

Smt. Rohini Deshwalin @ Aisha Bibi Vs M/s Bharat Coking Coal Ltd

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Acts Referred: Industrial Disputes Act, 1947 " Section 10, 11A, 33

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: M. M. Pal, Mohua Palit, Amit Kumar Das, Swati Shalini

Final Decision: xi Karnataka SRTC v. Lakshmiddevamma" reported in (2001) 5 SCC 433

Judgement

Anubha Rawat Choudhary, J

1. This writ petition has been filed for the following reliefs:-

“(i) For quashing/setting aside the award dated 30.08.12 passed by the Central Government Industrial Tribunal (No. 2) at Dhanbad in Reference Case No. 239 of

2001 whereby and where under it has been held that removal of the petitioner Smt. Rohini Deshwalin/Bhatni Deshwalin by M/s B.C.C.L is legal and proper as the case

is of fraudulent employment impersonating the real workman Rohini Deshwalin wife of Kali Deswali.

AND

(ii) further may be pleased in directing the respondents to make payment of all wages and consequential benefits treating the petitioner in continuous employment

since the date of her removal being 18.03.2000 till the date of her superannuation attained on 10.01.2009 and set aside the order of removal vide letter no.

WJA/BHD/P.O. 2000/587 dated 18.03.2000 (Annexure-1)

AND

(iii) to pass such other order(s), direction(s) as your lordships may deem fit and proper in the interest of justice.

2. The terms of reference to the Industrial Tribunal (No. 2) were as under: -

“Whether the removal of Smt. Rohini Deshwalin/Bhatni Deshwalin from the service by the management of BCCL Western Jharria Area is legal and proper? If

not, to what relief is the concerned workman entitled?”

3. The domestic enquiry was held to be fair and proper vide order dated 28.02.2012 and consequently the matter was placed for arguments on merits

on the basis of the materials already on record.

4. The paragraph 6 of the impugned award refers to the evidences adduced on the point of fairness of domestic enquiry and the order dated

28.02.2012 whereby the domestic enquiry was held to be fair and proper, paragraph 7 refers to the submissions of the union representing the

workman, paragraph 8 refers to the submissions of the management and findings are recorded in paragraph 9 of the impugned award. The said

paragraphs are quoted as under:

“6. In this case, on consideration of the statements of MW1 Sekhar Sood, Sr. Manager (Personnel) MW 2 Molay Kumar Chandra, Sr. Manager (Industrial

Engineer), MW 3 Hulash Baitha, the clerk (Spl. Grade) MW4 Akhilesh Kumar Chand, the Clerk, and MW 5 Rathi Devi Security Guard for the management and

WW 1 Rohani Deswalin (w/o Sri Numu Shah), the lady workman herself and WW2 Nunu Shah, for the Union on the preliminary point about the fairness of the

domestic enquiry, the Tribunal held the enquiry as quite fair, proper and in accordance with the Law as per order dt. 28.02.2012. Hence, it came up for final

argument on merit.

7. Mr. Surendra Prasad, the Learned Union Representative for workwoman Rohini Deshwalin/ Bhatni Deswalin submits that she continuously served for about

29½ years since her appointment firstly as Shale Picker on 17.10.1971, and thereafter but she illegally removed from the service as per letter dt.18.3.2000 on the

allegation of impersonation of Rohini Deshwalin w/o Kali Deshwalin without proper enquiry by the management, so she is entitled to full back wages and

consequential benefits. He relied upon the four but filed three case laws as under:

“Since the petitioner continued on the post for more than nine years, equity demands that his services could not have been terminated on the ground that his

appointment was not made after observing the provision of Articles 14 and 16 of the Constitution (2002 (2) PLJR 627(SB), Abhay Kr. Pandey Vs. State of Bihar-

para 5); that 'termination of petitioners' service having been declared illegal and arbitrary, he can not be denied benefits of wages for the period during which he

was not allowed to join duty principle of 'no work no pay' would not apply to such cases (2010(3)JLJR 335 (SB), Anil Kr. Singh V. Union of India Para 7 & 8);

and

Lastly it has been submitted by the Union Representative that 'Inordinate delay in issuance of charge Memo vitiates disciplinary proceeding, delinquent should

not be made to suffer for mistake committed by Department (2005 4 AB.I.C. 4332 (SC) (DB) P.V. Mahadevan Vs. M. D. Tamil Nadu Housing Board.

8. Whereas Mr. U.K. Dubey, the Senior Manager (Pers) as the Representative for the Management submits that it is the admission of the present workman alleged

Rohni Deswalin that the Form B Register mentions Kali Deshwalin as the husband of Rohni Deswalin (Ext.M.3/1); and She had not stated in her statement (Ext

M.3) in course of enquiry that Kali Deswalin was her husband whom or Akloo Deswalin son of Rohni Deswalin she did not know and she has not discharged the

onus of proof about her identity of being Rohini Deswalin wife of Kali Deswalin, she has accepted that her former husband Parna Deshwalin died so she married

to Nunu Sah (WW2), a muslim in the year 1978 or 1980; since the management found it on the verification report of the Supdt. of Police concerned that the

present lady workman is actually Bhatni Deswalin W/o Parna Deshwalin who was working by impersonating Rohani Deshwalin at Bhatdee Colliery as such as

the provision under clause 28 of the Certified Standing Order, the Chairman cum Managing Director of the Company after being satisfied with aforesaid reason

removed the present workwoman from the service of the Company in the interest of security and accordingly the Competent Authority accorded her removal from

her services Impersonating Rohni Deswalin w/o Kali Deswalin which was communicated to her of her removal from the service w.e.f. 18.03.2000 as per the letter

dated same of the Project Officer concerned (Ext. W.1); so the action of the management in removal of the present workwoman from the service was quite legal and

justified.

