

(2017) 02 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 4989 of 2009

Divisional Controller

APPELLANT

Vs

Lilabhai Visabhai Kuchhadiya

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)(b)

Citation : (2017) 2 LLJ 189

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Ms. Sejal K Mandavia, Advocate, for the Petitioner No. 1; Mr. Mrudul M. Barot, Advocate, for the Respondent No. 1

Final Decision : Partly Allowed

Judgement

Mr. K.M. Thaker, J.(Oral)—Heard Ms. Mandavia, learned advocate for the petitioner, and Mr. Barot, learned advocate for the respondent.

2. In present petition, the petitioner corporation has challenged award dated 5.8.2008 passed by learned Tribunal at Ahmedabad in Complaint (IT) No.340 of 2006 in Reference (IT) No.37 of 2000 whereby the learned Tribunal rejected the approval application filed by the corporation seeking approval of its action viz. order dated 14.8.2006 whereby the Board terminated the service of present respondent.

3. So far as factual background is concerned, it has emerged from the record that present respondent was working with the corporation as a Conductor. For certain reported misconduct, the corporation had issued charge sheet dated 19.1.2001 against present respondent and it was alleged that he had not issued tickets to some passengers. In pursuance of the said charge sheet, domestic inquiry was conducted. The Inquiry Officer submitted his report / findings wherein the Inquiry Officer held that the allegations against the delinquent employee i.e. present respondent are proved. The corporation, thereafter, passed

order dated 14.8.2006 and terminated service of the claimant, i.e. present respondent. However, since, at the relevant time, a dispute by way of Reference (IT) No.37 of 2000 was pending, wherein present respondent was a concerned workman, the corporation filed application under Section 33 of the Industrial Disputes Act [hereinafter referred to as "ID Act"] and sought approval with reference to order dated 14.8.2006. The learned Tribunal considered the approval application which was registered as application No.340 of 2006 and after examining the case on merits, learned Tribunal reached to the finding that since the Inquiry Officer had put certain questions to the delinquent employee during the proceedings of the departmental inquiry, the inquiry should be termed vitiated. On the said ground, the learned Tribunal rejected the approval application.

3.1 Feeling aggrieved by the said decision, the corporation filed present petition.

4. Ms. Mandavia, learned advocate for the petitioner corporation, assailed the impugned award dated 5.8.2008 and submitted that the learned Tribunal travelled beyond its jurisdiction and therefore, the award is not sustainable. She submitted that while considering application seeking approval filed by employer under Section 33(2)(b) of the ID Act, the learned Tribunal cannot enter into the merits of the proceedings and cannot examine the case of termination of employee on merits, so as to decide as to whether the termination is justified or not. She submitted that in present case, the learned Tribunal examined the case on merits and declared the inquiry defective on the ground that corporation could not have proceeded in the inquiry without appointing presenting officer and that inquiry officer had put some questions to the employee. The Tribunal entered into merits of the case and learned Tribunal declared the inquiry defective. The learned Tribunal rejected the approval application which is not permissible and that therefore, the award impugned in present petition should be set aside.

5. On the other hand, Mr. Barot, learned advocate for the respondent workman, submitted that the learned Tribunal has not committed any error in rejecting the approval application. He submitted that the learned Tribunal has power and authority to examine the case on merits while considering application under Section 33(2)(b) of the ID Act and to decide as to whether the application deserves to be granted or not. He submitted that the learned Tribunal can examine the legality and propriety of the inquiry and for that purpose, the learned Tribunal can also examine as to whether the Inquiry Officer travelled beyond his authority or not. He submitted that in present case, the learned Tribunal examined the legality and propriety of the inquiry and found that the Inquiry Officer travelled beyond his authority which vitiated the inquiry and therefore, the learned Tribunal rejected the approval application. According to learned advocate for the respondent workman, there is no illegality in the award and therefore, the petition should be rejected.

6. I have heard learned counsel for the petitioner corporation and the respondent workman. I have also considered the material available on record and the

impugned award.

7. At the outset, it is relevant and necessary to mention that so far as procedural aspect with reference to submitting approval application are concerned i.e. so far as compliance of conditions prescribed by Section 33(2)(b) is concerned, it is not in dispute that the corporation had complied all conditions prescribed by Section 33(2)(b). Thus, it is not in dispute that the approval application was filed in accordance with procedure prescribed under Section 33(2)(b) of the ID Act.

7.1 Actually, it is not the case even of the respondent workman that the corporation did not file approval application and/or committed breach of the procedure prescribed under Section 33 of the ID Act for filing approval application.

