
(2009) 10 GUJ CK 0076
In the Gujarat High Court
Case No : Spl. C.A. No. 8324 of 2009

Rashmikant G. Dave

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 3 LLJ 679

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; Pranav G. Desai, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Desai, learned advocates waives service of Rule on behalf of respondent. By consent rule is fixed forthwith.

2. Heard learned Counsel for the parties:

3. In this matter, as it is noted in order dated September 18, 2009, both the counsels had requested that the matter be decided finally. Accordingly, the matter was posted on September 22, 2009 and the matter was heard and it was listed for dictation of the order and receiving the gist of submission in writing, which the learned advocates rely in support of their respective claim. Accordingly, the written submissions are taken on record.

4. The petitioner-workman in Reference (IT) Old No. 50/1995, New No. 636/2004, once again renumbered as New No. 504/2008, has challenged the order and award dated January, 12, 2009 passed by the Central Government" Industrial Tribunal Ahmedabad below Exhibits 8 and 79, whereunder, the Industrial Tribunal declared that the departmental inquiry conducted against the petitioner was just legal and proper. The Tribunal posted further hearing on January 22, 2009.

5. Facts in brief deserve to be set out as under.

6. The petitioner, as stated in the petition was working as Cashier-cum-Clerk in the respondent Bank. He came to be served with charge-sheet on June 8, 1988. The petitioner filed reply to the charge-sheet denying the charges on September 8, 1988. The Departmental Inquiry was conducted and ultimately, petitioner came to be discharged from the services of the Bank with effect from September 6, 1991. The petitioner raised industrial dispute, which came to be referred to the Tribunal, wherein, it was marked as Reference (IT) Old No. 50/1995. The petitioner filed an application at Exhibit 8 specifically challenging the legality and propriety of the inquiry and also the findings of the inquiry officer. The Tribunal after hearing the submissions of parties, passed an order on May 30, 2006 declaring that the departmental inquiry held against the petitioner was not legal. The Tribunal recorded its findings that the findings recorded by the Inquiry Officer were not based on evidence. The order of Tribunal dated May 30, 2006 is produced on the record of this petition.

7. The respondent Bank filed an application for setting aside the said order dated May 30, 2006, however, the said application came to be rejected by the Tribunal vide its order dated September 13, 2007. Said copy has also been produced on record. The respondent Bank therefore filed Special Civil Application No. 510/2008 challenging the aforesaid two orders namely order dated May 30, 2006 and September 13, 2007. This Court disposed of the matter on March 4, 2008 directing the CGIT-cum-Labour Court to decide preliminary points raised by the petitioner as to whether inquiry conducted against him was just and proper and findings recorded by the Inquiry Officer was baseless and perverse and contrary to the provisions of law. The Court was directed to decide the same within two months from the date of receipt of writ of the Court. The order passed by this Court on March 4, 2008 is produced on record of this petition.

8. The respondent Bank examined one witness and filed short notes of arguments. The Tribunal passed an order on January 12, 2009 in the said Reference declaring that the inquiry was just and proper, which is impugned in the present petition under Article 227 of the Constitution of India.

9. Learned advocate Shri Clerk for the petitioner raised following contentions which could be set out as per the gist of the submissions. Shri Clerk contended that this Court categorically directed the Labour Court in its Order dated March 4, 2008 in S.C.A. 510/2008, to decide the preliminary point as to whether inquiry conducted by the bank was legal, valid or not and whether findings recorded by Inquiry Officer were perverse or not. In the order impugned the Tribunal has not recorded any findings with regard to the perversity or otherwise of the findings of I.O. in the inquiry by the bank. Thus the impugned order cannot be an order made in due compliance with the directions of this Court in order dated March 4, 2008 in S.C.A. 510/2008 and hence it is required to be quashed and set aside.

10. The advocate for the petitioner further contended that while passing the order dated May 30, 2006 the Labour Court framed specific issue as to whether the finding of the Inquiry Officer was based on evidence and, whether the inquiry

officer's findings were perverse or not. The Operative part of the order dated May 30, 2006 also records that the findings of IO were perverse. The Labour Court was therefore required to consider and decide the issue with; regard to the findings of the IO in inquiry.

