

(2020) 02 OHC CK 0002

In the Orissa High Court

Case No : Writ petition (C) No. 9463 Of 2019

Vice President, Emami Paper Mills Ltd.

APPELLANT

Vs

Vice President, Emami Paper Mills Ltd.

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 10, 12(5), 25(G)
Evidence Act, 187 — Section 145
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 OHC CK 0002

Hon'ble Judges : Kumari Sanju Panda, J;S.K. Sahoo, J

Bench : Division Bench

Advocate : Nitish Kumar Mishra A.K. Roy, A. Mishra S. Samantaray, Suvashis Pattnayak S. Dash, S.S. Sahoo

Final Decision : Disposed Of

Judgement

S.K. Sahoo, J

1. The petitioner has filed this writ petition seeking for a direction to quash the impugned order dated 08.05.2015 (Annexure-4) passed by the Presiding

Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No. 428 of 1995 in deciding the preliminary issue against the first party management

(petitioner in the writ petition) and holding that the domestic enquiry conducted against the second party workman (opposite party no. 2 in the writ

petition) was not valid. A further prayer has been made in the writ petition to quash the award dated 30.10.2018 (Annexure-5) directing the first party

management to reinstate the second party workman in service with full back wages along with all other consequential service benefits within one

month from publication of the award by the Government, failing which the second party would be entitled to interest @ 6% per annum on the

monetary benefit.

2. The reference which was made on 04.12.1995 by the Government of Odisha, Labour and Employment Department in exercise of the power

conferred upon it by sub-section (5) of section 12 read with clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereafter

â??I.D. Actâ??) to the Presiding Officer, Labour Court, Bhubaneswar for adjudication is as follows:

â??Whether the action of the management of M/s. Emami Paper Mills Ltd., Balgopalpur, Balasore in dismissing Sri. Muralidhar Das, Helper from

service w.e.f. 10.11.1994 is legal and/or justified? If not, to what relief the workman is entitled?â??

3. It is the case of the opp. party no. 2 workman that he was appointed as helper in the establishment of the petitioner w.e.f. August 1991. He along

with other workers associated to form a new Trade Union in the name of Emami Sramik Karmachari Sangha for which the management became

vindictive and took action against him to victimize on illegal and fabricated charges and suspended him during lock out period by way of unfair labour

practice. He was charge sheeted on 06.05.1994 and also suspended on that day just before unauthorized lock out. He prayed to issue odia charge

sheet to submit his reply but the management did not issue the same and despite that he denied the charges and agreed to appear in the enquiry with

his representative, but the management did not allow his representative though the management appointed one Advocate as an Enquiry Officer. It is

the further case of the opposite party no. 2 that the Enquiry Officer was partial to the management and basing upon the ex-parte enquiry, the

petitioner management dismissed him from service. The opposite party no. 2 prayed to set aside the enquiry and cancel the dismissal order with a

further prayer to reinstate him in service with all service benefits.

4. The petitioner management filed its written statement before the Labour Court stating therein that before terminating the opposite party no. 2 from

his service, enquiry was conducted but the opposite party no. 2 did not participate in the enquiry despite repeated opportunities being given to him. The

Enquiry Officer followed the principle of natural justice and fairly conducted the enquiry and found the opposite party no. 2 guilty of all charges and

the management carefully considered all the charges, the report of Enquiry

Officer and the gravity of incidents and thought it just and proper to terminate the opposite party no. 2 from his service for industrial peace and discipline. It is further stated in the written statement that in the event the Court did not accept the enquiry report as just and fair, the management should be given an opportunity to adduce evidence in support of the charge sheet framed against the opposite party no. 2.

5. The learned Tribunal framed the following issues:

â??(i) Whether the domestic enquiry is fair and proper.

(ii) Whether the action of the management of M/s. Emami Paper Mills Ltd., Balgopalpur, Balasore in dismissing Sri. Muralidhar Das, Helper from services w.e.f. 10.11.1994 is legal and/or justified?

(iii) To what relief the workman is entitled to?â??

