* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 9th February, 2024**
Pronounced on: 8th May, 2024

\+ W.P.(C) 6624/2007

CHIEF ENGINEER (ELECTRICAL) CPWD ..... Petitioner

Through: Mr. Jaswinder Singh, Advocate

versus

RAKESH SINGH ..... Respondent

Through: Mr. Mr.Saurabh Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL HISTORY

1. The petitioner ('petitioner Department' hereinafter) is an instrumentality of the Government entrusted to undertake public works. The respondent (now deceased) was engaged as a messenger with the petitioner Department since the year 1994 on hand receipt basis.

2. In the year 1996, the sister of Shri Raspal Chand, who was working with the petitioner department as a driver, was admitted in hospital, where the circumstances led the respondent to bring the official vehicle

bearing No. JK 02E 9408 of the petitioner Department to shift Shri Raspal's sister to another hospital for further treatment.

3. During the course of the said incidents, the above said vehicle met with an accident leading to termination of the respondent workman on the grounds of misconduct *vide* order dated 2nd June, 1997.

4. Aggrieved by the same, the respondent workman filed a claim bearing no. 15/1999. Pursuant to completion of the proceedings, the learned Labour Court ('Court below' hereinafter) passed an award dated 25th April, 2005 ('impugned award' hereinafter) holding the respondent's termination illegal and further directed the petitioner Department to reinstate the respondent workman along with 50% backwages.

5. Aggrieved by the said award, the petitioner Department filed the instant petition.

6. During the course of proceedings, the respondent workman had filed an application for payment under Section 17-B of the Industrial Disputes Act, 1947 ('ID Act' hereinafter) and the same was allowed by this Court *vide* order dated 18th October, 2012.

PLEADINGS BEFORE THIS COURT

7. In the pleadings filed before this Court, the petitioner Department has taken the following grounds:

> ***A.*** *Because the Ld. Tribunal did not follow the principles laid down by the Hon'ble Supreme Court in the matter of awarding back wages to the extent of 50% in favour of the respondent. In UP Brasware Corporation Vs. Udai Narain Pandey 2005 AIR SCW 6314 it was held*
> *"No precise formula can be laid down as to under what circumstances payment of entire backwages can be allowed.*

Indisputably it depends upon the facts and circumstances of each case. It would, however, be not correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of Section 6N of the U.P. Industrial Disputes Act."

It is submitted that in the facts and circumstances of the case, back wages to the extent of 50% as awarded by the Tribunal were totally unjustified and without any reason.

B. *Because, the Ld. Tribunal failed to appreciate that the respondent had misused the Government vehicle provided to him resulting in accident of the vehicle in question for which he had been found solely responsible as per the enquiry conducted by the department and accordingly his services wore terminated for misconduct and gross negligence by the Competent Authority after following the required. procedure as per rules.*

C. *Because the Ld. Tribunal wrongly observed that the principles of Natural Justice were violated in terminating the services of the respondent. The chargesheets had been issued to the respondent and after affording him adequate opportunity to present his case the termination order has been passed. The enquiry had been unblemished and should not have been set aside.*

D. *Because the Ld. Tribunal failed to appreciate that it was the responsibility of the respondent to hand over the offending vehicle over to the parent office at the time when the same was no longer required for the purpose for which it was sought. However, the respondent misused the vehicle without any knowledge of driving as well as any driving licence. It is pertinent to submit that the respondent had requested in writing to the concemed AE to provide the official Jeep on humanitarian grounds.*

E. *Because the Ed. Tribunal did not fully acknowledge the fact that the widow of the deceased in the accident as well as another person who was injured in the accident had claimed compensation for causing death by rash and negligent act, which will ultimately be the liability of the petitioner*

department. The Ld. Tribunal should have at least considered this aspect of the matter while awarding 50% back wages. However, this aspect was totally Ignored by the Ld. Tribunal. It is pertinent to mention that the SDM Chanakyapurt has already issued attachment orders in the name of Director General (W) for recovery of Rs.2,20,426/- and the recovery has been made. Another attachment order for Rs.72,202/- has been passed by SDM, Chanakyapuri.

