RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 253/2018
CNR: RJHC020036702018 | URN: SAW / 760U / 2018

Rajasthan High Court
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Manager, Rajasthan Patrika Pvt. Ltd, Keshargarh, Jawahar Lal Nehru Marg, Jaipur

----Appellant

Versus

Ms. Kumkum Sharma D/o Shri Madan Mohan Sharma, R/o 1638, Chaura Rasta, Jaipur

----Respondent

For Appellant(s)	:	Mr. Sunil Nath Raunak Mr. Mahendra Singh Ms. Shreya Sangayach Mr. Ankit Pople
For Respondent(s)	:	Ms. Shefali Sharma Ms. Harshita Thakral Mr. Rajendra Prasad

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HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

Reportable

Judgment Reserved on :- 18/08/2026
Pronounced on :- 17/11/2026

By the Court (Per, Arun Monga, J):-

1. This intra court appeal is directed against the judgment and order dated 20.12.2017 passed by the learned Single Judge in S.B. Civil Writ Petition No.12832/2016. By that judgment, the respondent's removal from service *vide* management order dated 27.02.2009 was set aside. The orders of the Labour Court dated 24.03.2015 and 31.05.2016 were also set aside. The respondent was directed to be reinstated in service with continuity and all consequential benefits, including back wages.

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2. The appellant seeks that the impugned judgment be set aside and the writ petition be dismissed. For convenience, the appellant is referred to as the management. The respondent, who was the writ petitioner, is referred to as the employee.

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FACTS

3. The employee was appointed as an Artist vide order dated 30.06.1995. About eight years later, by order dated 17.04.2003, she was transferred to Udaipur on the ground of administrative exigency. At Udaipur, she was posted in the Editorial Department. She did not challenge the transfer. On 27.09.2004, she submitted an explanation about her performance. She stated that she would continue to discharge the work assigned to her.

4. On 17.03.2006, she asked to be transferred back to Jaipur. She said she was unmarried and was living with her aged mother, whose health was poor. There was no vacant post of Artist at Jaipur. Even so, she was transferred to Jaipur vide order dated 27.04.2006 as a special case, on sympathetic grounds. At Jaipur too, she was posted in the Editorial Department.

5. Advisory and warning letters about her work followed. These include letters dated 25.09.2007, 29.09.2007, 19.11.2007 and 18.12.2007. The employee herself placed them on record as Annexure 12 to the writ petition.

6. On 03.10.2007, a charge sheet containing six charges was issued. In substance, the charges were these.

(i) Her complaint dated 29.08.2007 about her work seat was found untrue. She refused to read and receive the reply dated 30.08.2007. She similarly refused communications given to her on 08.09.2007 and 10.09.2007.

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(ii) On 06.09.2007, after reading a letter handed over by the Personnel Officer, she shouted loudly and disturbed discipline in the office.

(iii) On the same day, she returned the letter, refused to accept it and, when cautioned, asked the officer what he could do to her.

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(iv) She was instructed on 30.08.2007 to review two editions of the newspapers every day. She sent reviews late, at intervals, and of one edition only.

(v) She received a letter dated 25.09.2007 on this subject but refused to acknowledge it. She is alleged to have said that she would work only in her own way.

(vi) Despite warning letters dated 25.08.2006 and 21.08.2007, her work did not improve.

7. Each charge was linked to specific sub clauses of Clause 20(2) of the Certified Standing Orders. The employee did not reply within the time allowed. The management appointed an Enquiry Officer on 28.11.2007. She filed her reply to the first charge sheet before the Enquiry Officer on 08.12.2007.

8. Meanwhile, a second charge sheet dated 04.12.2007 was issued with two charges. It alleged that she had refused to receive the charge sheet dated 03.10.2007 and the communication dated 19.11.2007. It further alleged that she had failed to improve her work despite several opportunities. She replied on 07.12.2007 and filed an additional reply on 22.12.2007. An Enquiry Officer was appointed for this charge sheet on 11.12.2007.

