

**BEFORE P. S. KULKARNI, PRESIDING OFFICER
SEVENTH LABOUR COURT, MUMBAI
REFERENCE (IDA) NO. 19 OF 2012**

ADJUDICATION BETWEEN

M/s. Chalet Hotels Ltd. & Anr.

.. First Party

And

Mr. Deviprasad Tiwari

.. Second Party

Appearances : Shri. K.T.Rai / Shri S. Alva, Adv. for first Party No.1
Shri Mohit Kapoor, Adv. for First Party No. 2
Shri. S. I. Kazi, Adv. for Second Party

ORDER ON PRELIMINARY ISSUES

(Passed on this 8th day of May, 2018)

1. Present reference had received from Deputy Commissioner of Labour (Conciliation), Mumbai on 20.02.2012 to adjudicate the dispute between parties in respect of whether second party workman viz. Mr. Deviprasad Tiwari is entitled for reinstatement in service with continuity and full back wages with effect from 05.08.2010.

2. After referring the dispute, parties in dispute were appeared through their counsels and secured their respective pleadings. Second party filed his statement of claim at Exh.U-2 and

contended that, he was employed with first party no. 1 since 15.11.2003 and he was kept on rotating under various contractors. However, since 01.07.2007 till the date of termination, he was worked with first party no. 2.

3. Furthermore, during the course of employment, surprisingly and shockingly first party no. 2 served charge-sheet on him. Subsequently, they initiated departmental enquiry against him. Thereafter, enquiry officer concluded the same in affirmative and declared that, charges were duly proved in departmental enquiry. Moreover, during the course of enquiry, enquiry officer not provided sufficient opportunity to defend himself. On the other hand, no relevant documents like copy of contract entered in between first party no. 1 and 2 in pursuance of Contract Labour Regulations & Abolitions Act, provided by enquiry officer to complainant. Furthermore, during the course of enquiry, enquiry officer also not considered prayer of second party in relation to releasing the subsistence allowance. However, enquiry officer not at all considered the defence put forth by second party and also overlooked the genuine request made by second party and for the same, enquiry officer drawn perverse findings into that effect. It further alleged by second party workman that, enquiry officer also not followed the principles of natural justice and conducted false and illegal enquiry against second party. Hence, second party sought declaration of illegal enquiry and perversity of findings of enquiry officer.

4. On the contrary, first party no. 1 and 2 appeared and filed their written statement at Exh.C-7 and C-4 respectively. By way of filing written statement on record, first party denied all the allegations made by second party. Besides the specific denial, it further submitted by first party no. 1 that, there is no any employer-employee relationship in between first party no. 1 and second party, as such second party was engaged in the employment of first party no. 2 and services of second party was terminated by first party no.2. Therefore, it is contended by first party no. 1 that, neither it concerned with the charges leveled against second party nor dealt with the issue of termination of second party.

5. On the other hand, first party no. 2 filed its written statement at Exh.C-4 and contended that, second party is employed with him and during the course of employment, second party workman committed gross misconducts, which are needs to be seriously considered. However, he issued charge-sheet to second party into that effect, which received by second party on 07.09.2010. But, prior to that, since 05.08.2010, second party stopped reporting for his regular duties. However, second charge-sheet dt. 17.12.2010 was issued by first party no. 2 to second party workman. Thereafter, second party workman appeared in enquiry with his defence representative and putforth his defence in pursuance of couple of charge-sheets. Accordingly, first party no. 2 conducted bonafide enquiry by way of appointing independent enquiry officer and taken

appropriate action against second party, as such charges were duly proved against workman in enquiry. Furthermore, during the course of enquiry, full and fair opportunity was provided to second party to putforth his defence. Therefore, first party no. 2 finally submits that, action taken by them, is in accordance with the law. However, they strongly objected for declaration sought by second party in respect of defective enquiry.

6. Moreover, during the course of employment, management of first party no. 2 received various complaints against second party, which was signed by around 35 chauffeurs, in which they making serious allegations against second party. Same are pertains to, not obey the directions of management, wrongful gain, collect the cash from co-employees and misuse the same, submitting bogus bills, rude behaviour and used filthy language against co-employees, etc. However, first party leveled the charges under Section 24-A, 24-D, 24-E, 24-I, 24-L and 24-P of Model Standing Orders and served charge-sheet on second party into that effect. Subsequently, they initiated departmental enquiry against second party, in which all charges were duly proved. Therefore, in pursuance of proved misconduct, first party no. 2 dismissed to second party from his regular services.

7. On the strength of pleadings, my Ld. Predecessor has framed issues at Exh.O-6. As per settled position of law, issues in respect of fairness of enquiry and findings of enquiry officer are needs

to be answered at preliminary stage. Therefore, issues no. 2 and 3 are arise before me for determination at this preliminary stage.

ISSUES	FINDINGS
1) Whether second party is a workman ? :	Deferred
2) Whether the enquiry conducted by the enquiry officer is fair and proper ? :	In affirmative
3) Whether the findings recorded by the enquiry officer are perverse ? :	In negative
4) Whether the services of the second party workman is illegality terminated ? :	Deferred
5) Whether second party is entitled to relief claimed as sought ? :	Deferred
6) What order ? :	Deferred

~: **REASONS** :~

8. Heard Ld. advocates Shri S. I. Kazi for workman, Shri S. Alva for first party no. 1 and Shri Mohit Kapoor for first party no. 2 at length. Perused the documents filed by parties on record.