F. *Because the Ld. Tribunal failed to appreciate the material on record which clearly indicated that the respondent took the keys of the offending vehicle from Sh. Vijay Kumar at Village-Patoli and started for office with Raspal Chand, Mahesh Chand, Balbir Singh leaving with Sh. Vijay Kumar who was deputed to drive the vehide at Patoli. The vehicle was driven by Sh. Raspal Chand. It is apparent that Sn. Vijay Kumar was intentionally left at Village Patoli,*

G. *Because the award of the Tribunal has the effect of rewarding the respondent for his misdeeds, stead of penalizing him. It is very likely that a wrong message will go home and encourage other workers to act negligently in the same Fashion.*

4. That the petitioner has not filed any other writ petition before this Hon'ble Court or the Hon'ble Supreme Court

8. In response to the above said grounds, the respondent workman filed a counter affidavit which reads as under:

PRELIMINARY OBJECTIONS:

1. *That it is a settled law (MCD Vs. Asha Ram, Sadhu Ram Vs. DTC etc.,) that the Hon'ble High Court should not interfere with the finding of fact arrived by the Labour Court and writ will only lie if the order suffers from error of jurisdiction or arise from breach of principle of natural justice or is vitiated by error of law. The Hon'ble High Court cannot re-appraise the evidence and over turn it and if it does so it acts beyond its jurisdiction.*

2. *That the contents of writ petition are denied and disputed as untrue as is incorrect and false.*

3. *The present writ petition is not maintainable in law as much as the Respondent has not raised any substantial question of Law for determination by this Hon'ble Court. It is submitted that in the present petition the Respondent has challenged the finding of facts given by the Ld. Industrial Tribunal in favour of the Respondent after it has considered the material of record and applied its judicial mind.*

4. *It is submitted that the finding of fact given by the Ld. Industrial Tribunal in favour of the answering deponent is based on the material on record and there is no illegality or infirmity with the impugned Award of the Labour Court. It is submitted that the Respondent is not entitled to invoke the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India to challenge the funding of fact given by the Labour Court. It is submitted that the sole object of the Respondent behind the present writ Petition is to delay the implementation of the award obtained from the Industrial Tribunal in favor of the Respondent.*

The petitioner craves leave of this Hon'ble Court to refer and rely on the contents of Statement of Claim, Rejoinder, Affidavit, Written argument filed by the petitioner before the Labour Court to be treated as reply to this Writ Petition also.

6. The Ld. P.O. has come to the following categorical finding of fact at page 23 of the 7th line trom the top of the paper book.

"..I have perused the inquiry papers. The inquiry is very short. The workman has not been given opportunity in defence and the principles of natural justice have not been followed. In evidence in court of workman has admitted that he was given permission to take the jeep to shift Ms. Dipti, sister of Shri. Richpal Singh, driver from one hospital to another but there is no sufficient evidence on the record whether he was permitted to take the jeep to the home town of Ms. Dipti or not. It is necessary in the circumstances of the case to examine the witnesses who are connected with giving the permission to take the jeep to shift Ms. Dipti from

one hospital to another. The management has followed a shortcut method. If the workman is dispensed with his services on account of gross misconduct a full-fledged. inquiry should be held. It is immaterial whether he is a permanent employee or regular employee or an employee of temporary status. The action has been taken for gross misconduct of the workman so it should be proved by examination all the witnesses who are involved in granting permission to take the jeep to shift Ms. Ditpa from one hospital to another.
"The management should have conducted a full fledged inquiry. There is inquiry of only one page. Since taking of the jeep is admitted by the workman a full fledged inquiry is essential."

"...His services have been dispensed with by holding a nominal inquiry on account on his gross misconduct. Chargesheet was served on him but the statement of the witnesses regarding permission to take jeep to the hospital and to the hometown of Ms. Dipti has not been recorded. The inquiry has been concluded without any evidence worth the name, as such no proper procedure has been followed.
"I have perused the inquiry report. The workman applicant has been found guilty of mis-conduct without any evidence worth the name hence, the inquiry dt. 02.06.1997 is liable to be set aside as it has been conducted in violation of the principles of natural justice.
"The management has not examined any witness in respect of the charges. The workman was not given any opportunity to cross-examine the witnesses. There is no question of giving him opportunity for adducing evidence in defence, as such the inquiry has not been properly held. It is liable to be set aside and the inquiry dated 02.06.1997 is set aside hereby.

