Apart from this, any part thereof in excess of six months would also mean each month comprised of thirty days and not that six months shall be computed by calculating 26 days in a month. We do not accept the computation adhered to by the Labour Court. The factual status has been clearly indicated by the management as to how the retrenchment compensation has been calculated.

(10) Resultantly, we are of the opinion that the award, dated 21st May, 2004 made by the Labour Court is not sustainable by holding it to be violative of Section 25-F(b) of the Act. No other point has been opined by the Labour Court. Therefore, the findings in this regard of the Labour Court are set aside and that the reference is answered against the workman. The petition is allowed in the above terms.

R.N.R.

Before J.S. Narang & Arvind Kumar, JJ.

PUNJAB AGRICULTURAL UNIVERSITY & OTHERS,—*Petitioner*

versus

P.O.L.C. LUDHIANA AND ANOTHER,—*Respondents*

C.W.P. NO. 4861 OF 2006

2nd November, 2006

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.11—A—Charges of theft against a chowkidar proved and established—Termination of services—Industrial dispute—Reference—Whether a fair and proper inquiry had been conducted by the Management—Preliminary issue—Labour court finding that no fair and proper inquiry conducted—Management filing application for permission to lead evidence to prove charge of misconduct against workman—Rejection of—Neither any preliminary objection nor any alternative plea in the written statement by the management—Whether the Labour Court is not entitled to take any fresh evidence relating to the matter—Held, no—No inordinate delay on the part of management in making request to lead additional evidence—Workman would not suffer in any manner as he is also to be given opportunity to defend himself—Petition allowed, matter remitted to Labour Court for adjudication afresh by granting opportunity to the parties to lead additional evidence.

Held, that the Labour Court erred in declining the application of the management for producing evidence in support of the charge made against the workman on the basis of which the services of the workman have been terminated. No doubt, the facts of each case are relevant, for the decision to be rendered by the Courts, in this regard. In any case, the basic principle and the rights of the parties have to be kept in view while taking the decision accordingly. We cannot forget the ultimate objective—"dispensing justice between the parties." We cannot be overawed by the ruthless power enjoyed by one of the parties i.e. management and the other party may be considered a weakling i.e. the workman. This can never ever the issue before the Court. It is the principle, which is to be enunciated and it has to be seen in each case as to in what manner the justice has to be met with, be it a mighty person, be it a rich person and be it a poor person. The powers which are conferred upon the Courts/Tribunal cannot be placed under any kind of fetters while according opportunity under the aegis of the principle i.e. *"the prniciple of natural justice".* Whether the courts find that it shall be in the interest of justice that a party has to be accorded opportunity to spell out its view point, denial of such opportunity would be viewed seriously and that such act can never ever be appreciated in the realms of justice.

(Para 10)

Further held, that there was no inordinate delay on the part of the management in making the request for permission to lead additional evidence for proving the charge of misconduct against the workman. If such indulgence is granted, the workman would not suffer in any manner as he is also to be given the appropriate opportunity to defend himself, which according to the Labour Court was not granted.

(Para 17)

O. P. Gupta, Advocate, *for the petitioner.*

Dheeraj Bali, Advocate, *for the respondent.*

JUDGEMENT

J. S. NARANG, J.

(1) The petitioner–management has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, for seeking issuance of a writ in the nature of certiorari

quashing the order dated 28th March, 2005, 7th October, 2005 and award dated 14th December, 2005,—*Vide* which the reference has been answered in favour of the workman and against the management and that the workman has been ordered to be reinstated with continuity of service and full back wages.