9. Both charge sheets were entrusted to the same Enquiry Officer, Mr. Rupin Kala, learned Advocate. Common proceedings were held with the consent of both sides. The employee raised no objection at that stage to the Enquiry Officer or to the common proceedings. Sittings were held on 08.12.2007, 15.12.2007, 22.12.2007, 26.12.2007,

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29.12.2007, 05.01.2008, 12.01.2008, 19.01.2008, 29.02.2008, 05.04.2008 and 17.05.2008.

10. In the early enquiry sittings, the employee was given time on more than one occasion to arrange a Defence Assistant. Documents were exchanged. Copies of the documents produced by the Presenting Officer were supplied to her. On 24.12.2007, she sought permission to engage a person from outside the establishment as her Defence Assistant.

11. On 19.01.2008, statements of three management witnesses were taken on record. She was asked to cross examine them. She left the proceedings without doing so. The Presenting Officer asked that the enquiry proceed ex parte. The Enquiry Officer declined that request. He instead sent her copies of the statements by registered post and gave her another date.

12. On 29.02.2008, two more witnesses were examined. The Enquiry Officer recorded that she had declined to sign the order sheet of 19.01.2008 and had declined to inspect the original documents. She again left without cross examining anyone. The matter was adjourned to 05.04.2008 and she was informed by registered post. She did not appear on 05.04.2008. The matter was adjourned again to 17.05.2008. She did not appear on that date either, though, according to the Presenting Officer, she was present in the same premises. The Enquiry Officer then proceeded in her absence.

13. The Enquiry Officer submitted his report on 25.12.2008. He held all charges in both charge sheets proved. On 07.01.2009, the competent authority sent her the report and asked her to show cause why she should not be removed from service.

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14. In her reply dated 19/23.01.2009, she said she had stayed away from the enquiry because it was being conducted in a biased and arbitrary manner. She filed further replies on 02.02.2009 and 05.02.2009. On 27.02.2009, the Disciplinary Authority passed a speaking order. It held the charges proved and removed her from service.

15. A cheque dated 21.03.2009 for Rs.1,56,821.20 was sent to her towards terminal benefits. This included gratuity of Rs.1,12,554/-. She encashed the cheque.

16. The employee raised an industrial dispute. Conciliation failed. By notification dated 30.07.2009, the State Government referred the dispute to the Labour Court in the following terms.

"Whether removal of the petitioner Ms. Kumkum Sharma by the management of the Rajasthan Patrika Pvt. Ltd. vide order dated 27.2.2009 was legal and justified and if not to what relief and amount she is entitled?"

17. In her statement of claim in L.C.R. No.120/2009, she pleaded that though appointed as an Artist, she was made to do other newspaper work without facilities or training. She said that when she protested, she was charge sheeted and removed. The management denied this. It pleaded that a full and fair enquiry had been held and that the charges stood proved.

18. By interim order dated 24.03.2015, the Labour Court held the enquiry fair and proper. Her writ petition against that order was dismissed on 12.01.2016 as being directed against an interim order. She was left free to challenge it along with the final award. By award dated 31.05.2016, the Labour Court answered the reference against her.

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19. The employee then filed S.B. Civil Writ Petition No.12832/2016. She challenged the Labour Court orders dated 24.03.2015 and 31.05.2016 and sought reinstatement with back wages.

20. The writ petition was allowed and reinstatement with full back wages was directed. Aggrieved, the appellant-management has filed the instant appeal.

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SUBMISSIONS OF THE APPELLANT

21. Learned counsel for the appellant made the following submissions.

(i) The company and the Disciplinary Authority were necessary parties. The Labour Court was also a necessary party to a petition for certiorari. The writ petition was bad for non joinder.

(ii) The learned Single Judge set aside a reasoned award without examining its findings. The enquiry report, the evidence and the removal order were not even referred to.

(iii) Eight charges were framed. Most related to insubordination, refusal to receive orders and misbehaviour. The learned Single Judge dealt with only one charge, relating to review of editions.

(iv) The employee walked out of the enquiry and abandoned it despite repeated opportunities. She cannot now complain of denial of natural justice.

