HIGH COURT OF GUJARAT

JITESH KANAIYALAL THAMWALA

Versus

D J CHAUHAN OR HIS SUCCESSOR IN OFFICE AS PRESIDING OFFICER AND ORS

Date of Decision: 28 April 2008

Citation: 2008 LawSuit(Guj) 2731

Hon'ble Judges: H K Rathod

Eq. Citations: 2008 3 GCD 2140, 2008 19 GHJ 134

Case Type: Special Civil Application

Case No: 28463 of 2007

Subject: Constitution, Labour and Industrial

Acts Referred:
Constitution Of India Art 141, Art 226, Art 14
Industrial Disputes Act, 1947 Sec 11A

Final Decision: Petition disposed

Advocates: J B Pardiwala, K D Gandhi, M S Mansuri, Nanavati Associates

Cases Referred in (+): 40

H. K. Rathod, J.

[1] Rule. Service of Rule is waived by learned advocates appearing on behalf of the respondents respectively. In the facts and circumstances of the case and with consent of all the learned advocates, matter is taken up for final hearing today.

[2] Heard learned the learned advocates appearing on behalf of respective parties.

[3] In the present petition, petitioner workman is challenging the order passed by Labour Court, Bharuch in Reference (LCB) No.285 of 1995 Exh.83 dated 14th August 2007. The petitioner was dismissed from service on 30th June 1995 by respondent No.2. Against which, industrial dispute was raised which was referred for adjudication on 29th August 1995. The statement of claim was filed by workman vide Exh.3,

against which, reply vide Exh.7 was filed by respondent. Thereafter, statement of claim was amended by the workman vide Exh.25, which was, again, vide Exh.30 purshis, respondent employer has accepted the reply filed vide Exh.7. The petitioner workman was examined vide Exh.32 for limited purpose. The petitioner has raised contention against the departmental inquiry conducted by employer and for limited purpose, evidence was given by petitioner before the Labour Court which was cross-examined by respondent No.2. Vide Exh.14, respondent No.2 has produced certain documents relating to departmental inquiry and also cited relevant decision by both the parties. Thereafter, Labour Court has framed the issue that whether departmental inquiry conducted against the petitioner by the employer is illegal or not or whether principles of natural justice is violated or not. The Labour Court, Bharuch has come to conclusion that in respect to the charge sheet dated 5th January 1994, the departmental inquiry which was conducted by the employer is held to be legal and valid and matter was adjourned on 29th August 2007.

[4] Learned Advocate Mr. Mansuri for the petitioner submits that the very same question was considered by this Court in Patel Filters Limited versus Barkatbhai V. Narsindani and another, 2000 1 GLR 562, wherein, respondent workman of that case has raised all such contentions that the departmental inquiry was vitiated because lawyer was not permitted by the enquiry officer to defend the case of the workman in departmental inquiry and, therefore, departmental inquiry was held against the workman without help of the lawyer which has been held to be illegal and contrary to the principles of natural justice by the Labour Court. Said order was challenged by the employer Patel Filters Ltd. Before this Court by filing Special Civil Application NO. 6546 of 1999 which was decided by this Court on 1st October, 1999.

Learned advocate Mr. Mansuri also submitted that the decision of the apex court in The Cooper Engineering Ltd. v. P. P. Mundhe, 1975 2 LLJ 379 was cited before this Court and yet the Court has examined legality and validity of the order of the labour court holding that the inquiry is vitiated and ultimately, petition was allowed on the ground that the case of The Cooper Engineering Ltd. cannot be accepted as universal principle of law to be applied in all cases irrespective of its merits. Learned advocate Mr. Mansuri has placed reliance on para 7 of the said decision which is, therefore, reproduced as under:

"7. I do agree the endeavour of the court should be to hear and decide all the issues arising in a matter simultaneously nor should a party be permitted to while away time by challenging the orders on preliminary issues and not permitting the court to decide the real issues. But this is not a case where the issue in question could have been decided along with other issues. The nature of the issue is such which has to be decided as a preliminary issue. This is the view taken by the

Hon'ble Supreme Court in the matter of The Cooper Engineering Ltd. . Ordinarily, the courts do not entertain petition against the decision on preliminary issues where such issues can as well be challenged after final adjudication. However, it can not be accepted as universal principle of law to be applied in all cases irrespective of its merits. In the present case, the issue raised is a clear question of law and the relevant facts are undisputed. Since the question does not raise disputed questions of facts, I feel the matter can be entertained against the decision on preliminary issue also and that is what I am inclined to do."

