

GAHC010171522016



2026:GAU-AS:6322

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4378/2016

THE WORKMEN OF BORAJAN TEA ESTATE
REP. BY THE SECY., ASSAM CHAH MAZDOOR SANGHA, GOLAGHAT
BRANCH, P.O. GOLAGHAT

VERSUS

THE MANAGEMENT OF BORAJAN T.E. and ANR.
GOLAGHAT, P.O. BORAJAN, GOLAGHAT, ASSAM

2:THE PRESIDING OFFICER
LABOUR COURT
DIBRUGAR

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioners(s) : Ms. J.R. Thakur, Advocate

For the Respondent(s) : Mr. M.K. Mishra, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **05.05.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Ms. J.R. Thakur, the learned counsel appearing on behalf of the petitioner. Mr. M.K. Mishra, the learned counsel appears on behalf of the respondent No. 1.

2. At the outset, this Court would like to strike out the name of the respondent No. 2 from the array of parties, taking into account the well settled principle that an officer who exercises judicial powers ought not to be arrayed as a party to the writ proceedings. In fact, the Supreme Court had deprecated such a practice.

PREFACE

3. The present writ petition has been filed assailing the Award dated 29.02.2016 passed by the learned Labour Court, Dibrugarh in Reference Case No. 02/2009, whereby the Reference made vide Notification dated 20.11.2008 was answered holding inter alia that the management of Borjan Tea Estate was justified in dismissing the services of the workmen and that the workmen were not entitled to reinstatement with full back wages.

BRIEF FACTS

4. Before taking note of the impugned Award assailed in the present proceedings, this Court finds it very pertinent to take note of the brief facts leading to Reference Case No. 02/2009.

On 20.03.2007, at around 7:30 A.M., approximately 1,500 workers of Borjan Tea Estate assembled in front of the factory gate and made an outcry. Thereupon, some of the workers forcefully entered the factory compound as well as the Manager's office by breaking the lock of the gate, in spite of resistance from the security man and started shouting, pelting stones, damaging the furniture and fixtures of the office. The then Manager, Mr. Sanjoy Das, sustained serious injuries in the said incident. It is on account of the intervention of the police, the incident could be subdued. This resulted into a lockout of the Borjan Tea Estate for a period of 11 (eleven) days.

5. Subsequently, on 07.04.2007, 11 (eleven) workmen were issued Charge Sheets alleging inter alia that they were responsible for forming an unlawful assembly outside the garden gate and for instigating other workers to do the same. It was further alleged that these workmen incited other workers to pelt stones at the office, which led to a violent situation coming into being, causing damage to the garden property, trespass into the Manager's office,

and breaking of office furniture and other valuables. The management also alleged that it suffered losses amounting to Rs. 19,66,450/-. The workmen were charged with willful insubordination, riotous conduct, inciting others to violence and disturbance and willful destruction of garden property, amounting to gross misconduct under Clause 10(a)(1), (7), (8), and (11) of the Standing Orders in force in the Estate.

6. The workmen thereupon submitted their respective replies stating inter alia that they were nowhere connected with the incident, though they were present among other workers of the Borjan Tea Estate. One of the workmen namely Shri Dilip Tanti, who was the gateman categorically stated that the gate in question was broken/open by some of the workers after overpowering him.

7. The management being not satisfied appointed an Enquiry Officer to hold 11 (eleven) independent domestic enquiries against the workmen. Pursuant thereto, the Enquiry Officer conducted the enquiries and submitted 11 (eleven) domestic enquiry reports opining inter alia that all the workmen were guilty of gross misconduct inasmuch as, as per the Enquiry Officer, the management had proved beyond reasonable doubt that these 11 (eleven) workmen were guilty of gross misconduct as alleged in

the Charge Sheets.

8. The records further reveal that pursuant to the enquiry reports received, notices were issued to each of the workmen and they were informed to submit representation prior to a final decision being taken by the management. It was also mentioned vide these notices which were all dated 16.08.2007, that in the circumstance no representation is submitted, it would be presumed that the workmen would have nothing to submit, and the management would dispose of the case in the manner deemed appropriate.