As to Issue No. 2 :-

9. Second party workman moved with the allegations of

unfair labour practices on the part of first party by way of issuing false and illegal charge-sheet against him and commenced departmental enquiry, as such workman not at all involved in any misconduct as alleged by first party. Moreover, in enquiry, no material documents like copy of contract which entered in between first party no. 1 and 2 was provided by the enquiry officer nor he provided the copy of so-called complaint on which basis charge-sheet was served. On the other hand, during the course of proceeding, workman made request before enquiry officer that, direction be given to first party in respect of payment of subsistence allowance, but this request was not taken into account by the enquiry officer and held that,, such reliefs are beyond the jurisdiction of enquiry officer.

10. The counsel of second party further argued that, second party tried to justify himself in pursuance of alleged misconduct, but defence putforth by workman was not at all considered by the enquiry officer. However, enquiry officer not followed the principles of natural justice and for the same, he not concluded entire enquiry proceeding in accordance with Standing Orders. Second party workman also filed written notes of arguments at Exh.U-14 and Exh.U-15 and lastly sought declaration of defective enquiry.

11. Per contra, the counsel of first party argued that, full and sufficient opportunity had given to the second party to putforth his

defence before enquiry officer. He participated in enquiry with defence representative and availed each and every opportunity to defend himself. Therefore, enquiry officer neither violated the principles of natural justice nor they deprived any right of second party. Hence, allegations in respect of defective enquiry are nothing but after thought story of second party.

12. I carefully perused the material on record. Admittedly, in departmental enquiry, terminology of “followed the principles of natural justice” dealt with the quantum of opportunity provided by enquiry officer to delinquent employee. However, keeping this aspect in my mind, I have gone through the enquiry papers. It appears that, there is no any single objection had raised by second party before enquiry officer or employer in respect of in anyway his right to defend had been deprived. On the contrary, it further crystallized from record that, enquiry officer provided sufficient opportunity to second party to defend himself in pursuance of alleged misconduct.

13. Therefore, considering all these aspects and taken into account the opportunity provided by enquiry officer to second party, it can be said that, there is no case of defective enquiry in the hands of second party. Hence, I have recorded my findings as on issue no. 2 in affirmative.

As to issue no. 3 :-

14. As concerned with the issue of findings of enquiry officer, it argued by counsel of second party that, material papers in respect of misconducts were not provided by the enquiry officer to second party like copy of contract entered in between first party no. 1 and 2 in pursuance of Contract Labour (Regulations & Abolitions) Act, 1970 and so-called complaint on which basis the first party no. 2 served charge-sheet against second party. They further argued that, second party rightly made request in respect of production of referred documents, but same was not considered by the enquiry officer. Hence, findings drawn by enquiry officer are cryptic in nature, henceforth same are needs to be declared as perverse.

15. Needless to say, it is settled position of law that, mere raising objections in respect of non providing the documents during the course of enquiry is not sufficient. On the contrary, parties in objection are bound to prove the factum of what actual prejudice have been caused to them on account of non supply of alleged documents. Case in hand, second party workman failed to show that, what actual prejudice has been caused to him on account of alleged fact. Hence, in such circumstances, it can be said that, defence putforth by second party is unsustainable in eye of law.

16. Moreover, second party workman also raised his

grievance in respect of enquiry officer not considered his request in respect of releasing the payment towards subsistence allowance. However, enquiry officer taken favorable decisions and protect the interest of employer. On account of allegations made by second party, I have gone through the referred request of second party, which putforth by him before enquiry officer, during the course of enquiry. Considering the same, I am of opinion that, enquiry officer rightly held and declared that, the request of second party in relation to releasing the payment of subsistence allowance is beyond his jurisdiction, because in departmental enquiry, it only expected from enquiry officer that, he should be dealt with the charges leveled against delinquent employee.

17. Admittedly, the standard of proof required in departmental or domestic enquiry is in the form of “preponderance of probability” and not required in the form of “beyond reasonable doubt”. On the other hand, in the departmental or domestic enquiry theory of “some evidence” is applicable. However, keeping these aspects in my mind, I have carefully perused the report of enquiry officer. On perusal, facts discloses that, findings of enquiry officer are duly clubbed with the material placed before him. I have not found any adverse remark or findings recorded by enquiry officer, as per the parameters referred above. Hence, I have recorded my findings on issue no. 3 in negative.

18. In the premises of aforesaid discussions and in pursuance of recorded findings as on issue no. 2 and 3, it crystallized that, present reference is needs to pass some workable order in terms of following declaration.

ORDER

- (i) It is hereby declared that enquiry conducted by enquiry officer against delinquent is fair, proper and in accordance with the principles of natural justice.
- (ii) Findings drawn by the enquiry officer are not perverse.
- (iii) Both parties are hereby directed to proceed with rest of the issues.

Mumbai.

Dated : 08/05/2018.

Rsr/-

Sd/-
(P. S. Kulkarni)
Presiding Officer
Seventh Labour Court, Mumbai.