

LET US NOT PLAY WITH FIRE AT THE COST OF HUMAN LIVES

The recent fire accident that took place in one of the temples in Quilon district in Kerala, where more than 100 people have lost their lives and 350 and more people were injured. Many houses and buildings in the vicinity have been damaged beyond repair that has shocked the entire nation. Seeing the gravity of the incident, the Prime Minister of the country, the Union Health Minister, the then Chief Minister of Kerala and other ministers of the state rushed to the scene and gave direction for the relief operation. The state wanted to declare the incident as national calamity. Relief was flowing in from the state government, centre and from other philanthropists. But the loss of precious life of innocent people and property has created irreparable wound in the minds of people across the country.

According to prima facie report, the incident was due to the reckless attitude of the temple authorities and local politicians. The competitive display of fireworks has led to this calamity with disproportionate use of explosives. In spite of the prohibitory order from the district collector, the temple authorities flouted the rule and went ahead with the fire works with the support of the local politicians. It was surprising to note the failure of the police to implement the decision of the district administration and stop the show. Here religious sentiments and personal egos are prioritized over human lives by throwing out public safety and governance.

It looks as though the police were governed by politicians, constrained to act professionally. The argument that the firework is the part of temple tradition cannot be taken as an excuse. Tradition needs to change according to circumstances, as in olden days temples were adorned with oil lamps, which is now replaced by electrical light there by replacing the old rituals.

Here the temple authorities and the police have violated the Supreme Court directions and provisions of Explosive Rules 2008. According to the rule only 15 kg of explosive can be used for the fireworks, whereas in the present case they have used more than hundred times of the permitted level. Even after the explosion police could recover 150 kg of explosives from the site. They have also seized two cars from the site fully loaded with explosives. Rule also states that fireworks display should be held at least 100 meters away from the people and

residential area. The Supreme Court has also directed that no fireworks can be carried between 10 pm and 6 am. But in most of the cases of fireworks starts after 10 pm and in the present case it started after 12.30 am and explosion took place by 3.30 pm.

The government of Kerala has appointed a judicial commission by a retired judge of Kerala High Court. The Hon'ble High Court of Kerala has also initiated a suo moto case on the base of a letter received from a sitting judge of the same court and directed ban on the use of sound generated fireworks between sun set and sun rise in the places of worship. Country has witnessed many such calamities in the past such as stampede at Mahamaham in Tamil Nadu, Kumbamela in Nasik, Mandhur Devi Temple in Satara in Maharashtra, Uphar Cinema stampede at Delhi, Boat tragedy in Tekkady in Kerala resulting in the loss of hundreds of people due to adventurism or negligence. In all such cases government appointed judicial commission to appease the public revolt. Whatever is the finding of the judicial commission and fixing of those who have committed negligence or flouting rules, nothing will bring back the lives of innocent people. More over most of the recommendations of such commission normally remain only in cold storage until the government wake up to face one more such calamity. They

have learned only few lessons from such gory happenings in the past. Amnesia of the people makes the authorities go in to slumber until the next incidence.

Legislature, Executive and Judiciary are the three main pillars of the Indian constitution, each one will have their own responsibility to work in co-ordination with the other. It is to the legislature to make law, bureaucracy to implement and enforce the judiciary to evaluate and adjudicate. But in most of the case it is the representatives of the people or their agent to poke their nose and spoil the situation as we have seen in the present incidence in Kerala. Fireworks are not a unique phenomenon. In fact the worlds over the spectacular fireworks are conducted ensuring all safety norms not at the whims and fancy of the local leaders. Accountability and responsibility for safety of citizen lies with the administration. If there has been open defiance of law, such violator has to be fixed and put to task. Political parties should refrain from interfering with the investigation trying to extricate those who are involved in the crime. Zero tolerance for violence and a strong commitment to safety standard should be non negotiable if the human lives are to be protected. ■



NO TAX DEDUCTION FOR PF WITHDRAWALS OF UPTO ₹ 50,000 FROM JUNE 1

No tax will be deducted at source for PF withdrawals of up to ₹ 50,000 from June 1, according to government sources.

The government has notified raising the threshold limit of PF withdrawal for deduction of tax (TDS) from existing ₹ 30,000 to ₹ 50,000, a senior official told PTI.