9. The records further reveal that pursuant thereto, the workmen sought for time by filing representations and accordingly, the time was extended to 28.08.2007 vide separate communications issued to these 11 (eleven) workmen on 21.08.2007. Subsequent thereto, on 08.09.2007, all these workmen were dismissed from service as no representation were submitted thereby agreeing to the enquiry reports of the domestic enquiry.

10. On account of the dismissal of these 11 (eleven) workmen, an industrial dispute arose, whereby the Government of Assam in exercise of its powers under Section 10 of the Industrial Disputes Act, 1947 made a Reference to the learned Labour Court,

Dibrugarh vide the Notification dated 20.11.2008. The Schedule to the said Notification contained the Terms of the Reference and the same being relevant are reproduced herein under:

“-SCHEDULE-

- 1. Whether the management of Borjan Tea Estate, P.O. Borjan, Dist.-Golaghat is justified in dismissing the services of Sarbarshree Purneswar Karmakar, Rajesh Kurmi, Rajen Karmakar, Dilip Tanti, Babloo Tanti, Rupeswari Tanti, Jamuna Karmakar, Daima Tanti, Anita Tanti, Bimoli Karmakar and Anjana Tanti workmen with effect from 10-09-2007?*

- 2. If not, are the above named workmen entitled to reinstatement with full back wages or any other relief in lieu of reinstatement?”*

11. Upon receipt of the said Notification, a Reference proceeding was instituted, being registered and numbered as Reference Case No. 02/2009. Pursuant thereto, written statement were filed by both the management and the workmen.

12. Before proceeding further with the narration of facts, this Court finds it very pertinent to take note of the written statement filed by the management in the said Reference proceedings. A perusal of the said written statement reveals that the management had narrated the incident which led to the dismissal of the concerned workmen. It was categorically mentioned at paragraph

Nos. 5, 6 and 7 stating inter alia that impartial domestic enquiries were conducted on different dates at Borjan Tea Estate after issuing notice of enquiries upon all the workmen. It was further mentioned that the domestic enquiries were held separately in full conformity with the principles of natural justice and found all the workmen guilty of the charges as alleged in the Charge Sheets and pursuant to the receipt of the enquiry reports of the domestic enquiries, the management did not find any extenuating circumstances to take a lenient view in the cases of the workmen, and accordingly the workmen were dismissed from service w.e.f. 10.09.2007. It was further mentioned that the dismissal of the workmen from the service was fully justified and that the workmen were not entitled to reinstatement at their service or any other relief. Paragraph No. 14 of the said written statement, being relevant, is reproduced herein under:

“14. That, the Management beg to submit that, they want to rely on the domestic enquiry held by the Management and thereafter, intend to adduce further evidence on merit if the domestic enquiry is found to be violative of the principles of natural justice.”

13. From a perusal of the above quoted paragraph, it would be seen that the management reserved the right to rely on the domestic enquiries held by the management and thereafter

intended to adduce further evidence on merit, if the domestic enquiries were found to be violating the principles of natural justice.

14. The workmen also filed a written statement wherein it was the categorical stand of the workmen that the domestic enquiries were not impartial and in fact, the domestic enquiries were perfunctory, as no opportunities were given to the workmen to adduce defence evidence. It was categorically mentioned at paragraph No. 5 that the workmen did not instigate other workers in front of the office or in pelting stones at the office or becoming violent or breaking window panes or abuse management staff as alleged by the management. It was categorically mentioned that one Shri D.K. Bhuyan, who was the Presenting Officer on behalf of the management in the domestic enquiries, had also adduced evidence for the management in the domestic enquiries and as such, he has not only remained as a Presenting Officer alone, but he had also acted as a witness. It is also mentioned at paragraph No. 13 of the written statement that on the date of occurrence, the entire employees of Borjan Tea Estate abstained from duties, but the management has alleged that the workmen under Reference have instigated the entire workers of the workmen.

15. The record further reveals that the written statement was filed by the workmen on 04.01.2013.

16. Thereupon, instead of framing a preliminary issue on the question of validity and legality of the domestic enquiries upon which the management of the respondent Tea Estate was laying emphasis upon, the learned Labour Court proceeded to record evidence.