(v) She never objected to the appointment of the Enquiry Officer. Not during the enquiry, not in her replies and not before the Labour Court. Reliance was placed on **U.D. Lama v. State of Sikkim**.[1] The appointment of a lawyer as Enquiry Officer does not by itself show bias, as held in **Saran Motors Pvt. Ltd. v. Vishwanath**[2] and **Dalmia Dadri Cement Ltd. v. Murari Lal Bikaneria**.[3]

1(1997) 1 SCC 111
21964 SCC OnLine SC 9
3(1970) 3 SCC 259

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(vi) The plea that the Presenting Officer could not be a witness was never raised before the Labour Court or in the writ petition.

(vii) In any case, if the enquiry was found defective, the management should have been allowed to prove the charges on merits. It had sought this in its written statement. Direct reinstatement with full back wages was not permissible.

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(viii) Reinstatement of an employee guilty of repeated insubordination would harm discipline. There was no pleading that she remained unemployed after 27.02.2009.

SUBMISSIONS OF THE RESPONDENT

22. Learned counsel for the respondent supported the impugned judgment. The submissions were these.

(i) The core finding of the learned Single Judge is that the management, the Presenting Officer and the Enquiry Officer joined hands to hold her guilty. This finding has not been specifically challenged. Bias renders the forum *coram non judice*. Reliance was placed on **Ranjit Thakur v. Union of India**.[4]

(ii) The Enquiry Officer was the management's regular lawyer. He later defended his own report before the Labour Court and the writ court.

(iii) She was an Artist, not trained in law. She was denied a Defence Assistant of her choice. She was denied relevant documents. The Presenting Officer was himself a material witness. No date was fixed for defence evidence even after the management closed its evidence.

(iv) She stayed away only after losing all hope of a fair hearing. She kept writing to the Enquiry Officer in protest.

(v) The charges, at best, amount to minor misconduct under the standing orders. Removal is a major penalty and is disproportionate. Reliance was placed on **Reserve Bank of**

4(1987) 4 SCC 611

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India v. C.L. Toora[5] and **Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut**,[6].

(vi) The plea for remand is misconceived. The management has not shown that since 2009, she was gainfully employed. Reliance was placed on **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.)**[7] and **Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.**[8]

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23. In the aforesaid backdrop, we have heard learned counsel for both sides and gone through the record, and shall now proceed to render our opinion by recording reasons and discussion thereof in the succeeding part of the order.

IMPUGNED JUDGMENT:-

24. Before proceeding further it would be apposite to notice the impugned judgment passed by the learned Single Judge. Relevant thereof is reproduced as under:-

"*20. Heard learned counsel for both the parties and carefully examined the material available on record.*

21. Adverting to the first issue raised by the petitioner regarding inherent bias of the being thing case Enquiry Officer where he also being a Lawyer of the re representing case of the respondent-Rajasthan Patrika and also the Lawyer being their Legal Advisor as well as being the Lawyer who appeared in the present case and contested the matter before the Labour Court and before this Court, this Court finds that a presumption of bias cannot be sustained on the sole ground that the Officer was a part of the Management. In the case of Biecco Lawrie Ltd. and another Vs. State of West Bengal and another: 2009(4) L.L.N. 91, the fact that the Enquiry Officer was the Company Lawyer was not considered as being biased and partisan who favoured and was partial towards the Management of the Company. In the said case, the delinquent employee was denied right to engage Lawyer while the Management was represented by a person who was a Commerce Graduate but was not a Lawyer but was a legally trained person. The said action was also not held to be in violation of the principle of natural justice since the charges were specific and simple and not difficult to comprehend.

22. In the case of Saran Motors Private Ltd. New Delhi Vs. Vishwanath and another: FLR 1964(9) (SC) 7, it has been held by the Supreme Court as under:-

5(2004) 4 SCC 657
6(1984) 1 SCC 1
7(2013) 10 SCC 324
8(1979) 2 SCC 80

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> *"In our opinion, this view is completely erroneous and cannot be sustained. We have repeatedly pointed out that domestic enquiries in industrial relations must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the Tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is wellknown that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual as attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry. Therefore, the first reason given by the Tribunal for ignoring the findings of the domestic enquiry must be reversed."*

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23. In the case of M/s. Dalmia Dadri Cement Ltd. Vs. Murari Lal Bikaneria: FLR 1970(21) (SC) 201, it was held as under:-

