



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 24843/2018
CNR: RJHC021059722018 | URN: CW / 42143U / 2018

Manager, Alwar Zila Dugdh Utpadak Sahkari Sangh, Alwar,
Rajasthan

-----Petitioner

Vs.

1 Ram Prasad Meena Son Of Shri Nanag Ram Meena,
Resident Of Roopbas, Alwar.

---Workman

2 Manager, Rajasthan Cooperative Dairy Federation Ltd.,
Saras Sankul, Jawahar Lal Nehru Marg, Jaipur.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 1303/2019
CNR: RJHC020024322019 | URN: CW / 2219U / 2019

Ramprasad Meena Son Of Nanagram Meena, Aged About 42
Years, Resident Of Roopbas Alwar, Tehsil And District Alwar
(Rajasthan).

-----Petitioner (Workman)

Vs.

1 The Manager, Alwar Dugd Utpadak Sahakari Sangh, Alwar,
District Alwar (Rajasthan).

2 Manager, Rajasthan Cooperative Dairy Federation, Saras
Sankul, Jawahar Lal Nehru Marg, Jaipur.

-----Respondents

For Petitioner(s) : Ms. Anita Aggarwal
Mr. Laxmikant Tailor
Mr. Vibhanshu Sharma
Ms. Kalpana

For Respondent(s) : Mr. Pradeep Mathur for workman

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

09/10/2026

1. These writ petitions were filed aggrieved and dissatisfied from award dated 05.09.2018 in LCR No. 274/2006 (104/2003) passed by the Industrial Tribunal-cum-Labour Court, Alwar on a reference under Section 10(1) of the Industrial Disputes Act, 1947.



2. The writ petition No. 24843/2018 is filed by the employer with following prayers:

"It is, therefore, most respectfully prayed that Your Lordships may kindly be pleased to allow this writ petition and;

(i) By an appropriate writ, order or direction quash and set aside the award dated 5.9.2018 passed by the Industrial Tribunal and Labour Court Alwar in LCR No. 274/2006 (Old No. 104/03) and further the statement of claim filed by the respondent may kindly be dismissed.

(ii) Or any other appropriate relief may kindly be granted to the petitioner which this Hon'ble Court may deem/fit and proper in the facts and circumstances of the case.

(iii) Cost of the litigation may kindly be granted to the petitioner."

3. The writ petition No. 1303/2019 is filed by petitioner workman with following prayers:

"It is, therefore, most respectfully prayed that Your Lordships may kindly be pleased to allow this writ petition and call for the entire record pertaining to the present matter,

(i) by issuing an appropriate writ, order or direction the impugned award dated 05.09.2018 passed by the learned Industrial Tribunal-cum-Labour Court, Alwar in LCR No. 274/2006 (Old No. 104/2003) may kindly be modified and petitioner may be held entitled for complete backwages from the date of his termination.

(ii) by issuing an appropriate writ, order or direction the respondents may kindly be directed to make payment of salary to the petitioner for the period he remained under suspension;

(iii) such other order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case also be passed in favour of humble petitioner along with cost."

4. Brief facts of the case are that the employer has issued a charge sheet on 05.09.1989 to workman Ram Prasad Meena



on the charge that he was found in possession of 25 tin of pure ghee which was stolen from dairy plant of employer. Pursuant to charge sheet, the workman was suspended on 22.09.1989 and on 09.05.1991 the workman was removed from service after conclusion of the domestic inquiry. A reference was made under the Industrial Disputes Act wherein a statement of claim was filed by the workman and a reply is filed by the employer.

5. On 12.10.2010 the Industrial Tribunal-cum-Labour Court has considered the arguments of both the parties and declared the domestic inquiry to be fair and proper. Thereafter, an application was filed by the workman for recalling/review of the order dated 12.10.2010. After considering the arguments of both the parties, the application for review was also dismissed on 20.10.2015.
6. After opportunity of hearing to both the parties, the Industrial Tribunal-cum-Labour Court, Alwar has passed a final order on 05.09.2018 and answered the reference in following manner:

