

**(2002) 11 AHC CK 0080**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 1491 of 1993

Mohd. Akhlaque Khan

APPELLANT

Vs

Managing Director, Varanasi Mandal Vikas Nigam Ltd., Varanasi  
and Others

RESPONDENT

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**Date of Decision :** 01-11-2002

**Acts Referred:**

**Citation :** (2002) 11 AHC CK 0080

**Hon'ble Judges :** Rakesh Tiwari, J

**Final Decision :** Dismissed

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## **Judgement**

Rakesh Tiwari, J.—Heard the learned Counsel for the parties and perused the records.

2. The petitioner joined the service in Varanasi Mandal Vikas Nigam Ltd. Varanasi as a clerk in the year 1978 and was confirmed in the year 1979 after completing the period of probation. He was placed under suspension by the Managing Director vide order dated 1461991 in pursuance of the chargesheet contained in Annexure1 to the writ petition. He was neither paid subsistence allowance nor was given copies of documents demanded by him, which, it is alleged, were necessary for submitting his reply to the chargesheet. Aggrieved, he filed writ petition, wherein a direction was issued vide order dated 861992 to the respondents to pay subsistence allowance and to make available the copies of documents sought by the petitioner. In pursuance of the order dated 861992 copies of the documents were supplied to him on 9101992. He also inspected the records on 15101992. In the mean time Varanasi Mandal Vikas Nigam was closed down with effect from 17111993. However, the enquiry continued and the Inquiry Office submitted his report on 30121992. On 1311993 additional enquiry report was served on the petitioner and FIR was lodged by the respondents against him under Section 409 IPC at P.S. Cantt. Varanasi through Crime No. 30 of 1993.

3. The petitioner is a workman. He alleges that he was not supplied the copies of the documents relied upon by the department and as such the enquiry is

defective and is liable to be quashed. It was not denied that he had inspected the records on 15101992 and was supplied copies of the documents on 9101992. This is sufficient compliance of the principles of natural justice and the contention of the petitioner has no force.

4. The Apex Court in *Delhi Cloth and General Mills Co. v. Ludh Budh Singh*, AIR 1972 SC 1031, in paragraph 60 has laid down the principles for adjudication of dispute before the labour Court in case where the enquiry has been held, (2) enquiry is defective or (3) where no enquiry has been made. Paragraph 60 is quoted below:

¶60. From the above decisions the following principles broadly emerge.(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If the domestic enquiry had been held, it is open to the Management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper it is the duty of the Tribunal in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the

management, then no additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied. On evidence adduced before it that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceeding are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.?

5. In *Chandrama Singh v. Managing Director, U.P. Cooperative Union Lucknow and others*, 1991 UPLBEC 898, the Full Bench of this Court in Paras 9 and 13 of the judgment has held as under:

?(9) Having regard to the above noticed decisions of the Hon''ble Supreme Court of India, it is rules that where a complete machinery/remedy for obtaining relief

is provided in statute and such machinery and remedy fully covers the grievance of the petitioner then, unless extraordinary or exceptional circumstances exist or the machinery remedy does not cover the grievance of the petitioner or the machinery or remedy is demonstrated and proved by the petitioner to be inadequate or inefficacious, the petitioner has to be relegated to the alternative remedy and the Court should not entertain a writ petition under Article 226 of the Constitution of India for redressal of the grievance by the petitioner.....?

(13) The decisions of the Hon''ble Supreme Court of India and this Court, noted above, lead to an irresistible conclusion that the High Court must not allow its extraordinary jurisdiction under Article 226 of the Constitution of India to be invoked if the petitioner has got an alternative remedy and such remedy is not pleaded and proved to be inadequate or inefficacious or if it is not established from the material on record that there exist exceptional or extraordinary circumstances to deviate from the well settled normal rule of relegating the petitioner to alternative remedy and permit him to bypass the alternative remedy. The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The petitioner must furnish material facts and particulars to sustain such a plea.?

6. In *Scooters India and others v. Vijay E.V. Elder*, 1998 SCC (LS) 1611, the Hon''ble Supreme Court in Para 2 of the judgment has held as under:

?(2) .....there was no occasion for the High Court to entertain the writ petition directly for adjudication of an industrial dispute involving the termination of disputed questions of fact for which remedy under the industrial laws are available to the workman.?

7. The petitioner has not pleaded and given cogent reasons before this Court to establish that alternative remedy before the labour Court is inadequate and inefficacious, as such the writ petition cannot be entertained only on the grounds that affidavits have been exchanged between the parties and the petition is pending for about ten years. Entertaining writ petition does not mean that it has to be allowed in all circumstances. The decisions of the Apex Court are binding on all Courts under Article 141 of the Constitution and this Court will not allow its extraordinary jurisdiction under Article 226 of the Constitution to be invoked in aforesaid circumstances particularly when the disputed questions of fact require appreciation of oral and documentary evidence for establishment of the legal rights of the respective parties. The Act and Rules framed under the U.P. Industrial Disputes Act, 1947 are adequate for settlement of any Industrial Dispute and provide a forum for arriving at findings of fact by taking into consideration the evidence, oral and documentary adduced before it.

8. In this view of the above position of law, the writ petition is dismissed on the

ground of alternative remedy. It is, however, directed that if the petitioner raises an industrial dispute before the concerned Regional Conciliation Officer/Deputy Labour Commissioner within a month from today, the said authority will try to amicably settle the dispute. In case no settlement is arrived at, the matter shall be immediately referred by the competent authority to the Labour Court or Industrial Tribunal for adjudication. The reference to made, shall be decided by the Labour Court in a manner prescribed and time limits as provided in Rule 12 of the U.P. Industrial Disputes Rules, 1957 for filing written statements, rejoinder, documents etc. If necessary, the proceedings may be held on day to day basis under Rule 12 (4) of the Rules and the case may be decided preferably within a period of six months from the date of receipt of reference.