> *"We find ourselves unable to accept the conclusions arrived at by the Tribunal. The Tribunal seems to have been greatly impressed by the fact that instead of appointing someone in the appellant's factory itself as the Enquiry Officer the Works Manager had brought in an outsider who was no other than a junior advocate occasionally assisting Anand Prakash, their counsel in some matters. The Tribunal's view that this was wholly unwarranted and done with the purpose of loading the dice against the workmen appears to be unreasonable. Merely because the Enquiry Officer was a junior advocate and that he had on occasions been engaged by the appellant, it is not possible to take the view that he would necessarily be biased against the workmen. Evidently some of the workmen had behaved rudely to some members in the managerial cadre and it would not have been at all difficult for the Works Manager to appoint as Enquiry Officer some person of the factory itself over whom he was likely to have greater influence than on an outsider. As he himself was going to be a witness in the enquiry he' entrusted the appointment of the Enquiry Officer to the Director of the Company. We find nothing unfair in this and are unable to take any exception to the course adopted."*

24. The element of fairness in an enquiry and the apprehension rness in an enquiry of bias was aptly consi considered and quoted by the Apex Court in the ate of Punjab 1 others: (2001 thers: (2001) case of State of Punjab Vs. V.K. Khanna and others: (2001) 2 SCC 330 where observations of the English Courts have been quoted as quoted under:-

> *"7. Incidentally, Lord Thankerton in Franklin v. Minister of Town and Country Planning (1948 AC 87) opined that the word bias is to denote a departure from the standing of even-handed justice. Girja Shankars case (supra) further noted the different note sounded by the English Courts in the manner following:*
>
> *"30.Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the*

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case of Reg. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No.2) [2000 (1) A.C. 119] observed:

..In civil litigation the matters in issue will normally have an economic impact; therefore a judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a judge applies just as much if the judges decision will lead to the promotion of a cause in which the judge is involved together with one of the parties.

31. Lord Brown Wilkinson at page 136 of the report stated:

It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25 November 1998 would lead to a position where judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a judge would be disqualified. That is not correct, The facts of this present case are exceptional, The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'sobjects. Only in cases where a judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the judge would be well advised to disclose a possible interest.

Lord Hutton also in Pinochets case (supra) observed:

there could be cases where the interest of the judge in the subject matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation.

33. Incidentally in Locabail (Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.: 2000 Q.B. 451), the Court of Appeal upon a detail analysis of the oft cited decision in Reg. v. Gough [(1993) A.C. 646] together with the Dimes case, (3 House of Lords Cases 759): Pinochet case (supra), Australian High Courts decision in the case of re J.R.L., Ex parte C.J.L.: (1986 (161) CLR 342) as also the Federal Court in re Ebner (1999 (161) A.L.R. 557) and on the decision of the Constitutional Court of Sourth Africa in President of the Republic of South Africa v. South African Rugby Football Union (1999 (4) S.A. 147) stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:

By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the

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judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such persons evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly (1989) 167 C.L.R. 568); or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.

34. The Court of Appeal judgment in Locabail (supra) though apparently as noticed above sounded different note but in fact, in more occasions than one a in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

8.The test therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained: If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise."

25. In the aforesaid case, the Supreme Court adverted to the facts of the case and observed as under:-

"25. Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and malafide move creep in issuance of the two notifications assuming in hot haste but no particulars of any malafides move or action has been brought out on record on the part of Shri V.K. Khanna while it is true that the notings prepared for Advocate Generals opinion contain a definite remark about the malafide move on the part of Shri V.K. Khanna yet there is singular absence of any particulars without which the case of malafides cannot be sustained. The expression malafide has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bonafide actions not otherwise bonafide, however, by themselves would not amount to be malafide unless the same is inaccompanymen with some other factors which would depict a bad motive or intent on the part of the doer of the act."