9. After hearing the arguments of both the representatives of the parties concerned and on the scrutiny of the materials available on the case record, I find that

none of the aforesaid case laws holds good with the present factum of the Reference; moreover, the Union Representative has neither pleading nor proved any fact

of inordinate delay in the department enquiry against the present workwoman. The case of the Union has not merit at all. Since this is purely a case of fraudulent

employment by the present workwoman Bhatni Deswalin through impersonation of real workwoman Rohini Deswalin w/o Kali Deswalin, so removal of the

present workwoman Smt. Rohni Deswalin/Bhatni Deswalin from the service by the management of M/s B.C.C.L., Western Jharia Area is held to be quite legal and

proper. The workman/(workwoman) concerned is not entitled to relief. Thus the reference is responded. Let the copy of the Award be sent to the Ministry for

Labour & Employment, Government of India, for information and needful. *~*~*

Arguments of the petitioner.

5. Learned Senior counsel for the petitioner submits that there is serious allegation of impersonation against the petitioner, but there has been no

charge-sheet and consequently there has been no departmental enquiry in terms of Clause 27 of the Certified Standing Order. She has submitted that

certain enquiry was said to have been conducted but the complainant was not examined. She has submitted that in absence of any departmental

proceeding, the charge of impersonation cannot be said to have been established. She has also submitted that charge of impersonation is a gross

misconduct and therefore, in order to hold the petitioner guilty of impersonation, departmental enquiry was required to be conducted.

6. Learned Senior counsel for the petitioner has referred to Clause 28 of the Certified Standing Order, to submit that, as per,

the respondents (hereinafter referred to as "management") they have exercised power under Clause 28 of the Certified Standing Order, but the

condition precedent for exercising of such power is not satisfied. The petitioner has been removed from service on account of serious charges of

impersonation, for which it was incumbent upon the management to conduct a regular departmental proceeding before coming to a conclusion that the

petitioner had impersonated herself. She has referred to the so-called enquiry report (Annexure- 7) and submits that the same cannot be termed as

departmental enquiry report and at best it can be termed as an internal enquiry report.

7. Learned Senior counsel for the petitioner has referred to Clause 27 and 28 of the Certified Standing Order annexed as Annexure- 2 to the writ

petition. The letter of removal from service has also been placed which is at Annexure- 1 to the writ petition to submit that the removal is on account

of allegation of impersonation.

8. The learned Senior counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court reported in (2011) 6 SCC 376

(Commissioner of Police, Delhi Vs. Jai Bhagwan) (para 15 to 18) to submit that non-examination of complainant is fatal to such an enquiry. She has

also relied upon judgment reported in (2016) 8 SCC 471 (Avtar Singh Vs. Union of India and others) (para 13, 19, 27 and 28) to submit that

suppression of material fact can be proved only through departmental proceedings.

9. Learned Senior counsel has further referred to judgment reported in 2017 (1) JBCJ 175 (SC) (Harjas Rai Makhija Vs. Pushparani Jain and

Another) (para 21 and 22) to submit that the allegation of fraud is required to be proved in a departmental proceeding. She has further submitted that

no criminal case was filed and Clause 28 of the Standing Order is not applicable.

10. The learned Senior counsel has also referred to judgment reported in (2010) 2 SCC 169 (Kamal Nayan Mishra Vs. State of Madhya Pradesh

and Others) (paragraphs 19 and 24). She submits that the petitioner had put in more than 29 years of service, she was confirmed and promoted and

there had been no allegation against the petitioner at any point of time.

Arguments of the respondents (management).

11. Learned counsel appearing on behalf of the management, on the other hand, has submitted that the exercise of power under Clause 28 of the

Certified Standing Order has been undertaken in terms of Clause 28 of Standing Order itself, inasmuch as, the matter was placed before the

competent authority who has taken a decision. He has referred to such decision from the records received from the learned Tribunal and submits that

it specifically mentions that the decision was taken by the Managing Director of the respondent " company.

12. The learned counsel submits that statutory form B at page no. 43 of the records received from the concerned Tribunal reflects that Rohini

Deshwalin who was the actual employee was wife of Kali Deshwali and the subsequent document at page no. 45 which is also form B register

reflects that the name of husband of actual Rohini Deshwalin was Kali Deshwali. He submits that it is not the case of the petitioner that her husband's

name was Kali Deshwali and therefore, on the face of the record, the petitioner cannot claim to be the actual employee of the respondent

company.

13. Learned counsel for the management has also submitted that enquiry was conducted and the petitioner had herself admitted during enquiry that

name of her husband was not Kali Deshwali and the name of her husband was Parna Deshwali. He has further submitted that under such

circumstances, the Form- B register being statutory register, the petitioner had neither claimed before the authority that she was the wife of Kali

Deshwali nor it was her case that she was wife of Kali Deshwali even before the learned Tribunal and therefore, it stood admitted from the side of

the petitioner that she was not the wife of Kali Deshwali. In such circumstances, the working of the petitioner in the respondent company is through

impersonation and therefore, the petitioner has been rightly removed from service by exercising powers under Clause 28 of the Certified Standing

Order.

14. Learned counsel for the management has also submitted that the length of service is not relevant when it comes to impersonation. He has relied

upon a judgment passed by the Hon'ble Supreme Court in the case reported in (2004) 2 SCC 105 (R. Vishwanatha Pillai Vs. State of Kerala and

others) (paragraphs 15 to 18) and submits that in case of appointment obtained through false caste certificate the Hon'ble Supreme Court has held

that in cases of fraudulent appointment, the incumbent is not entitled to protection under Article 311 of Constitution of India and he submits that

consequently there was no requirement to conduct regular departmental proceeding.