"The management may re-open the inquiry after giving notice to the workman applicant. The workman applicant is entitled to get 50% back wages as he is an unskilled

workman and he was employed on hand receipt basis. In case the employee is held guilty of mis-conduct a proper inquiry should be held. The action of the Executive Engineer is not justified."

7: That one of the paragraph of statement of claim has not been reproduced by the petitioner. The same is reproduced hereinunder:

"That the vehicle referred herein above i.e. Jeep No. JK 02E 9408 was met with an accident and the workman Shri. Rakesh Singh had not contributed for the said accident and also it is proved as per the FIR his name has not been mentioned by the police officer and the workman was victimized without holding any proper inquiry and the services of the workman terminated and all the provisions of the Industrial Disputes Act, 1947 were violated."

PARAWISE REPLY AND REPLY TO GROUNDS:

1. That the contents of 2 to 2(vi) and grounds of the writ petition are wrong and denied. The following is their actual position as stated in the statement of claim and reiterated herein below. The petitioner crave leave of this Hon'ble Court to refer and rely on the contents of statement of claim, evidence, finding of the award which was not been even challenged to be read as reply thereto to the writ petition including grounds. A copy of the Demand Notice dt. 24.06.1997 is annexed as Annexure R-1

9. Pursuant to completion of the proceedings, this Court had directed the parties to file their written synopsis and the same is taken on record.

SUBMISSIONS

(on behalf of the petitioner Department)

10. Learned counsel appearing on behalf of the petitioner Department submitted that the learned Court below erred in appreciating that

awarding 50% backwages to the respondent is unjustified and an undue burden on the employer.

11. It is submitted that the learned Court below erred in appreciating that the respondent had misused the Government vehicle which resulted in an accident and he was found to be solely responsible for the said action.

12. It is submitted that the enquiry committee had duly provided fair opportunity to the respondent to present his case, therefore, the learned Court below erred in observing the violation of the principles of natural justice.

13. It is submitted that the learned Court below erred in ignoring the fact that the liability to compensate the deceased's legal heirs was on the petitioner and the respondent cannot be let scot free.

14. It is submitted that the learned Court below erred in appreciating the fact that the respondent workman drove the vehicle without any knowledge of the same, therefore, the said accidents happened solely due to carelessness of the workman.

15. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

16. *Per Contra*, learned counsel appearing on behalf of the respondent workman vehemently opposed the present petition submitting to the effect that the reappreciation of evidence cannot be done by the writ Court as the Courts cannot become an investigative agency in matters pertaining to award passed by the Labour Courts.

17. It is submitted that the learned Court below rightly appreciated the material on record and applied its judicial mind, therefore, no interference is warranted by this Court at this stage.

18. It is submitted that the facts explained by the petitioner in the petition are wrong and the respondent workman never drove the vehicle and the same was duly recorded by the learned Court below after examination of the evidence.

19. It is submitted that the non-registration of the FIR against the respondent workman is testament to the fact that he never drove the vehicle, rather the same was being driven by the official driver of the petitioner i.e., Shri Vijay Kumar.

20. It is submitted that the enquiry proceedings were undertaken without providing the opportunity to the respondent to rebut the charges leveled against him, therefore, leading to violation of the principles of natural justice.

21. It is submitted that the respondent workman has already died due to cancer and his family is left to survive without any stable income, therefore, this Court may grant compensation in lieu of the services which the respondent workman ought to have rendered in the petitioner Department.

22. In view of the foregoing submissions, the learned counsel appearing on behalf of the respondent workman submitted that the present petition, being devoid of any merit may be dismissed.