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26. In the said case, it was further held as under:-

"37. As noticed above malafide intent or biased attitude cannot be put on a straight jacket formula but depend upon facts and circumstances of each case and in that perspective judicial precedents would not be of any assistance and as such we refrain from further dealing with various decisions cited from the Bar since facts are otherwise different in each of the decisions. "

26. In the case of International Airports Authority of India Vs. K.D. Bali and another: (1988) 2 SCC 360, while examining an her: (1988) 2 SCC 360, arbitration award, it was held by the Apex Court as under:-Court as under:

"6.In the words of Lord O'Brien, LCJ there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. See in this connection Gullapalli Nageswara Rao v. The State of Andhra Pradesh, [1960] 1 SCR 580 and Mineral Development Ltd. v. State of Bihar, [1960] 2 SCR 609. Recently this Court in a slightly different context in Ranjit Thakur v. Union of India and others, A.I.R. 1987 S.C. 2386 had occasion to consider the test of bias of the Judge. But there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension because the arbitrator being the appointee of his client was not acceding to the request of his client which the petitioner considered to be reasonable. We have heard this submission with certain amount of discomfiture because it cannot be and we hope it should never be in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner."

27. Thus, for arriving at a conclusion regarding bias and arriving at a conclusion re prejudice, facts of the case need to be examined. In the present case, the petitioner has alleged that she was an Artist appointed but her field of duties was different from the field of work for which she was served with the charge-sheet. It is her case that she has been continuously representing the authorities for allotting her the work for which she has been appointed. Mr. Rupin Kala, Advocate, who appeared for the respondent-Rajasthan Patrika in the present case, was appointed

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as an Enquiry Officer case, was app by the management even before she could file her reply to the charge-sheet. Mr. Rupin Kala, Enquiry Officer recorded evidence of Mr. PK Gupta, who was also the Presenting Officer of the Management. The petitioner was not given opportunity of placing her case through Defence Assistant of her choice. The Enquiry Officer did not allow her request for making available the documents and her application was dismissed. She has apprehended of not getting an impartial verdict from the Enquiry Officer and the Enquiry Officer has given his verdict ex-parte.

28. Thus, this Court finds that there was a reasonable apprehension in the mind of the petitioner of inherent bias and prejudice of the Enquiry Officer. Although, in view of the law laid down by the Apex Court, as quoted above, mere appointment of Court, as quoted above, Lawyer to conduct t enquiry, who a fadice and b S not who also appears for the Management in cases, may not be ipso-facto case for presumption of bias and prejudice and bald allegations of bias may not be made out but if the facts of the case are examined, it is found that there has been perversity in arriving at findings by the Enquiry Officer and the Enquiry Officer, who is supposed to have knowledge of law, being an Advocate, acts contrary to the provisions of law and denies the delinquent fair opportunity to defend, a likelihood of bias and prejudice as well as unfairness and partiality towards the Management can be inferred. In the present case, taking note of the submissions, which are found to be correct on record, specially with regard to the fact that the enquiry officer has allowed the Presenting Officer to be a witness in the enquiry and has also not allowed the Defence Assistant Assistant to to the the petition petitioner, an inference can be drawn of bias on his part. Further, he has argued on behalf of the Management also to support not only his enquiry report but also the decision taken by the Management of removing the petitioner from service. It is also seen that the Enquiry Officer did not give any opportunity to the petitioner to produce witnesses on her behalf after having closed evidence of the Management. Thus, the apprehension of the petitioner of the Enquiry Officer having a role to pay in the entire enquiry proceedings upto the level of final decision being taken by the Management, is found to be correct and the circumstances, whereby the disciplinary action and supporting all the orders of the Labour Court by the same counsel do speak volumes a predetermined and prejudiced mind. It is a case where the prosecution, Management and the Enquiry Officer have joined hands to hold the petitioner guilty and ST petitioner guilty and the Labour Court, without adverting to these aspects, has held wrongfully the enquiry to be fair.

29. In view of the law laid down in the case of Glaxo Laboratories Vs. The Presiding Officer, Labour Court, Meerut & others (supra), this Court finds that the allegations levelled against the petitioner was that the petitioner did not perform the duties to analyze the news and the work done by the petitioner was compared with Mr. Chandra Bhan Singh, who was an Assistant Editor while the petitioner had been transferred from Udaipur to Jaipur with direction that she would assist the Assistant Editor Mr. Chandra Bhan Singh who was engaged in analyzing the news. Thus, the charge levelled against the petitioner was not in accordance with the spheres of duties allotted to her. She was not competent to analyze the news at her own level and being an Artist, she was required, as per the duties, to prepare publication of drawing, layout, map, graphs and other similar embellishment, illustrations of any kind or creative art. The Enquiry Officer, Disciplinary Authority as well as the Labour Court have failed to examine the basic contention raised by the petitioner of having not committed any misconduct. Thus, the work of assisting the Assistant News Editor Mr. Chandra Bhan Singh was not within the sphere of duties. It is not the case of the Management that the petitioner had been trained for the said purpose.