अप्रार्थी प्रबन्धक, अलवर जिला दुग्ध उत्पादक सहकारी संघ अलवर व प्रबन्धक, राजस्थान को-ऑपरेटिव डेयरी फ़ेडरेशन लि० सरस संकुल जवाहर लाल नेहरू मार्ग, जयपुर द्वारा समप्रसाद मीणा पुत्र नानगराम की दिनांक 09.05.91 से की गई सेवा मुक्ति अनुचित व अवैध है। प्रार्थी पुनः सेवा में लिये जाने का अधिकारी है। प्रार्थी की सेवायें निरन्तर मानी जाती है। सेवा समाप्ति की दिनांक 09.05.91 से अधिनिर्णय की दिनांक 05.09.2018 तक प्रार्थी वेतन का 25 प्रतिशत प्राप्त करने का अधिकारी है और उसके बाद प्रार्थी नियमानुसार वेतन लाभ-परिलाभ प्राप्त करने का अधिकारी होगा। उक्तानुसार अवार्ड पारित किया जाता है।



7. The counsel for petitioner employer while placing reliance upon grounds of writ petition has submitted that after serving a charge sheet and following the process for domestic inquiry, the workman was found as guilty for commission of theft and awarded the punishment of removal. She also submitted that the principle of considering domestic inquiry and criminal case are different and in no case the order of acquittal in criminal case result in automatic setting aside of findings of domestic inquiry. She also submitted that the Industrial Tribunal has largely relied upon the fact that the workman was acquitted by the criminal court and on the basis of said acquittal the order of reinstatement was passed. She further submitted that there were sufficient evidence on record before the inquiry officer during domestic inquiry and the material, admissible in evidence before the domestic tribunal were considered by the inquiry officer. She further submitted that the charges were proved and there is no satisfactory explanation by the workman. She also submitted the misconduct of theft was so grave that it warrants removal from service and there is no perversity, particularly when on two occasions, the inquiry report was considered by the Industrial Tribunal and the inquiry procedure was found as fair. She also submitted that at the most the Industrial Tribunal can consider proportionality, but same principle is not applicable in the instant case as this is a case of theft from the premises of employer and recovery has been effected from the possession of workman. She also referred the principle to





read the evidence before the domestic tribunal and submitted that there is nothing adverse while adopting process by the inquiry officer in domestic inquiry. At last, she submitted that the award passed by the Industrial Tribunal is contrary to settled principle of law.

8. Aforesaid contentions were opposed by learned counsel appearing on behalf of the workman and he submitted that the employer has failed to produce original record relating to domestic inquiry before the tribunal and based upon the oral submission the inquiry was declared as fair and proper in favor of employer, but while answering the reference, the Industrial Tribunal has considered all these aspects and set aside the termination order. He also submitted that neither of the statement of witness examined in domestic inquiry nor the documents relied by the inquiry officer were placed on record to justify the conviction of the workman and without justification a workman cannot be declared as guilty. He also submitted that the findings of the inquiry officer were based upon the document which was never produced before the tribunal and the criminal court. He also submitted that after considering the evidence, the Court has acquitted the workman from the alleged charge of theft. He further submitted that the Industrial Tribunal has considered the findings recorded by the inquiry officer in domestic inquiry and after considering the said findings has found that there was no legal evidence to establish the charge. He also submitted that the workman was acquitted by the criminal court and nothing has been found against the workman for



involvement in said theft from the plant of the employer. He further submitted that the Industrial Tribunal has committed serious error in granting only 25% of back wages, particularly when the workman was dismissed by the employer without any fault of workman. He also submitted that the workman is entitled for 100% back wages with all consequential benefits when he is acquitted from the charge and the findings of the domestic inquiry tribunal is set aside.

9. Learned counsel has placed reliance upon judgment in case of **Maharashtra State Road Transport Corporation Vs. Mahadeo Krishna Naik, AIR 2025 SC 1172, Jeetubha Khansangji Jadeja Vs. Kutch District Panchayat (2022) 4 HCR 854, and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. AIR 1999 SC 1416**, and submitted that when departmental proceedings are vitiated, the workman is entitled for entire back wages with consequential benefits. He also placed reliance upon order dated **10.10.2023 in DB review petition (writ) No. 56/2019 in DB SAW No. 1052/2008 in SB Civil Writ Petition No. 1363/2004, titled as RSRTC and another Vs. Inderchand Sharma (deceased) through LR and Anr.**
10. Heard learned counsel for the parties and perused the material placed on record. Also considered the judgment as referred by learned counsel for workman.
11. The question of fairness of inquiry was considered by the Industrial Tribunal on 10.12.2010, and after considering the material and legal position, the Industrial Tribunal has observed that the domestic inquiry was fair and impartial.