6. The petitioner management filed a petition before the learned Tribunal to decide issue no.(i) as preliminary issue which was rejected vide order

dated 05.09.2014. Against the said order, the petitioner management preferred W.P.(C) No. 17464 of 2014 before this Court which was disposed of

as per order dated 21.10.2014 directing the learned Labour Court to decide issue no.(i) as preliminary issue with a further direction that if the finding

of the preliminary issue goes against the petitioner management, it should be given an opportunity to adduce evidence in respect of the merit of the

reference. Accordingly, the learned Labour Court took up issue no.(i) as preliminary issue. The second party workman (opposite party no. 2)

examined himself as W.W.1 and proved twelve documents marked as Exts.1 to 12 to substantiate that the domestic inquiry conducted by the

petitioner management was not valid one. The first party management (petitioner) examined two witnesses and proved documents marked as Exts. A

to Z/2 on its behalf. The Presiding Officer, Labour Court in its impugned order dated 08.05.2015 came to hold that the domestic enquiry was not a

valid one and accordingly, the preliminary issue was answered against the petitioner management.

7. Assailing the impugned order dated 08.05.2015, the petitioner management filed another writ petition before this Court vide W.P.(C) No. 9855 of

2015 which was disposed of as per order dated 30.01.2018 directing the Labour Court to proceed with the matter by affording opportunity to the

parties to lead evidence, without being influenced by the observations made in the order dated 08.05.2015.

8. After remand of the case record, the petitioner management examined four witnesses before the learned Labour Court as M.W. Nos. 3 to 6 on its

behalf and placed reliance on a number of documents marked as Exts.A to Z/2 which had already been marked during the hearing of preliminary

issue. The opposite party no. 2 examined himself as W.W. No. 1 and relied on thirteen documents marked Exts. 1 to 13, out of which twelve

documents had already been marked as Exts.1 to 12 during the hearing of preliminary issue.

9. The learned Labour Court in the impugned award dated 30.10.2018 while adjudicating issue no.(ii) has been pleased to hold that there is no dispute

that the second party workman was a helper in the establishment of the first party and he joined under the management since August 1991 and he

was dismissed from service w.e.f. 10.11.1994 on the allegation of misconduct. It is further held that the allegations made in para-7 and 8 of the

charges (Ext.1) and para-2 of page-2 of the charges (Ext.1) are vague and ambiguous and no proceeding should be allowed to sustain on the basis of

such vague allegations made in the charge sheet. It is further held that on the close scrutiny of the evidence led by the management, the charges could

not be proved against the workman. The management did not lodge any complain with the local police station against the workman alleging any

misconduct and no station diary entry was also proved in connection with the alleged occurrence which according to the learned Labour Court creates

reasonable suspicion about happening of such occurrence. It is further held that there is no cogent material to hold the charges as sustainable rather it

was found that charges were framed intentionally so that the workman could be dismissed from his service and the action of the management in

dismissing the opposite party no. 2 from service was found to be illegal and unjustified and accordingly, the first party management was directed to

reinstate the second party workman in service with full back wages along with all other consequential service benefits without one month from

publication of the award by the Government, failing which the second party workman would be entitled to interest @ 6% per annum on the monetary

benefit.