11. The advocate for the petitioner further submitted that the purshis Exhibit 79 does not run counter to the directions issued by this Court in its judgment dated March 4, 2008 in Special Civil Application No. 510/2008. Looking to said purshis, it is clear that said purshis is signed only by the advocates and not by the petitioner. At the most it may amount to concession by an advocate on a question of law. It is submitted that any such concession on a question of law, if at all made by the advocate, is not binding on the petitioner. In support of this submission, he has relied on the judgment case of Government of Tamil Nadu and Others Vs. Badrinath and Others, It is submitted that while passing the order below Exhibit 8 dated May 30, 2006 the CGIT cum Labour Court framed a specific issue whether the findings of the Inquiry Officer is based on evidence and also recorded the finding that the findings of the Inquiry Officer are perverse and not based on evidence. The operative part of the order also holds that the findings given by the Inquiry Officer are not based on evidence. It is submitted that in the written arguments Exhibit 61 filed by the petitioner, the petitioner has referred to written arguments Exhibit 40 and submitted that the earlier arguments were part and parcel of Exhibit 61. The same is also observed by the Tribunal in the impugned order in para-8. However, in the impugned order the Tribunal has ignored and has not dealt with the written argument Exhibit 40. Therefore the impugned order is erroneous and contrary to law. He has also submitted that the departmental inquiry held against the petitioner is not legal and valid for the reasons stated in para 12 to 18 of the memo of petition. It is submitted that relevant and material documents including the report of CBI were not supplied to the petitioner though demanded by the petitioner and therefore the inquiry is in gross violation of principles of natural justice and illegal. In support of this argument, he has placed reliance in the judgment case of Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others, He further submitted that the issue of legality and validity of the inquiry includes the issue whether the findings of the Inquiry Officer are perverse or not. An inquiry can be defective if there is violation of principles of natural justice and also if the findings of the Inquiry officer are perverse. In support of this submission, he has placed reliance in the judgment in case of Management of Ritz Theatre (P) Ltd. Vs. Its Workmen, in case of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, in case of Bharat Forge Company Ltd. Vs. A.B. Zodge and another, It is submitted that in view of the aforesaid, the employer has a right to adduce additional evidence before the Labour Court to prove the guilt of the workman even if the findings of the Inquiry Officer are perverse. If the contention of the Bank, that legality of the inquiry and the perversity of findings are different stages is accepted, the Bank will have right to adduce additional evidence, twice i.e. firstly after the inquiry is

held invalid and secondly after the findings are held to be perverse. Such a result is not envisaged by any provision of law or judgment. Therefore the contention that legality of the inquiry and perversity of findings are different stages cannot be accepted. On the contrary, the] judgments referred to above, clearly show that an inquiry can be held to be defective either for violation of principles of natural justice and/or for perverse and baseless findings. The employer will have right to adduce additional] evidence if either of the issues being decided against the employer. But both the issues are required to be decided together and not at different stages. The contention of the respondent Bank that the petition is not; maintainable at this stage is not tenable as the Industrial Tribunal has not decided the issue in due compliance of the order passed by this Court. Moreover, the respondent Bank itself had challenged the earlier order passed below; Exhibit 8 before this Court at this stage only and therefore, the respondent Bank cannot be heard to say that the petition is not maintainable at this stage. He has further submitted that the contention of respondent Bank that the petitioner has not approached the Tribunal with an application to review of impugned order, is also not tenable as the Labour Court/Tribunal has no power to review its order. He further, submitted that reliance placed on the statement; of Shri G.M. Pathak was in gross violation of principles of natural justice as said Shri G.M. Pathak had passed away and was not available for cross-examination.