FINDINGS AND ANALYSIS

23. Heard the learned counsel appearing on behalf of the parties and perused the record.

24. The petitioner Department has approached this Court against the impugned award on the grounds that the learned Court below failed to appreciate the material evidence establishing misconduct on part of the deceased respondent workman and wrongly directed the reinstatement along with backwages. Therefore, it is contended that the impugned award being in violation of the settled position of law is liable to be set aside.

25. In rival submissions, the learned counsel for the respondent workman now appearing through his legal heirs has submitted that the learned Court below rightly appreciated the fact that the accident was never his fault and despite the fact that he did not know driving, the petitioner Department wrongfully incriminated him in the alleged offence. Therefore, the impugned award rightly set asides the wrongful termination of the respondent workman and does not need any interference of this Court.

26. Before delving into the merits of the instant case, this Court deems it imperative to reiterate the settled position of law with regard to the limited jurisdiction of this Court under the extraordinary writ powers granted under the Constitution of India and affirmed by the Hon'ble Supreme Court and this Court time and again.

27. It is well settled that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is

constituted under special legislations to resolve the disputes of a particular kind.

28. In ***Union of India v. Subrata Nath***[1] the Hon'ble Supreme Court reiterated the principles related to the powers conferred to the High Court under Article 226 of the Constitution of India and held as under:

> ***"14.*** *It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the statutory regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.*
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> ***15.*** *In the above context, following are the observations made by a three-Judge Bench of this Court in B.C. Chaturvedi (supra):*
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> ***"12.*** *Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority*

[1] **2022 SCC OnLine SC 1617**

accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. ***The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal*. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.*

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18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose

appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

[Emphasis laid]

16. *In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya, a two Judge Bench of this Court held as below:*

"7. ***It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse****. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India, Union of India v. G. Ganayutham, Bank of India v. Degala Suryanarayana and High Court of Judicature at Bombay v. Shashikant S. Patil).*

[Emphasis laid]

17. *In Chairman & Managing Director, V.S.P. v. Goparaju Sri Prabhakara Hari Babu, a two Judge Bench of this Court referred to several precedents on the Doctrine of Proportionality of the order of punishment passed by the Disciplinary Authority and held that:*

*"**21.** Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."*

18. *Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India v. P. Gunasekaran held thus:*

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal*. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

***19.** In Union of India v. Ex. Constable Ram Karan14, a two Judge Bench of this Court made the following pertinent observations:*

*"**23.** The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the courts to assume and usurp the function of the disciplinary authority.*

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons."

***20.** A Constitution Bench of this Court in State of Orissa (supra) held that if the order of dismissal is based on findings that establish the prima facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order*

becomes unassailable and the High Court ought to forebear from interfering. The above view has been expressed in Union of India v. Sardar Bahadur.

21. *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."*

29. Upon perusal of the above, it is clear that a writ is issued for correcting errors of jurisdiction committed by the lower Courts or Tribunals and such errors would mean where orders are passed by inferior Courts or Tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. 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 the principles of natural justice.

30. Tersely stated, f*irstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene. *Lastly*, if the Court observes that there has been a gross violation of the principles of natural justice.

31. Therefore, the limited question for adjudication before this Court is whether the impugned award suffers from any illegality which is apparent on the face of the record or not. The relevant extracts of the impugned award read as under:

> *"It was submitted from the side of the workman applicant that proper inquiry in this case has not been held. The workman was permitted to take Jeep for shifting Ms. Dipta from one hospital to another but the Jeep was taken to the hometown of Ms. Dipta as she expired. Her dead body was*