"The Finance Act, 2016 has amended Section 192A of Income Tax Act, 1961 to raise the threshold limit of PF withdrawal



from ₹ 30,000 to ₹ 50,000 for Tax Deducted at Source (TDS)," the notification stated.

The government had introduced the proposal to deduct TDS on PF withdrawals in order to discourage pre-mature withdrawal and to promote long term savings. ■

Source: Business Line, dt.31.5.2016

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

MORE COMPANIES TWEAK MATERNITY LEAVE POLICIES TO RETAIN EMPLOYEES

With an eye on retaining women employees, more companies are tweaking their maternity benefit policies, including increasing the mandatory three months paid leave to six.

Interestingly, companies are changing leave policies not just in the event of child birth, but also surrogacy and adoption.

They have incorporated changes in their HR policies to curb attrition among women and also to increase gender diversity. They have introduced initiative to make the company more women friendly.

A media conglomerate has made amendments to their maternity leave policy with an increase in the quantum of paid maternity leave. This policy is also applicable to women who wish to opt for adoption or surrogacy.

The duration of paid leave that can be availed for maternity has been increased from 12 weeks to six months. They have made special provision for a Mother's Room, where a new mother can pump and store milk for her baby while at work.

"Women form an integral part of our workforce. Our policies are geared towards encouraging women to develop their careers and essay leadership roles while playing key part in supporting their families," according to an employer.

They also have a paternity policy applicable for its male employees for a period of five working days or 84 calendar days in case of a single male parent (adoption).

Flexible policies

An other company has recently rolled out its women –centric initiatives, including seven month –long paid



Most women quit their jobs after childbirth due to lack of support at home

maternity leave, 18 months of half pay half working day post – maternity support. As per the current government guidelines, companies in India typically offer three months of paid maternity leave.

India is ranked 123rd when it comes to the female –male ratio at workplace. At least 48 percent of women India quit their careers midway. As per available data, Indian women's contribution to the

national GDP is 17 percent as against the global average of 37 percent.

New –age companies have also introduced changes in their maternity benefits package to include six months of maternity leave plus four months of flexi working hours with full pay for new mothers.

With the introduction of these polices, they intent to create a safe, secure and inclusive work atmosphere.

Gender diversity

Industry experts say these policies are in the right direction to ensure gender diversity at work. Research has shown that most women quit their jobs after childbirth due to lack of support at home.

According to a talent strategy consulting firm such initiatives are to curb attrition among women employees.

'Even though a six month long maternity leave puts stress on companies' wage bills, especially that of small and medium firms, several companies are still undertaking steps to retain talent and improve gender diversity. Going forward, we see more companies going ahead with such initiatives.' ■

Source: Business Line Dt. 19.5.16

NEVER BEND BEFORE THE INSOLENT MIGHT

MIGRANT LABOUR TRAFFICKING LAWS IN INDIA- OUT OF THE SHADOWS, AND INTO THE LIGHT?

Despite making steep socio-economic progress since her independence, India remains the source, transit and destination country for labour trafficking. To put in brief, labour trafficking can be defined as the trafficking of an individual by use of coercion, duress or fraud with the underlying aim of exploiting him for purposes ranging from forced labour to slavery, including but not limited to involuntary servitude, debt bondage and peonage. Migrant labour trafficking is a subset of human trafficking, where unsuspecting individuals are deceived by agents or economic conditions to be a part of exploitative forced labour.

The approximate number of people trafficked into forced labour in India to be around twenty to sixty-five million. The reason for keeping such a wide range is that there exists a practical difficulty in calculating the number of trafficking victims, owing to the confusion caused by migrant labourers voluntarily looking for employment and labourers lured into forced labour by virtue of being trafficked. Also, several migrant workers start off voluntarily and later become victims of trafficking, due to them being unable to find suitable employment or after being terminated from their original work in the place of migration.

While India is a prime target for trafficking labour and exporting them to Middle-Eastern and European nations, our country also has an acute problem of internal labour migration trafficking. The majority of housemaids working in homes across New Delhi, drivers at tax companies such as Ola or Uber in Noida, construction workers in Kerala or agricultural labourers of Punjab are migrants. Approximately one-third of the population of India is migrant population.



Poverty is the core cause of labour trafficking in India

Majority of these people migrate from rural to urban areas in search of work and Gaming their livelihood. Absence of employment opportunities and professional development in the village areas of India are the key causes of such migration.