[5] Learned Advocate Mr. Gandhi for the respondent submitted that in such circumstances, as per the view taken by the apex court in The Cooper Engineering Ltd. v. P. P. Mundhe, 1975 2 LLJ 379, this order can be challenged by the petitioner after the final result, if it goes against the petitioner and at this stage, court should not interfere with the order and should refuse to interfere at this stage, because, otherwise, the proceedings will be held up and final adjudication will not be over within reasonable time because, according to him, respondent was dismissed from service on 30.6.1995. According to him, more than 12 years have passed and if the matter will remain pending before this court and if the stay is granted by this court then, for another four to five years, the petition will remain pending in this court against such order of the revisional court. He submits that if the ultimate result goes against the petitioner, then, the petitioner can challenge such order of the labour court on all the grounds while challenging the order of the Labour Court dated 14.8.2007 and therefore, this petition cannot be entertained by this court.

[6] I have considered the submissions made by all the learned advocates. I have also considered the observations made by this Court in aforesaid decision, para 7 in particular. However, it is necessary to consider the observations made in para 21 and 22 by the apex court in The Cooper Engineering Ltd. v. P. P. Mundhe, 1975 2 LLJ 379. Observations made by the apex court in para 21 and 22 of the said judgment are reproduced as under:

"21. Propositions (4). (6) and (7) set out above are well-recognised. Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the Court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate in advance of the pronouncement of the order in that behalf ? In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger

issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see S. 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. We are therefore clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter if worthy can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

[7] After considering the observations made by the Hon'ble apex court in para 21/22 of the said judgment, the apex court has not made it clear that that any question of law, if it is involved, it should have to be decided by the High Court and if the question of law is not involved, then, it should not have to be decided. Such demarcation or exception has not at all been observed by the Hon'ble apex court. Apex Court has observed that the preliminary point must have to be decided by the labour court but when such decision on the preliminary point is challenged by either of the parties before the higher forum, then, there is no justification to stall the final adjudication of the dispute before the labour court by questioning its decision with regard to the preliminary issue but if the matter is worthy, it can be agitated even after the final adjudication of the reference and passing of the award. In case of departmental inquiry

conducted against the employee, workman has challenged the departmental inquiry as bad by raising contention in statement of claim and employer raised contention that the departmental inquiry is legal and valid. In such circumstances, labour court shall have to examine first as to whether the departmental inquiry is legal and valid or not. Answer given will be either in the affirmative or in the negative. If the departmental inquiry is held to be legal and valid, then, it is for the workman to challenge the same and if it is held to be invalid, then, it is for the employer to challenge it but such challenge by either party is held to be unjustified by the apex court because it is ultimately stalling further proceedings of adjudication pending before the labour court which is not at all in the interest of the either of the parties and, therefore, whatever may be the decision of the labour court on preliminary issue, whether it is a pure question of law or facts or a mixed question of law and facts, same can be challenged by the party while challenging the ultimate award if it is against such party because ultimate object is that the further proceedings before the labour court should not be held up and there is no justification to stall the proceedings under the guise of challenging the order passed by the labour court on preliminary issue. Therefore, decision of the apex court is very much clear. There is no demarcation or exception as understand made by the apex court as regards pure question of law or pure question of facts and/or mixed question of law and facts. Even if the question of law is involved, it can be challenged after final adjudication if the ultimate result is against such party. There is no bar for challenging such question of law after final adjudication but that does not mean that the High Court can interfere whenever High Court likes to interfere. As per Article 141 of the Constitution of India, law declared by the Supreme Court is to be binding on all courts. The law decided by the Supreme Court shall be binding on all courts. Ratio is that there is no justification from either side to held up the proceedings while challenging preliminary issue before the High Court and the High Court is legitimately expected not to interfere in such matters and, therefore, according to my opinion, merely question of law arising while examining order passed by the labour court on preliminary issue will not give jurisdiction to interfere with such order on preliminary issue and to stall the proceedings before the court below. There is no scope in such two parts as understood by this court because there may be only one result, either the departmental inquiry may be held to be valid or invalid, it may be involving a question of law or question of law and facts but the judicial discipline requires not to interfere in such petition because there is no justification with either of the parties to challenge this issue and to stall the further proceedings because same can be challenged after final adjudication if it goes against such party.

[8] It is necessary just to understand the industrial law which is not similar to civil law. The proceedings under industrial law which related to right to livelihood and therefore, certain restrictions are imposed by Apex Court in number of decisions. The dismissal or

discharge order passed by employer challenged by workman under the industrial forum must have to be adjudicated by Labour Court under the machinery of Industrial Disputes Act, 1947.