10. Mr. Nitish Kumar Mishra, learned counsel appearing for the petitioner contended that the impugned order dated 08.05.2015 and the award dated 30.10.2018 passed by the learned Labour Court are not sustainable in the eye of law. He argued that the opposite party no. 2 after initial appearance in the domestic enquiry, remained absent willfully for which the enquiry was conducted ex-parte and therefore, the opposite party no. 2 is precluded from raising any plea of prejudice and bias against the Enquiry Officer. He further submitted that there was no prejudice caused to the opp. party no. 2 in the facts and circumstances of the case and relied upon the decision of the Hon'ble Supreme Court in the case of Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha reported in (2011) 5 SCC 142. It is further contended that the learned Labour Court has committed error of record in holding that there is absence of time of occurrence, lack of F.I.R. or station diary and that the charges are vague, ambiguous and unsustainable. Notwithstanding the erroneous finding against the management as per preliminary issue no.(i), the management adduced additional evidence of M.W. Nos. 3 to 6, whereas the workman examined himself alone on merits. According to Mr. Mishra, all the management witnesses are eye witnesses to the misconduct committed by the workman and they have specifically proved the charges and the workman has not been able to shake the credibility of such evidence in any manner. It is argued that relying upon the original certified copy of deposition in a criminal case in 2 C.C. Case No. 184 of 1994 filed at the time of argument, the learned Labour Court has rejected the evidence of all the management witnesses pertaining to the incident of 05.05.1994 on the ground of vital contradictions. The evidence relating to the incident of 28.03.1994 was also rejected as unreliable due to lack of F.I.R. being lodged and the evidence relating to the incident of 01.05.1994 was not accepted on a wrong notion that the same is not a misconduct due to the meeting held on May Day i.e., International Labour Day outside the factory premises. Mr. Mishra further argued that in the impugned award, the learned Labour Court has erroneously discarded the evidence on merit tendered by the management witnesses on unjust and erroneous consideration of extraneous materials like evidence adduced by M.W. No. 5 in a criminal proceeding as P.W.2 even though such evidence was never confronted to M.W. No. 5 as per the provision under section 145 of the Evidence Act as well as the settled principle governing such cases

as laid down by the Hon'ble Courts. Reliance was placed on the Full Bench decision of Allahabad High Court in the case of Ajodhya Prasad

Bhargava v. Bhawani Shankar Bhargava reported in A.I.R. 1957 Allahabad 1. It is further argued that while the plea of the workman is that he was

not a party to the criminal proceeding, evidence of M.W. No. 5 as P.W.2 and the ultimate judgment in the said proceeding have been used and

accepted by the learned Labour Court. Placing reliance on the decision of the Hon'ble Supreme Court in the case of Shashi Bhusan

Prasad v. Inspector General reported in (2019) 7 SCC 797, it is argued that the degree of proof in a disciplinary proceeding and criminal proceeding

are distinct and different inasmuch as the disciplinary proceedings are proved on the basis of preponderance of probabilities whereas a criminal

offence requires proof beyond all reasonable doubt. According to Mr. Mishra, there is no bar to charge sheet an employee in the absence of F.I.R. as

misconduct in employment are internal matters which are to be dealt under the Code framed for such purposes.

11. Mr. Suvashis Pattnayak, learned counsel appearing for the opposite party no. 2 on the other hand supported the impugned order of the learned

Labour Court holding the domestic enquiry as invalid while deciding the preliminary issue as well as the award of reinstatement with full back wages

along with consequential service benefits. He argued that the scope of interference with an award of the learned Labour Court by this Court

exercising jurisdiction under Article 226 of the Constitution of India by issuing a writ of certiorari has been well settled in the case of Syed

Yakoob v. K.S. Radhakrishnan reported in A.I.R. 1964 S.C. 477 by a Constitution Bench of the Hon'ble Supreme Court and this Court exercising

such jurisdiction is not entitled to act as an appellate Court. He argued that when the findings recorded by the Labour Court are not perverse or

irrational or arrived at by ignoring materials on record or arbitrary or contrary to the principles of natural justice, the same should not be interfered with

by this Court and the writ petition should be dismissed.

12. Domestic enquiry in an industrial establishment is governed by the Standing Orders applicable thereto and it is required to be conducted in terms of

such Standing Orders. Even though it was argued before the learned Labour Court that the Enquiry Officer conducted the enquiry in accordance with

the provisions laid down in the Certified Standing Order of the company but no such Standing Order was filed nor proved during the hearing by the petitioner management. Law is well settled that even if specific rules have not been provided, then general principles of enquiry have to be adopted in case of domestic enquiry which requires that a charge sheet has to be served by the concerned authority of the institution to the employee indicating the specific charges against him and by appointing an Enquiry Officer, the enquiry has to be conducted in consonance to the principles of natural justice and in case of non-cooperation by the employee, the enquiry may also be conducted ex-parte on the basis of available documents and witnesses and on analysis of material documents and records referred and relied upon, that too, in consonance to the principles of natural justice and on the basis of the fact-finding report rendered by the Enquiry Officer, the competent authority may take appropriate subsequent decision.