7.2 From the material available on record as well as from the impugned award, it has emerged that the corporation had issued charge sheet and conducted domestic inquiry and when the corporation passed disciplinary order (i.e. order dated 14.8.2006 terminating service of the respondent workman) the corporation, simultaneously, filed approval application before the learned Tribunal (where Reference (IT) No. 37 of 2000 was pending). While passing the impugned order and filing approval application, the corporation, undisputedly, paid one month's wages to the respondent workman and also complied with the conditions and procedure prescribed by Section 33 of the ID Act. Even the learned Tribunal has not found any error or defect in action of the corporation in filing approval application in accordance with Section 33 of the ID Act.

7.3 However, the learned Tribunal has held that during the domestic inquiry the Inquiry Officer had put some questions to the delinquent workman and therefore, the inquiry should be held to be defective.

8. In this context, learned advocate for the petitioner corporation would contend that since presenting officer was not appointed the Inquiry Officer had asked few formal questions to the delinquent employee e.g. whether he admitted the charge against him or not and what was his explanation with reference to the allegations by the corporation and the evidence placed on record by the corporation. The learned advocate for the petitioner would also submit that the Inquiry Officer had not put any questions to the claimant with regard to the merits of the allegations and/or any questions in nature of cross examination of the delinquent employee and that therefore, the decision by learned Tribunal with regard to domestic inquiry and/or the method of conducting domestic inquiry by the Inquiry Officer is erroneous and the decision to reject approval application on said ground is not sustainable.

9. In this view of the matter, the issue which arises for consideration is about the extent of learned Tribunal's jurisdiction while examining and adjudicating approval application filed under Section 33(2)(b) of the ID Act.

9.1 On this count, it is relevant to note that it was reported against the claimant

that he had committed misconduct of not issuing tickets to the passengers. Undisputedly, a charge sheet was issued and his explanation was called for. The explanation (by the employee) was considered and thereafter and it was not found satisfactory. Therefore, domestic inquiry was instituted. The delinquent employee participated in the inquiry, wherein opportunity of hearing and defence was granted to the delinquent employee.

9.2 Upon conclusion of the proceedings, the Inquiry Officer submitted his report holding, inter alia, that the allegation of not issuing tickets to the passengers is proved against the delinquent employee.

9.3 The disciplinary authority considered the report of Inquiry Officer and after taking into account relevant factors, the disciplinary authority decided to terminate the service of the claimant and therefore, order dated 14.8.2006 came to be passed.

9.4 Since a dispute by way of Reference (IT) No.37 of 2000 was pending at the relevant time before the learned Tribunal and the delinquent employee was concerned workman in said reference, the corporation simultaneously filed approval application and sought approval of its action i.e. the termination order dated 14.8.2006.

10. While examining the approval application, the learned Tribunal entered into the merits of the domestic inquiry and while examining the record and proceedings of the domestic inquiry on merits, the learned Tribunal noticed that the Inquiry Officer had put some questions to the delinquent employee. On that ground, learned Tribunal declared the domestic inquiry defective and rejected approval application.

11. In this background, question arises about the extent of tribunal's jurisdiction while adjudicating approval application under Section 33(2)(b) of the Act.

12. So as to address the issue as to whether the aspects considered by the tribunal in present case could have been examined by learned tribunal in application under Section 33(2)(b) of the ID Act or not, it would be appropriate to consider observation by Apex Court which explain tribunal's jurisdiction in respect of application under Section 33(2)(b) of the ID Act.

13. In the decision in case of Lakshmi Devi Sugar Mills Ltd. v. Ram Sarup and Ors. [AIR 1957 SC 82], Hon"ble Apex Court considered the scope of learned Tribunal's jurisdiction for deciding approval application in light of erstwhile Sections 22 and 23 (Present Section 33 is similar to said Sections 22 and 23). In the said decision Hon"ble Apex Court, observed that:-

"19. The scope of the enquiry before the Labour Appellate Tribunal under section 22 of the Act has been the subject-matter of decisions by this Court in Atherton West and Co. Ltd. v. Suti Mill Mazdoor Union and Others and The Automobile Products of India Ltd. v. Rukmaji Bala and Others The Tribunal before whom a n application is made under that section has not to adjudicate upon any industrial

dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment "to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization. It cannot impose any conditions on the employer before such permission is granted nor can it substitute another practice for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the (1) (1952) I L.L.J. 554. (2) (1954) II L.L.J. 328. (1953) S.C.R. 780. (4) (1951) II L.L.J. 221. (5) (1954) II L.L.J. 656. (6) (1965) 1 S.C.R. 1241, 936 punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate Tribunal, the workman would be entitled to have all the circumstances of the case scrutinized by the Tribunal and would be entitled to get the appropriate relief -at. the hands of the Tribunal. If, on the other hand, such permission is refused, the parties would be relegated to the status quo and the employer would not be able to deal out the punishment which he intends to do to the workman. Even then an industrial dispute might arise between the employer and the workman if the workman was not paid his due wages and other benefits. Such industrial dispute also would have to be referred to the appropriate Tribunal by the Government and the Tribunal would award to the workman the appropriate relief having regard to all the circumstances of the case. The Tribunal before whom such an "application for permission is made under section 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was bona fide or was actuated by the motive of victimization. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged a prima facie case would be made out by the employer and the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal 937 out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case the dealing out of such punishment by the employer to the workman after such

permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal under section 22 of the Act would be to either grant the permission or to refuse it...."

(emphasis supplied)

13.1 Thereafter, in the decision in case of *Martin Burn Ltd. v. R.N. Banerjee* [AIR 1958 SC 79], Bench comprising three Hon'ble Judges, considered the issue about the scope and extent of learned Tribunal's jurisdiction while deciding application under erstwhile Section 22 (similar to present Section 33 of ID Act) of the ID Act. Hon'ble Apex Court held, inter alia, that:-

"22. The nature and scope of the enquiry before the Labour Appellate Tribunal under section 22 of the Act has been the subject-matter of decisions of this Court in *Atherton West and Co. Ltd. v. Suti Mill Mazdoor Union and others* , (*The Automobile Products of India Ltd. v. Rukmaji Bala and others*) and *Lakshmi Devi Sugar Mills Limited v. Pt. Ram Sarup* In the last mentioned case this Court succinctly laid down the principles governing such enquiry and observed at p. 935:

"The Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the condition of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practise or victimization."

27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record...."

(emphasis supplied)

13.2 The issue with regard to scope of learned Tribunal's jurisdiction while adjudicating and deciding approval application under Section 33(2) (b) of the ID Act was examined by Hon''ble Apex Court in case of Lalla Ram v. Management of D.C.M.Chemical Works Ltd. and Anr. [AIR 1978 SC 1004]. In the said decision, Hon''ble Apex Court recorded the ground on which the Tribunal rejected the approval application and observed, inter alia, that:-

"5. While holding that the Enquiry Officers were not biased against the appellant; that there was no violation of the principles of natural justice and that it could not be said that the findings of the Enquiry Officers were not based upon any evidence or that the same were perverse, the Additional Industrial Tribunal, Delhi refused by its order dated April 23, 1969 to accord its approval to the appellant's dismissal on the grounds that the disciplinary action taken against the appellant was misconceived..."

(emphasis supplied)

13.3 While considering the issue as to whether the learned Tribunal could have examined the employer's action and the domestic inquiry from the said perspective, Hon''ble Apex Court observed and held that:-

"9. It cannot also be disputed that the extent of jurisdiction exercisable by an approving authority under Section 33 (2) (b) of the Act is very limited as has been clearly and succinctly pointed out by this Court in a number of decisions. In the Lord Krishna Textiles Mills v. Its workmen, (1961) 3 SCR 204 : (AIR 1961 SC 860) this Court after referring to its earlier decisions and explaining the distinction between "permission" and "approval" observed as follows (at pp. 863, 865 of AIR) :

"Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33 (2) (b) cannot be wider and is, if at all, more limited, than that permitted under Section 33 (1), and in exercising its powers under Section 33 (2) the appropriate authority must bear in mind the departure deliberately made by the Legislature in separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33 (5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33 (2) (b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional orderIn view of the limited nature and extent of the enquiry permissible under Section 33 (2) (b) all that the authority can do in dealing with an employer's application is to consider whether a prim a facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section

33 (2) (b) and the proviso are satisfied or not. Do the standing order justify the order of dismissal? Has an enquiry been held as provided by the Standing Orders? Have the wages for the month been paid as required by the proviso? and, has an application been made as prescribed by the proviso?"

12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under Section 33 (2) (b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practise and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co. v. Ram Probesh Singh*, (1964) 1 SCR 709 : (AIR 1964 SC 486) : *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar* (1961) 1 Lab LJ 511 (SC); *Hind Construction and Engineering Co. Ltd. v. Their Workmen*, (1965) 2 SCR 83 : AIR 1965 SC 917; *Workmen of Messrs Firestone Tyre and Rubber Company of India (P.) Ltd. v. Management*, (1973) 3 SCR 587 : AIR 1973 SC 1227, and *Eastern Electric and Trading Co. v. Baldev Lal*, 1975 Lab IC 1435 : (AIR 1975 SC 1892) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

(emphasis supplied)

13.4 A profitable reference can also be had to the observations by Hon''ble Apex Court in paragraph No.14 of the decision in case of *Jaipur Zila Sahakari Bhoomi*

Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors. [2002 AIR SCW 249] wherein Hon''ble Apex Court observed, inter alia, that:-

"14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practise; whether the conditions contained in the proviso were complied with or not, etc."

