
(2000) 10 MP CK 0043
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3021 of 2000

M.P. Ashok Hotel Corporation Limited and another	APPELLANT
Vs	
The Appellate Authority and another	RESPONDENT

Date of Decision : 16-10-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 11
Madhya Pradesh Industrial Disputes Rules, 1957 — Rule 10
Madhya Pradesh Shops and Establishments Act, 1958 — Section 58, 58(1), 58(2), 58(3), 59
Madhya Pradesh Shops and Establishments Rules, 1959 — Rule 14, 14
Motor Vehicles Act, 1939 — Section 68

Citation : (2001) 2 MPHT 199

Hon'ble Judges : Mr. Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Shri Ajay Mishra, for the Appellant; Ms. Shobha Menon, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra, J.—The learned Single Judge (S.K. Kulshrestha, J) has made this reference for consideration and authoritative pronouncement by a large Bench on the scope and powers of the Appellate Authority u/s 58 of M-P- Shops and Establishments Act, 1958 as to whether the said authority is under an obligation to permit the parties to adduce evidence in favour or against the cause on the basis whereof the services have been dispensed with. The learned Single Judge has doubted the correctness of the decision rendered by a Single Bench of this Court in Bajaj Electricals Ltd. Vs. N.K.Kanojia 1999(1)MPSLR 131, wherein it was laid down by the learned Single Judge that the Appellate Authority had no power to permit Parties to adduce evidence and after hearing the parties the Appellate Authority has to decide the case on merits.

2. The factual matrix leading to filing of this petition unfolds that the services of respondent No. 2 were terminated. He challenged the order of dismissal before

the Appellate Authority u/s 58 of the M.P. Shops, and Establishments Act, 1958 (hereinafter referred to as "the Act") read with sub-rule (2) of Rule 14-A of M.P. Shops and Establishments Rules, 1959 (hereinafter referred to as "the Rules"). The Appellate Authority passed an order on 10-4-2000 in appeal No. 1/19 in exercise of powers conferred u/s 58 (2) of the Act and reinstatement of respondent No. 2 was directed with full back wages.

3. In the reply filed before the Appellate Authority by M/s. Ashok Hotel Corporation Limited, Bhopal it was alleged that respondent No. 2 was removed on the ground of gross misconduct and in case the Appellate Authority considers that enquiry was necessary to be held before termination of his services, opportunity be granted to the employer to prove the misconduct by adducing evidence before the Appellate Authority. An application was also moved on February 10, 2000 that there were triable issues involved, issues should be framed and parties should be permitted to adduce evidence. The Appellate Authority, relying on the Single Bench decision of this Court in Bajaj Electricals Limited (supra) observed that as Appellate Authority it had no power to record evidence and after hearing the parties it decided the case on merits. The order passed by it has been assailed in the present writ petition.

4. The learned Single Judge (S.K. Kulshrestha, J.) felt that the Division Bench decision of this Court in the case of Employers, Anand Cinema Vs. Mohan, 1992 MPLJ 334, in which it has been held that neither the Industrial Disputes Act nor the Shops and Establishments Act contains any provision creating a bar against the employer "leading evidence to prove the misconduct and support the order of termination of service was not taken into consideration in the decision in Bajaj Electricals Limited (supra). The Single Judge also felt that Rule 14-A of the Rules and the prescribed form of notice were not brought to the notice of the learned Single Judge deciding the matter of Bajaj Electricals Limited (supra).

5. Thus, the point for consideration before us is whether the Appellate Authority exercising jurisdiction u/s 58 of the M.P. Shops and Establishment Act, 1958 has power to receive evidence to prove mis-conduct or permit the employee to adduce evidence against the cause on the basis whereof his services have been dispensed with.

6. Learned counsel for the petitioner, Shri Ajay Misra, has submitted that an application was moved for framing the issue and recording evidence. Though the respondent was allowed to file an affidavit on February 28, 2000, the applications filed by the petitioner on February 10, 2000 and March 7, 2000 to adduce evidence and cross-examine the deponent were not allowed. He has submitted that the decision in Bajaj Electricals Limited does not lay down the good law. He has placed reliance on Form No. 6 prescribed under Rule 14-A which mentions that evidence has to be submitted before the Appellate Authority. It is this further submission that grounds available under Industrial Disputes Act, 1947 can be raised before the Appellate Authority. It is further submitted that considering the power conferred on the Appellate Authority, an enquiry is

necessary and though it is styled as appellate forum, as a matter of fact it is first forum for a quasi judicial adjudication of the matter by the Appellate Authority. The learned counsel also relied on several decisions.