17. It may be pertinent herein to mention that the Reference proceedings were initially proceeding ex-parte against the workmen. At that point of time, the management of the respondent Tea Estate had submitted the evidence-in-chief and vide an order dated 16.05.2013, the management of the respondent Tea Estate had categorically mentioned that they would not like to further adduce any evidence. The records also reveal that the learned Labour Court fixed the proceedings for cross-examination of the management witnesses. The records further reveal that after the cross-examination of the management witnesses, evidence of the workmen side was also adduced. Pursuant thereto, on 29.02.2016, the impugned Award was passed.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PARTIES

18. Ms. J.R. Thakur, the learned counsel appearing on behalf of the petitioner submitted that in the instant proceedings the learned Labour Court committed a jurisdictional error in passing the Award without first framing a preliminary issue regarding the legality or validity of the domestic enquiries conducted against the workmen inasmuch as the management relied upon the domestic enquiries. The learned counsel further submitted that only upon the decision rendered on the legality and validity of the domestic enquiries and if it was held that the domestic enquiries were conducted in the manner provided by law, there was a necessity of the learned Labour Court to decide on the proportionality of the punishment. The learned Labour Court committed the second jurisdictional error in not deciding on the question of proportionality of the punishment, which ought to have been decided by the learned Labour Court. The learned counsel therefore submitted that the impugned Award is required to be interfered with on these two jurisdictional errors committed by the learned Labour Court. In that regard, the learned counsel referred to the judgments of the Supreme Court in the case of ***Kurukshetra University Vs. Prithvi Singh*** reported in ***(2018) 4 SCC 483***, as well as in the case of ***M.L.***

Singla Vs. Punjab National Bank & Another reported in **(2018) 18 SCC 21.**

19. The learned counsel appearing on behalf of petitioner also submitted that it has been the constant stand of the workmen that they were not a part of the said mob which pelted stone or vandalized the properties. The learned counsel further submitted that admittedly from the evidence on record, it would be seen that around 1,500 to 2,000 workers were present at 7:30 AM on 20.03.2007 and out of that, some of the workers committed such mischief. The learned counsel submitted that, in the entire evidence on record, nothing has been shown that the workmen in the instant case were involved in the said incident. The learned counsel further submitted that in the domestic enquiries, the Enquiry Officer had relied on the evidence of the Head Clerk. However, the evidence of the Head Clerk recorded in the domestic enquiries was not exhibited before the learned Labour Court. The learned counsel drawing the Reference to the evidence of M.W.2 submitted that during the cross-examination of the Head Clerk, he categorically mentioned that he did not remember the names of the workmen who were involved in the incident. The learned counsel therefore submitted that this is a case where interference under Article 226 of the Constitution of India is required in exercise

of the certiorari jurisdiction of this Court.

20. Mr. M.K. Mishra, the learned counsel appearing on behalf of the respondent No. 1 on the other hand submitted that the incident took place after an unlawful assembly at 7:30 AM on 20.03.2007, which resulted in not only vandalizing the properties of the management Tea Estate, but also injury to the Manager. The learned counsel submitted that the domestic enquiries which were carried out were done properly by following the principles of natural justice. Adequate opportunities were also granted to the workmen, and the failure on their part in spite of opportunities being granted to adduce evidence cannot be a ground to hold that the domestic enquiries were not done in a manner envisaged under law. The learned counsel further submitted that the contention of the learned counsel appearing on behalf of the petitioner that there was a jurisdictional error in not framing a preliminary issue as regards the legality and validity of the domestic enquiries, has no legs to stand, taking into account that a bare perusal of the impugned Award would show that the learned Labour Court had only decided the legality and validity of the domestic enquiries, and thereupon upheld the decision of the management in terminating the services of the workmen. The learned counsel therefore submitted that there is no case made out

for interference in exercise of the certiorari jurisdiction of this Court.

ANALYSIS AND DETERMINATION

21. This Court had heard the learned counsel appearing on behalf of the parties and perused the materials on record including the records of the Reference Case No. 02/2009.