Root Causes of Migrant Labour Trafficking:

Poverty is the core cause of labour trafficking in India. Ancillary factors that aid it are unemployment, our patriarchal society, lack of women's

rights, illiteracy, discrimination and societal norms like dowry. Along with poverty, the steady demand of cheap labour in the national / international market and lack of remedial initiatives by the administration has resulted in India becoming a hub for trafficking . Excessive migrant labourers in certain parts of India has also given way to other social evils like demand for sex workers and trafficked brides.

The caste system present in our society has further caused detriment to the situation. If a person comes from a lower caste, the discrimination he / she will face in day-to-day life will further make them vulnerable to trafficking. Even worse is the case of lower caste women, who are discriminated on the basis of both caste and gender; thereby denying them access to education and most foils of employment. Such a condition makes them easy targets for the recruiting agents of trafficking.

Although globalization has impacted India's society and economy in many a positive way, it has contributed substantially towards the increase of trafficking. Developments in technology and communication have indirectly benefitted traffickers by giving them a greater reach via media such as televisions and mobile phones. The travelling time and

cost between countries and States has also been reduced significantly. Just as globalization worked wonders to develop the standard of living across all nations, at the same time it brought inequality within and between nations. It successfully provided an impetus to capital movements and international trade, but did not check the ramifications of the same on migrant labour trafficking.

Also, lack of awareness on the issue of human trafficking coupled with our fragile legal frame-work has resulted in such becoming a grave threat to our society. It is apt to mention here that the recent Criminal Law Amendment Act, 2013(the Amendment Act) has attempted a serious revamp of the existing legal structure. But, the effectiveness of this amendment in preventing and prosecuting labour trafficking is yet to be seen.

Like many other transnational legal issues, labour trafficking has cross-border implications and therefore to govern these peculiar problems there are numerous legal rules and policies both at international and domestic levels. There are a number of international instruments which have a bearing on labour trafficking under U.N. Conventions in general and International Labour Organization ('I. L. O. ') in particular.

One of the most significant conventions, namely - the United Nations Convention against Transnational Organized Crime, was adopted by the General Assembly to fight against transnational organized crime. To supplement this Convention and to address specific problems of trafficking, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (' U..N. Trafficking Protocol') was put in place. The U.N. Trafficking Protocol was the first global instrument providing a comprehensive framework to address the trafficking of persons internationally and domestically. This Protocol mandates the States to criminalize not only trafficking, but also any form of attempted trafficking.

I.L.O. Conventions and Forced Labour:

International outrage against forced labour provided the impetus for two of the most fundamental I.L.O.

Conventions: the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No.105). According to the I.L.O. Forced labour Convention 1930 (No. 29) forced or compulsory labour shall mean "**all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.**"

Assessing Recent Efforts of The International Labour Organization:

Despite long-running interntional efforts being manifested in these Conventions, it was felt that significant implementation gaps existed in eradicating labour trafficking. 'There was an urgent need to bring in additional measures aimed at combating this issue. After rounds of discussion and deliberation, the I.L.O. in 2014 adopted a legally binding protocol to supplement Convention 29 and complement existing international law by laying specific guidance on effective measures to be taken to prevent all forms of forced labour.

Arguably, the issue of forced labour and trafficking is the least controversial area of international labour standards and there exists a greater consensus among countries to embrace reinvigorated standards for the same. But, it is a very pressing concern that anti-trafficking legislation in several countries is not in consonance with the aforementioned international conventions.

India's Labour Trafficking Laws- A Toothless Tiger?

The problem of labour trafficking in India has been steadily rising every year due to its complex cross borders situation. Needless to say, the pernicious issue of migrant labour trafficking in our nation requires a coordinated and multi-disciplinary response. The trafficking laws in India (particularly the Immoral Traffic Prevention Act. 1956) have exclusively focused to combat trafficking done for the purpose of sexual exploitation. As a result of such exclusivity, victims of human trafficking for the purposes of forced labour are not protected adequately. Article 23 of the Constitution of India prohibits human trafficking and all forms of forced labour. Further, Article 39(e), which is part of the DPSP, directs that health and strength

SUCCESS COMES TO THOSE WHO DARE AND ACT

of individuals should not be abused and prohibits exploitation of persons to perform work unsuited to their age or strength. In addition, Article 39(f) protects children and youth against any form of exploitation.