13. In the case of Ananta Saha (supra), the Hon'ble Supreme Court has held that in case the delinquent does not participate or cooperate in the enquiry, the Enquiry Officer may proceed ex-parte passing an order recording reasons.

14. When issue no.(i) was framed by the learned Labour Court with regard to the fairness of the domestic enquiry against the opposite party no. 2 workman and a petition filed by the petitioner management to decide the issue no.(i) as preliminary issue was turned down by the learned Labour Court, on being approached by the petitioner management, this Court in W.P.(C) No. 17464 of 2014 directed the learned Labour Court to decide the issue no.(i) as preliminary issue.

15. During adjudication of preliminary issue, the Enquiry Officer was examined by the first party management as M.W.2. It appears from his evidence that notice was issued to the second party workman on 06.08.1994 vide Ext.Q to attend the enquiry on 18.08.1994 but the workman did not turn up to participate in the hearing and ultimately the case was posted for hearing to 19.10.1994 and on that day, the workman was set ex-parte. The order sheet of the Enquiry Officer indicates that in all the dates posted for enquiry, he directed the second party workman to produce his witnesses and documents. The management was not directed first to produce its witnesses and documents. Therefore, we are of the view that while adjudicating the

preliminary issue regarding validity of domestic enquiry, the learned Labour Court rightly held in the impugned order dated 08.05.2015 that the Enquiry

Officer followed a wrong procedure by asking the second party workman to produce his witness first inasmuch as in such domestic enquiry, it was the

duty of the management first to prove the allegations made against the second party workman by leading evidence and thereafter, the second party

workman would have been asked to produce his witnesses and documents.

16. It is the case of the opposite party no. 2 workman that the first party management did not supply the relevant documents relied upon by it during

domestic enquiry along with charge sheet supplied to him in spite of his repeated request, on the other hand he was asked to submit his explanation

within seven days of receipt of charge sheet. According to the opposite party no. 2, non-supply of material documents has caused serious prejudice to

him.

17. After examination of witnesses from the respective sides and proof of documents during hearing of the preliminary issue, the learned Labour

Court on perusal of the record found that the first party management has not supplied any document along with the charge sheet to the second party

workman. The Court took into account two letters proved by the second party workman marked as Ext.5 which is dated 30.06.1994 and Ext.7 which

is the letter dated 14.07.1994 which were issued by the workman to the management asking for documents relied on by the first party management in

the charge sheet. The learned Labour Court held that no such documents as was sought for by the workman in Exts.5 and 7 were supplied to him by

the management at the time of issuance of charge sheet or prior to recording of evidence by the Enquiry Officer. The learned Labour Court further

took into account a document marked as Ext.6 issued by the management to the second party workman which is dated 06.07.1994, wherein it is

mentioned by the management that the copies of the documents which are required to be produced by the management at the time of enquiry to prove

the charges would be supplied to the second party before the commencement of enquiry. Accordingly, it was held that Ext.6 indicates that till its

issuance, no document was supplied to the second party workman. The learned Labour Court further held that the management relied on a lot of

documents like Exts. A, B, C, D and E which were also utilized against the second

party workman during the domestic enquiry but those documents were not supplied to the workman by the management.

18. In the case of Chandrama Tewari v. Union of India reported in 1987 Supp SCC 518 : A.I.R. 1988 S.C. 117, it is held as follows:â?

â??It is now well settled that if copies of relevant and material documents including the statements of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statements of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry are not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question, it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copies of statements of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.â??

19. In the case of State of U.P. v. Shatrughan Lal reported in (1998) 6 SCC 651 : A.I.R. 1998 S.C. 3038, it is held as follows:â?

â??Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge sheet is issued and the documents which are proposed to be utilised against that person are

indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him.â??

20. In the facts and circumstances of the case, we find it impossible to hold that the opp. party no. 2 workman was afforded reasonable opportunity to meet the charges leveled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the learned counsel for the petitioner that there was no prejudice caused to the opp. party no. 2 and that he is precluded from raising any plea of prejudice.