(emphasis supplied)

Of course, in the said decision, the issue for consideration before Hon''ble Apex Court was the effect of and consequence of the non-approval of the order passed by employer against the employee. However, in the said case, while examining scope of Section 33(2)(b) and scope of inquiry by learned Tribunal, Hon''ble Apex Court observed as quoted above.

13.5 Thereafter, the issue was again considered by Hon''ble Apex Court in case of Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241] wherein Hon''ble Apex Court, after considering previous decisions, observed and held, inter alia, that:-

"13. It is neither in doubt nor in dispute that the jurisdiction of the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal under Section 33(2)(b) cannot be equated with that of Section 10 of the Industrial Disputes Act. In this case admittedly an enquiry has been held wherein the parties examined their witnesses. The Respondent was represented and assisted by three observers. Shri M. Venkatesan was the Branch Manager, CRC Tanjore Town Branch, who had submitted his report and proved the same before the Inquiry Officer. He furnished a detailed account of the position of the bus vis-a-vis the other bus after the collision took place. He found that there was no brake tyre mark of the bus on the road. All the two seaters seats on the entire left side of the bus were found totally damaged. The left side roof arch angle of the bus was found totally out. Not only 4 persons were found to be dead at the spot, the driver and conductor of the bus and 10 other passengers were also sustained injuries in this accident. Out of the said 10 passengers, 3 subsequently died in the hospital owing to the injuries sustained by them. He further found that on the left side of the road in the earthen margin, there was a tamarind tree's protruding branch and which was found to have been already cut and the bottom stump of the branch was found protruding to a length of 3 inches. The bus was found to have been brought to a halt only at a distance of 81 ft. from the place of impact against the tree. He further noticed that even after the impact of the bus against the tree, the delinquent is said to have swerved the bus further to the right side from left side without applying brake and reducing speed and later only be brought the bus to a halt at some distance as a result of which the entire side roof angle of the bus got cut."

(emphasis supplied)

14. From above quoted observations, it emerges that the extent of jurisdiction by learned Tribunal in examining approval application under Section 33(2)(b) for deciding the question as to whether approval to the employer's action deserves to be granted or not, is limited and cannot be equated with Tribunal's power under Section 10 of the ID Act.

14.1 The issue which can be considered by learned Tribunal while adjudicating substantive reference against termination of service of an employee cannot be examined by learned Tribunal while deciding approval application under Section 33(2) (b) of the ID Act.

14.2 From above quoted observations by Hon''ble Apex Court, it comes out clearly that while considering approval application, learned Tribunal has to confine its examination as regards the issue:

"12. (i) whether a proper domestic enquiry in accordance with the relevant rules/ Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practise and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co. v. Ram Probesh Singh*, (1964) 1 SCR 709 : (AIR 1964 SC 486) : *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar* (1961) 1 Lab LJ 511 (SC); *Hind Construction and Engineering Co. Ltd. v. Their Workmen*, (1965) 2 SCR 83 : AIR 1965 SC 917; *Workmen of Messrs Firestone Tyre and Rubber Company of India (P.) Ltd. v. Management*, (1973) 3 SCR 587 : AIR 1973 SC 1227, and *Eastern Electric and Trading Co. v. Baldev Lal*, 1975 Lab IC 1435 : (AIR 1975 SC 1892) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment;"

15. In present case, it appears that while considering approval application, learned Tribunal entered into the merits of the case and examined minute details of the proceedings conducted by the Inquiry Officer. Having noticed that the corporation had not appointed Presenting Officer, the learned Tribunal, without proper examination of relevant aspects and without considering that applicable regulations of the corporation provide that inquiry may be conducted without appointing presenting officer, formed the opinion that the Inquiry Officer had played role of Prosecutor as well as Judge. On the said premise, learned Tribunal

declared that the domestic inquiry was not conducted in accordance with law. The learned Tribunal also held that the Inquiry Officer had put some questions to the claimant and proceeded on the premise that inquiry officer cannot put any question to the employee/delinquent, the Court declared the inquiry defective.

15.1 The nature and extent of the questions allegedly put by the Inquiry Officer to the claimant are neither examined nor mentioned in the impugned award therefore, it is not possible to ascertain as to whether the learned counsel for the corporation is justified in contending that the Inquiry Officer had put few formal questions or the observation by learned Tribunal that the inquiry officer had conducted cross examination of the employee, is justified.