12. Learned advocate Shri Desai for the respondent Bank contended that the petition-is not maintainable under Article 227 of the Constitution of India as the interlocutory order, is under challenge. Without prejudice to the aforesaid contention, Shri Desai for the respondent further submitted that Exhibit 8 was unequivocally given go by as could be seen from the order that has been passed. Moreover, it is also required to be noted that Exhibit 79 is a purshis jointly filed by both the advocates representing the parties before the Court after the order of this Court calling upon the Tribunal to decide the matter in light of the order of the Court and as per the said purshis, it would be very clear that the parties and their counsels had agreed, to confine their challenge at that stage to the legality and propriety, of the inquiry proceedings only. Exhibit,8 dated February 9, 1998 would now therefore would, not survive as the order made by the Tribunal upon Exhibit 8 originally was subject matter of challenge before this Court and this Court has categorically called upon the Tribunal to decide the issue afresh and in light thereof the Exhibit 8 ! would now not hold good so as to give liberty to the petitioner to urge that the findings with regard to perversity have not been, recorded or the Court has not addressed itself to Inquiry Officer"s findings with regard to evidences and guilt. Exhibit 8 was dated February 9, 1998 and it was not produced on March 16, 1998. Therefore, it would be now not open for the petitioner to challenge the order impugned on plea that the Court did not pass the order strictly in accordance with the directions contained in the order of this Court dated March 4, 2008, Learned advocate for the respondent further submitted that earlier Exhibit 79 couple with the practice prevalent would go to show that the Tribunal did not do anything unnatural in confining its findings qua

legality and propriety only. It is a matter of fact that day and day in out the purshis are filed expressing clearly that the party workman was giving up his challenge to the propriety and legality of the inquiry and keeping alive the challenge to the findings of Inquiry Officer being perverse. Shri Desai, learned advocate without prejudice to the aforesaid submissions, said that the order dated (March 30, 2008 passed by this Court also cannot be construed as the order binding upon the Tribunal so as leaving no liberty to the parties to give up portion of the directions contained in the order.

13. Shri Desai, learned advocate made elaborate submissions which has been reflected in the gist which is on record on merit of the charge levelled against the petitioner. The contention of the petitioner is that since this Court in the earlier order directed to decide two issues, the Tribunal is bound to decide the same and since only one issue is decided this Court should quash the decision and remand back the matter for, decision afresh, on both the points. This contention is untenable at law. He submitted that the Tribunal had, acted within the jurisdiction and this Court may not interfere at this interlocutory stage in supervisory jurisdiction of Article 227 of the Constitution of India. This Court has earlier passed direction concerning Exhibit 8 filed by the learned advocate for the petitioner for deciding two issues-legality and validity of the inquiry and illegality or perversity, of the findings of the inquiry officer. However, when Exhibit 8 application had not been pressed after the said order of this Court, and when the parties including the petitioner advocate gave purshis Exhibit 79, the Tribunal was justified and within its competence in exercising jurisdiction only qua that issue. Not deciding the second issue cannot vitiate or make the impugned order as illegal, null and void of no effect. The settled decision of law is that the Tribunal has wide jurisdiction and liberty to carry on its proceedings. In the instant case, both the parties including the petitioner's advocate, wanted to decide only one issue as can be seen from Exhibit 79. It is submitted that jurisdiction of Tribunal is wide and exercise of jurisdiction is illegal and proper in the instant case and therefore, the contention of the petitioner that this Court should exercise jurisdiction under Article 227 of the Constitution of India and to quash the decision arrived at with regard to the legality of the inquiry as the second issue is not decided is untenable, misconceived and not maintainable in law. He submitted that the Tribunal has, after examining the entire records of the inquiry proceedings held that the inquiry is legal, proper and in accordance with the principles of natural justice. Even otherwise, simply because of the second issue is not decided, though at the instance of both the parties, it cannot nullify the decision already, given on facts. He submitted that this being decision on the preliminary issue and when reference is pending, the petitioner cannot agitate before this Court under Article 227 that the order impugned be quashed. The reference is still pending and therefore, present petition is not maintainable. In support of this submission, he has placed reliance on unreported judgment of this Court in S.C.A. No. 4902/2004 dated April 23, 2004, and following judgments of Apex Court in case of D.P. Maheshwari Vs. Delhi Administration and