(2) The brief facts need to be noticed are that the workman had joined the service with the Punjab Agricultural University, Ludhiana (hereinafter referred to as "the management") as a Chowkidar at a monthly salary of Rs. 770,—*vide* order dated 28th January, 1991. During the period of service some complaints had been received against the workman in regard to theft of petrol and other material while working in the College of Home Science of the Management. He had been served the charge-sheet dated 2nd September, 1997 for the misconduct so committed. He submitted reply dated 9th October, 1997. Inquiry Officer was appointed and also the Presiding Officer. The inquiry was conducted on different dates. However, the workman did not appear before the Inquiry Officer. In the reply he had admitted the charge relating to five chairs and one stool which having been found/recovered from his residence were, in fact left by one Jagmal Singh. Thus, after taking into consideration the reply to the charges, the Inquiry Officer held the workman responsible, by submitting the report accordingly. A show cause notice dated 13th February, 1998 had been served upon the workman. A reply thereto was submitted, which had been considered by the competent authority and the same was found to be unsatisfactory. Resultantly, his services had been terminated on 11th March, 1998 on account of the charges having been proved and established in accordance with law.

(3) The workman served a demand notice dated 12th March, 1998 upon the management, which was contested by way of submitting written comments before the appropriate authority. The conciliation proceedings failed, resultantly the appropriate government referred the "industrial dispute" for adjudication to the Labour Court, Ludhiana. The workman submitted the claim statement before the Labour Court, which had been duly contested by way of written statement dated 12th June, 2002, submitted by the management. Whereby preliminary objections had also been taken with the prayer that the claim of the workman is not sustainable. It has also been pleaded that the services of the workman was legally terminated on the basis of the inquiry conducted by the Inquiry Officer in accordance with law.

(4) Upon the pleadings of the parties, the issues had been framed and that issue No. 2 related to the inquiry as to whether the same had been conducted by the management in a fair and proper manner. The issue had been treated as preliminary issue and that the Labour Court returned a finding,—*vide* order dated 24th February, 2004, copy Annexure P5. It has been opined that in view of the facts having emerged from the record, it cannot be said that the workman had admitted the charges levelled against him. The statement of Jagmal Singh had been recorded by the Inquiry Officer but no opportunity to cross examine was afforded to the workman. Thus, this statement could not have been relied upon for opining against the workman and in favour of the management. It has been categorically held that no fair and proper inquiry had been conducted, therefore, the finding on issue No. 2 had been returned against the management and in favour of the workman. However, the Labour Court passed an order on 28th March, 2005,—*vide* which the application, submitted by the management for permission to lead evidence before the Labour Court, has been rejected on the ground that the management did not take any preliminary objection or had stated in the written statement that if the inquiry is not held to be fair and proper, it may be given chance to prove the allegations against the workman by leading evidence before the Court. Thus, the parties had been directed to lead evidence upon the remaining issues. Copy of the aforesaid order has been appended as Annexure P6. It is thereafter that the award dated 14th December, 2005, copy Annexure P11 was made by the Labour Court in favour of the workman and against the management.

(5) Notice of motion had been issued by a Division Bench of this Court,—*vide* order dated 28th March, 2006 and that the operation of the impugned award had been stayed subject to the rigour of Section 17-B of the Act. The workman had filed the affidavit in compliance to Section 17-B of the Act, which was taken on record,—*vide* order dated 19th May, 2006 and that the counsel for the petitioner had taken time for making compliance thereof. Learned counsel or the petitioner has not been disclosed as to whether the compliance has been made or not. If that be so till today the compliance shall be made dehors the decision in the instant petition. If no such compliance is made, the proceedings before the Labour Court shall not proceed with and that the Labour Court shall be entitled to draw appropriate inference accordingly.

(6) The workman has submitted the detailed written statement and has raised the preliminary objection that the management is not entitled to claim the opportunity to lead evidence before the Labour Court as the said opportunity has to be asked at the very outset i.e. submitting the written statement before the Labour Court. In support of his contention, reference has been made to the dicta of the Hon'ble Supreme Court rendered in re: **Delhi Cloth Mills Ltd.** *versus* **Ludh Budh Singh, (1), Karnataka State Road Transport Corporation** *versus* **Smt. Lakshmidevamma, (2)** and the Division Bench judgment of this Court rendered in re: **Palwal Co-operative Sugar Mills Ltd. Palwal** *versus* **Presiding Officer, Labour Court-II, Faridabad and another, (3)**. It has been further contended that the Labour Court has come to the correct conclusion by examining the facts and the entire proceedings of the Inquiry Officer, from where it has been concluded that the respondent-workman had not been given the adequate opportunity to defend himself, as no opportunity to cross examine Jagmal Singh witness, produced by the management, had been granted. It is also contended that the application for permission to lead evidence has been rightfully rejected,—*vide* order dated 7th October, 2005 while relying upon the dicta of the Hon'ble Supreme Court in re: **Karnataka State Road Transport Corporation's case** *(supra)*. Since no infirmity can be found in the aforesaid order of the Labour Court, the final award dated 14th December, 2005, cannot be interfered with.