7. Smt. Shobha Menon, learned counsel appearing for the respondent No. 2, has urged that a plain reading of the relevant provisions of the Act and the Rules indicates that evidence cannot be recorded and only hearing opportunity is to be granted by the Appellate Authority. It is her further submission that provisions of M.P. Industrial Relations Act and the procedure prescribed thereunder are different. Rule 51 of the M.P. Industrial Rules empowers the authority concerned to record evidence. It is further submitted that u/s 11 of the Industrial Disputes Act, while conducting an enquiry the Labour Court is possessing the powers of Civil Court and under the Rules framed under the I.D. Act, Rule 10-B provides for adjudication which means holding of an enquiry. Thus, the provisions of I.D. Act and M.P.I.R. Act are not *pari materia*. It is her further submission that the form prescribed under the M.P. Shops and Establishment Rules cannot be read so as to empower the Appellate Authority to record evidence. She has also pressed into service certain decisions in support of her submissions. She has also relied on the decision in Bajaj Electricals Limited (*supra*).

8. Before considering the rival submissions, the relevant provisions be noticed. Section 58 of M.P. Shops and Establishments Act, 1958 which provides for dismissal reads thus :

"58, Notice of dismissal.-- (1) No employer shall dispense with the services of an employee who has been employed for a period of three months or more except for reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice.

Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2)(a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) the Appellate Authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the Appellate Authority shall be final and binding on both the parties and be given effect to within such time as may be specified in the order

of the Appellate Authority."

Sub-section (1) of Section 58 deals with dismissal. Sub-section (2) provides for appeal by the employee dismissed, discharged or retrenched. Under sub-section (3) of Section 58, the decision of Appellate Authority is final and binding on both the parties. Section 59 empowers the Government to make Rules to carry out the purposes of the Act. The Government is also empowered to frame Rules to prescribe the authority to which and the time within which an appeal may be filed by a dismissed, discharged or retrenched employee, and any other matter which is to be or may be prescribed. Under sub-section. (3) of Section 59, the Rules made under this Section shall be subject to the condition of previous publication and, when so made shall be deemed, to be part of the Act.

9. Rule 14-A has been inserted by amendment in the year 1984 and reads thus :--

"14-A. Appellate Authority and limitation for appeal.-- (1) The Divisional Assistant Commissioner of Labour shall be the Appellate Authority for the purposes of sub-section (2) of Section 58.

(2) The employee discharged, dismissed or retrenched may prefer an appeal to the Appellate Authority within a period of one year from the date of the communication of the order of discharge, dismissal or retrenchment, as the case may be : Provided that the appeal may be entertained even after the expiry of the said period of one year if the employee satisfies the Appellate Authority that he has sufficient reason for not preferring an appeal within the said period.

(3) On receiving the appeal, the Appellate Authority shall give a notice in Form K-1 to the non-appellant (employer) and in Form K-2 to the appellant (employee) concerned by registered post acknowledgment due.

(4) After perusing the record and after giving an opportunity to the Parties of being heard, the Appellate Authority shall decide the appeal. Reasons in brief for the decision shall be recorded in the appellate order.

(5) The Appellate Authority shall supply a copy of" order passed by it in the appeal to the non-appellant (employer) as well as to the appellant (employee) concerned free of cost."

What Rule 14-A prescribes is that Appellate Authority shall give a notice in Form K-1 to the employer and in Form K-2 to the employee (appellant) concerned by registered post acknowledgment due. Forms K-1 and K-2 are relevant and they are quoted hereunder :--

"FORM K-1 [See sub-rule (3) of Rule 14-A] Notice to employer/nonil -appellant under clause (b) of sub-section(2) of Section 58 of the Madhya Pradesh Shops and Establishments Act, 1958 (No. 25 of 1958)

Appeal No. Appellant (employee)

Vs.

..... Non-appellant (employer)

Shri..... has submitted an appeal before me under clause (a) of sub-section (2) of Section 58 of the Madhya Pradesh Shops and Establishments Act, 1958 against the order of his discharge/dismissal/retranchment No. dated A copy of appeal is enclosed herewith. The date of hearing of the appeal has been fixed on month 198..... at..... a.m./p.m. in my office. You are hereby required to appear personally or through your pleader or any person specially authorised to act on your behalf, before me to answer the claims. If you or any other persons aforesaid do not appear on the said date, the case will be decided ex parte.