Bonded Labour System (Abolition) Act, 1976- An Archaic and Ineffective Legislation

Twenty-six years after the adoption of the Constitution, the legislators enacted the Bonded-Labour System (abolition) Act, 1976 (the Act) which sought to abolish the bonded labour system. Though the definition of bonded labour in the Act is similar to the definition of labour trafficking provided in the U.N. Trafficking Protocol, the Act fails to specify that trafficking of persons can take place for the purposes of bonded labour. The offence can only be triggered if the labour is rendered to be 'bonded labour' as per the Act. Thus, in a situation where a person has been trafficked and labour has been rendered, prosecution of the traffickers is not possible under the Act if the master-labour relationship does not constitute a 'bonded labour system.

The Criminal Law (Amendment) Act, 2013 – A Shaky Beginning?

It is amply clear that the existing legislations on forced labour in India do not adequately address the intricate problems associated with labour trafficking. Furthermore, India lacks any comprehensive definition of human trafficking. The Justice Verma Committee ('the Committee') that was constituted to address the gaps in criminal law opined that human trafficking has become a grave issue due to the lack of definition of trafficking and the ineffectiveness of law enforcement in relation to trafficking. The Committee recommended that our Legislature should adopt the definition of 'trafficking' contained in the U.N. Trafficking Protocol.

Based on these recommendations, the law-makers enacted the Criminal Law (Amendment) Act, 2013 which defined human trafficking by amending Section 370 of the Indian Penal Code. The newly amended Section has been heavily borrowed from the U.N.

Trafficking Protocol's definition of trafficking. It expanded the types of offenses that is criminalized as trafficking violation and ensured that the perpetrators involved at each and every stage of the trafficking chain is prosecuted.

Conclusion-Is There Light at the End of the Tunnel?

It can be said without an iota of doubt that the new amendment has brought India's labour trafficking law in close conformity with the U.N. Trafficking Protocol. But, there continues to remain a crevice between the Indian legislative framework and its implementation; and the U.N. Trafficking Protocol's stipulations.

To begin with, the Amendment Act has to be modified to the extent that the stringent sentences prescribed for persons indulging in sex trafficking has to be made applicable on those perpetrating labour trafficking. Then, the Bonded Labour Act needs to clearly include the concept of "bonded labour" as a part of "human trafficking". Further, the Amendment Act needs to explicitly mention that forced labour falls under the definition of exploitation, or that "physical exploitation" in itself signifies forced labour.

The focus of India's policy makers has been on the prevention and prosecution of sex trafficking, despite labour trafficking being more prevalent here. To add to that, the Legislature has made no efforts to set up measures for the safety, rehabilitation and compensation for victims of forced labour'.

Therefore, in pursuance of India's own Constitution and her obligation towards international conventions, the time is ripe for the Government to take note of migrant labour trafficking as an important matter and take rapid steps to curtail it in consonance with the laws, policies and guidelines laid down by the United Nations and the International Labour Organization. ■

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Source:2016-II-LLJ

HUNCHBACK OF LEARNING

Where children are made to bear the load

The concept of investment in education is explicitly adopted by the government in the national policy of education, as the country's growth is always linked to the growing level of literacy. While continuing their mission of education for all, government also had been providing norms and standard to be maintained by all schools with improvement in teacher student ratio of 1:30 up to class V and 1:35 from Class VI onwards.



Children who are required to flutter like butterflies are moving with cart load of

Despite investment in education and improvement in access and retention, the end result continued to be an area of serious concern, as the level of growth and quality of education has not improved in India as expected. The tragedy lies not in the involvement level but in the learning level as well. The standard of education has gone down to such a level that according to reports children passing out from primary class are unable to read their own books in many cases. The 2014 edition of the Annual Status of Education Report (ASER) reveals that a standard V student cannot read and write the books meant for a student in class II. A simple division is beyond the fourth of children in class V. Subtraction stumps a similar preparation of those in class III. This low level of learning is due to the poor quality of teaching and lack of accountability among teachers.

According to Dr. Maria Montessori, founder of Montessori Method of Educational system, all energies have been harnessed by man, but the force and energy of the soul of the children has been left out, ignored and by ignorance oppressed. She also ushered a new era in child education especially at nursery level and emphasized the need to have reform in the method of education of the children

and instruction. Those who are struggling towards this end are struggling for regeneration of man. She accordingly designed various methods to teach the children based on child psychology on colours, smell, taste, building blocks with bricks by which children could learn, sense the length, height and thickness of an object. She has also developed a novel method of

educating the children through process of sense training, as according to her the mental deficiency in a child results from the dullness of the sense and the sense training was the best method to achieve excellent result in their education.