Thereafter, a review was dismissed on 20.10.2015 by same tribunal. The review has been filed only on the ground that the entire domestic inquiry record has not been filed on record and same is required to be requisitioned. An application to requisition the record relating to domestic inquiry was considered by the Industrial Tribunal on 09.11.2016, but same was dismissed.

12. When the matter was considered on merits, the Industrial Tribunal has set aside the termination order dated 09.05.1991 and declared the termination order as illegal and unfair. The order of reinstatement has been passed by the Industrial Tribunal with 25% back wages and both the parties are before us by filing two different writ petitions.
13. A domestic inquiry is first tested at initial level on settled parameters such as whether there is violation of principle of natural justice, or the inquiry was biased, or there was no procedure followed by the inquiry officer.
14. In the instant case, the domestic inquiry was declared as fair and proper. The Industrial Tribunal has examined the procedure and also the conduct of inquiry, and after examining the same, the domestic inquiry was found as fair and proper. Thus, on the ground of fairness, the domestic inquiry was approved by the Industrial Tribunal. The order of declaration of domestic inquiry as fair and proper was challenged by filing review, but after dismissal of review application, nowhere order has been challenged. Thus, domestic inquiry was fair and proper.



15. Now comes the second part, that after declaration of domestic inquiry as fair and proper, what is the scope before the Industrial Tribunal in a reference. The first ground which can be raised is perversity on the ground that the findings recorded by the domestic inquiry tribunal was completely beyond the record, or not based upon legal evidence, or the conclusion was drawn in manner that no prudent person can draw such conclusion, and the findings in domestic inquiry can be set aside on ground of perversity.

16. Second ground is proportionality of punishment (Section 11(A) of the Industrial Disputes Act). A tribunal can examine if the punishment awarded to workman is shockingly disproportionate to the gravity of proof of misconduct, and in case it was found that the punishment is shockingly disproportionate, then the tribunal can set aside the termination and award lesser punishment. Third ground which can be assailed before the Industrial Tribunal is *bona fide* intent of employer, particularly if there is any victimization or adoption of unfair practice by the employer. In such case, the Industrial Tribunal can intervene despite the fact that the inquiry has been considered as fair and proper.

17. The principle governing the consideration of the process of domestic inquiry and also the evidence before the domestic inquiry tribunal is that the tribunal is not empowered to re-appreciate the evidence when the inquiry has been declared as fair and proper. Similarly, no additional evidence can be allowed in support of workman when the domestic inquiry is



found as fair and proper. The Industrial Tribunal can only intervene when there is shockingly disproportionate punishment.

18. In case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (supra)**, where departmental proceedings and criminal case are based on identical set of facts and evidence in both the proceedings are common, and it was held that if employee was acquitted in criminal case, then departmental proceedings stand vitiated.

19. In case of **Maharashtra State Road Transport Corporation Vs. Mahadeo Krishna Naik (supra)**, Hon'ble Supreme Court has held that when the corporation suppress the evidence and played a fraud, then the termination is liable to be set aside and the employee is entitled to be reinstated with back wages.

20. In case of **Jeetubha Khansangji Jadeja Vs. Kutch District Panchayat (supra)**, Hon'ble Supreme Court has considered non-compliance of the provision under the Industrial Dispute Act and held that in case of illegal termination, the reinstatement with back wages is appropriate relief.

21. In case of **RSRTC and another Vs. Inderchand Sharma (deceased) through LRs (supra)**, a Division bench of this court, after considering judgment in case of **Jeetubha Khansangji Jadeja Vs. Kutch District Panchayat (supra)**, and also **Deepali Gondu Sarwase Vs. Kranti Junior Adhyapak & Ors. (2013) 10 SCC 324**, has held that 50% of back wages should be awarded.



22. When we consider the material placed on record, then it is evident that on the basis of a theft committed in godown of dairy, on basis of shortage report of 25 tin of pure ghee, FIR No. 69/1988 was registered at police station Kotwali Alwar, and after investigation police has filed charge sheet against eight persons including present workman Ram Prasad. After registration of criminal case, learned Additional Chief Judicial Magistrate no.2 , Alwar has acquitted the accused from charge under Section 457 and 381 of IPC. The order passed by the criminal court indicates that the accused were acquitted as there was no evidence against them. The order itself indicates that it was a honourable acquittal. The workman was acquitted as there was no evidence, or zero evidence against him in criminal case.