(7) Learned counsel for the petitioner has argued that the Hon'ble Supreme Court has expressed its view in the subsequent judgments,—*vide* which it has been held that once the Labour Court comes to the finding that the inquiry was non est, the Labour Court should give an opportunity to the respondent to establish the charges before passing an award in favour of the workman. Reference has been made upon the dicta of the Hon'ble Supreme Court rendered in re: **Divyash Pandit** *versus* **Management N.C.C.C.B.M. (4).** In this case the Hon'ble Supreme Court has noticed the dicta of the Hon'ble Supreme Court rendered in **Karnataka State Road Transport Corporation's case** *(supra)*, and it has been held that by virtue of

(1) AIR 1972 S.C. 1031
(2) 2001 (2) S.C.T. 1041 (S.C.)
(3) 1996 (4) R.S.J. 363
(4) 2005 A.I.R. S.C.W. 5525

the said judgment, no fetters on the powers of the Court/ Tribunal could be placed to require or permit the parties to lead additional evidence including production of any document at any stage of hearing, before they are concluded. The relevant para 8 of the said judgment reads as under :—

> "8. The appellant has challenged this decision of the High Court before us. We are of the view that the order of the High Court dated 2nd December, 2002 as clarified on 3rd March, 2003, does not need any interference. It is true no doubt that the respondent may not have made any prayer for additional evidence in its written statement but as held by this Court in **Karnataka State Road Transport Corporation's** *versus* **Laxmi Dev Amma** this did not place a fetter on the powers of the Court/Tribunal to require or permit parties to lead additional evidence including production of document at any stage of proceedings before they are concluded. Once the Labour Court came to the finding that the enquiry was non est, the facts of the case warranted that the Labour Court should have given one opportunity to the respondent to establish the charges before passing an Award in favour of the workman."

Reference has also been made to another judgment of the Hon'ble Supreme Court rendered in re: **Cooper Engineering Limited** *versus* **P. P. Mundhe (5),** wherein it has been held that when case of dismissal or discharge of an employee is referred for adjudication, the Labour Court first must decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry held or enquiry is admitted to be defective, being in violation of rules etc. and that the matter is concluded between the parties, such question must be decided as a preliminary issue. In that situation, when the decision is being pronounced, it will be for the management to decide whether it would adduce any evidence before the Labour Court. If it choses not to adduce any evidence, it will not be thereafter permissible in any proceedings to contest the aforesaid issue. The Hon'ble Supreme Court had earlier opined in re: **State Bank of India** *versus* **R. R. Jain and others (6),** that even

(5) 1975 (II) L.L.J. 379
(6) (1972) 1 S.C.R. 755

if it is assumed that the domestic enquiry conducted by the employer was in anyway vitiated, the Industrial Tribunal would be committing an error in law by not giving opportunity to the management to adduce evidence before it, to establish the validity of the order of discharge/dismissed.

(8) On the other hand, learned counsel for the respondent has argued that in view of the dicta of the Hon'ble Supreme Court **Karnataka State Road Transport Corporation's case** *(supra).* the management is expected to take the alternative plea, such as in a case where an inquiry is held into the misconduct of a workman and if that enquiry is not found in order, the right to produce evidence before the Court has to be asked for by the management at the time of taking stand in support of the enquiry held. In the instant case, no such plea is indicative from the written statement submitted by the management before the Labour Court. The subsequent application filed, after the finding has been returned on issue No. 2, the management could not be granted opportunity to produce evidence in support of the charge, on the basis of which the order of dismissal had been passed.