15. Learned counsel for the management has also relied upon the judgment passed in the case reported in (1981) 3 SCC 451 [Firestone Tyre and

Rubber Company of India (P) Ltd. Vs. Workmen Employed, Represented by Firestone Tyre Employees' Union] and has referred to paragraph

10 of the said judgment to submit that merely because no formal enquiry or formal charge-sheet was issued to the petitioner, the same will not vitiate

the enquiry conducted by the management. The learned counsel has submitted that the learned Tribunal has held the enquiry to be fair and proper and

the said order is not under challenge in the present proceedings and therefore, it is not open to the petitioner to contend that the petitioner has been

removed without any enquiry.

16. Learned counsel for the management has also relied upon the judgment passed in LPA No. 420 of 2017 (Jamuna Harijan @ Jamuna Ahirwar

Vs. Central Coal Fields Limited and others) and has submitted that in case of impersonation, there is no need to conduct a regular departmental

proceeding.

Rejoinder Arguments of the petitioner.

17. The learned Senior counsel for the petitioner, in response, has submitted that the present case is not a case of simpliciter removal rather it is a case

of removal by holding that the petitioner has impersonated herself. She has submitted that such serious charge could have been proved only through

regular departmental proceedings which has not been conducted in the present case. The petitioner has categorically stated that no charge-sheet was

ever issued and there has been no departmental proceeding.

18. The learned Senior counsel submits that so-called enquiry report is not a result of any departmental proceeding. She has further submitted that in

the so-called enquiry report itself it was mentioned that there was conflicting opinion and therefore, the matter was referred to the Superintendent of

Police, Dhanbad to conduct an enquiry who conducted an enquiry and submitted his views. The learned Senior counsel submits that such enquiry

conducted by the Superintendent of Police, Dhanbad cannot form a part of the enquiry report as such proceeding by Superintendent of Police,

Dhanbad is without participation of the petitioner.

19. The learned Senior counsel has referred to Annexure- 6/1 dated 19.07.1987 to submit that during the process of forwarding of service excerpts to

the petitioner seeking her confirmation with regard to the entries made in service record, only the name of the petitioner is reflecting and the name of

the husband of the petitioner does not find place in the service excerpts. She submits that this happened way back in the year 1987 and it is for the

management to explain as to under what circumstances the service excerpts which was forwarded to the petitioner did not contain the name of her

husband if the same was appearing in Form "B" register. Such mismatch is completely unexplained.

20. The learned Senior counsel for the petitioner also submitted that the husband of the petitioner namely, Parna Deshwali expired around 30 to 35

years ago prior to her appointment and subsequently, she married Nunu Sah.

Findings of this Court.

21. As per the written statement filed before the learned Tribunal it was the case of the workman/petitioner that since 17.10.1971 she had been in the

employment of Bhatdee Colliery and upon nationalization, she had submitted the form containing employment particulars and after due verification

including police verification, she was employed. Since 17.10.1971 she was continuously working and was removed from service with effect from

18.03.2000 after completing 29 $\tilde{\text{A}}$ ½ years of service with unblemished record. It was the specific case of the petitioner that no charge-sheet was

served nor any enquiry in terms of service rules was held and her removal on the charge of impersonation under clause 28 of the Certified Standing

Order was against the principles of natural justice. It was further case of the petitioner that it was wrongly stated in the letter of removal that an

enquiry was conducted with the knowledge and participation of the petitioner and on police verification report, the charge of impersonation was

established. It is her further case that no enquiry was conducted in her presence or with her knowledge nor she was ever informed about police

verification being conducted in her case.

22. At the instance of the management the learned Tribunal had passed an order dated 28.02.2012 on the preliminary point of fairness of enquiry after

examining the witnesses produced before the learned Tribunal on the preliminary point and held that the enquiry conducted by the management was

fair and proper and then the Tribunal directed the matter to be placed for arguments.

23. Since the enquiry was held to be fair and proper, there was no occasion for the learned Tribunal to ask the management or the concerned

workman to lead evidence on merits of the allegation of impersonation. It is important to note that the management did not reserve its right to lead

evidence if the enquiry conducted by them was found to be improper by the Tribunal.

24. The case of the management primarily rested on the fact that the employee as per records was Rohini Deshwalin w/o Kali Deshwali, and the

workman had not discharged the onus of giving proof about her identity of being Rohini Deshwalin wife of Kali Deshwali; she had accepted that her

former husband was Parna Deshwali who died and then she married Nunu Sah in the year 1978 or 1980; on the verification report of the

Superintendent of Police, it was disclosed that the workman is actually Bhatni Deshwalin W/o Parna Deshwali who was working by impersonating

Rohini Deshwalin wife of Kali Deshwali at Bhatdee Colliery. As such the provision under clause 28 of the Certified Standing Order was invoked and

the competent authority after being satisfied with aforesaid reason, removed the workman from the service in the interest of security.

On the other hand, the case of the workman was that she was removed from service on the allegation of impersonation of Rohini Deshwali w/o Kali

Deshwali without proper enquiry by the management and it was insisted that a departmental enquiry under clause 27 was required to have been

conducted before taking any disciplinary action and the provisions of clause 28 was wrongly invoked. It was never the case of the workman that she

was Rohini Deshwali wife of Kali Deshwali rather her case throughout was that she is Rohini Deshwali wife of Parna Deshwali and had not

worked as Rohini Deshwali w/o Kali Deshwali. The records of the management including her service excerpts did not mention the name of her

husband, rather the name of her father was appearing in the records.

25. The learned Tribunal held that since this was purely a case of fraudulent employment by the present workman Bhatni Deshwali through

impersonation of real workman Rohini Deshwali w/o Kali Deshwali, so her removal from the service by the management was quite legal and proper.

The finding of the learned tribunal has been recorded only in paragraph 9 of the award which has no reference to the materials of the enquiry

conducted by the management including the enquiry report. This assumes importance as even the enquiry report of the management did not give any

finding that the workman/petitioner was an imposter, rather while submitting the enquiry report, the enquiry officer called upon the management to call

for a police verification report as no definite conclusion could be drawn.

