SPA (Stage-I) 2.7.2023 (Typing)

Shift-01 Paragraph

Contending that in spite of such payment, the respondent company had neither shown any progress in the work nor any inclination, therefore, the State Government filed two separate applications in the arbitration cases in which the interim awards were passed for invocation of the Bank Guarantees on which the learned Arbitrator did not pass any specific order for which the same lapsed and, therefore, the amounts of the interim awards were rendered unsecured. Instead, the learned Arbitrator proceeded with the hearing of the cases. The State Government also took exceptions of the receipt of the payment of the amount of the interim awards by draft issued in the name of the Arbitrator. It further fell aggrieved by the permission granted by the Arbitrator to the respondent company to introduce additional documents in one of the arbitration proceedings, i.e., 26.08.1999 of 2001 pertaining to Micro Hydel Project. The State Government asserting that the above conduct and actions of the Learned Arbitrator were opposed to the fundamental essentials of impartiality and neutrality of an Arbitral Tribunal filed separate applications under Section 14 of the Act in all the seven cases in the court of the learned Deputy Commissioner, being the principal civil court of original jurisdiction of the District. Noticeably six of such applications were filed on 13.11.2003 and the one pertaining to Arbitration case No. 02/20/99 of 2001 on 22.12.2003. According to the respondent-company, the works under the Contract could not be completed within time due to the lapses on the part of the State Government and, therefore, noticing the lack of will on its part to either fulfil its reciprocal promise or complete the project, the respondent-company invoked the arbitration clause in the contract. It has asserted that the Chief Justice by order dated 16.03.2001 appointed the respondent No. 2 as the sole arbitrator on the consensus of the parties. After the learned Arbitrator entered upon the reference, the respondent-company filed its claim statement. Following a conciliation between the parties as suggested by the Arbitral Tribunal, the Secretary, conveyed the consent of the State Government to the passing of an interim award in the interest of expeditious completion of the project. Thereafter on 08.12.2001, the learned Arbitrator passed interim awards in the above two cases and fixed a period of 15 days for payment on the submission of Bank Guarantees. The amount awarded was belatedly paid though the respondent-company had submitted the Bank Guarantees in time. It, however, in order to

establish its bona fide, started the works at the site by making its own investments. As the Bank Guarantees were scheduled to expire on 28.02.2003, left with no alternative, the State Government filed applications before the learned Arbitrator-praying for invocation or extension of the validity thereof. Though in the interim award, the learned Arbitrator had granted leave to the State Government to approach the Arbitral Tribunal for recovery of the amount awarded in the event of the failure on the part of the respondent-company to complete the project within the date fixed, no order was passed on the applications as a result whereof, the Bank Guarantee lapsed on 28.02.2003. The filing of the applications before the learned Deputy Commissioner, was justified by asserting that it was the principal civil court of original jurisdiction of the concerned District. The maintainability of the applications under Articles 226/227 of the Constitution of India was assailed on the ground of non-exhaustion of alternative remedy before the learned court below contending that any decision on the merits of the contentions raised in the writ proceedings would amount to prejudging the issues subjudice before the learned lower court. The learned Single Judge has held that notwithstanding the language and expression deployed in the applications under Section 14 of the Act, the contention in sum and substance being that the learned Arbitrator by his conduct and actions pertaining to invocation of Bank Guarantee and the receipt of the amounts has displayed a conduct giving rise to a justifiable doubt as to his impartiality and independence, it is the Arbitrator under the scheme of the Act who is the appropriate forum to decide the said question. The learned Single Judge, therefore, held that as under Section 13 the Arbitrator has been empowered to decide on a challenge made with regard to his independence and impartiality, Section 14 cannot, be stretched to confer powers on the court to decide on such a challenge brought before, if on grounds contemplated by concerned Section of the Act. Having held so, the Learned Single Judge interfered with the proceedings pending before the learned Deputy Commissioner. Adverting to the facts, the learned senior Counsel contended that the Arbitrator having been proposed by the State appellant and accepted by the respondent-company, it was estopped from questioning his fairness and neutrality. According to the learned senior Counsel, the interim award was passed as consented to by the Secretary of Power Department, payment where under was much delayed to the detriment and prejudice of the respondent-company who in the meantime had invested money and materials for

furthering the works. Criticizing the State appellant of having adopted a non-cooperative attitude. Mr. Sukhwinder urged that it did not lie in its mouth to allege bias and want of impartiality having approached the Arbitrator for extension or invocation of the Bank Guarantees on the eve of the expiry thereof. The statements of objects and reasons of the Act highlights the main objectives thereof which, inter alia, are to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of specific arbitration, to ensure that the Arbitral Tribunal remains within the limits of its jurisdiction and to minimize the supervisory role of courts in the arbitral process. The preamble of the Act illustrates that it is a legislation to consolidate and amend law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.