(9) We have heard learned counsel for the parties and have also perused the paper book and the order dated 7th October, 2005 and the award dated 14th December, 2005, copy Annexure P-9 and P11 respectively.

(10) We are of the considered opinion that the Labour Court erred in declining the application of the management for producing evidence in support of the charge made against the workman on the basis of which the services of the workman have been terminated. No doubt, the facts of each case are relevant, for the decision to be rendered by the Courts, in this regard. In any case, the basic principle and the rights of the parties have to be kept in view while taking the decision accordingly. We cannot forget the ultimate objective- "dispensing justice between the parties." We cannot be overawed by the ruthless power enjoyed by one of the parties i.e. management and the other party may be considered a weakling i.e. the workman. This can never ever the issue before the Court. It is the principle, which is to be enunciated and it has to be seen in each case as to in what

manner the justice has to be met with, be it a mighty person, be it a rich person and be it a poor person. The powers which are conferred upon the Courts/Tribunal cannot be placed under any kind of fetters while according opportunity under the aegis of the principle i.e. *"the principle of natural justice"* Wherever the Courts find that it shall be in the interest of justice that a party has to be accorded opportunity to spell out its view point, denial of such opportunity would be viewed seriously and that such act can never ever be appreciated in the realms of justice.

(11) Hon'ble Supreme Court while rendering judgment in **Karnataka State Road Transport Corporation's case** *(supra).* has considered the dicta of the Courts including the Hon'ble Supreme Court in various matters decided earlier and has concluded that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal; but essentially the rules of natural justice are to be observed in such proceedings. The said Courts/Tribunal have power to call for any record or evidence at any stage of the proceedings, if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. No doubt, the parties are expected to open up/disclose their pleas and the approach before the Court/Tribunal in a fair and honest manner, which shall include the alternative plea (as aforesaid) as well; but that would be without prejudice to its rights and contentions. The strait jacket method cannot be applied in *strictio senso* as the same would place fetters on the power of the Court/Tribunal when a situation does warrant that the permission to lead additional evidence including production of documents, deserves to be granted and that such power can be exercised at any stage of the proceedings before they are concluded finally. Thus, the dicta is that such power shall be exercisable by the Court/Tribunal in the given set of circumstances and the facts placed before it.

(12) The relevant extract from the aforesaid judgment reads as under :—

> "23. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before Labour Court/Tribunal but essentially the rules of natural

justice are to be observed in such proceedings. Labour Courts/Tribunals have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the Court/ Tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on the facts and circumstances of the case it is deemed just and necessary in the interest of justice."

"43. For the foregoing reasons, it is not possible to hold that if the employer does not express his desire to lead additional evidence in reply to statement of claim in proceedings under Section 10 or when an application is filed for approval under Section 33(2)(b) of the Act, the employer cannot be allowed to exercise option at a later stage of the proceedings by making an application for the purpose. The employer's request, when made before close of proceedings, deserves to be examined by the Labour Court/Tribunal on its own merits and it goes without saying that the Labour Court/ Tribunal will exercise discretion on well settled judicial principles and would examine the *bona fides* of the employer in making such an application."

"44 The doctrine *stare decisis* has also no applicability. In decisions earlier to Shambhu Nath Goyal's case *(supra),* the consistent view was that the prayer for adducing evidence could be made before the close of proceedings. Soon after Shambhu Nath Goyal's case, in Rajendra Jha's case, similar view was expressed. The procedure laid down in Shambhu Nath Goyal's case would not be just, fair and reasonable both to the employer and the workman. The

said decision has not acquired the status attracting the doctrine of *stare decisis*. Shambhu Nath Goyal represents highly technical view. Considering that we are considering the rule of convenience, expediency and prudence and there is no statutory prohibition, the procedure which promotes the cause of both employer and workman deserves to be laid down."