carried in an ambulance and the jeep followed the ambulance. I have, perused the inquiry papers. The inquiry is very short. The workman has not been given opportunity in defence and the principles of natural justice have not been followed. In evidence in court of workman has admitted that he was given permission to take the Jeep of shift Ms. Dipti, sister of Shri Richpal Singh, driver from one hospital to another but there is no sufficient evidence on the record whether he was permitted to take the Jeep to the home town of Ms. Diptai or not. It is necessary in the circumstances of the case to examine the witnesses who are connected with giving the permission to take the Jeep to shift Ms. Diptai from one hospital to another. The management has followed a shortcut method. If the workman is dispensed with his services on account of gross misconduct a full-fledged inquiry should be held. It is immaterial whether he is a permanent employee or regular employee or an employee of temporary status. The action has been taken for gross misconduct of the workman so it should be proved by examination all the witnesses who are Involved in granting permission to take the Jeep to shift Ms. Dipte from one hospital to another. In the fact and circumstances of the case, the management has not held proper inquiry though the workman has admitted that the has taken the jeep on permission but it has not come anywhere whether the permission was granted to Shift Ms. Diptal from one hospital to another or to take the Jeep to home town of Ms. Diptai as such sufficient evidence in this case is lacking. The management should have conducted a full-fledged inquiry. There is inquiry of only one page. Since taking of the Jeep is admitted by the workman a full- fledged inquiry is essential.

I have perused the cross-examination for the workman. He has admitted that he got the permission of the Assistant Engineer while taking the vehicle, which met with an accident. He has further admitted that he has not enclosed any permission letter in his evidence on file. From the cross examination of the workman it becomes quite obvious that he was not given permission to take the jeep in writing so it

cannot be ascertained whether he was permitted to take the Jeep only to the hospital or he was permitted to take the Jeep to the hometown of Ms. Dipti. The management's witness have stated that he was not given permission to take the jeep to the hometown of Ms. Dipti. The dead body of Ms. Dipti was carried from hospital to the hometown as she expired in the hospital. There is no evidence on the record whether permission was given to take the jeep to the hospital only or to the hometown of Ms. Dipti. The workman has not filed any written permission; as such it is difficult to decide what was the correct permission. No proper inquiry has been conducted in this case. The workman application has worked from 12.05.1994 upto 01.06.1997. His services were terminated on 02.06.1997 so admittedly he has worked for more than 240 days and certificate regarding his good conduct has also been given by the competent authority. His services have been dispensed with by holding a nominal inquiry on account on his gross misconduct. Chargesheet was served on him but the statement of the witnesses regarding permission to take jeep to the hospital and to the hometown of Ms. Dipti has not been recoded. The inquiry has been concluded without any evidence worth the name. As such no proper procedure has been followed.

I have perused the inquiry report. The workman applicant has been found guilty of mis-conduct without any evidence worth the name hence, the inquiry dated 02.06.1997 is liable to be set aside as it has been conducted in violation of the principles of natural justice.

It was submitted from the side of the workman applicant that he is entitled to full wages. My attention was drawn to 2004 (8) AD (SC) 444. This case law is not applicable in the facts and circumstances of the case as the management has also adduced evidence. The management has not examined any witness in respect of the charges. The workman was not given any opportunity to cross-examine the witnesses. There is no question of giving him opportunity for adducing evidence in defence, as such the inquiry has not been

properly held. It is liable to be set aside and the inquiry dated 02.06.1997 is set aside hereby.
The management may re-open the inquiry after giving notice to the workman applicant. The workman applicant is entitled to get 50% back wages as he is an unskilled workman and he was employed on hand receipt basis. In case the employee is held guilty of mis-conduct a proper inquiry should be held. The action of the Executive Engineer is not justified.
The reference is replied thus :-
The action of the Executive Engineer, CPWD, BFL, Div.I, BSF Campus, Paloura in terminating Sh. Rakesh Singh. Messenger from services is neither legal nor justified. The workman is restored to his position prior to 02.06.1997 along with 50% back wages. The management is directed to reopen the inquiry and after following the principles of natural justice conduct the inquiry within six months after publication of the Award. The inquiry will be conducted after giving notice to the workman applicant and it should be positively completed within six months after the receipt of the Award by the management. The workman will co-operate with the inquiry.
The Award is given accordingly."

32. Upon perusal of the above extracts of the impugned award, it is made out that the learned Court below had referred to the documents of the enquiry and observed that the petitioner Department ought to have conducted a full-fledged enquiry into the allegations of the respondent workman.

33. The above cited paragraphs also make it evident that the petitioner Department had failed to examine the witnesses involved in the incident and had passed a one page inquiry report on the misconduct alleged on the part of the respondent workman.