You are also hereby informed to produce all the documents and witnesses which you want to prefer in support of your defence, by the said date of hearing.

Issued this.....day of.....under my hand and seal.

..... Appellate Authority

FORM K-2 [See sub-rule (3) of Rule 14-A] Notice to appellant under clause (b) of sub-section (2) of Section 58 of the Madhya Pradesh Shops and Establishments Act, 1958 (No. 25 of 1958).

Appeal No.....

..... Appellant (employee)

Vs.

..... Non-appellant (employer)

The appeal filed by you against the order of discharge/dismissal/retranchment No. dated has been fixed on..... day of 19..... at..... a.m./p.m. You are hereby required to appear personally or through your pleader or any other person specially authorised to act on your behalf before me to prove your claims. If you or any of your representatives aforesaid do not appear on the said date, the case will be decided ex parte.

You are also hereby informed to produce all witnesses and documents which you want to prefer in support of your claims, by the said date of hearing.

Issued this day of..... under my hand and seal.

..... Appellate Authority."

10. A bare reading of the forms indicates that employer as well as the employee are informed by the Appellate Authority to produce all the documents which they want to prefer in support of their case by the date of hearing. Form K-2 further mentions that an employee who has filed the appeal is required to appear personally or through pleader or any other person especially authorised to prove

his claims. Similarly, Form K-2 issued to an employer requires him to appear personally or through his pleader or any other person especially authorised to act on his behalf before the Appellate Authority to answer the claim and produce all the documents and witnesses which he wants to prefer in support of his defence.

11. The first question arises as to the scope of an appeal filed against the order passed by the employer. Though provision has been made in the form of an appeal, however, the fact remains that it is the first and last forum which an employee can avail against an order passed by the employer. The grounds of appeal prescribed indicate that an employee has an opportunity to establish that he has not been guilty of misconduct as held by the employer and there was no reasonable cause for dispensing with services. Obviously, for proving that there was no reasonable cause and he has not been guilty of misconduct, some evidence is required to be adduced by the employee in the appeal. Appellate Authority is required to give notice in the manner prescribed under the Rules and in the prescribed forms. The Appellate Authority may direct reinstatement of the employee with or without back wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement and decision of the Appellate Authority shall be final and binding. The question whether the person can be deprived of back wages and whether he had obtained some other employment may require evidence to be adduced. It is necessary that the appellate powers in the context of the Rules and the Forms are so construed as to make the remedy effective. Considering the nature of objections and the purpose for which the hearing is given, the production of evidence either oral or documentary is clearly comprehended in Section 58 which is also provided in the Forms. In the case of Malik Ram Vs. State of Rajasthan, , the Apex Court while considering the scope of hearing contemplated in Section 68-D (2) of Motor Vehicles Act, 1939 has held that though considering the nature of the objections, evidence may have to be taken u/s 68-D (2), it does not follow that evidence is necessary to be recorded in every case. The Apex court has observed :

"It will therefore, be for the State Government, or as in this case the office concerned, to decide in case any party desires to lead evidence whether firstly the evidence is necessary and relevant to the enquiry before it. If it considers that evidence is necessary, it will give a reasonable opportunity to the party desiring to produce evidence to give evidence relevant to the enquiry and within reason and it would have all the powers of controlling the giving and recording of evidence that any Court has."

The question is whether the provisions under the Industrial Disputes Act can be enforced by workmen by filing an appeal u/s 58 of the M.P. Shops and Establishments Act, 1958. If the employees are "workmen" and the management is an "industry" as defined in the Industrial Disputes Act, and the action taken by the Management amounts to retrenchment, then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in