The dismissal or discharge may be based upon departmental inquiry or may not be based upon departmental inquiry. If the allegations are made against the workman and no departmental inquiry was conducted, then, employer can request the Labour Court to permit them to lead proper evidence before the Labour Court for proving charge against the workman. Once, departmental inquiry was conducted and dismissal order was passed, then, it is for the workman to raise contention against such departmental inquiry that it is vitiated because of no opportunity was given which violates basic principles of natural justice. The employer can defend his inquiry and mentioned it that departmental inquiry conducted against the workman is legal and valid. However, it is open for the employer to ask for opportunity in case if departmental inquiry is vitiated by Labour Court. The preliminary issue is that whether departmental inquiry is proper or not must have to be examined by Labour Court first as a preliminary issue. If preliminary issue decided by Labour Court either in favour of workman or in favour of employer.

On both the occasions, either party can challenge it before High Court and can request this Court to entertain this petition and stay the further proceedings. Normally, this practice to challenge preliminary issue order to the higher forum adopted by employer with a purpose to obtain the stay against the further proceedings. Number of cases on having decision on preliminary issue, the further proceedings have been stayed by High Court pending before the Labour Court. Therefore, Apex Court, in various cases, in case of D.P. Maheshwari v. Delhi Administration, 1983 LabIC 1629, The Cooper Engineering Ltd., v. P.P. Mundhe, 1975 AIR(SC) 1900 and other cases, decided that not to entertain such challenge on preliminary issue on behalf of the employer and both the issues can be decided finally by the Labour Court and same can be examined by Labour Court on the basis of the evidence on record. The object of Industrial Disputes Act, 1947 must have to be achieved to have as early as possible final adjudication on the industrial dispute which maintain industrial peace between the workmen and employer and it may not give a cause of another industrial dispute during the pendency of reference before the Labour Court.

Similarly, a preliminary issue relating to departmental inquiry result may come either way and either party is entitled to challenge it, but, in case of The Cooper Engineering Ltd., , Supreme Court has, in terms, held that not to entertain such challenge by either party to the High Court either question of law may involved or not. The reason behind it that in case if inquiry is held to be legal and valid, then,

workman can challenge the finding given by inquiry officer whether finding is baseless or perverse or not and thereafter, workman can request the Labour Court to consider his case under Section 11A of the Industrial Disputes Act, 1947 that whether punishment imposed by employer is proportionate to the misconduct in question or not.

These two remedies are available with the workman i.e. to challenge the finding and (ii) to request the Labour Court to exercise the power under Section 11A of the Industrial Disputes Act, 1947. So, challenge to order passed by Labour Court on preliminary issue holding inquiry is legal and valid have no fruitful purpose or there is no justification by workman.

Similarly, in case, if, departmental inquiry is vitiated in whatsoever reason including the question of law examined by Labour Court, the remedy is available to the employer to request the Labour Court to permit the employer to lead evidence or proving the charge against the workman before the Labour Court. If, employer is able to prove the charge by leading fresh evidence after inquiry is declared vitiated, then, Labour Court may confirm the dismissal order and challenge to order on preliminary issue that inquiry is vitiated becomes meaningless.

If, employer satisfactorily proved the charge against the workman by leading fresh evidence, then, that order will relate back to the original order of dismissal. So, employer has not to pay a single rupee when he succeeds in proving the charge against the workman. Therefore, either way challenge by either party the order of Labour Court on preliminary issue, is, ultimate dependent upon the final outcome of reference, meaning thereby that, order passed on preliminary issue cannot be decided the result of reference or fat of reference, but, it merely gives remedy to workmen and employer on different angle, but, ultimately, workmen and employer are not sufferer if preliminary issue decided by Labour Court in respect to departmental inquiry, which can be challenged along with final adjudication. Therefore, this was the object in the mind of Apex Court which reflected in Para 21 of case of The Cooper Engineering Ltd., and on that basis, the ratio decided by Apex Court in case of The Cooper Engineering Ltd., in uncertain terms not to encourage the challenge by either party as there is no justification for finalasing the petition against the order passed by Labour Court on preliminary issue. The ratio is very clear and no exception is carved out or kept open by Apex Court which gives discretionary powers to High Court to interfere with an order on preliminary issue if question of law is involved. This is not a civil proceedings, but, this is purely special enactment having subject nature of a dispute and having special effect of order on preliminary issue decided by Labour Court. So, analogy of civil proceedings will not

be applicable at all to the challenge of order passed by Labour Court on preliminary issue relating to departmental inquiry.

[9] It is a duty of this Court to follow the binding precedent of Apex Court without interpreting such ratio by High Court or without exercising the discretionary power upon binding precedent, this Court must have to understand and apply the precedent under Article 141 decided by Apex Court without using any kind of discussion and using discretion, otherwise, it amounts to ignore the binding precedent of Apex Court by High Court.