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30. The allegation of the petitioner regarding the Deputy Editor having no competence to issue charge-sheet or to appoint Enquiry Officer, however, is not made out in view of the submissions of the respondent that the as Dr Mary e Deputy Editor had been authorized to act Authority on the basis of the resolution of Board.

31. From the facts of the case, this Court is satisfied that dismissal of the petitioner is by way by way of victimization and the order dated 27/02/2009 was unjustified and contrary to law. The Management has relied on a defective enquiry and the said punishment based on defective enquiry and supported by the Enquiry Officer before the Labour Court as well as this Court, cannot be held as legal and justified. The findings of the Labour Court that the petitioner could have been allotted other work than that for which she was appointed is wholly perverse and for being not performed work for which she was not trained, she could not have been punished. A prayer made by an employee for requesting not to be allotted a work which she may not be able to perform would not come within the ambit of disobedience and if such an employee is forced to work by issuing warnings and later on charge sheeted for not performing the said work, in accordance with law itself amounts to victimization and harassment.

32. In the circumstances, this Court finds that the petitioner has been subjected to wrongful departmental proceedings. She has been victimized and it is because of unfair harassment and exploitation. This Court, therefore, holds the entire enquiry proceedings against the petitioner as vitiated and bad in law and the same are set aside.

33. Consequently, the writ petition is allowed. The order impugned dated rder & awe noung 27/02/2009 B HIG respondent-Rajasthan Patrika removing the petitioner from service as well as impugned order & award dated 24/03/2015 and 31/05/2018 passed by the learned Labour Court holding the enquiry fair and proper as well as removal of the petitioner proper and justified are hereby quashed & set aside and the respondent-Rajasthan Patrika is directed to reinstate the petitioner in service with all consequential benefits including continuity of service and back wages. Compliance of this order be made by the respondent within a period of three months from the date of submission of certified copy of this order in their office. No costs."

25. Having perused the impugned judgment, we find that the learned Single Judge first held that a presumption of bias cannot arise merely because the Enquiry Officer is a lawyer engaged by the management. Learned Single Judge took note that the same advocate had defended the management, and his own report, before the Labour Court and before the writ court. The learned Single Judge also found that the Presenting Officer had been allowed to depose as a witness, that the request for a Defence Assistant had been refused, and that no opportunity was given to lead defence evidence. From these circumstances, a real likelihood of bias was inferred.

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26. The learned Single Judge further held, relying on **Glaxo Laboratories *(supra)***, that the work of reviewing editions was outside the duties of an Artist. On that basis, the removal was held to be an act of victimisation.

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QUESTIONS FOR CONSIDERATION:-

27. First and foremost, we would proceed to frame the questions that arise for our consideration. The same are framed as under :-

(a) Whether the domestic enquiry stood vitiated by a real likelihood of bias?

(b) Whether the employee's abstention, or her failure to object earlier, saves the enquiry?

(c) Whether the learned Single Judge validly recorded a final finding of victimisation on the merits of the charges?

DISCUSSION AND ANALYSIS

Whether the enquiry is vitiated by bias [Question (a)]

28. The law on bias is well settled. Bias means a departure from even handed justice. A mere apprehension or vague suspicion is not enough. There must be a real likelihood of bias. This was explained in **State of Punjab v. V.K. Khanna**.[9] In **International Airports Authority of India v. K.D. Bali**,[10] it was held that the apprehension must be judged from the standpoint of a reasonable and honest person, not a whimsical one.

29. In **Ranjit Thakur *(supra)***, the test was stated thus. The question is not whether the adjudicator was in fact biased. The question is whether a reasonable person, aware of the relevant facts, would think that bias was likely. It was also held that proceedings tainted by bias are vitiated.