15.2 When award impugned in present petition is examined, it comes out clearly that though the learned Tribunal has made reference of some of the decisions which appear to have been relied on by the parties, learned Tribunal has not discussed the principles related to scope of its jurisdiction as explained by Hon"ble Apex Court in the said decided cases. In particular, the decision by Hon"ble Apex Court in case of Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241] is not taken into account by learned Tribunal.

16. At this stage, it is relevant to mention that learned advocate for the respondent relied on the decision in case of Divisional Controller, GSRTC v. V.K. Chaher [2003 (4) GLR 3302]. The decision by Hon"ble Apex Court in case of Cholan Roadways Ltd. (supra) is a decision subsequent to the cited decision in case of Divisional Controller (supra) and that therefore, the issue with regard to scope and extent of the learned Tribunal's decision for deciding application under Section 33(2)(b) must be examined in light of and must be decided in light of the said decision by Hon"ble Apex Court in case of Cholan Roadways Ltd. (supra).

17. Further, as mentioned herein above earlier, the learned Tribunal appears to have proceeded on the basis of contention by the workman that the Inquiry Officer had asked certain questions during proceedings of inquiry to him.

17.1 The learned Tribunal, however, does not appear to have carefully examined the nature of questions put by the Inquiry Officer to the concerned workman and the learned Tribunal also did not address the question as to whether any innocuous question put by the inquiry officer, for purpose of seeking clarification would render the inquiry defective and whether some innocuous questions by the Inquiry officer for the purpose of seeking clarification from the concerned workman would automatically and as a rule, vitiate the domestic inquiry. Even if it is assumed that the learned Tribunal can examine such aspects while deciding approval application, then in that event, the learned Tribunal would be obliged to examine the nature of questions put by the Inquiry Officer and to also consider whether some questions, which may not prejudicially affect the concerned workman i.e. the question(s) which may not cause any prejudice to the workman, put by the Inquiry Officer, would be sufficient to declare that the

Inquiry Officer acted as Prosecutor as well as Judge and to condemn the inquiry on said ground. Said decision can be reached only after close scrutiny of nature of question put by the Inquiry Officer and after addressing the issue as to whether the questions put by the inquiry officer were in nature of cross-examination and whether the questions actually caused prejudice to the workman. Whereas, in present case, the learned Tribunal has not addressed relevant aspects. The learned Tribunal ought to have confined its inquiry and probe as regards legality and propriety of the inquiry and compliance with principles of natural justice by keeping in focus the limitations of jurisdiction of the learned Tribunal in deciding application under Section 33(2)(b) as explained by Hon''ble Apex Court in case of Cholan Roadways Ltd. (supra).

18. Since the learned Tribunal, in present case, has held that the inquiry is vitiated by taking into account the allegation of the concerned workman that some questions were put to him by Inquiry Officer during inquiry, however, observation by learned Tribunal are recorded without considering the nature of the questions put by the 19. Inquiry officer and since the learned Tribunal has not taken into account whether the question actually caused any prejudice to the workman and/or whether the questions were actually in nature of cross examination and without considering the limitation or extent of jurisdiction as explained by Hon''ble Apex Court in Cholan Roadways Ltd. (supra), it appears that the proceedings of approval application No.340 of 2006 deserves to be re-examined by learned Tribunal keeping in focus foregoing discussion and in view of the fact that entire record of inquiry proceedings (wherefrom the nature of questions put by the Inquiry Officer can be verified) is not available on record of present petition. Therefore, following order is passed:-

[a] In view of foregoing discussions and for the reasons mentioned above, the award dated 5.8.2008 deserves to be set aside and the approval application No.340 of 2006 deserves to be reconsidered and reexamined by learned Tribunal. Therefore, the award dated 5.8.2008 in approval application No.340 of 2006 is hereby set aside and the case is remitted to the learned Tribunal for reconsideration and fresh decision.

[b] It is clarified that the learned Tribunal will reconsider and decide the approval application independently and in accordance with law without being influenced by previous award and after granting opportunity of hearing to both sides.

[c] Having regard to the fact that the proceedings are pending since 2006, the learned Tribunal would endeavour to expedite the hearing of the approval application and decide the same as expeditiously as possible and preferably within 3 months from receipt of present order. For the said purpose, the concerned workman is permitted to directly serve certified copy of this order to the learned Tribunal with request to expedite the hearing.

20. With aforesaid observations, clarifications and direction, present petition is partly allowed. Rule is made absolute to the aforesaid extent.