Whereas the method of education now prevailing in country is contrary to the system developed under the Montessori system of education where teaching is based on books unlike in the traditional gurukul system of education, that was prevailing in India earlier. Children who are required to flutter like butterfly are moving with cart load of books over their shoulder, beyond the permissible level. In this process they are only inviting various problems such as stunt growth mentally and physically, change the patterns of their behaviours, tiredness, lack of interest in learning, head ache, pain in the spinal chord etc.

Unlike in the past subject of study of a child has grown in to a number of branches. Among other subjects many states have introduced three language formula such as English being international language, Hindi the national language besides language of the state. This is besides other subjects such as Math's, Science, Social studies, History, Moral science etc. Children are also made to carry all the text books, relevant note books, work books, besides pencil box, geometry box, colour box, Snacks box, lunch box, water bottle,

umbrella, tuition books if any. According to Scientific study a child can carry only 10 percent of their body weight, whereas the said norms are seldom being followed by the school authorities nor implemented by the state. According to National Child Welfare Commission when the parents and teachers are trying to improve the learning and intelligence level of the child they are only ignoring his mental and physical health by making him to carry heavy load of books beyond his capacity without application of mind. No scientific study has been made to resolve this issue. There should be a concerted effort on the part of parents and teachers to reduce the weight of the school bags by keeping a set of books in school, introducing tablet system in lieu of notes etc. Government should also change their education policy to address this concern.

It is heartening to note that Maharashtra Government has declared 15th October, the birth anniversary of Dr.APJ Abdul Kalam, former President of India, whose writing had been a great inspiration to the students and youth of the country, as 'No-school bag day'. The occasion will also be observed as 'reading day' for all students from Class III to VIII to read non-academic books in school to

improve their reading level and habits. School authorities have been asked to host book exhibition and implement gift a book programme and conduct seminar on books and writers – Schools have been advised to have similar programme once in a month including teachers meet. The other states should also emulate the example of Maharashtra in improving the education and learning level of the children. The confidence level in a teacher will create confidence in a child that will make him to feel safe, improve his learning level, respect and listen to others. The parents and teachers should act like a bridge between the child. It is through this bridge his learning capacity, love and affection towards others will flow.

Parents and teachers should understand that both nature and nurture matter in the development of the career of a child. Children generally being sensitive, any harsh punishment will only have an adverse affect on a child which is not only illegal but also may create a fear psychoses and hatred towards others. As such it is necessary to offload the physical and mental burden of a child in order to improve his learning level and career growth. ■

COLOURFUL DIET FOR A COLOURFUL HEALTH

Foods get their colour from the phytochemicals present in them. "These phytochemicals are vitamins, minerals and antioxidants that are essential for the body, and are good for preventing and reducing the risk of various diseases,"

Each colour adds a different nutrient, so the mantra is to keep your meals as colourful as possible. Dietitians suggests choosing three colours for each of the five –six small meals in a day. "The



rainbow diet will detoxify your body and build immunity and strong bones," According the dietitian.

But do remember that colourful refined or packaged items do not count. As far as possible, eat natural food such as vegetables and fruits either raw, boiled or cooked.

RED

Bite into the juicy red of a tomato, watermelon, pomegranate, strawberry or apricot to get some

STRONG REASONS MAKE STRONG ACTIONS

lycopene in your system. "Lycopene is one of the strongest antioxidants. It protects against prostate cancer, cardiovascular disease and damage from ultraviolet light exposure," Anthocyanins, or the red pigment in fruits and vegetables, decreases the risk of muscular degeneration, stroke and certain types of cancer, says a nutritionist.

Fruits and Vegetable are: Pomegranate, raspberries, red apples, cherries, red grapes, red pear, rhubarb, strawberries, beetroot, tomatoes, watermelon, red chilli peppers, red onion, red potatoes.

ORANGE

The phytochemicals responsible for the orange colour in fruits and vegetables such as carrots, mangoes or pumpkins are carotenoids. Carotenoids, "help maintain healthy mucous membranes and healthy eyes, as well as help reduce the risk of cancer and heart diseases and also improve immune system function.

Fruits and Vegetables are : Apricots, peach, oranges, kinnows, carrots, pumpkin.