Others, in case of Workmen Employed by Hindustan Lever Ltd. Vs. Hindustan Lever Limited, ; in case of National Council for Cement and Building Materials Vs. State of Haryana and Others, and in case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, He submitted that the Tribunal has held that CBI report is not part of the Inquiry proceedings, nor was it relied upon during the inquiry proceedings, and it was not, referred to in the charge-sheet and the inquiry was different and distinct. Further, the petitioner has failed to establish as to what prejudice is caused on account of non-supply of the said report. It is therefore submitted that non-supply of the said documents did not vitiate inquiry nor there is any breach of the principle natural justice as per the settled legal position and in support of this submission, he has relied on the judgment in case of Pandit D. Aher Vs. State of Maharashtra, He further submitted that the Reference is still pending for final adjudication. The petitioner, if willing to urge any other issues to be decided, can very well approach the Tribunal but his contention, that since it was directed by this Court that two issues to be decided, though at later stage a purshis was filed Exhibit 79, for determination of only one issue, the petitioner be entitled to the relief for quashing and setting aside the interlocutory order of the Tribunal, is untenable in law. Shri Desai has submitted that the petitioner has failed to establish that there was any prejudice caused to him on account of mere decision of legality and validity of the inquiry itself. The petitioner has raised mere vague and uncertain contention about breach of principles of natural justice which cannot help the petitioner for seeking relief prayed for in this petition. It was submitted that in the instant case, the Tribunal has exercised jurisdiction and decided the lis between the parties on the basis of Exhibit 79 and after considering all the arguments, written as well as oral, including Exhibits 61 and 40 of the petitioner, amongst other, as well as considered the entire record of the inquiry proceedings. Therefore, at this interlocutory stage, the petitioner is not entitled to the relief and the petition is not maintainable in law. He submitted that the contention of the petitioner that the Tribunal is bound to decide both the issues in view of the earlier direction and the party by giving Exhibit 79 cannot request for decision only on one of the issues is untenable in law. It is further submitted that the petitioner's further oral contention that giving of Exhibit 79 is a concession by the Ld. advocate and the same should be disregarded is also not tenable in law. In this regard, it is submitted that the petition does not disclose any of such averments and contentions. The petition also does not disclose of not pressing Exhibit 8 and giving of Exhibit 79. He submitted that it is always open for the parties during the proceedings to contend that only particular issue may be decided instead of other issues and it is not that in spite of the fact that the parties do not desire to have a decision on particular issue, the Tribunal is bound/ to decide the same. Without prejudice to all other contentions, it was submitted that even though it was held that since this Court had earlier directed to decide two issues and the Tribunal has not decided the second issue at the instance of both the parties, particularly, the petitioner and the petitioner is entitled to the relief for decision of second issue, then the Tribunal can be approached by the

petitioner by making separate application for the decision on the second issue or can be directed by this Court for decision of the second issue, but that will not nullify the decision already arrived after hearing both the parties on facts of the first issue and therefore the relief for quashing and setting aside the decision on the first issue is not maintainable in law and the petition be dismissed in the facts and" circumstances of the case.

14. This Court has heard learned advocates for the parties and perused the order impugned. Following indisputable facts, emerging from the submissions impugned order and gist of submission, deserve to be set out as under before advertng to the rival contentions of learned advocates.

(i) The subject matter of Reference is the order of discharge dated September 6, 1991, passed by the respondent Bank based upon the disciplinary proceedings arising out of charge-sheet dated September 8, 1988.

(ii) The reference is made in the year 1995 and in the year 1998 Exhibit 8 purshis dated February 9, 1998 came to be passed on by the petitioner requesting the Tribunal that as petitioner had challenged the legality of the inquiry and imposition of the punishment on finding therein the Tribunal may call upon the other side to begin its evidences on the point of inquiry.

(iii) As per the say of learned advocate for the respondent, the said purshis was not pressed on or before March 16, 1998.

(iv) The Court, thereafter, passed an order on May 30, 2006, wherein, it was held that the inquiry held against the second party i.e. present petitioner was illegal and against the principles of natural justice. It was further held that the findings recorded by the I.O. were not based upon the evidences on record. It is important to note at this stage that this is pronouncement by the competent Court on issues framed by it, which reads as under:

Issue Nos. 1, 2 and 3:

(a) Whether the enquiry held by the first party against the second party is legal and according to the principles of natural justice?

(b) Whether the findings of the Inquiry Officer is based on the evidence?

(c) What final order?