21. It is needless to mention that when the impugned order dated 08.05.2015 passed by the learned Presiding Officer, Labour Court in deciding the preliminary issue against the petitioner management was challenged by the petitioner in W.P.(C) No. 9855 of 2015, this Court as per order dated 30.01.2018 did not delve into the merits of such order rather directed the learned Labour Court to proceed with the matter by affording opportunity to the parties to lead evidence, without being influenced by any observation made in such order.

22. Law is well settled that before proceeding with the domestic enquiry against a delinquent, he must be informed clearly, precisely and accurately the charges leveled against him and the charge sheet should specifically set out all the charges which the workman is called upon to show cause against and should also state all relevant particulars without which he cannot defend himself properly. The object of such requirement is that the delinquent employee must know what the charges against him are and the nature of misconduct alleged against him and he must get ample opportunity to meet such charges and to defend him by giving proper explanation. If the charges are not precise and definite, the delinquent employee would not be able to understand those charges and defend himself effectively and in such a case, it cannot be said to be a fair and just enquiry. In the case of *The Government of Andhra Pradesh v. A. Venkata Rayudu* reported in (2007) 1 SCC 338, it is held that a charge sheet should not be vague but should be specific. In the case of *Zunjarrao Bhikaji Nagarkar v. Union of India*

reported in (1999) 7 SCC 409, it is held that initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite.

23. The learned Labour Court examined the validity of the charge memo issued to the second party workman and found that in paragraphs 7 and 8 of the charges (Ext.1), there is no specific mention of date of the alleged occurrence and in paragraph 9 of the charges, there is no specific mention of time of such alleged occurrence.

24. According to Mr. Mishra, the learned Labour Court has made unjust and erroneous consideration of extraneous materials like evidence adduced by M.W. No. 5 Prakash Nagar in a criminal proceeding as P.W.2 even though such evidence was never confronted to M.W. No. 5 as per the provision under section 145 of the Evidence Act. According to him, the original certified copy of deposition of P.W.2 in the criminal case i.e. 2 C.C.

Case No. 184 of 1994 was filed at the time of argument.

25. It appears that co-workman Radhakrishna Maharana and Santosh Kumar Maharana were facing criminal trial relating to an incident which took place on 05.05.1994 in the Court of learned S.D.J.M., Balasore in the aforesaid 2 C.C. Case No. 184 of 1994 and M.W. No. 5 Prakash Nagar was examined in the said case as P.W.2. Learned Labour Court took into account the admission made by M.W.5 in his cross-examination that he had adduced evidence in relation to the fact of the case before the learned S.D.J.M., Balasore. Even though the evidence of Prakash Nagar as P.W.2 in the criminal proceeding was not confronted to him when he was examined as M.W. No. 5 but all the same, the learned Labour Court compared the evidence adduced by the said Prakash Nagar as M.W.5 vis-a-vis as P.W.2 and held that there are vital contradictions in the evidence.

26. Now, the question comes up for consideration whether the learned Labour Court was justified in comparing the evidence of Prakash Nagar in two different proceedings. It cannot be lost sight of the fact that the opposite party no. 2 was not facing trial in 2 C.C. Case No. 184 of 1994 but two of his coworkers were facing the same. Even though the incident in question relates to 05.05.1994 in connection with which Prakash Nagar gave evidence in both the proceedings and his attention was not drawn to the relevant parts of his evidence as P.W.2 when he was examined as M.W. No. 5 and

such evidence was only produced at the time of argument but all the same, everything depends upon the applicability of the Evidence Act to an

Industrial Disputes Act proceeding. In the case of R.M. Yellatti v. The Assistant Executive Engineer reported in (2006) 1 SCC 106 : A.I.R. 2006 S.C.