proceedings before the authorities u/s 58 of the Shops and Establishments Act. The Apex Court has considered the question in the context of A.P. Shops and Establishments Act in the case of Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, , and has held that the A.P. Shops and Establishments Act prescribed alternative authorities to settle a dispute arising out of a retrenchment. Those authorities may exercise their jurisdiction under the Shops Act, but they have to decide such disputes in accordance with the provisions of Chapter V-A of the Industrial Disputes Act. Rights and liabilities arising out of retrenchment shall be decided in accordance with Chapter V-A of the I.D. Act. The said rights can be enforced by a workman personally by himself filing an appeal u/s 40 (1) of the A.P. Shops and Establishment Act. It is not necessary that a reference should be sought under the Industrial Disputes Act by collective action of workers. Hence, rights available under the I.D. Act can be raised and decided in an appeal u/s 58 of the M.P. Shops and Establishments Act. In that context, the question is what are the rights available to the parties before the Appellate Authorities when enquiry is held and whether a party can justify its defence or claim before the Appellate Authority. In other words, the question arises for consideration is whether it is open for an employee to prove that he was not guilty of the misconduct by leading evidence and similarly whether the employer can be permitted, where no enquiry has been held or if enquiry has been held it is found to be defective, to adduce evidence so as to prove the misconduct of the employee. In the context of I.D. Act, the Apex Court considered the question with reference to power of the Labour Court in the case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . The Apex Court found that where the dismissal of a workman by an employer on ground of misconduct is preceded by a proper and valid domestic enquiry, Section 11A empowers the Labour Court or Tribunal to reappraise the evidence and examine the correctness of the Finding thereat. Section 11A further empowers it to interfere with the punishment and alter the same. It further held that, the mere fact that no enquiry or defective enquiry has been held by the employer does not by itself render the dismissal of workman illegal. The right of the employer to adduce evidence justifying his action for the first time in such a case is not taken away by the proviso to Section 11A.

12. The Apex Court in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , held that a Court Tribunal is entitled to find out the true nature of the termination order, whether it is punitive or not. In this regard the form of the order is not decisive and the Court can lift the veil to see the true nature of the order. The substance, not semblance, governs the decision. What is decisive is the plain reason for the discharge, not the strategy of a non-enquiry or clever evidence of stigmatising epithets. If the basis is not misconduct, the order is saved. The form of the order of termination is not conclusive of the true nature of the order. If there is a failure to hold enquiry the Tribunal would have to consider not only whether there is a prima

facie case but would have to decide for itself on the evidence adduced whether the charges have been made out. A defective enquiry in this connection stands on the same footing as no enquiry and in either case the Tribunal would have jurisdiction to go into the entire matter and the employer would have to satisfy the Tribunal that on the facts the order of dismissal or discharge was proper.

13. A similar view has been taken by a Division Bench of this Court in *Ramprasad Ambaram Verma Vs. President, Industrial Court* and another 1991 Vol. II LLJ 488, in which it was laid down that in case where procedural safeguards have not been followed and enquiry has not been held the order of termination could be justified in the course of adjudication before appropriate Tribunal or Labour Court under the Industrial Disputes Act or the Madhya Pradesh Industrial Relations Act. The object of industrial adjudication is to put an end to the industrial dispute as early as possible by permitting the employer to prove before the Labour Court that the termination is justified on the ground of misconduct, the industrial dispute is brought to an end and the employee is given the benefit of an independent adjudication by the Labour Court without leaving him to the mercy of an adjudication in a domestic enquiry held by the employer. The effect of not holding an enquiry is that the Tribunal or the Labour Court would not have to consider only whether there was a prima facie case. In the absence of an enquiry, it has never been recognised that the Tribunal straightway without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective. Employer has not been given a free hand or unfettered power to terminate the services of an employee under the garb of the order of discharge simpliciter or to adopt the "hire and fire" policy to terminate the services of the employee for a misconduct without following the procedure prescribed. In such a situation, the employer is bound to satisfy the Labour Court or Tribunal about the bonafides of the action. A similar view has been adopted by the Single Judge of this Court in *Koran Singh Vs. State of M.P. and others*, 1999 (2) MPIJ 432.

14. In view of the fact that the adjudication in appeal touches the rights available to an employee under the I.D. Act, in order to make the remedy effective, it is necessary that the Appellate Authority must possess all the powers available for such adjudication within the purview of Section 58 of the M.P. Shops and Establishments Act. For this reason also we are of the opinion that the provision has to be construed so as to make it effective and as the Appellate Authority is the final forum for adjudication of the dispute, it should have the power to record evidence.

