

ORDER ON MEMO FILED BY THE PETITIONER

The brief facts are as under:

This dispute is referred to this Tribunal for deciding the legality of the termination of the Petitioner from his employment by the Respondent. The Respondent after service of process appeared before the Court through its learned Advocate and submitted objection. When the case was set down for hearing and recording of evidence of the Petitioner, the Petitioner had filed a memo on 16.12.2021 seeking directions to the Respondent to prove that the Domestic Enquiry was conducted properly by giving an opportunity to the Petitioner to contest the same as per the settled principles of law.

2. The Respondent filed objections to the said memo contending that as per the judgment of Hon'ble High Court of Punjab and Haryana in Punjab Tractors Ltd., Vs. P.O., Labour Court, the burden is on the Petitioner to prove that the Domestic Enquiry was not held properly. As such, the Respondent need not lead his evidence to prove that the Domestic Enquiry was held properly.

3. Heard both the sides and perused the records.

4. The points that arise for consideration of the court are as under:

(1) Whether the Respondent needs to be directed to prove that the Domestic Enquiry held by it is valid and proper at the first instance?

(2) What order?

5. The findings of this court on the above points are as under:

Point No.1: In the affirmative

Point No.2: As per final order, for following:

REASONS

6. Point No.1:- The learned Advocate for the Petitioner had relied upon many authorities, especially reported in AIR 1972 SC 1031 – Delhi Cloth and Gen. Mills Vs. Ludh Budh Singh and LNIND 2021 DEL 2465 between Security India (P). Ltd Vs. Manoj Prasad and others. Whereas the Respondent had relied upon the judgment of

Hon'ble High Court of Punjab and Haryana reported in (2008) 149 PLR 342 between Punjab Tractors Limited Vs. Presiding Officer, Labour Court. But, this Court is of the opinion that Their Lordships' of the Hon'ble Supreme Court of India in the judgment reported in 2018 4 SCC 483 – Kurukshethra University Vs. Pruthvi Singh have laid down that *the burden is on the management to prove that the Domestic Enquiry is valid and proper. Only after deciding this issue, the Tribunal has to consider whether the sentence of termination imposed on the employee is proper or not.* Their Lordships' of Hon'ble Supreme Court in the said judgment have categorically contended that *the validity of domestic enquiry is a preliminary issue and needs to be considered at the first instance.* In view of the same, this Court is of the opinion that as sought by the Petitioner the Respondent has to lead his evidence at the first instance to prove that the Domestic Enquiry held by it is valid and proper. For the reasons discussed as above, point No.1 is answered in the affirmative.

7. Point 2:- For the reasons discussed as above, the following:

ORDER

The memo filed by the Petitioner is hereby accepted.

The Respondent is directed to lead evidence to prove that the Domestic Enquiry held by it is valid and proper.

PRINCIPAL DISTRICT JUDGE,
UDUPI.