A BHARAT FORGE COMPANY LTD.

v.

A.B. ZODGE AND ANR.

FEBRUARY 20, 1996

B [G.N. RAY AND B.L. HANSARIA, JJ.]

Labour Laws :

Industrial Disputes Act, 1947 :

C *S.11-A—Order of dismissal—Employer's prayer to lead evidence in support thereof—Rejected by the Industrial Tribunal—Upheld by the High Court—Whether justified—Held : Denial of opportunity to the employer to lead evidence in support of the order of dismissal not justified—Proceedings before the Tribunal to be completed within six months—Employer to lead* D *further evidence within two months and the workmen to lead evidence within one month thereafter.*

Workmen of Messrs Firestone Tyre and Rubber Co., of India (P) Ltd. **v.** *Management and Ors.*, **[1973] 3 SCR 587**, *Shankar Chakravarti* **v.** *Britannia Biscuit Co. Ltd. and Anr.*, **[1979] 3 SCR 1165**; *Workmen of Motipur Sugar* E *Factory (P) Ltd.* **v.** *Motipur Sugar Factory (P) Ltd.*, **(1963) II LLJ 163 SC**; *State Bank of India* **v.** *A.K. Jain*, **(1971) III LLJ 599 SC**; *Delhi Cloth General Mill Co. Ltd.* **v.** *Ludh Budh Singh*, **(1972) 1 LLJ 180 SC, relied on.**

Management of Ritz Theatre (P) Ltd. **v.** *Its Workmen*, **[1963] 3 SCR** F **461) and In re :** *Cooper Engineering Ltd.*, **(1975) 2 LLJ 379 SC, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4178 of 1996.

G From the Judgment and Order dated 2.2.90 of the Bombay High Court in W.P. No. 5281 of 1989.

G.B. Pai, O.C Mathur and Ms. Meera Mathur for the Appellants.

Madan G. Phadnis Ms. Gunwant Dara and P. Gaur for the Respon- H dents.

The following Order of the Court was delivered : A

Leave granted.

Heard learned counsel for the parties. The short question which arises for consideration of this Court is whether the Industrial Tribunal was justified in refusing the prayer of the appellant company the employer to B lead evidence in support of the order of dismissal passed against the respondent-employee. By the impugned Judgment, the Bombay High Court has upheld the decision of the Tribunal in refusing to give permission to the employer to lead evidence before the Tribunal in justification of the order of dismissal. C

Mr. Pai, the learned senior counsel appearing for the appellant has submitted before us that such permission has been refused by the Tribunal by indicating that although the enquiry was properly held, the finding in such enquiry was perverse and in such circumstances, no opportunity to lead evidences should be given. Such view according to Mr. Pai is not D justified inasmuch as it has been held in *Management of Ritz. Theatre (P) Ltd.* v. *Its Workmen*, [1963] 3 SCR 461 that even when finding is perverse (see page 468) the whole issue is at large before the Tribunal and it would be entitled to deal with the merits of the dispute itself, when it would be open to the employer to adduce additional evidence, Mr. Phadnis, learned E senior counsel appearing for the respondents, contends that that was the position in law before insertion of Section 11 A in the Industrial Disputes Act, but this section has altered the position.

Mr. Pai's submission is that this is not so. In support of his contention, he has drawn our attention to the decision of this Court in *Workmen* F *of Messrs Firestone Tyre and Rubber Co. of India (P) Ltd.* v. *Management and Ors.*, [1973] 3 SCR page 587. In the said decision, the legislative changes brought about on the power of the Tribunal to decide the question or correctness and propriety of the order of termination or dismissal of service of an employee under Section 11 A were taken into consideration. It has been indicated in the said decision that the Tribunal under Section G 11 A of the Industrial Disputes Act is clothed with the power to assess the evidences placed before the Tribunal for deciding as to whether the decision made by the employer was justified or not and such power is not fettered in any manner. In the said decision, the earlier decisions of this Court were also considered and ten principles emerging from such H

A decisions have also been culled out. It also appears that the contention sought to be raised on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal, for the first time since recognised by this Court in its various earlier decisions, has been taken away by Section 11 A of the Industrial Disputes Act has not been accepted. It has been indicated in the said decision that there is no indication in Section 11 A B that such right has been abrogated. It has also been held that if the Intention of the legislature was to do away with such right which has been recognised over a long period of time as noticed in the decisions referred to earlier Section 11 A would have been differently worded. This Court has observed that admittedly there are no express words to that effect and C there is no indication that the Section 11 A has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidences, for the first time, before the Tribunal even if the employer had held no inquiry or the inquiry held by the employer is found to be perverse.

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Mr. Phadnis has, however, submitted before us that it does not appear that in the decision of *Firestone Tyre Rubber Company's* case, proviso to Section 11 A has been specifically adverted to and thereafter considered. The proviso expressly bars introduction of any fresh materials because the proviso to Section 11A indicates that the Labour Court, E Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take fresh evidence in relation to the matter.

F Mr. Phadhis has submitted that the implication of proviso to Section 11 A therefore requires consideration. Such contention of Mr. Phadhis, however, cannot be accepted. Mr. Pai has drawn our attention to a later decision of this Court by a Bench of three Judges in *Shankar Chakravarti* v. *Britannia Biscuit Co. Ltd. and anr.*, [1979] 3 SCR paged 1165. In the said decision, the question of implication of the proviso to Section 11 A was G specifically raised and such question had been gone into. The contention that under the proviso to Section 11 A the Labour Court or the Industrial Tribunal or the National Tribunal in proceeding under Section 11A shall rely only on the material on record and shall not take any fresh evidence in relation to the watter under consideration was not accepted by this Court H by placing reliance on the reasonings indicated in the decision in Firestone

Rubber Company case.

A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary Action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in *Workmen of Motipur Sugar Factory (P) Ltd.* v. *Motipur Sugar Factory (P) Ltd.*,(1965) II LLJ 162 SC, *State Bank of India* v. *R.K. Jain*, (1971) III LLJ 599 SC. *Delhi Cloth General Mill Co. Ltd.* v. *Ludh Budh Singh*, (1972) I LLJ 180 SC and *Firestone Tyres Co.,* case (supra). The stage at which the employer should ask for permission to adduce additional evidence to justify the disciplinary action on merits was indicated by this Court in *Delhi Cloth and General Mill's* case (supra). In *Sankar Chakraborty's* case (supra), the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling him to adduce further evidence to sustain the charges. If the employer chooses to do so, by relying on the decision of this Court in the case of *Cooper Engineering Ltd.,* (1975) 2 LLJ 379 SC, has not been accepted. The view expressed in *Delhi Cloth Mill's* case (supra) that before the proceedings are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in *Sankar Chakraborty's* case after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in *Cooper Engineering Ltd.* has not overruled the decision of this Court in *Delhi Cloth Mill's* case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified.

In that view of the matter, the impugned Judgment cannot be sustained and the same is set aside. It will be open to the parties to lead such evidence as they may deem proper before the Industrial Tribunal where

A the matter is to be re-heard. Since the proceeding is pending for a long, we direct that the proceeding before the tribunal should be completed as early as practicable, but not beyond six months from the date of communication of this order. In order to expedite the proceeding before the Tribunal we direct that the appellant Bharat Forge Ltd. may lead such
B further evidence as the said company may desire within a period of two months from today and the workmen may also lead evidence if they so desire within one month thereafter. The appeal is accordingly disposed of without any order as to costs.

G.N. Appeal disposed of.