9(2001) 2 SCC 330
10(1988) 2 SCC 360

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30. We agree with the learned Single Judge that the mere engagement of an advocate as Enquiry Officer does not show bias. That is the clear ratio of **Saran Motors *(supra)*** and **Dalmia Dadri Cement *(supra)***. An employer is free to choose a lawyer, even one it engages from time to time, to hold a domestic enquiry.

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31. But this case does not stop there. The Enquiry Officer did not remain a neutral adjudicator. After submitting his report, he became the management's counsel in the very dispute that arose out of that report. He defended his own findings before the Labour Court. He defended them again before the writ court. He also defended the removal order founded on those findings. The learned Single Judge has recorded this fact. It is not disputed before us.

32. This matters for a simple reason. A domestic enquiry is a quasi judicial exercise. The Enquiry Officer must weigh both sides with an open mind. In the reference, the very question before the Labour Court was whether his enquiry was fair. He was the one person whose fairness was under scrutiny. Yet he appeared as the advocate for one side and asked the Labour Court to uphold his own findings. An adjudicator cannot later become the advocate of his own verdict.

33. This is not a case of a fanciful apprehension. The dual role is a matter of record. A reasonable person, knowing these facts, would be entitled to conclude that the Enquiry Officer had identified himself with the management's cause. A reasonable person aware of relevant facts would also be entitled to doubt that he approached the evidence with an open mind. The test laid down in **Ranjit Thakur** and **V.K. Khanna** is therefore satisfied.

34. **Saran Motors** and **Dalmia Dadri Cement** do not help the appellant. Those decisions protect the employer's choice of a lawyer as

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Enquiry Officer. Neither of them dealt with an Enquiry Officer who later turned counsel to defend his own enquiry and the punishment based on it. That later conduct throws light back on the enquiry itself.

35. The situation brings to mind a well known Urdu couplet. It captures the grievance of a litigant who finds the accuser and the judge to be one.

मुद्दई भी वही, मुंसिफ़ भी वही, शहर भी उसी का;

मुझे यक़ीन था, मेरा क़सूर निकलेगा।

36. The Labour Court, by its order dated 24.03.2015, held the enquiry fair. It did not examine the effect of the Enquiry Officer appearing before it as counsel for the management. That fact was before its own eyes. It did not consider this glaring facts going to the root of the fairness of the enquiry. Overlooking a circumstance of this kind is an error apparent on the face of the record. It justified interference under Article 226 of the Constitution. Once this foundational defect is found, a point by point examination of the other findings of the Labour Court becomes unnecessary. Question (a) is thus answered in favour of the employee.

Absence of Objection and Abstention from Enquiry [Question (b)]

37. The appellant says the employee never objected to the Enquiry Officer. The doctrine of waiver, relied upon in **U.D. Lama *(supra)***, presupposes knowledge of the facts constituting bias. The Enquiry Officer's appearance as the management's counsel came only after the enquiry was over. The employee could not have objected during the enquiry to something that had not yet happened.

38. Even otherwise, the plea is not an afterthought. In her reply dated 19/23.01.2009 to the show cause notice, she stated that she

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abstained because the proceedings were biased. The learned Single Judge has also noted that she pleaded before the Labour Court that she could not expect justice from an advocate who represented the employer. The plea of waiver therefore fails.

39. The appellant next says she walked out of the enquiry and cannot complain. Her conduct was not commendable. She was given repeated opportunities and she let them pass. Ordinarily, an employee who deliberately abstains cannot complain of denial of opportunity. But bias is a different kind of defect. It does not concern the opportunity given to the employee. It concerns the neutrality of the forum itself. Participation by the employee would not have cured it. Her abstention therefore cannot save the enquiry. Question (b) is accordingly answered. It may, however, be relevant to the question of back wages. We deal with that later in the succeeding part of the instant order, at the appropriate place.

40. We may also note here that the employee also raised other grievances. These relate to the Defence Assistant, the supply of documents, the Presenting Officer deposing as a witness and the absence of a date for defence evidence. Some of these were not raised before the Labour Court. Whether an outsider could act as Defence Assistant depends on the Certified Standing Orders, which the parties read differently. Since the enquiry fails on the ground of bias, we do not find it necessary to rule finally on these grievances. They are left open.