34. The subsequent paragraphs in the impugned award makes it clear that since the permission to take the vehicle was not given in writing, it cannot be inferred whether the said permission was restricted to take the vehicle to the hospital or till the village of the person admitted in the hospital, therefore, the alleged violation cannot be concluded due to lack of evidence.

35. On the basis of lack of evidence during the enquiry proceedings, the learned Court below deemed it appropriate to set aside the earlier enquiry and provided liberty to the petitioner Department to initiate the same after giving due notice to the workman.

36. Furthermore, the learned Court below also categorically held that the enquiry officer failed to abide by the principles of natural justice therefore, leading to wrongful termination of the respondent without providing him the opportunity to cross examine the witnesses.

37. This Court is of the view that the principles of natural justice is one of the most important principles which encompasses protection of fundamental rules and aims at ensuring fairness and impartiality in judicial, administrative and quasi-judicial proceedings. In ***Union of India v. Ram Lakhan Sharma***[2] the Hon'ble Supreme Court crystalised the principles regarding adherence to the principles of natural justice in the following manner:

> ***"24.*** *The disciplinary proceedings are quasi-judicial proceedings and the Enquiry Officer is in the position of an independent adjudicator and is obliged to act fairly, impartially. The authority exercising quasi-judicial power*

[2] **(2018) 7 SCC 670,**

has to act in good faith without bias, in a fair and impartial manner.

25. *Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. All its facets are steps to ensure justice and fair play. This Court in Suresh Koshy George v. University of Kerala [Suresh Koshy George v. University of Kerala, AIR 1969 SC 198] had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In para 7 this Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. The following was held in paras 7 and 8: (AIR p. 201)*

"7. ... The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In Russell v. Duke of Norfolk [Russell v. Duke of Norfolk, (1949) 1 All ER 109 (CA)] , Tucker, L.J. observed: (All ER p. 118 D-F)

'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.' "

26. *A Constitution Bench of this Court has elaborately considered and explained the principles of natural justice in A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150] . This Court held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. Initially recognised as consisting of two principles, that is, no one shall be a judge in his own cause and no decision shall be given against a party without affording him a reasonable hearing, various other facets have been recognised. In para 20 the following has been held: (SCC p. 272)*

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely, (1) no one shall be a judge in his own case (nemo debetessejudex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and, that is, that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. …"

27. *In State of U.P. v. Saroj Kumar Sinha [State of U.P. v. Saroj Kumar Sinha, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675] , this Court had laid down that Enquiry Officer is a quasi-judicial authority, he has to act as an independent adjudicator and he is not a representative of the department/disciplinary authority/Government. In paras 28 and 30 the following has been held: (SCC p. 782)*

"28. An Enquiry Officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function

is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

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30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The Enquiry Officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

28. *When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he*

is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

29. *M. Rama Jois, J. of the Karnataka High Court had occasion to consider the above aspect in Bharath Electronics Ltd. v. K. Kasi [Bharath Electronics Ltd. v. K. Kasi, 1986 SCC OnLine Kar 30 : ILR 1987 KAR 366] . In the above case the order of domestic inquiry was challenged before the Labour and Industrial Tribunal. The grounds taken were, that inquiry is vitiated since Presenting Officer was not appointed and further Enquiry Officer played the role of prosecutor. This Court held that there is no legal compulsion that Presenting Officer should be appointed but if the Enquiry Officer plays the role of Presenting Officer, the inquiry would be invalid. The following was held in paras 8 and 9: (SCC OnLine Kar)*

"8. One other ground on which the domestic inquiry was held invalid was that Presenting Officer was not appointed. This view of the Tribunal is also patently untenable. There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry (see: Gopalakrishna Raju v. State of Karnataka [Gopalakrishna Raju v. State of Karnataka, 1980 SCC OnLine Kar 18 : ILR 1980 KAR 575]). It is true that in the absence of Presenting Officer if the inquiring authority plays the role of the Presenting Officer, the inquiry would be invalid and this aspect arises out of the next point raised for the petitioner, which I shall consider immediately hereafter.