23. The order of dismissal dated 09.05.1991 (Annexure-1) in writ petition No. 24843/ 2018 was filed by the employer, which indicate that two charges: firstly, commission of theft of 25 tin (15 kg of each tin), and further storing and receiving stolen property. Second charge, which was found proved, is that the stolen property was kept in the house of Ram Prasad Meena and same was disposed.

24. The domestic inquiry report has been filed by the employer as Annexure-5, and we have considered the entire report. The material indicate that the statement of Ram Naresh Yadav were considered in favor of department, whereas the inquiry officer was of the view that other witnesses Mahesh Sharma, Hari Kishan and Suraj Meena are not important witnesses. The analysis of the evidence clearly indicate that



all charges were not accepted by the workman, which means that they have pleaded not guilty. The evidence and analysis clearly indicate that on the basis of presumption or adopting principle of surmises and conjectures, these charges were found proved against the workman. The process adopted by the inquiry officer clearly indicate that there was no legal evidence to prove these charges, and without any legal evidence the inquiry officer has drawn a conclusion against the workman. Therefore interference by the Industrial Tribunal was within the scope and authority, despite declaring the domestic inquiry as fair and proper.

25. The entire material clearly indicate that there was neither any document which has been admitted by the workman nor any legal evidence against the workman, whereby the charges in the charge memo can be deemed to be proved. It is duty of the inquiry officer to consider the legal evidence and on the basis of preponderance of probability may draw a conclusion, but he cannot jump to a conclusion without any legal evidence, and in the instant case there was no legal evidence against the workman, and without any evidence he jumped to conclusion. Thus, the finding on two charge nos. 3 and 4, against the workman, recorded by the disciplinary authority on the basis of domestic inquiry report, is perverse, and the Industrial Tribunal has rightly interfered in the finding.

26. Now comes the question: what is the relief for the workman? No doubt about the fact that when the termination order is found to be vitiated, as due to findings by the inquiry



tribunal, then there are two ways: firstly, reinstatement, and secondly, lumpsum compensation. None of the material placed on record indicate that since when the workman is working in employer organization and on what terms. Therefore, it is very difficult for us to draw any conclusion about the one-time compensation. We have no option except to agree with the reinstatement order passed by the Industrial Tribunal. Therefore, the Industrial Tribunal has not committed any error while directing reinstatement of workman on same terms where the workman was working at the time of termination.

27. Now comes the issue of back wages. After considering judgment in case of **Deepali Gondu Sarwase Vs. Kranti Junior Adhyapak & Ors (supra)**, a Division Bench of this Court, in case of **RSRTC and another Vs. Inderchand Sharma (deceased) through LRs (supra)** has directed award of 50% of back wages. In case of **Maharashtra SRTC Vs. Mahadeo Krishna Naik (supra)**, Hon'ble Supreme Court has directed 75% of back wages.

28. In case of **Jeetubha Khansangji Jadeja Vs. Kutch District Panchayat (supra)**, the reinstatement was for the back wages for the period of two years. All these judgments are under the Industrial Disputes Act, and current case is also under the Industrial Disputes Act.

29. The case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (supra)**, relates to Central Civil Services (C.C.A. Rules, 1965), and Article 309 and 311 of the Constitution of India, therefore the principle of back wages



or other benefits in case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited (supra)** is different than the dispute under the Industrial Disputes Act.

30. Herein this case the only admission on behalf of workman is that he was a daily wager, and Annexure-1, which is a termination letter dated 09.05.1991, clearly indicate that the workman was daily wager. Therefore, the ends of justice would be served if we award 50% of the back wages to the workman, and to this extent writ petition no.1303/2019 is liable to be allowed.

31. In view of discussion made herein above, the civil writ petition No. 24843/2018 is hereby dismissed with pending application, if any.

32. The civil writ petition No. 1303/2019 is allowed to the extent that the petitioner workman is entitled for 50% of the back wages from 09.05.1991 till date or the date of attaining the age of superannuation, whichever is earlier.

33. Accordingly the award dated 05.09.2018 by the Industrial Tribunal stands modified.

34. The miscellaneous application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J

21-22/CHETNA/S-A