22. The narration of facts herein above and a perusal of the impugned Award would show that the learned Labour Court did not specifically frame a preliminary issue as regards the legality and validity of the domestic enquiries which were held against the workmen. It is apposite out here to mention that at paragraph Nos. 5, 6, and 7 as well as at paragraph No. 14 of the written statement filed by the management, the reports of the domestic enquiries were relied upon by the management to justify their stand for dismissing the workmen. Under such circumstances, it was the requirement of law that the learned Labour Court ought to have framed a preliminary issue on the legality and validity of the domestic enquiries held against the workmen.

23. This Court also finds it pertinent to observe that a perusal of the impugned Award shows that though no preliminary issue was

framed regarding the legality and validity of the domestic enquiry reports, but what was decided in the impugned Award was only the legality and validity of the domestic enquiry reports. The learned Labour Court further did not proceed to decide anything else.

24. It surprises this Court to take note of that the learned Labour Court while passing the impugned Award, after upholding the domestic enquiries held against the workmen, did not decide as regards the proportionality of the punishments which have been imposed against the workmen, which was a jurisdiction conferred upon the learned Labour Court to decide. The procedure therefore followed by the learned Labour Court, in the opinion of this Court amounts to a jurisdictional error committed by the learned Labour Court.

25. This Court finds it very pertinent to take note of the judgment of the Supreme Court in the case of ***M.L. Singla (supra)***, wherein the Supreme Court observed the procedure to be followed when a domestic enquiry is being relied upon. Paragraph Nos. 12 to 27 being relevant, are reproduced herein under:

“12. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no good ground to interfere in the “conclusion”

arrived at by the High Court, but on our reasoning mentioned infra.

13. *It is necessary to examine the legality and correctness of the Award of the Labour Court in the first instance and then the impugned order.*

14. *When we examine the Award in the light of detailed facts set out above, we find that the Labour Court committed more than one jurisdictional error in answering the Reference.*

15. *The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.*

16. *Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.*

17. *If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.*

18. *If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by Respondent 1 Bank. This the Labour Court could do by taking recourse to the powers under Section 11-A of the ID Act.*

19. *While deciding this question, it was not necessary for the Labour Court to examine as to whether the charges are made out or not. In other words, the enquiry for deciding the question should have been confined to the factors such as—what is the nature of the charge(s), its gravity, whether it is major or minor*

as per rules, the findings of the enquiry officer on the charges, the employee's overall service record and the punishment imposed etc.

20. *If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural justice thereby causing prejudice to the rights of the employee, Respondent 1 Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits.*

21. *The Labour Court was then under legal obligation to give such opportunity and then decide the question as to whether Respondent 1 Bank was able to prove the charges against the appellant on merits or not.*

22. *If the charges against the appellant were held proved, the next question to be examined was in relation to the proportionality of the punishment given to the appellant. If the charges against the appellant were held not proved, the appellant was entitled to claim reinstatement with back wages either full or partial depending upon the case made out by the parties on the issue of back wages.*

23. *The second error was that the Labour Court called upon the parties to lead evidence on all the issues including the charge of misconduct in the first instance itself.*

24. *The third error committed by the Labour Court was that it proceeded to examine the findings of the enquiry officer on the charges like an appellate court, appreciated the evidence adduced before the enquiry officer and the one adduced before it and then came to a conclusion that the findings of the enquiry officer are perverse. This the Labour Court could not do.*

25. *Assuming that the Labour Court had the jurisdiction to direct the parties in the first instance itself to adduce evidence on merits in support of the charges*

yet, in our opinion, it was obligatory upon the Labour Court to first frame the preliminary issue on the question of legality and validity of the domestic enquiry and confine its discussion only for examining the legality and propriety of the enquiry proceedings.

26. *Depending upon the finding on the preliminary issue on the legality of the enquiry proceedings, the Labour Court should have proceeded to decide the next questions. The Labour Court while deciding the preliminary issue could only rely upon the evidence, which was relevant for deciding the issue of legality of enquiry proceedings but not beyond it.*

27. *In other words, the Labour Court failed to see that it would have assumed the jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and secondly, the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted, he had led the evidence."*

26. The proposition of law as laid down by the Supreme Court in the aforementioned paragraphs clearly show that when a domestic enquiry is being relied upon, it is the requirement of law that the preliminary issue be framed as regards the legality and validity of the domestic enquiry report and thereupon, if it is held that the domestic enquiry report is in order, then to decide as to whether the imposition of punishment was proportionate. In the instant case, it would be seen that the learned Labour Court vide the impugned Award only decided as regards the legality and validity of the domestic enquiry reports and held it to be fair and thereupon upheld the termination of the workmen.