[10] Recently, the Apex Court in case of Oriental Insurance Co. Ltd. v. Smt. Raj Kumari and Ors., 2007 AIR(SCW) 7149 has examined this question. The relevant Para 11 to 15 are quoted as under :

"11. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judges decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the wellsettled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors., 1968 AIR(SC) 647 and Union of India and Ors. v. Dhanwanti Devi and Ors., 1996 6 SCC 44. A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem, 1901 AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton, 1951 AC 737, Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

13. In Home Office v. Dorset Yacht Co., 1970 2 AllER 294 Lord Reid said, Lord Atkins speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances. Megarry, J in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board, 1972 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

14. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

[11] Recently, the Apex Court has observed the said question in case of Som Mittal v. Government of Karnataka, 2008 3 SCC 574. The relevant Para 9 and 12 are relevant, therefore, the same are quoted as under :

"9. When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under section 302 IPC, but to emphasize that the power under section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection. Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a Judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.

[12] When this Court renders judgments, it does so with great care and responsibility.

The law declared by this Court is binding on all courts. All authorities in the territory of India are required to act in aid of it. Any interpretation of a law or a judgment, by this Court, is a law declared by this Court.

The wider the power, more onerous is the responsibility to ensure that nothing is stated or directed in excess of what is required or relevant for the case, and to ensure that the Court's orders and decisions do not create any doubt or confusion in regard to a legal position in the minds of any authority or citizen, and also to ensure that they do not conflict with any other decision or existing law. Be that as it may."

[See : (i) Sumtibai and others v. Paras Finance Co., 2007 10 SCC 82, Para 10 to 13 (ii) Government of Karnataka v. Gow Ramma, 2008 AIR(SC) 863

12. The Apex Court dislike to ignore the binding decision by High Court or subordinate Court which view has been expressed by Apex Court in case of Palitana Sugar Mills Pvt. Ltd. & Anr. v. Smt. Vilasiniben Ramachandran & Ors., 2007 AIR(SCW) 2655. Para 12 is relevant, therefore, is quoted as under :

"12. It is well settled that the judgments of this Court are binding on all the authorities under Article 142 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show-cause notices. Such an attempt is to belittle the issues and the orders of this Court. We are pained to say that the then Deputy Collector has scant respect for the orders passed by the Apex Court."

[13] Similar view has been taken by Apex Court recently in case of U.P. State Electricity Board v. Pooran Chandra Pandey and Others, 2008 116 FLR 1172, where, observations are made in Para 11 to 19, which are quoted as under :

"11. As observed by this Court in State of Orissa vs. Sudhansu Sekhar Misra, 1968 AIR(SC) 647 vide para 13:-

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem.

"Now before discussing the case of Allen v. Flood, 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

12. In Ambica Quarry Works vs. State of Gujarat & others, 1987 1 SCC 213 (vide para 18) this Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case.

It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

13. In Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd, 2003 2 SCC 111 (vide para 59), this Court observed:-

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

[14] As held in Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another, 2004 AIR(SC) 4778, a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:-

"Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

Observations of Courts are neither to be read as EuclidRs. s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

[15] In London Graving Dock Co. Ltd. vs. Horton, 1951 AC 737, Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office vs. Dorset Yacht Co., 1970 2 AllER 294 Lord Reid said. "Lord AtkinRs. s speech..... is not to be treated as if it was a statute definition; it will

require qualification in new circumstances. Megarry, J. in (1971)1 WLR 1062 observed:

One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board, 1972 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

[16] The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

[17] We are constrained to refer to the above decisions and principles contained therein because we find that often Uma Devis case is being applied by Courts mechanically as if it were a Euclids formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum Corporation Ltd. , a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Uma Devi's case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Uma Devis case inapplicable to the facts of that case.

[18] In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-'-vis the original employees of the Electricity

Board since they have been taken over by the Electricity Board in the same manner and position. Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society before 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution.

> We have to read Uma Devis case in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution.

[19] We may further point out that a seven- Judge Bench decision of this Court in Maneka Gandhi vs. Union of India & Anr., 1978 AIR(SC) 597 has held that reasonableness and nonarbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhis case is a decision of a seven-Judge Bench, whereas Uma Devis case is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, Maneka Gandhis case does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application."