15. Now, we make an endeavour to find out whether the forms which prescribe adducing of evidence ie., Forms K-1 and K-2 issued under Rule 14-A of the Shops and Establishments Rules authorise the Appellate Authority to record evidence. Question is also about correctness of the Single Bench decision of this Court in *Bajaj Electricals Limited* (supra) 1999 (1) MPLSR 131, which has taken the view

that the Appellate Authority exercising powers of appeal cannot seek justification of the employer's act by allowing the parties to lead evidence regarding the misconduct committed by the employee for coming to its own conclusion. The function of the Appellate Authority u/s 58 of the Act has been held to be like an authority hearing departmental appeal and it has to pass order in accordance with Section 58 (2) of the Act.

16. The Act, Rules and the Forms are integral part of the legislation and have to be read together in order to find the intendment, scope and ambit of the provision in question. The learned counsel for the petitioner has relied on a decision of the Apex Court in *The Maharashtra State Road Transport Corporation Vs. Babu Goverdhan Regular Motor Service and Others*, , in which the Apex Court considered a similar question and observed in Para 15 thus :

"..... Therefore the relevant rule and the form prescribed, have to be read together and so read it follows that an applicant for a permit must comply, at any rate, substantially with the various matters mentioned therein."

In the case of *Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another*, , the company raised a contention that according to the Certificate of Registration granted to it there was no condition that cotton purchased under the certificate should be subjected to manufacture in Punjab and on this basis claimed that the purchases of cotton were free of tax u/s 5 (2) (a) (ii) of the Punjab Sales Tax Act. The Apex Court held that Certificate of Registration by itself cannot be read in isolation, but Sections 5 and 7 have to be read with Rule 26 and Form S.T. XXII. So read, the old registration certificate even though it did not contain the words "in the State of Punjab" would stand implicitly modified by the sections, the rule and Form S.T. XXII operating together.

17. In the case of *Commissioner of Income Tax, Jullundur Vs. Ajanta Electricals, Punjab*, , it has been held that in view of the clear indication in Form 6 by use of the words "it has not been possible" to move an application within the time prescribed, the period of thirty days is not intended to be final as discretion has been given to the I.T.O. to extend that date. If it was intended that the application for extension of time was to be made within the time allowed originally or within the extended time then the words "it has not been possible" were not at all necessary. Thus form can be used to provide for method and interpretation of Section and run under which it has been prescribed.

18. We find no substance in the submission of the learned counsel for the respondent No. 2 that the Form is derogatory to the Rule 14-A and Section 58 of the M.P. Shops and Establishments Rules and Act. Section 58 itself mentions that hearing has to be in such manner as may be prescribed. Notice for hearing has to be given in the prescribed manner and the mandatory of hearing contemplated has to be understood as provided in the Rule and the Forms. Rule 14-A prescribed different notices to the employer and employee respectively in Forms K-1 and K-2. As per the forms, opportunity of being heard has to be given

to the parties, and the forms mention that witnesses and documents are to be produced before the Appellate Authority. Thus, the hearing includes recording of evidence before the Appellate Authority. The forms-do not derogate the purpose of Rule 14-A and Section 58 of the Rules and Act, rather they are part and parcel of the legislature as u/s 59 there is power to frame the Rules and the Forms advance the cause and make the remedy available u/s 58 effective.

19. The learned counsel for the petitioner has drawn attention to the decision of the Apex Court in the context of Tamil Nadu Shops and Establishments Act and Andhra Pradesh Shops and Establishments Act so as to contend that the Apex Court has held that Appellate Authority has the power to record evidence in an appeal filed by an employee aggrieved by his order of discharge or dismissal. In the case of *The Chairman, Brooke Bond India Private Ltd. and Another Vs. Chandranath Choudhary*, , the Apex Court, after considering the language of Section 26 of Bihar Shops and Establishments Act, has come to the conclusion that the Appellate Authority is entitled to record evidence and come to its own findings on such evidence. The authority is required to come to its own Findings on the evidence adduced by the parties and recorded by it independently of the findings given in the domestic enquiry. The fact that the employee is entitled to file a complaint and show that there was no reasonable cause or that he was not guilty of misconduct shows that the competent authority has to come to its own findings on the evidence led before it irrespective of the findings in the domestic enquiry. Same is the provision u/s 58 (2) of M.P. Shops and Establishments Act under which also the Appellate Authority is required to come to its own conclusion. Hence, we have no hesitation to hold that evidence is required to be adduced.