9. The third ground on which the Industrial Tribunal held that the domestic inquiry was invalid was that the Enquiry Officer had played the role of the Presenting Officer. The relevant part of the findings read:

'The learned counsel for the workman further contended that the questions put by the enquiry officer to the management's witnesses themselves suggest that he was biased and prejudiced against the workman. There has been no explanation as to why no Presenting Officer was appointed and as to why the enquiry officer took upon himself the

burden of putting questions to the management's witnesses. The enquiry proceedings at Ext. A-6 disclose that after the cross-examination of the management's witnesses by the defence, the enquiry officer has further put certain questions by way of explanation, but from their nature an inference arises that they are directed to fill in the lacuna. The learned counsel for the management contended that the enquiry officer has followed the principles of natural justice and that the domestic enquiry is quite valid. I am of the view that the fact that the enquiry officer has himself taken up the role of the Presenting Officer for the management goes to the root of the matter and vitiates the enquiry.'

As far as the position in law is concerned, it is common ground that if the inquiring authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is: whether the Enquiry Officer did so? It is also settled law that an inquiring authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the inquiring authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair. (See Mulchandani Electrical and Radio Industries Ltd. v. Workmen [Mulchandani Electrical and Radio Industries Ltd. v. Workmen, (1975) 4 SCC 731 : 1975 SCC (L&S) 429] .)"

30. *This Court had occasion to observe in Workmen v. Lambabari Tea Estate [Workmen v. Lambabari Tea Estate, (1966) 12 FLR 361 : (1966) 2 LLJ 315 (SC)] , that if the Enquiry Officer did not keep his function as Enquiry Officer but becomes prosecutor, the inquiry is vitiated. The following was observed: (FLR p. 362)*

"The inquiry which was held by the management on the first charge was presided over by the Manager himself. It was conducted in the presence of the Assistant Manager and two

others. The enquiry was not correct in its procedure. The Manager recorded the statements, cross-examined the labourers who were the offenders and made and recorded his own statements on facts and questioned the offending labourers about the truth of his own statements recorded by himself. The Manager did not keep his function as the enquiring officer distinct but became witness, prosecutor and Manager in turns. The record of the enquiry as a result is staccato and unsatisfactory."

31. *A Division Bench of the Madhya Pradesh High Court speaking through R.V. Raveendran, C.J. (as he then was) had occasion to consider the question of vitiation of the inquiry when the Enquiry Officer starts himself acting as prosecutor in Union of India v. Mohd. Naseem Siddiqui [Union of India v. Mohd. Naseem Siddiqui, ILR 2004 MP 821] . In the above case the Court considered Rule 9(9)(c) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench while elaborating fundamental principles of natural justice enumerated the seven well-recognised facets in para 7 of the judgment which is to the following effect:*

"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well-recognised facets:

(i) The adjudicator shall be impartial and free from bias,

(ii) The adjudicator shall not be the prosecutor,

(iii) The complainant shall not be an adjudicator,

(iv) A witness cannot be the adjudicator,

(v) The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges,

(vi) The adjudicator shall not decide on the dictates of his superiors or others,

(vii) The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations.

If any one of these fundamental rules is breached, the inquiry will be vitiated.

32. *The Division Bench further held that where the Enquiry Officer acts as Presenting Officer, bias can be presumed. Para 9 is as follows:*

"9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject-matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Enquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Enquiry Officer is in position of a judge or adjudicator. The Presenting Officer is in the position of a prosecutor. If the Enquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Enquiry Officer conducts the examination-in-chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross-examines the delinquent employee or his witnesses to establish the case of the employer/disciplinary authority evidently, the Enquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Enquiry Officer does not have an open mind."

33. *The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:*

"16. We may summarise the principles thus:

(i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.