(v) However, it is required to be noted that this Court in writ petition being Special Civil Application No. 510/2008 on March 4, 2008 quashed and set aside the order dated May 30, 2006 and September 13, 2007 and remanded the matter back to the Court for deciding the preliminary points raised by the respondent workman, which could be verbatim set out as Para 27 : Accordingly, both the orders dated May 30, 2006 and September 13, 2007 are hereby quashed and set aside with a direction to Labour Court, Ahmedabad to decide preliminary point raised by respondent workman whether inquiry conducted against respondent workman by the petitioner Bank is legal and valid or not and

finding given by Inquiry Officer is baseless and perverse or not in accordance with law and to decide the question within a period of two months from the date of receiving copy of this order after giving reasonable opportunity of hearing to both parties.

(vi) Pursing Exhibit 79 could be discussed at this stage wherein, as it appears from the language it was stated that as per the order of this Court and in accordance therewith, the parties agreed to Court's confining its decision qua the legality of the inquiry.

(vii) The Court passed the impugned order without addressing itself to submissions made on perversity of the findings of the I.O.

(viii) The Court has in its order impugned in this petition, referred to the written submissions made by advocate for both the parties and also referred to the fact that workman relied upon the written submission that were pressed into service when the earlier order had been passed. After having referred to the same, the Court did not choose to record its findings on the contentions raised thereunder.

(ix) The Court has recorded that Exhibit 40 was requested to be treated as part of submission and thereafter, it has come to the conclusion that the inquiry was held in accordance with principles of natural justice and there was no breach of any rules and regulations in conducting the inquiry and held that inquiry was said to have been held appropriately.

(x) At this stage, it is required to be noted that both the counsels have agreed that in case the Court is inclined to accept the submission in defense of the order, then the Court may not decide on the merits of the matter at this stage.

(xi) The Court hastened to add here that said argument was further qualified by the counsel for the Bank that in fact, the order impugned is not calling for any interference and therefore, the Court may examine the matter on merits but it is for the satisfaction of the Court ; for passing appropriate order and thus, he at length referred to the development of incident which led to issuance of charge-sheet.

(xii) At this stage, therefore, it is required to be noted that so called temporary misappropriation alleged was for Rs. 35,000/-and on it being detected, said was sought to be made good by putting up some cheque, which were drawn on the account of some firm, which was in the name of petitioner's wife.

(xiii) The matter was referred to CBI for investigation as could be seen from the record and ultimately, the same did not culminate into registering the offence against anyone. Thereafter, departmental proceedings commenced.

(xiv) The reference to the CBI inquiry in this proceedings assumes special significance as a very subject-matter namely temporary misappropriation of Rs. 35,000/- was subject-matter of investigation at the end of CBI.

(xv) The Court has in the impugned order at places observed that non-

furnishing of the investigation done by CBI or report of CBI did not cause any prejudice as no prejudice was demonstrated by the petitioner.

(xvi) The Court, therefore, come to a conclusion that the inquiry was just and proper.

15. Against the backdrop of aforesaid almost indisputable facts, this Court is to now examine the rival contentions of the counsels of the parties.

16. Ordinarily, this Court is slow in interfering with interlocutory orders as the parties are at the liberty to assail the same with final order if it is adverse to it. But as could be seen, in the instant case, the decision of this Court, dated March 4, 2008 in S.C.A. 510/2008 calling upon the Labour Court to decide the controversy afresh contained sufficient reasons for relegating the parties to the labour Court for its decision on the issues. That reasoning itself would show that the order impugned is final so far as the very basic issue of propriety and legality of the inquiry is concerned hence the contention of the respondent bank with regard to non-interference with interlocutory orders would be of no avail to them.

17. The respondent bank at this stage cannot be permitted to support the Labour Court's omission in deciding and dealing with the challenges and contentions of petitioner to the findings of Inquiry officer on the grounds of it being perverse, only on the basis of their interpretation of purshis Exhibit 79. The Court is of the view that the Exhibit 79 cannot be construed as conveying that parties did not intend to invite Courts decision on findings of Inquiry Officer at that stage. The close reading of purshis Exhibit No. 79 would rather indicate contrary to what is submitted by the learned Counsel of the respondent bank. In fact the purshis 79 contains specific reference to the direction of this Court and urges the Labour Court to decide the same as per the direction of the Court, from that purshis it cannot be said that the parties or the petitioner did not want the Court to decide on the findings of Inquiry Officer at that stage.