YELLOW

"Foods like avocado, which have both yellow and green in it, contain zeaxanthin and lutein, which are very important for retina health," Other than improving one's sight, yellow reduces age related tissue degeneration and the risk of prostate cancer, and lowers LDL (bad) cholesterol and blood pressure. Muscular strength, healthy bones and shining skin are that yellow gives",

Fruits and Vegetable are: Papaya, lemons, mangoes, peach, pineapple, musk melon, figs, yellow tomatoes, corn, sweet potatoes, and yellow beetroot.

GREEN

Greens are full of chlorophyll, folate and iron, making them perfect for someone who needs strength. These

are must, especially during pregnancy. The compounds that give green vegetables their colour are called glucosinolates, "which are a large group of sulphur –containing amino acid derivatives that help in reducing the risk of certain cancers. In addition, green leafy vegetables also contain high amounts of iron and folic acid, as well as vitamin C, which are a strong antioxidant and an anti-ageing vitamin. Green vegetables are good for your eyes, bones and teeth, and also help in improving immunity,

Fruits and Vegetable are : Cucumber, avocado, celery, green apples, grapes, kiwi, spinach, coriander, mint, lettuce, leek, leafy greens, okra peas, beans, capsicum, cabbage, cauliflower, asparagus, broccoli, Brussels sprouts.

BLUE AND PURPLE

The grape family of fruits, like berries, raspberries and cranberries, contains anthocyanins that reduce inflammation. These and other nutrients like flavonoids, ellagic acid, quercetin, and lutein found in blue and purple foods support retinal health, lower LDL cholesterol, boost immune system activity, support healthy digestion and improve calcium and other mineral absorption. Blue pigments in foods can also help reduce tumor growth and fight inflammation.

Fruits and Vegetable are: Black currants, blackberries, blueberries, dried plums, figs, prunes, raisins, and eggplant, purple potatoes, purple cabbage, purple carrots.

WHITE

This one is outside the list of rainbow colours, but white fruits and vegetables, including apples, pears, bananas, cauliflower and garlic, are high in dietary fiber, protect against cholesterol and contain antioxidant –rich flavonoids such as quercetin. They

contain health –promoting chemicals such as allicin, which helps lower cholesterol and blood pressure and reduces the risk of stomach cancer and heart disease. Some members of the white group, such as bananas and potatoes, are good sources of potassium.

Fruits and Vegetable are: White peach, brown pears, bananas, dates, shallots, onion, cauliflower, mushrooms, potatoes, ginger, garlic, turnips, white corn. ■

Source: Mint-17.5.16

Judicial Verdict

[2016 (148) FLR 1072]
(CALCUTTA HIGH COURT)

DEBANGSU BASAK, J.

W.P. No. 1733 of 2003

January 27, 2016

Between

M/s. HOTEL AIRPORT ASHOK (KOLKATA HOTEL PVT. LTD.)

and

INDUSTRIAL TRIBUNAL and others

Dismissal– Domestic enquiry– Being set aside by the impugned order of Industrial Tribunal– Management will reverse all decisions taken pursuant to and emanating out of such domestic enquiry against the employee forthwith Management will ensure that the employee is not prejudiced. [Paras 10 and 12]

Constitution of India, 1950– Article 226– Writ jurisdiction– As a Writ Court, the Court would not sit in appeal over the impugned decision passed by Industrial Tribunal– Scope of enquiry for a Writ Court is limited– View taken by Industrial Tribunal is plausible and not perverse nor passed in breach of principles of natural justice. [Para 9]

JUDGMENT

DEBANGSU BASAK, J.– The challenge in the present writ petition is directed towards order No. 71 dated June 16, 2003 passed by the 4th Industrial Tribunal, West Bengal. According to the petitioner, the order of the Tribunal is perverse. The Tribunal ought not to have directed setting aside the order of dismissal. Reliance has been placed on a judgment in (*Delhi Cloth & General Mills Company Ltd. v. Ludh Budh Singh*) in support of such contention.

2. None appears for the respondent.

An order passed by the Industrial Tribunal is under challenge in the present Writ Petition. The order is reasoned. It deals with the validity of domestic enquiry held against the delinquent worker.