26. In the judgement passed by the Hon'ble Supreme Court in the case of "The workmen of M/s Firestone Tyre Rubber Co. of India (Pvt.)

Ltd. vs. The Management & Ors." reported in (1973) 1 SCC 813 in paragraphs 13, 27, 29, 32 as also 41-A, it has been held that even if no

enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and

validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It has been held that it is obligatory on an

employer to hold a proper domestic enquiry in which all material evidence will have to be adduced. When a dispute is referred for adjudication and it is

found that the domestic enquiry conducted by the management is defective or if it is found that no domestic enquiry at all had been conducted, the

order of discharge or termination passed by the employer becomes, without anything more, is unjustified and the Labour Tribunals have no option but

to direct the reinstatement of the workman concerned, as his discharge or dismissal is illegal. Even in cases where a domestic enquiry has been held

and finding of misconduct recorded, the Labour Tribunals have now full power and jurisdiction to reappraise the evidence and to satisfy themselves

whether the evidence justifies the finding of misconduct. Even if the enquiry proceedings are held to be proper and the finding of misconduct is also

accepted, the Tribunal has now power to consider whether the punishment of dismissal or discharge was necessary for the type of misconduct of

which the workman is found guilty. In such circumstances, the Tribunal can also give any other relief to the workman, including the imposing of a

lesser punishment. In cases where an employer had not conducted any enquiry or when the enquiry conducted by him is held to be defective, the

employer will not be given any opportunity to adduce evidence before the Labour Tribunal for justifying his action. The Hon'ble Supreme Court further

observed that various decisions of the Hon'ble Court have emphasized that there is an obligation on the part of an employer to hold a proper enquiry

before dismissing or discharging a workman. And it has also been stated that the enquiry should conform to certain well-defined principles and that it

should not be an empty formality. If the management, being fully aware of this position in law, does not conduct an enquiry or conducts a defective

enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or wrong committed by it. It has also been held in the aforesaid

judgment that an employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his

action, should ask for it at the appropriate stage. Paragraphs 13, 27, 29, 32 as also 41A of the aforesaid judgement are quoted as under:-

“13. The above position has been completely changed by Section 11-A. It is now obligatory on an employer to hold a proper domestic enquiry in which all

material evidence will have to be adduced. When a dispute is referred for adjudication and it is found that the domestic enquiry conducted by the management is

defective or if it is found that no domestic enquiry at all had been conducted, the order of discharge or termination passed by the employer becomes, without

anything more, unjustified and the Labour Tribunals have no option but to direct the reinstatement of the workman concerned, as his discharge or dismissal is

illegal. Even in cases where a domestic enquiry has been held and finding of misconduct recorded, the Labour Tribunals have now full power and jurisdiction to

reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. Even if the enquiry proceedings are held to be proper

and the finding of misconduct is also accepted, the Tribunal has now power to consider whether the punishment of dismissal or discharge was necessary for the

type of misconduct of which the workman is found guilty. In such circumstances, the Tribunal can also give any other relief to the workman, including the

imposing of a lesser punishment. In cases where an employer had not conducted any enquiry or when the enquiry conducted by him is held to be defective, the

employer will not be given any opportunity to adduce evidence before the Labour Tribunal for justifying his action. Various decisions of this Court have

emphasised that there is an obligation on the part of an employer to hold a proper enquiry before dismissing or discharging a workman. And it has also been

stated that the enquiry should conform to certain well defined principles and that it should not be an empty formality. If the management, being fully aware of this

position in law, does not conduct an enquiry or conducts a defective enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or

wrong committed by it and seek a further opportunity before the Tribunal of adducing evidence for the first time. Generally, the Standing Orders also provide for

the conduct of an enquiry before imposing a punishment. The Standing Orders have been held to be statutory terms of conditions of service. If an employer does

not conform to the provisions of the Standing Orders, he commits an illegality and an order passed, which is illegal, has only to be straightaway set aside by the

Tribunal. Decisions of this Court, while recognising that an opportunity has to be given to an employer to adduce evidence before the Tribunal for the first time,

have not given due importance to the effect of a breach of a statutory obligation committed by an employer in not conducting a proper and valid enquiry as per

the Standing Orders. This anomaly has now been removed by the Legislature.

27. The right of an employer to lead evidence before the Tribunal to justify his action was again reiterated in *Khardah Co. Ltd. v. Workmen* AIR 1964 SC 719 as

follows:

“It is well-settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the

question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal, and the Tribunal will consider the merits of the dispute

and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee.”

29. The rights of an employer to avail itself of an opportunity to satisfy the Tribunal by adducing evidence, when an enquiry held by it was found to be defective or

when no enquiry at all has been held, have been stated in *State Bank of India v. R.K. Jain* (1972) 1 SCR 755 as follows:

“It should be remembered that when an order of punishment by way of dismissal or termination of service is effected by the management, the issue that is

referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to

any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the

judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that

will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of

termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead

all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the

management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order

impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry

that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis

that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other

hand, if the management relies not only on the validity of the domestic inquiry, but also adduce evidence before the Tribunal justifying its action, it is open to the

Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the

domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it

is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for

the management to avail itself of the said opportunity.

32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a

Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable,

and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said

enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the

employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or

mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality

and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for

the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand,

the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to

decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of

defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or

after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once

it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at

the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for

the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged

misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment

imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in

Management of Panitole Tea Estate v. Workmens (1971) 1 SCC 742 within the judicial decision of a Labour Court or Tribunal.Ã¢â‚¬â€¢

41-A. Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal

comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the

Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the

order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it

may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved

misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead.

The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A.