"45. In view of the above, I am of the opinion that the Shambhu Goyal's case *(supra)* does not lay down correct law. The law has been correctly laid in Shankar Chakravarti's case and Rajendra Jha's case. The correct procedure is as stated in Shankar Chakravarti's case subject to further safeguards for workman as already indicated above."

(13) It may be noticed that the Labour Court/Tribunals and the National Tribunals had been conferred the power by virtue of Section 11-A of the Industrial Disputes Act, 1947, promulgated by way of amendment, which came into force on 15th December, 1971 that where the aforesaid forums find in the course of the adjudication that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal, as the circumstances of the case may require. The aforesaid provision reads as under :

"**11A.Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workman:**—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it things fit, or give such other relief to the workman including the award of any lesser punishment

in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on materials on record and shall not take any fresh evidence in relation to the matter."

(14) However, by virtue of the aforesaid provision the Court/ Tribunal has virtually been vested with the appellate power. ***Would this amount that by virtue of the proviso, the Labour Court/ Tribunal is not entitled to take any fresh evidence relating to the matter ?*** In this regard, to our mind, the so called appellate power has been divided into two halves: firstly where the Labour Court proceeds to differ with the order of dismissal passed against the workman and second is-whether it proceeds to award lesser punishment in lieu of discharge or dismissal.

(15) For lesser punishment, it shall be assumed that the evidence has been found sufficient to arrive at such conclusion.

(16) But in a case where the dismissal has to be converted into acquittal of the charge, some more consideration is required to be made which may arise in a situation where the Labour Court holds that the enquiry has not been conducted in accordance with law. In a case where it is found that there is insufficiency of evidence on the part of the management and/or the workman has not been given the adequate opportunity to defend himself; two courses may be open, one is that the management would be entitled to hold the enquiry *de novo* upon reinstatement of the workman and the other would be to permit the management to bring additional evidence for establishing the guilt. Of course, it goes without saying that opportunity to defend shall to be granted to the workman equally. If such leave is granted to the parties, this would always cut down the delay for final disposal of the matter pending before the Court/Tribunal.

(17) In the instant case, the management filed an application after the decision had been rendered upon issue No. 2 *vis-a-vis* the status of the enquiry conducted by the management. No doubt, the management may spell out its mind by taking the alternative plea in

the written statement submitted to the claim of the workman but if such plea has not been taken, the Court/Tribunal cannot be made powerless to give indulgence in the facts and circumstances spelt out and brought before the Court/Tribunal. It is for this reason, the Courts have interpreted the powers of the Court/Tribunal with categoric observation that the powers of the forums cannot be put under any kind of fetters, when they are required and expected to take a conscious and cautious decision for achieving the ultimate objective i.e. dispensing justice between the parties. The management had filed the application, when the decision upon the relevant issue i.e. Issue No. 2 had been rendered on 28th March, 2005. The application is shown to have been filed on 6th June, 2005 and of course, by placing reliance upon various judgments of the Supreme Court as well as this Court. We are satisfied that there was no inordinate delay on the part of the management in making the request for permission to lead additional evidence for proving the charge of misconduct against the workman. If such indulgence is granted, the workman would not suffer in any manner as he is also to be given the appropriate opportunity to defend himself, which according to the Labour Court was not granted.

(18) In view of the above, the petition is allowed and the orders dated 7th October, 2005, copy Annexure P9 and the award dated 14th December, 2005, copy Annexure P11, are quashed. The matter is remitted to the jurisdiction of the Labour Court for adjudication afresh and, of course, by granting opportunities to the parties to lead additional evidence in accordance with law. The parties through their counsel are directed to appear before the Labour Court on 4th December, 2006.

(19) It shall be appreciated if the matter is decided expeditiously by the Labour Court and preferably within a period of six months from the date of appearance of the parties. It is made clear if any unnecessary adjournment is asked for by the parties without any cogent reason the same shall be viewed by the Labour Court in a serious manner and if required adverse inference shall be drawn accordingly.

R.N.R.