27. Taking into account the submissions so made by the learned counsel appearing on behalf of the petitioner, this Court finds it pertinent to look into, as to whether, the opinion rendered by the learned Labour Court holding the domestic enquiries to be fair is in consonance with the well-settled principles of law.

28. From a perusal of the materials on record, and more particularly, the evidence adduced by the management witness No. 4 before the learned Labour Court, who was the Enquiry Officer, he during his cross-examination, categorically mentioned that though information was provided to the workmen as regards the appointment of an Enquiry Officer and to participate in the domestic enquiry proceedings, but he did not inform the workmen that they are required to adduce evidence. In fact, during his cross-examination, he mentioned that the Presenting Officer would be informing the workmen that they would be required to adduce evidence.

29. This Court also finds it very surprising to take note of that without the records of the domestic enquiries being placed before the learned Labour Court as to how the evidence was adduced and as to whether the observers were present inasmuch as such evidence would be available in the Minutes recorded during the

course of the domestic enquiries.

30. This Court also finds it very relevant to take note of that the evidence on the basis of which the Enquiry Officer decided that the workmen were involved in the mob which led to the incident was on the basis of the evidence of the Head Clerk. The said Head Clerk adduced evidence as M.W. 2 before the learned Labour Court and during his cross-examination he admitted that he did not remember the names of the workers involved in the said incident. It may not be out of place to mention at this stage that the facts of the present case would show that there was a gathering of around 1,500 workers of the Borjan Tea Estate, and out of that some were involved in the incident. The learned Labour Court, having permitted the management to adduce evidence, and the management having stated during the proceedings dated 16.05.2013 that they would not like to adduce any further evidence, ought to have taken into consideration the evidence of M.W. 2 recorded before the learned Labour Court, which formed the basis of the decision of the Enquiry Officer in the domestic enquiries. This aspect was not considered at all.

31. This Court also finds it very pertinent to take note of that a perusal of the enquiry reports of the domestic enquiries would

show that the Enquiry Officer did not even care to give reasons as to why action was taken only against the workmen. A perusal of the enquiry reports further reveals that after recording the evidence and the procedure followed, the Enquiry Officer held that the management had proved the charges beyond reasonable doubt.

32. The above analysis of the enquiry reports not only shows that it is in conflict with the principles of natural justice, but also perverse.

33. It is therefore the opinion of this Court that the learned Labour Court ought to have therefore rejected these reports of the domestic enquiries and proceeded to decide on merits on the basis of the evidence which was available, inasmuch as the evidence of all the parties were taken prior to the Award passed.

34. Considering the above, it is therefore the opinion of this Court that this is a fit case for exercise of jurisdiction under Article 226 of the Constitution to interfere with the Award dated 29.02.2016 passed in Reference Case No. 02/2009.

CONCLUSIONS

35. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned Award dated 29.02.2016 passed in Reference Case No. 02/2009 is set aside and quashed.

(ii) The reports of the domestic enquiries held qua the workmen are set aside and quashed for the reasons already above mentioned.

(iii) The learned Labour Court is directed to decide the Terms of Reference in terms with the Notification dated 20.11.2008, on merits, on the basis of the evidence available on record.

(iv) Taking into account that the incident occurred sometime in the year 2007 and that almost 19 years have passed in the meantime, this Court directs the learned Labour Court, Dibrugarh, to decide the said Reference proceeding as expeditiously as possible and preferably within a period of 3 (three) months from the date of appearance of the parties before the learned Labour Court.

(v) Taking into account that the parties are already present before this Court, the parties are directed to appear before

the learned Labour Court, Dibrugarh on 22.06.2026 for further proceedings in Reference Case No. 02/2009.

(vi) The Registry is directed to forthwith return the records to the learned Labour Court, Dibrugarh, so that the Reference proceedings may proceed with on the date so fixed hereinabove. The Registry may employ the services of a special messenger for the return of the records, if so necessary.

JUDGE

Comparing Assistant