27. It has been again held by the Hon'ble Supreme Court in the case of "Shambhu Nath Goyal Vs. Bank of Baroda" reported in (1983) 3 SCC

491 that the rights which the employer has in law to adduce additional evidence in a proceeding before Labour Court or industrial tribunal must be

availed by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application

seeking either permission to take certain action or seeking approval of the action taken by it. The view has been upheld by the Hon'ble Supreme

Court in the case of A, "Karnataka SRTC v. Lakshmiddevamma" reported in (2001) 5 SCC 433 by a majority judgment. It has been held as under:

A"16. While considering the decision in Shambhu Nath Goyal case we should bear in mind that the judgment of Varadarajan, J. therein does not refer to the

case of Cooper Engg. However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in Goyal case¹ the management was

given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the

Industrial Disputes Act, 1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby that the

management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the

Tribunal/Labour Court.

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that

the directions issued by this Court in Shambhu Nath Goyal case need not be varied, being just and fair. There can be no complaint from the management side for

this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality

in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to

adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management

to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in

Shambhu Nath Goyal case is just and fair.

18. There is one other reason why we should accept the procedure laid down by this Court in Shambhu Nath Goyal case. It is to be noted that this judgment was

delivered on 27-9-1983. It has taken note of almost all the earlier judgments of this Court and has laid down the procedure for exercising the right of leading

evidence by the management which we have held is neither oppressive nor contrary to the object and scheme of the Act. This judgment having held the field for

nearly 18 years, in our opinion, the doctrine of stare decisis requires us to approve the said judgment to see that a long-standing decision is not unsettled without

a strong cause.

19. For the reasons stated above, we are of the opinion that the law laid down by this Court in the case of Shambhu Nath Goyal v. Bank of Baroda is the correct

law on the point.

20. In the present case, the appellant employer did not seek permission to lead evidence until after the Labour Court had held that its domestic enquiry was

vitiated. Applying the aforesaid principles to these facts, we are of the opinion that the High Court has rightly dismissed the writ petition of the appellant,

hence, this appeal has to fail. The same is dismissed with costs.

28. Although the order dated 28.02.2012 has not been specifically challenged in this writ petition, but in paragraph 21 of the writ petition, the petitioner

while referring to the aforesaid order dated 28.02.2012 passed by the learned Tribunal has alleged that the order is erroneous, without considering the

provisions of service rule, without issuing any charge-sheet to the petitioner and without seeking any explanation from the petitioner and the said order

has been passed relying upon a private and discreet enquiry. Even the written statement which was filed by the petitioner before the learned Tribunal

clearly reveals that the petitioner had a serious grievance in connection with conduct of enquiry. A reference was also made to the written statement

filed by the petitioner stating that no enquiry was conducted in her presence and she was not informed about the police verification against her nor

about the report so received nor she was supplied with a copy of it and that the enquiry was against the principles of natural justice. Thus, the writ

petition also involves legality and validity of the order dated 28.02.2012, whereby the so-called enquiry was held to be fair and proper. Much will

depend upon the legality and validity of the said order dated 28.02.2012. Moreover, even if the enquiry is held to be fair and proper then also the

necessary scrutiny of the records of the enquiry conducted by the management leading to order of punishment was required to be made by the learned

Tribunal within the scope of section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act of 1947").

29. Admittedly, the petitioner was removed by exercising power under clause 28 of the Certified Standing Order. Clause 27 provides for the

procedure dealing with the cases of misconduct and clause 28 of the Certified Standing Order deals with the special procedure to remove or discharge

a workman without following the procedure under clause 27.

“27.0 PROCEDURE FOR DEALING WITH THE CASES OF MISCONDUCT”

28.0 SPECIAL PROCEDURE IN CERTAIN CASES:

Where a workman has been convicted for a criminal offence in a Court of Law or where the Chairman/Managing Director of the Company is satisfied, for

reasons to be recorded in writing, that it is inexpedient or against the interest of security to continue to employ the workman, the workman may be removed or

discharged from services without following the procedure laid down in Standing Order No. 27.

30. Clause 27 of Certified Standing Order deals with termination/dismissal of employees while dealing with the cases of misconduct as per procedure

laid down therein. Clause 28 deals with removal or discharge of a workman from service without following the procedure laid down in clause 27 of the

Standing Order when a workman is convicted for a criminal offence in a court of law or where the chairman or managing director of the company is

satisfied, for reasons to be recorded in writing, that it is expedient or against the interest of security to continue to employ the workman.

31. This Court is of the considered view that if an employee is to be removed on the serious conduct of impersonation, a regular departmental enquiry

in terms of Clause 27 is required to be conducted and if the employee has been convicted in a criminal case in a court of law or where the chairman

or managing director of the company is satisfied that it is expedient or against the interest of security to continue to employ the workman, he may

remove an employee by assigning reasons. This Court is of the considered view that power cannot be exercised in terms of clause 28 of the Certified

Standing Order by holding that the employee is guilty of impersonation without conducting a regular departmental enquiry in terms of clause 27 of the

Certified Standing Order or without conviction in any criminal case.

32. The perusal of the order of removal reveals that the petitioner has been removed by holding the petitioner guilty of impersonation. The order of

removal of the petitioner is quoted as under: -

“Sub: Removal from the services of the company.

Where as in the enquiry conducted with your knowledge and participation and from the police verification report received from the S.P. Dhanbad, it has been

established that you have entered into the employment at Bhatdee Colliery in the name of Smt. Rohni Deswalin W/o Kali Deswali. From the enquiry, it has been

established that you entered into employment by impersonating Smt. Rohini Deswalin W/o Kali Deswali giving your false identity, parentage etc and working as

Security Gurad at Bhatdee Colliery.

You are thus apart from committing offence of forgery and giving false declaration of your name and other details of the family members in the record by

fraudulent manner and thus impersonating also, not entitled to continue in the employment of the company as Smt. Rohni Deswalin by the act of such

impersonation which is against the interest of the security of the company.