Shift-02 Paragraph

In the counter affidavit, filed on behalf of respondents 1 to 3, it is stated that since the petitioner is a workman he has an effective and efficacious alternative remedy under the provisions of the Industrial Disputes Act. Respondents, while denying that the appellate authority had dismissed the petitioner appeal in a cryptic manner, would state that the 1S respondent, vide proceedings dated 23-08-1999, had considered all the petitioners contentions judiciously, found no extenuating circumstances warranting reconsideration of the order of the disciplinary authority, had assessed the punishment awarded by the disciplinary authority and found it to be proportionate to the gravity of misconduct and had thereafter, while dismissing the appeal, confirmed the punishment awarded. With regard to the earlier service record of the petitioner, it is stated that an unblemished record does not entitle the petitioner to commit fraud or to claim immunity against being punished. It is stated that despite being given 15 day time to give reply to the charge sheet, the petitioner did not respond thereto before 12-07-1998 but later on 24-07-1998 had sought 30 day time to submit his reply to the charge sheet. Even within this extended period of 30 days, the petitioner did not furnish his reply to the charge sheet. Respondents would allege that this request, for being supplied the list of witnesses and documents, was dilatory, that diversionary tactics had been adopted by the petitioner and that, in the absence of an explanation to the charge sheet, the disciplinary authority had decided to hold an enquiry. It is stated that the petitioner had renewed his request for being issued a list of documents and he was advised, to attend the enquiry and obtain the list of witnesses and documents. The petitioner was provided all the required material in the first sitting of the enquiry itself on 26/10/1998 and that no prejudice had been caused to the petitioner in this regard. Respondents would contend that ordering of an enquiry is not an end but a means for reaching the end and the disciplinary authority had no option but to order for the domestic enquiry, to ascertain the truth of the allegations levelled in the charge sheet, in the absence of petitioner written reply. The enquiry officer had provided ample opportunity to the petitioner to defend his case and that the opportunity given to him by the enquiry officer was availed by the petitioner who participated during the enquiry and defended his case effectively. It is contended that, even before the enquiry officer, the petitioner had not stated as to how prejudice had

been caused to him in this regard. Respondents would deny the allegations of mala fides and bias against the enquiry officer and the disciplinary authority. They would state that they had waited for nearly two months, after the charge sheet was issued, for the petitioner to submit his reply thereto and it is only thereafter that the disciplinary authority had ordered for an enquiry. Respondents would state that the petitioner, having failed to submit his explanation to the charge sheet cannot contend, more so in the absence of any specific provision in this regard, that failure to furnish the list of witnesses and documents, prior to the commencement of the enquiry, had caused him prejudice and had denied him the opportunity of submitting his reply to the charge sheet. Respondents would contend that the petitioner had participated in the enquiry, had availed the opportunity afforded to him, had cross-examined the management witness at length and had adduced evidence in his defense. It is stated that the 3rd respondent informed the petitioner, vide letter dated 03/10/1998, that the enquiry was fixed on 26/10/1998. In the present case the executing Court had inherent jurisdiction to sell the property. We have assumed that Section 35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-observance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of Section 35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situations may be visualized when the judgment-debtor does not seek to take the advantage of the benefit conferred on him under Section 35 of the Act. Admittedly, there was an inspection by the Inspectors and on the basis of the report submitted, the disciplinary proceeding was initiated. The petitioner repeatedly asked for a copy of the report on the basis of which charges were framed against him. The report was denied to him on the ground that the same was confidential in nature. It is well settled that a report preceding the inquiry with reference to which or on the basis of which the disciplinary proceeding was started should be furnished to the delinquent to enable him to prepare his defense. It is not open to the management, the employer, to say that since the witness or the document on which it would rely would be disclosed to the delinquent, he will suffer no prejudice. It is difficult to postulate the manner in which the delinquent would have been benefited by the supply of the report and the extent to which he has been

prejudiced by the denial thereof. He should have been supplied the relevant portion pertaining to the allegation which was the subject-matter of the charge. We are of the view that the denial of the management to supply a copy of the report so far as that related to the allegations infracted principles of natural justice. It has been held that where principle of natural justice is violated, the Court need not consider if there is prejudice because violation of principles of natural justice is prejudice.