20. The Kerala High Court in the case of *Kavitha Movie House Vs. M.A. Abdul Khader* 1980 Vol. II LLJ 24, and in the case of *P.K. Sahakama Sangham Ltd. Vs. Deputy Labour Commissioner and another* 1988 Vol. II LLJ 231, has laid down that Appellate Authority under the Kerala Shops and Commercial Establishments Act, 1960 has the power to record evidence and conduct de novo enquiry.

21. The Apex Court in *The United Planters Association of Southern India Vs. K.G. Sangameswaran and another*, , has held that Appellate Authority under T.N. Shops and Establishments Act has power to record evidence. The Court observed :

"10. Before construing the provisions of Section 13 (4) and Rule 9, it may be stated that it has always been the philosophy of Industrial Jurisprudence that if the domestic enquiry held by the employer was defective, deficient, incomplete or not held at all, the Tribunal, instead of remanding the case to the enquiry officeAfor holding the enquiry de novo, would itself require the parties to produce their evidence so as to decide whether the charges, for which disciplinary action was taken against the employee, were established or not. The pending proceedings keep the employer and the employee in a state of confrontation generating further misgivings and bitterness. It is, therefore, of paramount

importance that such proceedings should come to an end at the earliest so as to maintain industrial peace and cordial relations between the management and the labour.

14. In view of the provisions contained in Section 11A, a question arise in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , as to the jurisdiction of the Tribunal to take evidence to decide the merit of the charges and it was laid down that in spite of the prohibition contained in the Proviso to Section 11A the Tribunal, in order to satisfy itself as to the guilt of the person charged, had the jurisdiction to take the evidence and that the law in that regard had not undergone any change. It was pointed out that if the domestic enquiry had been held by the employer, the Tribunal will examine the merits of that enquiry and would confine itself to the evidence already on record. But where the enquiry was defective, the Tribunal could still take fresh evidence to decide the merits of the charges.

15. This decision has since been followed by this Court in a number of cases, including *The East India Hotels Vs. Their Workmen and Others*, ; *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, ; *Rustan and Homsby Lid. Vs. T.B. Knnan* AIR 1975 SC 2025; and in a recent decision in *Bharat Forge Company Ltd. Vs. A.B. Zodge and another*, , in which its was again reiterated that the parties have the right to adduce evidence before the Tribunal and the Tribunal can, on the basis of such evidence, come to its own conclusion as to the guilt of the employee."

The Apex Court in the context of Section 41 and Rule 9 (3) of Tamil Nadu Shops and Establishments Act and Rules has laid down that the jurisdiction of the Appellate Authority to record evidence and come to its own conclusion on the question involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry, it will still be open to the Appellate Authority to record, if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte or no evidence was recorded during those proceedings, the Appellate Authority would still be justified in taking additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer. Thus, we are of the opinion that M.P. Shops and Establishments Acl also empowers the Appellate Authority to take additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer and the jurisdiction of the Appellate Authority in that regard is very wide. The submission is not tenable that the jurisdiction of the Appellate Authority to record evidence would be limited only to those cases where no evidence was recorded at the domestic enquiry and the principles of natural justice were violated. We are of the opinion that Appellate Authority has the power to record evidence in order to come to its own conclusion whether the employee was guilty of the charges framed against him and should not leave the employee at the mercy of the employer by sending

back the case. We are alive to the position that in Tamil Nadu Shops and Establishments Act, Section 41 and Rule 9 (3) make provision for recording of evidence adduced before the Appellate Authority and under the Bihar Act also that is provided. Here, the Act and the Rule provide for filing of appeal and the Forms prescribing recording of evidence are integral part of the legislation. Thus, the ratio of the decisions of the Apex Court applies to the instant case with full force and is not dented for the mere fact that in the M.P Act it is the form which describes the detailed mode of hearing and provides for fixation of a date for production of witnesses and documents.