355, it is held that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. In the

case of Municipal Corporation, Faridabad v. Siri Niwas reported in (2004) 8 SCC 195, it is held that the provisions of the Indian Evidence Act per se

are not applicable in an industrial adjudication. The general principles of it are, however applicable. The decision relied upon by the learned counsel for

the petitioner in the case of Ajodhya Prasad Bhargava (supra) is not regarding the applicability of section 145 of the Evidence Act to an Industrial

Disputes Act proceeding rather it was in the context of adjudication of a civil suit proceeding. Therefore, we are not inclined to place any reliance on

such decision. However, we are of the view that the method adopted by the learned Labour Court in comparing the evidence of Prakash Nagar in two

different proceeding to find out contradictions particularly when the opp. party no. 2 was not an accused in the criminal case proceeding, was not

proper and justified.

27. M.W. No. 5 Prakash Nagar in his evidence affidavit in paragraph 4 has stated about the misconduct of opp. party no. 2 in the incident dated

05.05.1994. However, in the cross-examination he has admitted that he was not present at the spot and also at the relevant time during the incident as

described by him under paragraph 4 of his affidavit upon which F.I.R. was lodged by the Management. He further stated that no F.I.R. was lodged

with regard to the alleged incident dated 05.05.1994.

28. Therefore, the evidence of M.W. No. 5 relating to the incident dated 05.05.1994 alleging misconduct against opp. party no. 2 is not acceptable.

Though M.W. No. 5 stated in his evidence affidavit relating to some incident stated to have taken place on 28.03.1994 in paragraph 6 but in paragraph

23 of his cross-examination, he stated that he did not remember whether any show cause notice was issued by the management in relation to the

incident dated 28.03.1994 and he admits that no F.I.R. was lodged with regard to the alleged incident dated 28.03.1994. Even though M.W. No. 5

stated that on 01.05.1994 the opp. party no. 2 and other workers organized a

meeting in front of the factory main gate without obtaining any permission from the concerned authority and persuaded the willing workmen not to join the duty on that day and threatened them with dire consequence in case they join their duties but the learned Tribunal analysed the evidence and held that if at all any meeting was organized on the â??May Dayâ?? i.e. International Workers Day which is a holiday and that too outside the factory premises, the same can by no stretch of imagination be construed as misconduct in employment and no charge sheet can be sustained for such alleged act.

29. The learned Labour Court also analysed the evidence of other witnesses like M.W. No. 3 Om Prakash Sharma, M.W. No. 4 Padma Lochan

Nayak and M.W.6 Kajol Ray Chowdhury examined by the management and found the same to be not reliable and trustworthy. All these three

witnesses stated about the incident that took place on 05.05.1994 in which the opposite party no. 2 workman and others stated to have entered inside

the chamber of M.W. No. 5 forcibly and unauthorizedly and demanded withdrawal of show cause letters issued against two workmen and ultimately

M.W. No. 5 was rescued by police. Since M.W. No. 5 himself states that he was not present at the spot on that day, the evidence of these three

witnesses do not inspire confidence. It was further held by the learned Labour Court that no station diary entry was proved relating to the alleged

occurrence which creates reasonable suspicion about its happening. The learned Court found that there is no cogent material to hold the charges as

sustainable rather the charges were framed intentionally so that the workman could be dismissed from his service. The findings recorded by the Court

are neither perverse nor irrational. In the case of Shashi Bhusan Prasad (supra), it is held that the two proceedings criminal and departmental are

entirely different and they operate in different fields and have different objections. Even if do not consider the evidence of M.W. No. 5 as given in the

criminal case relating to the incident dated 05.05.1994, we find as per the discussion above that the evidence of the management witnesses are not

acceptable to sustain the charges which are also defective as pointed out in the impugned award. A finding of fact cannot be challenged on the ground

that relevant materials and evidence adduced before the Court below was insufficient or inadequate to sustain the findings. The adequacy or

sufficiency of evidence and the inferences to be drawn from the evidence are the exclusive domain of the Court below and the same cannot be

agitated before this Court. Even if another view is possible on the evidence adduced before the learned Court below, this Court would not be justified

to interfere with the findings recorded by the Court. When the findings recorded by the Court are perverse or irrational or arrived at by ignoring

materials on record or arbitrary or contrary to the principles of natural justice, the same can be interfered with by this Court in a petition under Article

226 of the Constitution. (Ref:- A.I.R. 1964 S.C. 477, Syed Yakoob v. K.S. Radhakrishnan).