> 14. Therefore, in view of recent decisions in observations made by Apex Court as referred above, Para 7 as referred above from the decision of this Court in case of Patel Filters Limited v. Barkatbhai V. Narsindani and Anr., 2000 1 GLR 562 is directly having conflict with binding decision of The Cooper Engineering Ltd., .
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> 15. When inquiry is held to be legal and valid while deciding the preliminary issue by Labour Court, then, workman have remedy to raise contention against the finding decided by inquiry officer that finding is baseless and perverse. If, finding is held to be baseless and perverse, even, on that occasion also, employer has right to lead evidence to justify dismissal. So, each occasion, in industrial law, a reasonable and balance procedure has been developed on the basis of various decisions of Apex Court. The Labour Court, even conciliation officer, while examining the application under Section 33(2)(B) of the Industrial Disputes Act, 1947 can decide the finding given in domestic inquiry is based upon legal evidence or not or whether finding is perverse or not which is as per view taken by Apex Court in case of Central Bank of India Ltd., New Delhi v. Prakash Chand Jain, 1969

2 LLJ 377. The Head Note of the aforesaid judgment is relevant, therefore, the same is quoted as under :

"The appeal was preferred against the order of the industrial tribunal rejecting approval sought for by the appellant-bank under S.33 (2)(b) of the Industrial disputes Act. The acts of misconduct levelled against the workman were alleged to have fallen under Para. 521-A(J) of the Sastri award. The tribunal, when dealing with the application for approval, held that the enquiry held by the enquiry officer was fair, and was not vitiated by any irregularity or unfairness but refused to accord approval on the ground that the findings rendered by the enquiry officer were perverse and were not based on evidence inasmuch as most of the findings ere the result of mere conjecture of the enquiry officer.

Rejecting the contention of the counsel for the appellant-bank that the tribunal, in refusing to accord approval and in disregarding the findings recorded by the enquiry officer, exceeded its jurisdiction conferred by S.33(2)(b) of the Act and the tribunal having once held that the enquiry was fair, it had no jurisdiction to go into the correctness of the findings of the enquiry officer as an appellate Court, held that the tribunal can disregard the findings given by the enquiry officer in an application under S.33(2)(b) of the Industrial Disputes Act only if the findings are perverse. The test of perversity is that the findings may not be supported by legal evidence. Yet another case of perversity is that when the findings are such which no reasonable person could have arrived at on the basis of the materials before him. Though in regard to certain elements of the acts of misconduct, the tribunal erred in assessing the perversity of the evidence adduced before the enquiry officer at the domestic enquiry, and though such an enquiry officer was not bound to observe the technical rules of evidence, held in the instant case that substantive rules of evidence which would form part of principles of natural justice have been ignored by the enquiry officer, when he based his findings on hearsay evidence.

It is true that in various cases it has been held that domestic tribunals like an enquiry officer are not bound by the technical rules about the evidence in the Indian Evidence Act but it has nowhere been laid down that even substantive rules which would form part of principles of natural justice also could be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom enquiry is held and that the statements made behind the person charged are not to be treated as substantive evidence is one of the basic principles of natural justice which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. A domestic tribunal would not be justified in recording its finding on the basis of hearsay evidence

without having any direct or substantive evidence in support of such findings. In other words, the findings recorded by the enquiry officer must be supported by legal evidence. The evidence should consist of statements made in the presence of the workman charged and exception is envisaged where the previous statements could be used after giving copies of the statements well in advance to the workman charged but with further qualifications that previous charge must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman charged.

Applying the above principles and on merits, held that the findings of this enquiry officer were not based on any legal evidence in regard to the two charges levelled against the workman even though partly the first of the charges could be held to be proved. "

16. Recently, the Apex Court has decided two cases;

(i) U.P. State Road Transport Corporation v. Vinod Kumar, 2007 13 JT 404, where, Apex Court has decided that in case when legality and validity of departmental inquiry is not challenged by the workman, but, confined to his challenge only conclusion of the inquiry officer and quantum of punishment, then, it was not open to Labour Court to go into the findings of inquiry officer regarding the misconduct committed by the workman. The relevant observation made by Apex Court in Para 10 is relevant, therefore, is quoted as under :

"10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the Enquiry Officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the enquiry conducted, it was not open to the Labour Court to go into the findings recorded by the Enquiry Officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the Courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment. Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, 2006 6 SCC 187, wherein this Court, after taking into account the earlier decisions, held in para

18 as under:-

"In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation v. B.S. Hullikatti, 2001 2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis-conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty.

This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum."