21. A Division Bench of this Court considered the power of the Labour Court in the context of M.P. Shops and Establishments Act and the Rules in the case of Employers in relation to M/s. Anand Cinema Vs. Mohan Tiwari 1992 MPLJ 334, in the facts situation obtaining that gate-keepers at the cinema theatre were issued termination orders due to unsatisfactory work and conduct. The Labour Court held that the action of the employer in terminating the services of the employee was a case of illegal retrenchment. This Court laid down that the Labour Court should have rendered an opportunity to the employer to lead evidence to establish before the Labour Court that by terminating the services of the employees, it had not, in fact and law, retrenched them within the meaning of Section 2(oo) of the I.D. Act but had punished them for one of the misconducts enumerated in Rule 14 of M.P. Shops and Establishment Rules, 1959. This Court observed that the action of the employer will have to be judged by the Labour Court not only on the basis of the order of termination and provisions of Section 58 of the Shops and Establishments Act, but will have to be judged on all facts and circumstances which may come on record after full opportunity to lead evidence is granted to the parties. The decision in the said case is on the same line that Labour Court has the power to record evidence. The said case was based on the unamended Section 58. Now, by amendment of Section 58 appeal has been provided and Rule 14-A has also been inserted subsequent thereto in the Year 1984. Section 58 was amended in the year 1982 and the Rule was amended in 1984.

22. Learned counsel for the respondent No. 2 has submitted that in case of conflict between the body of the Act and the Schedule, the former prevails. She has placed reliance on Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, . It is her further submission that the form cannot control the Act and the Rules. Learned counsel has relied on Life Insurance Corporation of India Vs. Escorts Ltd. and Others, . But in the instant case, we find that the form is not controlling the Act or the Rules. It simply prescribes a mode, as per the Section and the intendment of the Rules, of hearing and nothing beyond it and there is no conflict in the body of the Act and the form. Both are supplemental to each other. In A.G. Vs. Lamplough (1878) 3 Ex. D 214; Ujagar Prints Vs. Union of India : AIR 1989 SC 516; and Aphali Pharmaceuticals Ltd. Vs. State of Maharashtra and Others, , it has been held that Schedules appended to statutes form part of the statute. In the present case, the form and the Rules are part of

the Act pursuant to Section 59. The division of a statute into sections and Schedules is a mere matter of convenience and Schedule therefore may contain substantive enactment, as held in *A.G. Vs. Lamplough* (supra), which may even go beyond the scope of a section to which the Schedule may appear to be connected by its heading. In such a case a clear positive provision in a Schedule may be held to prevail over the prima facie indication furnished by its heading and the purpose of the Schedule contained in the Act. The same is the proposition in *IRC Vs. Gittus* (1920) 1 KB 563; and *Commissioner of Income Tax, West Bengal Vs. Calcutta National Bank Limited (In Liquidation)*, . We are of the opinion that it is permissible to prescribe in the form the mode of hearing which includes examination of witnesses and production of documents, considering the nature, ambit and scope of the provisions u/s 58 of the Act.

23. Thus, we are of the opinion that u/s 58 of the M.P. Shops and Establishments Act, while hearing the appeal Appellate Authority is empowered to record evidence at the instance of employer and employee to advance their cause before it in respect of the matter involved in the appeal. The contrary view taken in the case of *Bajaj Electricais Limited Vs. N.K. Kanojia*, (W.P. No. 420/95, decided on 14-1-1998) 1999(1) MPLR131, does not lay down the correct law and is overruled. Rule 14-A and Forms K-1 and K-2 were not brought to the notice of the learned Single Judge deciding the matter in *Bajaj Electricais Limited Vs. N.K. Kanojia* (supra).

24. The entire case has been referred for decision of larger Bench under Rule 9 (1) of the High Court Rules. We have heard the counsel for the parties on merits of the case. A perusal of the impugned order of the Appellate Authority (Annexure P-I) shows that it has relied on the decision of this Court in *Bajaj Electricais Limited* (supra) and refused to conduct an enquiry on the ground that the Appellate Authority has a limited function and u/s 58 of the Act the Appellate Authority is required to function within the limits prescribed in the said decision. The Appellate Authority, therefore, refused the permission to the parties to lead evidence regarding the misconduct committed by the employee to come to its own conclusion. As held above, the view cannot sustain and hold the field. The employer had moved an application (Annexure P-4) on 10-2-2000 and another application on 7-3-2000 for cross-examining the employee/appellant before the Appellate Authority which was disallowed on impermissible ground. Thus, the order passed by the Appellate Authority cannot be sustained and is liable to be quashed.

25. In the result, the petition is allowed. The impugned order dated 10-4-2000 (Annexure P-I) passed by the Appellate Authority is quashed. The appeal is remanded to the Appellate Authority for rehearing in accordance with law and to decide the same in view of our decision in the matter. The Parties are directed to bear their own costs as incurred.

26. Writ Petition allowed.