3. The delinquent worker has a history with regard to his dealings in management. He was initially appointed as a Counter Attendant by the petitioner. On the allegation of possession of three Bangladeshi currency notes of ₹100/- each, he

was charge-sheeted in 1992. He had contested the disciplinary proceedings in respect thereof. The management had suspended him with effect from March 27, 1992 with regard to such incident. The management thereafter penalised him by way of stoppage three years increments and demoting him. The petitioner had made a representation against such decision. The management did not pay any heed thereto. The petitioner had moved two writ petitions before the Hon'ble High Court. One of such writ petition was disposed of by holding that such matter may be taken up by the Tribunal or the Labour Court as the disputes are covered under the Industrial Disputes Act. The representation of the delinquent worker for permission to participate in a training was directed to be considered by the concerned authority. The management did not allow this delinquent to participate in the training programme. The delinquent initially approached the Tribunal for redressal of the punishment meted out to him. The Tribunal, however, had held that he did not have jurisdiction. The delinquent thereafter filed a suit before the Sealdah Court being Title Suit No. 252 of 1997 challenging the order of the management relating the stoppage of increments.

4. The management thereafter issued the second charge-sheet in 1995 alleging supply of dirty beakers and sleeping during working hours. The delinquent worker was suspended. The management ultimately lifted the domestic enquiry in connections with the second charge-sheet.

5. According to the delinquent, he became aware of the second charge-sheet after receiving the order of dismissal dated March 15, 1999.

6. The third charge-sheet was issued against the delinquent on September 20, 1995. The third charge-sheet was in respect of an alleged incident of alleged supply of croissants to a flight.

7. According to the delinquent, the third charge-sheet is baseless and motivated, pre-determined to harass the delinquent after the expiry of two months of the alleged incident. The delinquent was placed under suspension from September 20, 1995.

8. The validity of the domestic enquiry relating to the third charge-sheet came up for consideration before the Industrial Tribunal. The Industrial Tribunal had disposed of such challenge to the domestic enquiry by holding that the management had acted in a motivated manner. It was guilty of victimization, unfair labour practice and *mala fide* intention. The report of the enquiry officer was found to be perverse and not binding upon the concerned workman. The Industrial Tribunal in the impugned order has given detailed reasons for arriving at such conclusions. It has noted that the prosecution had failed to examine any witness establishing the complaint. It has noted that several persons were involved in the preparation of the food tray which was ultimately placed before the passengers on board the flight. It has also noted that, after a food tray is prepared, the same is placed in a trolley. The trolley is placed under the custody of a Supervisor. The Supervisor has the authority to reject a tray placed in the trolley or to accept the same. In the present case relating to the incident, the Supervisor of the concerned trolley did not make any adverse remark in the log book. It is also noted that, croissants concerned was supplied by 'Monginis'. There is no material on record to suggest that any proceedings against Monginis has been initiated for such supply of croissants containing alleged fungus. In such circumstances, the Tribunal has returned such finding.

9. As a Writ Court, I am not to sit over appeal over the impugned decision passed by the Industrial

Tribunal. The scope of enquiry for a Writ Court is limited. The impugned order has not been demonstrated to be perverse. The impugned order is reasoned. The view taken by the Industrial Tribunal is plausible. The Writ Court is not to substitute its own findings with that of the Tribunal impugned before it unless it is demonstrated to be vitiated by perversity, or passed in breach of principles of natural justice

10. In *Delhi Cloth & General Mills Company Limited* (supra) the jurisdiction of the Tribunal to intervene in a domestic enquiry has been laid down. It has held that, the Industrial Tribunal has to accept the finding arrived at in the domestic enquiry unless it is perverse or unreasonable or the Tribunal has reasons to believe that the management is guilty of victimization or has been guilty of unfair labour practice or is acting *mala fide*. In the present case, the Tribunal on appreciation of the materials placed before it has to come to a finding that the enquiry is perverse, unreasonable, not permissible and

that the management guilty of victimization and unfair labour practice.

11. In such circumstances, I do not find any merit in the present writ petition. WP No, 1733 of 2003 is dismissed. No order as to costs.

12. In view of the domestic enquiry being set aside by the impugned order of the Industrial Tribunal, the management will reverse all decisions taken pursuant to and emanating out of such domestic enquiry against the employee forthwith. In doing so, the management will ensure that the employee is not prejudiced either in course of his employment or otherwise so 'far as monetary benefits as well as any other benefits receivable by such employee is concerned. The management will treat the employee as if the impugned disciplinary proceeding was not initiated against him. ■

Petition Dismissed.

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