18. Assuming for the sake of examining the contention that petitioner also urged the Court vide purshis Exhibit 79 not to decide the findings of the inquiry officer, without accepting it, then also the purshis Exhibit 79 cannot be said to have any effect of whittling down the Court's direction to the labour Court to decide the same.

19. The earlier order dated May 30, 2006 assailed by the bank in S.C.A. 510/2008 also contained specific findings with regards to the IO's. conclusions and findings. When the Labour Court on earlier occasion while passing the order dated May 30, 2006 framed specific issue with regard to the findings of the Inquiry Officer the bank cannot be permitted to submit that the petitioner did not insist for findings on I.O's findings at that stage on the basis of Exhibit 79 purshis.

20. The fact remains to be noted that the purshis Exhibit 79 as it is stated hereinabove, contains specific request reiterating the reference to the direction

passed by this Court in its order dated March 4, 2008 and the labour Court while rendering the impugned order has extensively referred to the written submissions filed by the petitioner based whereupon the earlier order dated May 30, 2006 was passed, then, naturally there was no scope for considering that petitioner did not want to have the decision of labour Court on the findings recorded by the 10 in its report. Thus, on this ground also, the Court is inclined to hold that the Exhibit 79 purshis cannot be construed to urging the labour Court to confine its findings qua propriety and legality of the inquiry alone and persuading it to defer its decision on the challenge of perversity to the findings of I.O.. The reliance placed upon on unreported decision of this Court in S.C.A. No. 4982/2004 in case of Blue Star Ltd. v. Sarigat Hasim decided on April 23, 2004, is of no avail to the respondent Bank for pressing into service the contention with regard to non-interference with the interlocutory order under Article 227 of the Constitution of India. It is pertinent to note that in case of Blue Star Ltd. v. Sarigat Hasim (supra), the Labour Court had opined that the reasonable opportunity was not given to the workman concerned during the course of Departmental inquiry and the Departmental inquiry was not in free and fair atmosphere and therefore, recorded that there was breach of principles of natural justice. This decision was assailed by the employer before the Court and in this circumstances, this Court held that the order of Labour Court was not so perverse to call for interference as the petitioner employer was to get an opportunity to prove the misconduct of workman before the Labour Court and therefore, it was held that no serious prejudice was caused to the petitioner and in those circumstances, this Court did not interfere with the order. But in the instant case, as could be seen from the development of the case, on earlier occasion, the Competent Court gave verdict that the I.O.'s findings were perverse and inquiry was without any evidence and while setting aside that order, this Court in writ petition in S.C.A. No. 510/2008 vide its order dated March 4, 2008 directed the Labour Court to specifically decide those issues afresh namely the propriety and legality of the inquiry and findings of the I.O. vis-a-vis the petitioner's challenge to it being perverse. In view of this, the reliance placed in the unreported decision of Blue Star Ltd. v. Sarigat Hasim (supra) is of no avail to the respondent.

21. The learned advocate for the respondent Bank has placed reliance upon decision in case of D.P. Maheshwari v. Delhi Administration and Ors. (supra) and Workmen Employed by Hindustan Lever Ltd. v. Hindustan Lever Limited (supra) and National Council for Cement & Building Materials v. State of Haryana and Ors. (supra) and contended that in the interest of expeditious adjudication of disputes, the Labour Court are to decide issues at the same time. Stopping of proceedings pending before the Labour Court by High Court under Article 227 for deciding preliminary issue would not be proper. The Court is of the view that there cannot be any dispute to the proposition canvassed by the advocate for the respondent, however, the peculiar facts of the present case will have to be taken into consideration while examining the plea of decision on the issue. It is

required to be noted that the issue of validity of inquiry proceedings involves examining of the propriety and conducting of the inquiry as well as the findings recorded thereon. The Court while examining the propriety and validity of the inquiry will necessarily have to go into the aspect of the perversity or otherwise on the findings of I.O. for coming to the conclusion as to whether the inquiry can be said to be proper. The established position in law is unequivocal that the employer has right to lead evidence for justifying the ultimate order of termination, discharge etc. The Court therefore, while appreciating the evidence in light of the principles of natural justice will have to examine that the evidences have been brought on record and what value is to be attached to them. Therefore, the Court while deciding the propriety and validity has to also simultaneously examine the findings of the IO so as to render its complete verdict on the validity of the inquiry. Shri Desai's submission therefore is not acceptable that the workman will have right to address the labour Court on his challenge to the findings of the I.O. on account of same being perverse. This Court is of the view that the decision therefore cited by the advocate for the bank would be of no avail to the Bank in resisting this petition.