17. The aforesaid decision is considered and relied upon by Apex Court recently in case of Employers in relation to the Management of West Bokaro Colliery of M/s. TISCO Ltd., v. The Concerned Workman Ram Pravesh Singh, 2008 2 JT 272, where, it is held that Labour Court or Tribunal had no power to interfere in the findings of domestic inquiry as an appellate court. The relevant observation made by

Apex Court in Para 19 and 20 are quoted as under :

"19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different

from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

20. Learned Counsel for the respondent cited two cases The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors., 1973 1 SCC 813 and South Indian Cashew Factories Workers Union vs. Kerala State Cashew Development Corpn. Ltd.& Ors., 2006 5 SCC 201, to contend that the Labour Court in exercise of its jurisdiction under Section 11A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic Tribunal by substituting its opinion in place of the opinion of the domestic Tribunal."

18. The net result of aforesaid two decisions which have been recently given by Apex Court as referred above after not challenging the legality and validity of departmental inquiry by workman or preliminary issue decided by Labour Court that departmental inquiry is legal and valid, then, workman is not entitled to challenge the finding given by inquiry officer to the effect that finding recorded by inquiry officer is baseless and perverse. Section 11A came into force on December 15, 1971 and not having any retrospective effect. Therefore, Section 11A is quoted as under :

"11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. - 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 adjudication proceedings, the labour court, tribunal or national tribunal as the case may be is satisfied 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; Provided that in any proceeding under this section, the labour court, tribunal or national tribunal as the case may be, shall rely only on the material on record and shall not take any fresh evidence in relation to the matter."

19. Regarding Section 11A in the statement of object and reason, it is stated as follows in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India

(Pvt.) Ltd., v. The Management and Others, 1973 1 SCC 813:

"3. Regarding Section 11A, in the Statement of Objects and Reasons it is stated as follows :-

"In Indian Iron and Steel Co. Ltd. v. Their Workmen,1958 AIR (SC) 130, the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workmen should not be limited and that the Tribunal should have the power in cases wherever necessary to 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 reliefs to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new S. 11A is proposed to be inserted in the Industrial Disputes Act, 1947....."

[20] Section 11A is inserted in statute book because of decision of Apex Court in case of M/s. Indian Iron & Steel Co., Ltd. and another v. Their Workmen, 1958 AIR(SC) 130.

[21] The decision of Apex Court in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., , the Apex Court has considered various decisions on

the issue and broadly some principles have been emerged after considering the various decisions of Apex Court in Para 32 which is quoted as under :

"32. From those decisions, the following principles broadly emerge :-

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it

is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971 1 SCC 742 within the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on 15-12-1971 applicable to all industrial adjudication arising out of orders of dismissal or discharge."

[22] What would be the effect of Section 11A has been discussed by Apex Court in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., in Para 36, 37 and 40 which are quoted as under :

"36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron and Steel Co. Ltd., 1958 SCR 667 existed.

The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the

power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct.

The limitations imposed on the powers of the Tribunal by the decision in Indian Iron and Steel Co. Ltd., 1958 SCR 667, case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded.

Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. Ltd.,1972 1 LabLJ 180. No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or

if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved."

[23] Therefore, in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., , the Apex Court has held that Labour Court while exercising the power under Section 11A may also differ from the said finding if a proper case is made out, meaning thereby that, what was once broadly in the realm of the satisfaction of the employer has ceased to be shown and now, it is the suggestion of the Tribunal that finally decides the matter.

[24] Therefore, in case when departmental inquiry is held to be legal and valid, finding recorded by inquiry officer can be examined by Labour Court and if, Labour Court has come to conclusion that finding is baseless and perverse, at that stage, employers have right to justify dismissal while seeking permission from the Labour Court to lead evidence in support of the order of dismissal as decided in case of Bharat Forge Co. Ltd. v. A.B. Zodge and Another, 1996 4 SCC 374. The relevant averments made in Para 7 which is quoted as under :

"7. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity.

Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognised. In this connection, reference may be made to the decisions of this Court in Workmen of Motipur Sugar Factory (P) Ltd. Vs. Motipur Sugar Factory (P) Ltd., 1965 2 LLJ 162. State Bank of India Vs. R.K.Jain,1971 3 LLJ 599. Delhi Cloth General Mill Co. Ltd. Vs. Ludh Budh Singh, 1972 1 LLJ 180 and Firestone Tyre Co.s Case . The stage at which the employer should ask for permission to additional evidence to justify the disciplinary action on merits was indicated by thisCourt in Delhi Cloth and General Mill's case . In Sankar Chakrabarty's case , the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame

preliminary issue and proceed to see the validity or otherwise of the enquiry and then serve a fresh notice on the employee - by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so, by relying on the decision of this Court in the case of Cooper Engineering Ltd., 1975 2 LLJ 379, has not been accepted. The view expressed in Delhi Cloth Mill's case that before the proceedings are closed,an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in Sankar Chakrabarty's case after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in Cooper Engineering Ltd. has not overruled the decision of this Court in Delhi Cloth Mill's case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, payer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified."