SPA (Stage-2) 26.11.2023 Shorthand

As there is no express provision prohibiting reservation to service candidates in respect of admission to postgraduate degree courses, it was argued that providing for such reservation by the State Government is not forbidden in law. Further, there are precedents of this Court to recommend that such an arrangement is acceptable as a separate channel of admission for in-service candidates. In the first place, the decisions pressed into service have considered the provisions regarding the admission process governed by the regulations in force at the relevant time. The admission process in the present case is governed by the regulations which have come into force from the academic year 2014-15. This regulation is a self-contained code. In contraindication, however, 50% of seats are earmarked for the postgraduate diploma courses for in-service candidates, as is noticeable from the clause. If the regulation planned a similar separate channel for in-service candidates even concerning postgraduate degree courses, that position would have been made clear in regulation.In our opinion, this statement certainly does not constitute the ratio of the judgment. The judgment is in no way dependent upon these observations. Moreover, those observations are in connection with all india selection and do not have similar force when applied to selection from a single State. These observations, however, indicate that the weightage to be given must be the bare minimum required to meet the situation. In these cases, we are of the view that the authorities might well consider giving weightage up to a maximum of 5% of marks in favour of in-service. The actual percentage would certainly have to be left to the management. We also clarify that these recommendations do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year.The regulations have been framed by an expert body based on experience and including the necessity to consider the services and experience gained by the in-service candidates is notified remote and

challenging areas in the State. The proviso prescribes the measures for giving incentive marks to in-service candidates who have worked in remote and difficult areas in the State. That can be termed as qualitative aspect for determining their merit. Even the quantitative factor to calculate the merit of the eligible in-service candidates is spelled out in the proviso. Accordingly, some weightage marks given to entitled in-service candidates linked to performance in NEET. Most educational activities, including admissions, have two aspects the first agreements with the adoption and setting up of the minimum standards of education. The objective of prescribing minimum standards is to provide a benchmark of the ability and quality of education revealed by various educational institutes in the complete country. Realizing the ample variety of the nation wherein levels of education fluctuated from lack of even basic primary education to institutions of high excellence, it was assumed desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education, and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements, it was essential to lay down a uniform minimum standard for the nations.

SPA (Stage - II) 26.11.2023 Shorthand

Apart from that it is the case of the petitioners stating that it is the exploitation by the Government. It is also the case of the petitioners whose selection process is already over and it is only to take charge in the post, the time was postponed, since the election process has intervened and therefore, after the election process the respondent ought to have given effect to the appointment orders. Since it is a matter relating to administrative action resulting in civil consequences, as per the judgment of the Hon'ble Apex Court the petitioners are entitled to a notice on principles of natural justice, which has not been followed. According to the first respondent, there are seven State Transport undertakings functioning in the state. He admits that under the lifting of the ban on recruitment, the respective cooperations have selected candidates for appointment, obtaining the list from Employment Exchange and in some cases, the provisional appointment orders have also been sent to the selected candidates. It is also the case of the first respondent that the orders issued, are not appointment orders but they were all provisional subject to certain conditions. While it is true that due to the intervention of the assembly election, the petitioners were directed to come after receipt of information, it remains a fact that after the election, the respondents have never given any intimation for verification of the certificate. It is the case of the petitioner Union that the Hon'ble Supreme Court has directed, the workers to be present before the Transport Corporation, for verification however, there have been some unfortunate incidents by the management and the management ultimately reported to the Hon'ble Supreme Court. According to the learned Senior Counsel, the order issued by the second respondent offering to employ a Driver or Conductor to the petitioners, is an appointment order, since the same is not for a casual appointment and the petitioners are not seeking to be appointed as casual labourers. It is in this regard, that the learned counsel would submit that even under the impugned, it is clearly stated that once appointment orders are sent to the selected

candidates, the term provisional appointments stated therein cannot take away their right to claim the post, especially in the circumstance that the appointments are made to the regular post. Therefore, the word provisional appointment is only a misconception and the petitioners are not merely selectees but they are appointees in the legal sense of the term and therefore, civil consequences have occurred to them. They were not allowed to join duty which is only consequential to the appointment orders issued, not by fault on the part of the petitioners, but due to the intervention of the election process and according to the learned Senior Counsel, even the Election Commission has recognized the appointment but only directed the appointees to join after the election process is over. On the other hand, by giving preferential treatment to a person who was not appointed by due process of law and who has been subsequently retrenched, who have been appointed to regular vacancies by following the procedures established by law, will only amount to acting against the principles of law as such and will jeopardize the interest of the regularly appointed persons like that of the petitioners.