30. In view of the foregoing discussions, we do not find any perversity or error apparent on record or illegality in the impugned order dated 08.05.2015.

We also agree with the view taken by the learned Labour Court in the impugned award dated 30.10.2018 that the action of the petitioner management

in dismissing the opp. party no. 2 workman with effect from 10.11.1994 was not legal or justified.

31. The question that now remains for consideration is whether the order of reinstatement with full back wages along with all other consequential

service benefits in favour of the opp. party no. 2 as was directed by the learned Labour Court is also to be confirmed or not or any other relief is to be

granted to the opposite party no. 2 in the interest of justice.

32. In the case of Asst. Engineer, Rajasthan Dev. Corp. v. Gitam Singh reported in (2013) 5 SCC 136, the Hon'ble Supreme Court held that it can be

said without any fear of contradiction that the Supreme Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed

employee is entitled to reinstatement in all situations. It has always been the view of the Supreme Court that there could be circumstance(s) in a case

which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of

wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, the Supreme Court

has laid down that consequential relief would depend on post of factors, namely, manner and method of appointment, nature of employment and length

of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation

should be directed to be paid. It was further held that a distinction has to be drawn between a daily wager and an employee holding the regular post

for the purposes of consequential relief. In the said case, the Hon'ble Supreme Court set aside the order of the learned Single Judge as well as the

Division Bench of the High Court in confirming the award of the Labour Court in directing reinstatement of the respondent Gitam Singh and also 25%

of back wages and held that compensation of Rs. 50,000/- by the appellant to the respondent shall meet the ends of justice. Similar view has been

taken by the Hon'ble Supreme Court in the cases of State of M.P. v. Lalit Kumar Verma reported in (2007) 1 SCC 575, Uttaranchal Forest

Development Corporation v. M.C. Joshi reported in (2007) 9 SCC 353, Sita Ram v. Motilal Nehru Farmers Training Institute reported in (2008) 5 SCC

75, Ghaziabad Development Authority v. Ashok Kumar reported in (2008) 4 SCC 261 and Jagbir Singh v. Haryana State Agriculture Marketing

Board reported in (2009) 15 SCC 327. The aforesaid view has also been reiterated by this Court in the case of Executive Engineer, Badanala

Irrigation Division, Kenduguda v. Ratnakar Sahoo reported in 2011 (Supp.I) Orissa Law Reviews 556.

33. In the case of District Development Officer v. Satish Kantilal Amrelia reported in (2018) 12 SCC 298, it is held that even though the termination

was bad due to violation of section 25-G of the I.D. Act but it would be just, proper and reasonable to award lump sum monetary compensation to the

respondent in full and final satisfaction of his claim of reinstatement and accordingly a total sum of Rs. 2,50,000/- was directed to be paid to the

respondent in lieu of his right to claim reinstatement and back wages in full and final satisfaction of the dispute.

34. It is not in dispute that the opp. party no. 2 was appointed as a helper w.e.f. August 1991 and he was terminated from his service w.e.f.

10.11.1994. The opp. party no. 2 is now aged about 56 years as mentioned in his Vakalatnama filed on 18.11.2019. Considering the nature of his

employment, his age, passage of 25 years since the date of termination, we are of the view that in the peculiar facts and circumstances of the case,

the direction of reinstatement in service to the opposite party no. 2 is not sustainable in the eye of law. However, taking into account the length of

period he faced litigation in different forums, the litigation costs incurred by him, his sufferings and the fact that we are not in favour of his

reinstatement, we are of the humble view that in lieu of his reinstatement, full back wages along with all other consequential service benefits as was

directed by the learned Labour Court, an amount of compensation of Rs. 3,00,000/- (rupees three lakhs only) in favour of opp. party no. 2 would be

just, proper and reasonable. The petitioner shall pay the compensation amount to the opp. party no. 2 within a period of three months from today.

35. With the aforesaid observation, the writ petition is disposed of.