Alleged Victimization [Question (c)]

41. Here we find force in the appellant's submission. There were two charge sheets and eight charges in all. Several of them relate to refusal to receive official communications, shouting in the office, defiant remarks to superiors and refusal to acknowledge letters. These charges

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do not depend on whether reviewing editions was part of an Artist's duties.

42. The learned Single Judge examined essentially one charge, namely the review of editions. On the strength of that, a sweeping finding of victimisation was recorded. The enquiry report, the evidence, the show cause replies and the removal order were not discussed. With respect, a finding on the merits of all charges could not rest on an examination of one.

43. There is also a deeper difficulty. Once the enquiry is held vitiated by bias, the findings recorded in it go. But that does not mean the charges stand disproved. Nor does it mean that the employee stands exonerated. It only means that the charges have not yet been tested by a neutral forum. The finding of victimisation, therefore, could not have been recorded at this stage. Question (c) is thus answered in favour of management.

RELIEF

44. When a domestic enquiry falls for a defect, the employer is not left without remedy. Two routes are recognised in law. First, the employer may prove the misconduct before the Labour Court on fresh evidence, provided it asks for this at the proper stage. This was laid down in **Shankar Chakravarti v. Britannia Biscuit Co. Ltd.**,[11] **Shambhu Nath Goyal v. Bank of Baroda**[12] and **Karnataka State Road Transport Corporation v. Lakshmidevamma**.[13]

45. Second, where a punishment is set aside because of a defect in the enquiry, the employer may hold a fresh enquiry from the stage at which the defect crept in. The question of back wages, and of how the intervening period is to be treated, then abides the result of that

11(1979) 3 SCC 371
12(1983) 4 SCC 491
13(2001) 5 SCC 433

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enquiry. This principle was laid down by the Constitution Bench in **Managing Director, ECIL v. B. Karunakar**.[14] Here, the defect lies in the very choice of the Enquiry Officer. The fresh enquiry must therefore begin from the stage of his appointment.

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46. We now turn to reinstatement. Employee would now be about 60 years of age. Reinstatement is therefore no longer a practical relief. What survives is the monetary consequence, mainly back wages for the period from removal till superannuation.

47. Back wages do not follow automatically. In **Deepali Gundu Surwase *(supra)***, it was held that full back wages is the normal rule when a termination is set aside. But the employee must at least assert that she was not gainfully employed. The burden then shifts to the employer to show otherwise. The adjudicating authority may also consider the nature of the misconduct found proved and other relevant factors. **Hindustan Tin Works *(supra)*** also recognises that back wages may be moulded on the facts of each case.

48. In the present case, the charges of insubordination and misbehaviour are serious and remain unadjudicated. It would not be just to award full back wages without first finding out whether they are true. Equally, it would not be just to deny her everything when her removal rested on a biased enquiry. The employee did not plead in the writ petition that she remained unemployed. The management, for its part, has not shown that she was gainfully employed. These questions have to be decided on evidence.

49. The learned Single Judge, therefore, rightly set aside the enquiry, the removal order and the orders of the Labour Court. But the direction for reinstatement with full back wages cannot be sustained. The just

14(1993) 4 SCC 727

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course is to allow the management to hold a fresh enquiry before a neutral Enquiry Officer about gainful employment of the respondent during relevant period. The question of back wages must abide the result.

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CONCLUSION AND DIRECTIONS

50. The appeal is partly allowed. We direct as follows.

(i) The direction in the impugned order to reinstate the employee with continuity of service and full back wages is set aside and matter is remanded to the learned Labour Court for the limited purpose of holding an inquiry regarding the gainful employment of the respondent during the period from removal from service till superannuation and depending upon the result of such inquiry, pass an appropriate fresh order, either way, qua the back wages.

(ii) Should a favourable order be passed by the Labour Court on conclusion of the enquiry, the management shall then decide the entitlement of the employee to back wages for the period from 27.02.2009 till the date of her superannuation. The amount of Rs.1,56,821.20 already paid towards terminal benefits shall be adjusted.

51. The impugned judgment dated 20.12.2017 stands modified to the above extent. There shall be no order as to costs. Pending applications, if any, stand disposed of.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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