[25] Therefore, Labour Court is entitled to go into the question of examining the legality and validity of finding and in case, if, finding is declared vitiated, perverse and baseless, employer is entitled to have permission from Labour Court to justify his dismissal. Therefore, the whole issue which relates to departmental inquiry in industrial law having a different procedure based upon various decisions of Apex Court being an unwritten law as in case, order passed by Labour Court on preliminary issue either to held inquiry is valid or not, but, either party has no justification to challenge before the High Court and High Court is not having any discretionary power to entertain such challenge or if encourage on the basis of discretionary power under Article 226 of the Constitution of India when ratio decided by Apex Court in case of The Cooper Engineering Ltd., , then, such observation and decision becomes meaningless in the eyes of law.

[26] The view taken by this Court in case of Dinesh Mills Ltd., v. Kedarnath R. Pande, 1998 2 GLR 1431 in Para 8 and 9 which are quoted as under :

"8. The petitioner has titled this petition under Articles 226 & 227 of the Constitution of India. Even if it is taken to be a petition under Article 227 of the Constitution of India, then too interference of this Court is not called for in the present case because even if it is taken that some illegality has been committed by the Labour Court in passing of the impugned order, though I am not expressing any final opinion, still where this Court feels that it will not cause any prejudice to the party challenging the same, it may decline to interfere in the matter. Similarly, where by the impugned order, if it is not resulting in failure of justice to the party concerned, the Court may decline to interfere in the matter. In the present case, as

observed earlier, this is only an interlocutory order and if ultimately final decision goes against the petitioner, then while challenging the said award, the petitioner has all right to challenge this order also and this Court has to consider the challenge and has to go into the question of correctness and propriety and legality of the said order and if ultimately this Court finds that the said order is illegal or improper, then the appropriate order may be passed in those proceedings. So it is not the case that the petitioner cannot challenge this order at any point of time. Their Lordships of the Apex Court, in the case of Cooper Engineering Ltd. v. P.P.Mundhe , have clearly warned that the party should not be permitted to stall the final adjudication of the industrial dispute by challenging the order, passed by the Labour Court and Industrial Tribunal, on the preliminary issue. The Hon'ble Supreme Court has gone to the extent of saying that it will also be legitimate for the High Court to refuse to intervene at this stage. So I do not find it to be a fit case where otherwise also, interference should be made by this Court sitting under Article 226 of the Constitution in the matter.

9. If we take the matter to be under Article 227 of the Constitution of India, I do not find any justification in extending the jurisdiction of this Court under this Article in the present case. This Court, under Article 227 of the Constitution of India, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless the High Court interferes. In the present case, as stated earlier, the preliminary issue has been decided by the Labour Court after taking evidence of both the parties and the main grievance of the learned counsel for the petitioner is that the order impugned is not a reasoned order. But only on this ground, in such case, as held by the Apex Court in the case on which reliance has been placed by learned counsel for the petitioner, the order may not be quashed and set aside. This Court, even in the matter where final orders have been passed by the Labour Court, may decline to interfere under Article 227 of the Constitution of India, where though the Labour Court has committed grave dereliction of duty or has made flagrant abuse of fundamental principles of law or justice, but no injustice is resulting to the party challenging the said order. This impugned order only decides the preliminary issue and the petitioner has all the right to challenge that order if ultimately the matter is finally decided against it, while challenging the final award of the Labour Court."

[27] Similarly, in case of Cadila Healthcare Ltd. v. Union of India & Ors., 1998 2 GLH 513, the same view has been taken by this Court and observation is made in Para 11 which is quoted as under :

"11. The matter is yet to be examined from another angle. From the scheme of the Act, 1958, it transpires that the application for registration of trade marks has to be disposed of expeditiously. Otherwise also, leaving apart the scheme of the Act aforesaid, whether it is a proceeding before the Civil Court or Criminal Court or before this Court or even before any quasi-judicial authority or administrative authority, the same has to be disposed of expeditiously. This object, as well in some of the cases the mandate of the statute, can only be achieved or attained where the Courts which are having powers of superintendence or extra ordinary powers under Article 226 of the Constitution of India, do not permit the parties to stall the final adjudication of the matter by questioning the decision of the authorities with regard to interlocutory matters when the matter if worthy, can be agitated even after final orders are passed. I consider it to be fruitful here to make reference to the decision of the Apex Court in the case of The Cooper Engineering Ltd. v. P.P. Mundhe, 1975 AIR(SC) 1900. The Apex Court, in this case, held:

"10. In Management of Ritz Theatre (P) Ltd. v. Its Workmen, 1963 AIR(SC) 295 this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry. While repelling this argument this Court made some significant observations:

"In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not.

Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the findings recorded at such an enquiry are are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute.....

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer: if the

finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence."

[28] In view of aforesaid observations made by this Court and considering the entire law on the subject that departmental inquiry if it is held to be invalid or valid challenge to High Court by either party should not have to be encouraged to entertain such petition may be filed by either party in view of Apex Court decision in The Cooper Engineering Ltd.,

[29] It is equally important to understand the difference between validity of finding and validity of departmental inquiry. The finding is not a part of departmental inquiry. Both are different and distinct entity in entire departmental proceedings. If validity of departmental inquiry is not challenged by workman, then, he can challenge the validity of finding which is separate and independent being a conclusion or result of departmental inquiry. So, both the things can be challenged by workman independently from each other. Therefore, the view taken by Apex Court in U P S R T C Vs Vinod Kumar, 2007 13 JT 404 and Employers Management Wesr Bokaro Colliery of Tisco Ltd. Vs Concerned Workman Ram Pravesh Singh, 2008 2 JT 272, if, it has to be implemented and held that in case when validity of inquiry is not challenged by employee, then, finding cannot be examined by Labour Court, then, it amounts to redundant the amendment of Section 11A which brought into statute with a particular object to remove the effect of decision of Apex Court in case of M/s. Indian Iron & Steel Co., Ltd. and another, 1958 AIR(SC) 130. Therefore, looking to the decision of Apex Court in case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., what would be the legal effect of amendment of Section 11A, Labour Court has certainly power to examine the finding given by inquiry officer independently irrespective of challenge against departmental inquiry and Labour Court can differ with the conclusion of inquiry officer like an appellate authority. If this decision of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd., of Apex Court, where, the entire law has been discussed after following the various decisions on the subject is binding as a precedent, otherwise, if it is not followed in light of recent two decisions of Apex Court, then, it amounts to restoring the original position which was prevailing prior to decision of Apex Court in M/s. Indian Iron & Steel Co., Ltd. and another, 1958 AIR(SC) 130, then, amendment of Section 11A becomes totally redundant, that is not the ratio laid down by Apex Court in aforesaid two recent decisions as referred above. There is no provisions in Industrial Disputes Act made that how the departmental inquiry is to be conducted and what procedure is to be followed. But, in Industrial Law, the procedure to be followed in departmental inquiry has been developed on the basis of various decisions given by Apex Court being an unwritten law and decision of Apex Court being a binding precedent being a law of land binding to all

the Courts of India. Therefore, in case when preliminary issue decided by Labour Court in respect to legality of departmental inquiry either way, there is no justification by either party to challenge in higher forum just to stall the final adjudication or further proceedings pending before Labour Court. Such order on preliminary issue relating to departmental inquiry is not adversely affected either way to either party and it is not cut the legal right of either party which is necessary to be examined or compelled to examine by this Court and that is how, the observations made by Apex Court in case of The Cooper Engineering Ltd., would a ratio binding to this Court and must have to be followed any decision contrary to the aforesaid decision is not binding to other Courts.

[30] This Court has taken pain to describe the entire Industrial Law on the subject of departmental inquiry with a view to appreciate and understand the law on the subject, so, there may not be any confusion or misinterpretation of the Apex Court judgment delivered in The Cooper Engineering Ltd., , therefore, elaborate discussion has been made.

[31] Therefore, I am not accepting the submissions made by learned advocate Mr. Mansuri appearing on behalf of petitioner and I am relying upon the decision of the apex court in case of The Cooper Engineering Ltd., para 22 and according to my opinion, the observations made by the apex court in para 22 is more clear and specific and not required to be interpreted in a manner which ultimately damage the binding precedent of the apex court and, therefore, this petition against the order passed by Labour Court, Bharuch in Reference (LCB) No.285 of 1995 dated 14th August 2007 is not entertained by this Court only on the ground that the further proceedings which are pending before the Labour Court cannot be held up or stalled with a liberty in favour of petitioner to challenge the said order dated 14th August 2007 after final adjudication if the ultimate result is against the petitioner. It will be open for the petitioner to raise contention before the Labour Court and to challenge the findings given by inquiry officer, if, he, so, desire and it is also open for the petitioner to make request to Labour Court to consider his case under Section 11A of the Industrial Disputes Act, 1947.

[32] With these observations and directions, this petition is disposed of without expressing any opinion on merits of the matter. Rule is discharged. No order as to costs.