22. Shri Desai learned Counsel for the Bank has placed reliance upon the decision in case of Pandit D. Aher v. State of Maharashtra (supra) and contended that the non-supply of the copy report of preliminary inquiry would not vitiate the inquiry and submitted that as the CBI report being a report, not in any way relied upon non-supply thereof would not vitiate the inquiry. This submission of Shri Desai requires little closer examination of the merit of the matter and learned Counsels have agreed that in case the Court is inclined to accept the petition, then the Court may not opine on the merit, and therefore, suffice it to say that Court did not opine on the merits of the matter. The CBI report cannot be equated with the preliminary inquiry report and the CBI report could be pressed into service by the- delinquent if it contains something positive in his favour or for contradicting any witness. Therefore, without elaborately dwelling of the submission, this Court is of the view that the matter is required to be remanded.

23. The Court is inclined to accept the submission of Shri Clerk, based upon the decision of the Apex Court that issue of legality and validity of the inquiry includes the issue whether the findings of the Inquiry Officer are perverse or not. An Inquiry could be defective if there is violation of principles of natural justice and also if the findings of the Inquiry Officer are perverse and as per the various decisions of the Apex Court, in such a case the employer is to be given an opportunity to lead the evidence afresh for justify ing the final order of discharge, removal, dismissal. When the scheme of the Tribunal as pronounced by the Apex Court, dictate that the employer is to be given an opportunity to justify its final order of discharge, dismissal and removal, then the submission that the artificial breaking of stages of hearing would cause tremendous prejudice and it would result into avoidable protracting of the reference before the Court. Deserves to be accepted. Thus on this count also the pleas of

interlocutory order and non-interference with it would be of no avail to the respondent bank. As ultimately, if final outcome is challenged before this Court in writ petition, and at that stage, if it is required to be held to be improper, then one more round of litigation would result into protracting the litigation between the parties.

24. At this stage, it would not be out of place to record that the submissions made by learned advocate for Bank in case the Court is inclined to accept the petition, then also, the entire matter may not be reopened but the trial Court be called upon to render its decision with regard to second point only and confirm the findings qua first issue. The Court, as could be seen from the order is persuaded not accept the submission as the issues are interlinked in such a way that there cannot be a findings of propriety in the order rejecting the direction of request without there being discussion upon the gist of documents. This is by way of restriction and therefore the Court is not inclined to accept the submission of learned advocate for respondent and is of the view that the entire order may be quashed. The Court hastened to add at this stage that the quashing of the entire order would not in any way amounting to pronouncement upon the findings and it is absolutely open to the Tribunal to come to its conclusion after affording due opportunity to both the sides.

25. Thus, looking to the order passed by this Court on March 4, 2008 and the directions contained therein, this Court is of the view that the labour Court has not exercised its jurisdiction which has resulted into tremendous prejudice to the workman and therefore, the order impugned is not sustainable in eye of law.

26. In view of the aforesaid discussion, the Court is of the view that the petition is required to be allowed partly and is allowed partly. The impugned award and order dated January 12, 2009 passed below Exhibit 8 and 79 passed by Central Government Industrial Tribunal, Ahmedabad in Reference (ITC) Old No. 50/1995-New No. 636/2004-New No. 504/2008 is quashed and set aside. The matter is remanded once again back to the Tribunal for recording its clear findings with regard to legality and propriety of the inquiry proceedings as well as the findings of the Inquiry Officer whether it is perverse or not and the only issue that may be decided later on is the issue of punishment.

27. With this observation, the matter is disposed of. Rule is made absolute to the aforesaid extent. As the charge-sheet is of the year 1988. it is in the fitness of thing that the Tribunal may decide the matter as soon as possible preferably within three months from the date of receipt of writ of this order. There shall be no order as to costs.