Thus, in the interest of the Company, you are hereby removed from rendering duties in the company under clause 28 of the Certified Standing Orders of the

Company, with immediate effect being impersonator and entered into employment by fraudulent manner in the name of actual employee Smt. Rohni Deswallin.

Do take note your restoration of duties so long as impersonator will not confer upon any right and the company reserves its right to take other appropriate action

as available in the law before the proper forum.

This is issued with the approval of the Competent Authority.

33. In the present case, it is an admitted position that the management had invoked clause 28 of the Certified Standing Order to remove the petitioner

by holding that the petitioner committed forgery, gave false declaration and impersonated Rohini Deshwalin w/o Kali Deshwali. It was observed in the

order of removal that the enquiry was conducted with the knowledge and participation of the petitioner and from the police verification report received

from the Superintendent of Police, Dhanbad, it was established that the petitioner had entered into the employment at Bhatdee Colliery in the name of

Smt. Rohini Deshwalin w/o Kali Deshwali.

34. Clause 28 of the Certified Standing Order reveals that for the purposes of exercising power under Clause 28 of Certified Standing Order, regular

enquiry in terms of Clause 27 is not required. However, in the present case the learned Tribunal held that the enquiry was fair and proper vide order

dated 28.02.2012.

35. At this stage, it would be useful to refer to the so-called enquiry report dated 30.10.1999 which was held to be fair and proper by the learned

Tribunal to see the findings of the enquiry report. In the enquiry report it was observed that the enquiry team had interrogated not only the petitioner

but also her husband Kali Deshwali (ex-driller of Bhatdee colliery) on 16.10.1999 at area office, and he had stated that Smt. Rohini Deshwalin had

worked as a wagon loader at Bhatdee for 2-3 months and then she became mentally disturbed and disappeared for 12 to 13 years and her

whereabouts could not be gathered. He also stated that Rohini Deshwalin had come back 2 to 3 years back. Kali Deshwali further stated that the

concerned workman i.e. the female employee (the petitioner) who was working as security guard in the establishment of the management was not

Rohini Deshwali, instead she was Bhatini, who was working as an imposter in the place of his wife. The conclusion of the enquiry report reveals that

as per the report both the statements enclosed at Flag A & B of the report appeared to be contradictory and doubtful, hence it was opined that the

case be referred to District Authority for police verification to ascertain the genuineness of the existing Rohini Deshwali working as female security

guard at Bhatdee colliery. Upon perusal of the enquiry report which is dated 30th October 1999, it is evident that there is no finding that the petitioner

had impersonated herself, rather, no final conclusion has been drawn in the enquiry report. The contents of the enquiry report is quoted as under:-

“Enquiry Report on suspected imposter employee Smt Rohini Deshwali, Security Guard working at Bhatdih Incline, WJA

As directed by D(P) vide his noting dated 30.9.99, Industrial Engg had conducted in-depth enquiry in respect of Smt. Rohini Deshwali, Security Guard, Bhatdee

Colliery, WJA and observations of detailed enquiry are as follows:

Enquiry team consisting of Industrial Engg, Personnel executives of HQ & WJA had interrogated Smt Rohini Deshwali (suspected imposter) in presence of female

security guard on 15.10.99 at Mahuda Office, WJA and again on 16.10.99 at Area Office of Western Jharia, in presence of

GM, WJA. Besides this alleged Smt Rohini Deshwali, team also interrogated with Sri Kali Deshwali, ex-driller, Bhatdee Colliery and complainants mother, i.e.

Smt. Rohini Deshwali (w/o Sri Kali Deshwali).

During enquiry the team observed that so called Rohini Deshwali, security guard was initially working with Keworah Group of mines as a wagon loader and

after nationalisation she was absorbed in Oct, 1971 as a shale picker (appointment letter not traceable) and later on was authorised to work as a security guard

at Bhatdee colliery vide letter dated 20.11.92 (letter enclosed at X). During enquiry the team learnt that this suspected security guard had married twice. From

her first husband late Parna Deshwali, who had died about 30-35 years back, she had one son named Sri Jetla Deshwali (who will be around 19-20 years now)

and then had married Sri Noonu Shah who has four sons and four daughters. (details pl ref Flag- A).

Further it is pertinent to mention here that as per ID Register and old Form B (unsigned record) the alleged Smt. Rohini Deshwali is a wife of Sri Kali Deshwali

whereas she denies to recognise Sri Kali Deshwali as her husband who was also ex-employee of Bhatdee (details pl ref Flag-B). Moreover, thumb impression

made by Smt. Rohini Deshwali in Form-B during 1971 and recently taken in presence of enquiry team do not match each other (details pl ref Flag-A & B).

Team when further interrogated Sri Kali Deshwali, ex-driller, Bhatdee colliery on 16.10.99 at Area Office, WJA, he stated that his wife Smt Rohini Deshwali (who

was also present with him) had worked as a wagon loader at Bhatdee for 2-3 months after nationalisation and then she became mentally disturbed and

disappeared for 12-13 years and her whereabouts could not be gathered. Just 2-3 years back, however, he could locate his wife at Bokaro. Sri Kali Deshwali

further stated that present the female employee who is working as a security guard at Bhatdee is not Rohini Deshwali instead she is Bhatini, who is working as an

imposter in place of his wife. (Statement enclosed at Flag-C).

Since both the statements endorsed at Flag-A & B appear to be contradictory and doubtful and hence the case may be referred to the District Authority for police

verification to ascertain the genuineness of the existing Rohini Deshwali working as female security guard at Bhatdee Colliery.

Submitted to D(P) for his kind perusal.

36. As suggested in the enquiry report, the matter was referred for police verification and the police verification report was received vide memo no.

348 dated 06.03.2000 which was marked as exhibit- M/8. It was reported by the police that Bhatni Deshwalin, wife of Parna Deshwali of village

Belakhanda, Post " Bhatdee Colliery had been working in the name of Rohini Deshwalin (Petitioner) by changing her name. Immediately thereafter,

the petitioner was removed from service in terms of the order dated 18.03.2000 and the letter of removal also refers to the police verification report.

