185/- show that the record of these amount, so collected by the respondent/employee was maintained. The amount of ' 33,185/- was recovered from the Depot Incharge R.M.Tripathi and deposited in the account of the Corporation on 25.10.2008 itself with the receipt in the name of R.K.Sharma, Traffic Superintendent. This copy/register contains the date-wise details of the amount collected by the employees, found working on Sagar Depot on that day. It is not the case of the petitioner/Corporation that the amount/money so seized from R.M.Tripathi does not tally with the books or was more or less than what was recorded in the books/register seized on 25.10.2008. In view of the aforestated, it cannot be inferred that there was any personal gain to the respondent/employee or any financial loss has occurred to the petitioner/Corporation. Under the circumstances, there is no perversity in the order of Labor Court. The finding of Labor Court that allegation of misconduct has not been proved is based on sound reasoning and does not call for any interference.

20. As regard the grant of back wages in W.P.No.7934/ 2014 it is seen that the Labour Court considering that no evidence has been produced by the petitioner that he was gainfully employed during this period or could not get employment despite trying and the poor financial conditions of Corporation, declined to grant back wages.

21. In exercise of its power of superintendence under Article 226/227 of the Constitution of India, the High Court can interfere with the order of Tribunal/Labour Court only when there has been a patent perversity in the order of the Tribunal/Court subordinate to it or where there has been gross and manifest failure of justice or the basic principle of natural justice has been flouted.

22. In Syed Yakoob v. K.S.Radhakrishnan the constitution Bench of Supreme Court considered the scope of High Courts jurisdiction to issue a writ of certiorari in cases involving challenge to the order passed by the authorities entrusted with quasi judicial functions under the Motor Vehicles Act, 1939, it was observed:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals; these

are cases where orders are passed by inferior Courts or Tribunals without jurisdictions, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is however no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art .226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh."

23. In view of the parameters laid down by the Supreme Court the High Court can interfere with the award, only if it is satisfied that the award of Labour Court is vitiated by any fundmental flaws.

24. In my view the Labour Court has exercised its discretion keeping in view the facts and legal evidence on record and given a well reasoned order, which does not warrant any interference from this Court under the exercise of supervisory jurisdiction.

25. In the result the writ petitions fail and are dismissed. The award passed by the Labour Court is affirmed. No order as to costs.

Petition Dismissed.

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