34. *We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory*

scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in Punjab National Bank v. Kunj BehariMisra [Punjab National Bank v. Kunj BehariMisra, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783] . In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows: (SCC p. 90)

*"10. ... '**7. Action on the enquiry report**.—(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.*

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.' "

***35.** The question which was debated before this Court was that since Regulation 7(2) does not contain any provision for giving an opportunity to the delinquent officer to represent before disciplinary authority who reverses the findings*

which were in favour of the delinquent employee, the rules of natural justice are not applicable. This Court held that principles of natural justice have to be read in Regulation 7(2) even though rule does not specifically require hearing of delinquent officer. In para 19, the following was held: (SCC p. 97)

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

36. *Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.*

> ***37.*** *The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases."*

38. Upon perusal of the above cited paragraphs, it is made out that the Hon'ble Supreme Court had observed that a disciplinary enquiry, being quasi judicial in nature, requires the inquiry officer to act fairly, independently and without any bias.

39. While upholding the order of the Guwahati High Court, the Hon'ble Supreme Court also observed that natural justice is a set of principles developed in administrative law to ensure justice and fair play. It includes various facets aimed at preventing miscarriage of justice.

40. In essence, the principles of natural justice serve as safeguards to ensure fairness, impartiality, and transparency in judicial, administrative as well as in quasi-judicial proceedings. Therefore, adherence to the same is a mandatory requirement.

41. While holding that the petitioner Department did not conform to the natural justice principle, the learned Court below set aside the enquiry report and reinstated the respondent workman.

42. The relevant paragraphs of the impugned award make it clear that the learned Court below had duly recorded the factum that the enquiry officer did not examine the witnesses involved in granting permission to the respondent to take the official jeep.

43. Furthermore, the necessity of full-fledged enquiry was held to be important as the fact that the permission as sought by the respondent from the official of the petitioner Department was not in writing rather was orally given.

44. On the basis of the same, it is clear that the learned Court below duly perused the enquiry report and held the same to be illegal mainly due to two reasons, *firstly,* the workman was not given any opportunity to cross-examine the witnesses, *secondly,* the statement of the witnesses was not recorded. Therefore, leading to the conclusion that the said enquiry was a mere formality.

45. In light of the same, this Court does not believe that the impugned award is legally untenable as the learned Court below duly abided by the law and therefore, held the enquiry report to be illegal ultimately setting aside the respondent workman's termination.

CONCLUSION

46. The principles of natural justice, being inherent to the core values of the Constitution, is one of the most important considerations for any administrative or quasi-judicial body where the adherence to the same is tested directly with relation to the fundamental rights as provided under the Constitution of India.

47. In the present case, the learned Court below directed the reinstatement of the respondent workman by holding that the enquiry report was not legally tenable as the same was in violation of the rights granted to the respondent workman.

48. It is held that there is no infirmity in the impugned award and the learned Labour Court has rightly arrived at the findings holding the respondent workman's termination illegal and the petitioner Department has failed to put forth any propositions to prove otherwise. In view of the same, this Court is not inclined to exercise its extraordinary writ jurisdiction to interfere with the impugned award. Therefore, the present petition is liable to be dismissed being bereft of any merits.

49. At this juncture, it is pertinent to mention here that as per the material on record, the respondent workman in the present case has already died, therefore, the question of reinstatement as directed by the learned Court below does not arise.

50. Furthermore, the referral to the previous orders in the instant case also makes it clear that the application under Section 17-B of the ID Act filed by the respondent was allowed *vide* order dated 18th October, 2012 and the respondent workman has received more than Rs.16 Lakhs in view of the same.

51. Taking into consideration the fact that the respondent workman has already expired due to which reinstatement does not seems to be a feasible option and the fact that the respondent workman has already received a considerable sum of money under Section 17-B of the ID Act, this Court deems it appropriate to award an additional compensation of Rs.5 Lakhs to the legal heirs of the respondent workman as final payment. The petitioner Department is directed to make the payment to the legal heirs of the deceased respondent workman within eight weeks from today.

52. In view of the same, the impugned award dated 25th April, 2005, passed by the learned Industrial cum Labour Court-II, Rajendra Place, New Delhi in Industrial Dispute no. 15/1999 stands modified.

53. Accordingly, the instant petition stands disposed of along with the pending applications, if any.

54. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 8, 2024
dy/av/ryp