37. Thus, the enquiry report did not reach any conclusion and the matter was sent for police verification and the order of removal was passed

primarily on the basis of police verification report. Letter of removal of the petitioner has been placed on record which is dated 18.03.2000 wherein it

has been mentioned that an enquiry was conducted with the knowledge and participation of the petitioner and from police verification report received

from Superintendent of Police, Dhanbad it was established that the petitioner entered into employment in the name of Smt. Rohini Deshwalin, wife of

Kali Deshwali and that the petitioner had obtained employment by impersonating Rohini Deshwalin, wife of Kali Deshwali and had given false identity,

parentage, etc. The letter of removal also reveals that it was recorded therein that apart from committing offence of forgery and giving false

declaration of name and other details of family members in the record by fraudulent manner, her continuation in service was against the interest of the

security of the company.

38. The order of removal from service as quoted above, clearly reveals that there is serious allegation of impersonation and also finding against the

petitioner but she has been removed with immediate effect by invoking Clause 28 of the Certified Standing Order which enables the management to

remove a workman without following the procedure of disciplinary enquiry under clause 27. Neither the enquiry report gave any conclusion that the

petitioner was an imposter nor any enquiry into the alleged misconduct of impersonation was done as per the procedure laid down under clause 27 of

the Certified Standing Order. The enquiry officer could not reach to any conclusion by recording that there were inherent contradictions. The enquiry

report also records that the old Form B register was an unsigned record and the enquiry officer did not rely on the same and could not reach to a

definite conclusion on the materials placed at the stage of enquiry.

39. Although the enquiry report did not reach to any conclusion with regards to guilt of the petitioner, but the learned Tribunal held that the enquiry

was fair and proper and without even looking at the enquiry report mechanically upheld the removal of the petitioner by recording that this was purely

a case of fraudulent employment by the present workwoman Bhatni Deshwali through impersonation of real workwoman Rohini Deshwali w/o Kali

Deshwali. Consequently, removal of the petitioner Rohini Deshwali/Bhatni Deshwali from the service by the management of M/s B.C.C.L.,

Western Jharia Area was held to be quite legal and proper. The finding of the learned Tribunal is at paragraph 9 of the impugned award which is

quoted above.

40. The records further reveal that as a sequel to the observation made by the enquiry officer, a police verification was sought for and the police

submitted the verification report dated 06.03.2000 observing that the petitioner was Bhatni Deshwali wife of Parna Deshwali and she had changed

her name to Rohini Deshwali and was working in the colliery. The report was straightaway followed by the order of removal of the petitioner dated

18.03.2000 holding that the petitioner has impersonated herself as Rohini Deshwali wife of Kali Deshwali and her continuation in service of the

company was against the security of the company and by exercise of power under Clause 28 of the Certified Standing Order the petitioner was

removed from service with immediate effect holding that the petitioner entered into employment in a fraudulent manner. The finding was recorded

without any enquiry in terms of clause 27 of the Certified Standing Order. Admittedly, nobody ever appeared before the enquiry officer who claimed

herself to be Rohini Deshwali wife of Kali Deshwali.

41. In view of the aforesaid, this Court is of the considered view that it cannot be said that the petitioner was found guilty as per the enquiry report and

the police verification report undertaken after submission of the enquiry report cannot form a part of the enquiry report. This Court finds that the

enquiry report did not reach any conclusion and ultimately the petitioner was removed from service by referring to the police verification report and at

no point of time any opportunity was granted to the petitioner after receipt of police verification report.

42. Having held that the enquiry report did not hold the petitioner guilty of impersonation, this Court is of the considered view that even otherwise,

once the enquiry on the basis of which the management dismisses an employee is held to be fair and proper, the Court is required to scrutinize the

material in terms of section 11-A of the Act of 1947 and still the Court can come to a different finding.

43. This Court finds that the learned Tribunal has completely failed to exercise its power in terms of section 11-A of the Act of 1947 and has

completely ignored that the enquiry report did not reach to any conclusion and no opportunity was granted to the petitioner at the stage of police

verification or even after the police verification. The learned Tribunal failed to consider that the petitioner was found guilty of impersonation by the

management for the first time only through the order of removal. This Court is of the view that the order dated 18.03.2000 is not a simpliciter order of

removal. It is an order holding the petitioner guilty of impersonation. Admittedly, no departmental proceeding in terms of Clause 27 of the Certified

Standing Order was initiated against the petitioner and it is also an admitted fact that no charge-sheet was ever issued to the petitioner so as to even

initiate a proceeding under Clause 27 of the Certified Standing Order.

44. This Court finds that while invoking Clause 28 of the Certified Standing Order, the petitioner could not have been held to be guilty of impersonation

without a departmental proceeding. Admittedly, the petitioner has not been found guilty of impersonation in the enquiry report or by any criminal Court

or by regular departmental proceedings under Clause 27 of the Certified Standing Order. The learned Tribunal failed to consider that invocation of

Clause 28 of Certified Standing Order and simultaneously holding the petitioner guilty by the said order, is ex-facie improper exercise of power. This

aspect of the matter has also been overlooked by the learned Tribunal. The security reason which has been shown in the impugned order of removal is

only that the petitioner has been found guilty of impersonation.

45. The learned Tribunal, while upholding the order of removal, has also referred to the verification report of the concerned Superintendent of Police

and has ignored the fact that enquiry report could not arrive at any conclusion on the basis of materials which were available with the management

and therefore, the enquiry report called upon the management to call for the police verification report. The learned Tribunal has completely ignored the

enquiry report and also the fact that the removal of the petitioner was not on the basis of enquiry report, but on the basis of police verification report.

The complainant who claimed to be son of Rohini Deshwali wife of Kali Deshwali claimed that his mother had gone somewhere and she suddenly

appeared after a long time and a few years before but at no point of time his mother whom he claimed to be actual Rohini Deshwali appeared at the

stage of enquiry or at any stage whatsoever.

46. This Court also finds that it was the specific case of the petitioner that she was never the wife of Kali Deshwali but was wife of Parna Deshwali

and had performed 2nd marriage with Nunu Sah in the year 1978 or 1980 and her records revealed that she had given the name of her father in her

identity and not the name of her husband and subsequently, in the service records the name of her husband Nunu Sah was inserted upon her

application. It was also her case that even her service excerpts did not contain the name of her husband. The certificate /identity card issued to her

also revealed the name of her father and not the name of her husband and so far as Form B register is concerned, it was unsigned. It was certainly

because of these contradictions with respect to the identity of the petitioner that the enquiry officer could not come to a definite conclusion. The

service excerpts were issued to the petitioner none other than the management as back as on 19.07.1987 but no name is written with regard to her

husband. There is another subsequent Form-B found in the records which was marked as Exhibit W-3 but the same does not find mention in the

enquiry report rather the enquiry report reveals that the form B (old record) is unsigned and the enquiry report did not rely on form B to come to any

conclusion. The various office orders which have been placed on record also do not disclose the name of the husband of the petitioner including her

service excerpts which is certainly based on records available with the management. The name of the husband of the petitioner as Nunu Sah and

son's name Md. Ishlam and Gulam Mushthfa were entered at her instance vide exhibit W-7 in Form F.

47. This Court is of the considered view that it cannot be said that it was an admission on the part of the petitioner that she was an imposter. This

Court finds that certainly there was admission on the part of the petitioner that she was not the wife of Kali Deshwali, but the same itself was not

sufficient to hold that she was an imposter, inasmuch as, it was never her case that she was working as Rohini Deshwali wife of Kali Deshwali,

rather her case was that she was Rohini Deshwali wife of Parna Deshwali and performed second marriage with Nunu Sah. It was also her case that

in various documents including service excerpts, the name of her husband did not appear and in certain documents the name of her father was

appearing.

48. The management has caused grave injustice to the petitioner while removing the petitioner under clause 28 of the Certified Standing Order and

simultaneous holding her guilty of impersonation, falsifying the records etc. without any finding of guilt in the enquiry report and without any conviction

in any criminal case. No enquiry in terms of the procedure under clause 27 of the Certified Standing Order was undertaken by the management

against the petitioner and the so-called enquiry report did not find the petitioner guilty.

49. So far as the judgment passed by the Hon'ble Supreme Court reported in (2004) 2 SCC 105, (R. Vishwanatha Pillai Vs. State of

Kerala and others) as relied upon by the learned counsel appearing on behalf of the management is concerned, the scrutiny committee constituted by

the orders of the Hon'ble Supreme Court in the case of "Kumari Madhuri Patil Vs. Addl. Commr., Tribal Development" reported in

(1994) 6 SCC 241 had given a finding that the appellant of the said case belonged to a forward caste and he obtained appointment against a seat

reserved for Scheduled Caste category on the basis of a caste certificate and the caste certificate itself was cancelled by the Caste Scrutiny

Committee. The Hon'ble Supreme Court held that the safeguard of affording an opportunity to defend, as provided under Article 311 of the

Constitution of India, stood complied with and instead of departmental enquiry the enquiry was conducted by the Caste Scrutiny Committee who was

better equipped to examine the question regarding validity or otherwise of the caste certificate and due opportunity was given to the appellant to

defend himself. The Hon'ble Supreme Court ultimately held that such appointment was no appointment in the eyes of law and therefore protection

under Article 311 of the Constitution of India could not be claimed.

This Court finds that at no point of time either in criminal proceedings or in departmental proceedings, the petitioner was granted due opportunity to

prove her identity, inasmuch as, at no point of time any departmental proceeding was initiated and the so-called enquiry did not reach to a definite

conclusion leaving it for the police verification to be conducted and upon receipt of the police verification report the petitioner was straightaway

removed from service by holding that she had impersonated herself. The authorities exercised power under Clause 28 of the Certified Standing Order

and admittedly no departmental proceedings in terms of Clause 27 of the Certified Standing Order was conducted. The said judgment does not apply

to the facts and circumstances of this case.

50. In the judgment passed by Hon'ble Division Bench of this Court in LPA No. 420 of 2017 (Jamuna Harijan @ Jamuna Ahirwar Vs. Central

Coal Fields Limited and others), there was an enquiry with regard to allegation of impersonation and enquiry was conducted after giving adequate

opportunity of being heard and enquiry report was prepared wherein the allegation was proved. The said judgment does not apply to this case. In the

enquiry report of the present case, no finding was arrived, rather the enquiry officer did not reach at a conclusion and asked the management to call

for a police verification report.

51. In view of the aforesaid findings, this Court is of the considered view that the learned Tribunal failed to scrutinize the records properly and failed to

exercise power under section 11-A of the Act of 1947 in accordance with law. Accordingly, the impugned award passed by the learned Tribunal

upholding the order of removal of the petitioner is perverse and is set-aside. Consequently, the order of removal of the petitioner dated 18.03.2000 is

also set-aside.

52. As per the case of the petitioner, she has attained the age of superannuation on 10.01.2009. The reference under the Act of 1947 was made vide

notification dated 19.09.2001. The petitioner has not stated before the learned Tribunal that the petitioner was not gainfully employed during the period

she remained out of employment.

53. Considering the totality of facts and circumstances and also the fact that the petitioner had already put in 29 and ½ years of service and had an

unblemished record, the petitioner is held entitled to 50% back wages from the date of reference till she attained the age of superannuation with all

consequential benefits.

54. This writ petition is according allowed in the aforesaid terms.

55. Pending interlocutory application, if any, is closed.