



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR
WRIT PETITION NO.7053 OF 2020 (L-TER)

BETWEEN:

M/S FOURESS ENGINEERING (INDIA) LIMITED
PLOT NO.2, 2ND PHASE,
PEENYA INDUSTRIAL AREA
BENGALURU-560 058
REP. BY ITS SENIOR MANAGER-HRD
AND ADMINISTRATION
SRI K.B.DEEPAK

...PETITIONER

(BY SRI.S.N.MURTHY., SR.COUNSEL FOR SRI.
SOMASHEKAR.,ADVOCATES)

AND:

SRI T K MUNISWAMY
S/O SRI KRISHNAPPA
MAJOR
C/O VENKATASWAMY REDDY
DOOR NO.152/3 (NEW)
MARATHALLI
BENGALURU-560 032.

...RESPONDENT

(BY SMT.MAITREYI KRISHNAN., FOR SRI.K.S.SUBRAMANYA.,
ADVOCATES)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 23.05.2018 IN SERIAL APPLICATION NO.8/2002 (IN
I.D.NO.28/2001) AT ANNEXURE-Q PASSED BY THE HONBLE
INDUSTRIAL TRIBUNAL, BENGALURU AND GRANT PERMISSION
TO DISMISS THE RESPONDENT FROM SERVICE AS PER THE
PROPOSED DISMISSAL ORDER DATED 13.03.2002 AT
ANNEXURE-D.





THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This petition is filed by the petitioner-Management seeking to quash the impugned order dated 23.05.2018 passed in Serial Application No.8/2022 (I.D.No.28/2001), by the Industrial Tribunal, Bengaluru (for short, "the Tribunal") vide Annexure-Q, and consequently, to grant permission to dismiss the respondent from service as per the proposed dismissal order dated 13.03.2002 vide Annexure-D.

2. Brief facts of the case are as under:

Petitioner is a public limited company. The respondent was working as operator whose last drawn salary was about Rs.5,724/- per month. Petitioner submits that the settlement was signed on 30.08.1995 under Section 18(1) of the Industrial Disputes Act, 1947 (for short, 'ID Act'), and nearly 250 workmen have signed the



settlement. Few of the workmen did not sign the settlement dated 30.08.1995 however, they were extended the benefit of settlement. The respondent is one such workman who has signed the settlement and enjoyed the benefit of settlement.

3. It is the case of the petitioner that the respondent along with few other workmen instigated and brought out an illegal strike from 16.07.1998, contrary to Clause-16 of the terms of the Settlement Agreement dated 30.08.1995. The illegal strike continued till 03.01.1999. Petitioner-Management received a complaint on 16.07.1998 from Sri Uma Mahesh Naidu/AW.2 that the respondent and other workmen had gathered in front of the factory gate and were obstructing the movement of men and material of the factory.

4. In view of the same, the petitioner got issued notices dated 16.07.1998 to 104 workmen including the respondent. Despite notice, the respondent did not report



for duty, continued illegal strike. Again, a letter was sent on 27.07.1998 asking the respondent and others to report for duty. However, many of the workers reported for duty, but the respondent did not. On 29.07.1998, the respondent formed a boisterous group along with others to prevent the workmen from going to work, further prevented the workers and other staff who are not interested in joining strike from continuing their work. Hence, in this regard, charge sheet-cum-notice of inquiry dated 29.09.1998 was issued to the respondent. In this connection, a meeting was conducted in the chambers of Hon'ble Deputy Chief Minister on 01.01.1999 and after prolonged discussion, workmen decided to call off the strike from 04.01.1999, and enquiry was held by the Enquiry Officer, Sri H.S. Prasad, and the respondent was represented by one Sri K. Chandrashekar. After the enquiry, a report was submitted against the respondent, finding him guilty of committing various acts of misconduct enumerated in the charge sheet. A second show cause



notice was issued and after consideration of the reply, the petitioner passed dismissal order dated 13.03.2002 vide Annexure-D.

5. The industrial dispute was pending before the Tribunal in I.D.No.28/2001 pertaining to strike and some of the misconduct committed by the respondent connected to the dispute regarding illegal strike. The respondent filed statement of objection. The domestic enquiry was tried as preliminary issue, the enquiry was set aside and the same being challenged in W.P.No.27355/2005, this Court dismissed the writ petition upholding the order of the Labour Court in setting aside the enquiry.

6. Thereafter, the evidence was recorded. The respondent also adduced his evidence. After hearing the parties, the Tribunal vide its order dated 23.05.2018, rejected the application refusing to grant permission to dismiss the respondent. Aggrieved by this order dated



23.05.2018, the present writ petition is filed by the Management.

7. It is the vehement contention of Sri S.N. Murthy, learned Senior Counsel appearing along with Sri Somashekhar, learned counsel for the petitioner, that the Tribunal failed to take note of the fact that there is limited scope of interference in an application filed under Section 33(1)(b) of the I.D.Act seeking permission to dismiss the respondent as per the proposed order of dismissal. It is due to the serious acts of misconduct by the respondent in illegally going on strike for six months from 16.07.1998 to 01.01.1999, the entire industry of the petitioner was paralyzed, resulting in colossal losses. The Tribunal has not appreciated the facts and law on the point which has premised its order in the guise of appreciating a criminal trial. Therefore, it is vehemently contended that the points framed by the Tribunal were not correct and it fell into an error in answering them. The Tribunal ought to have considered as to whether the Management had



established a *prima facie* case to grant permission to dismiss the respondent as per the proposed dismissal order and whether the dismissal order amounts to victimization, which has not been done. Therefore, the impugned order of the Tribunal is not justified and is liable to be set aside.

8. It is further contended by the learned Senior Counsel that the Tribunal committed an error apparent on the face of the record, disbelieving the deposition of A.Ws.4 to 6 on the ground that they are all employees and based on the partisan witnesses, it is quite natural they depose on behalf of the Management. The Tribunal has committed an error in discrediting the evidence of the witnesses in favour of the Management. He further contends that the Management cannot examine any other witnesses who are not parties or eyewitnesses to the incident, as it would only be the employees within the industry who can be relied upon as witnesses, none other than the workers.



9. It is further contended by the learned Senior Counsel that the observations of the Tribunal that the settlement dated 30.08.1995 is not a valid settlement and that the strike cannot be termed as illegal are contrary to the provisions of Section 18(1) read with Section 2(p) of the I.D.Act. He further contends that nobody disputed the settlement and there was no pleading to that effect. He further contends that once workers have agreed to issue 14 days' notice before going on strike, it is their duty to do so, and any strike without such notice is contrary to law and is, therefore, illegal.

10. It is further contended by the learned Senior Counsel that the observations made by the Tribunal at paragraph-38 of the impugned order with regard to the benefit of doubt should go to the workers, are not tenable, particularly, when the respondent has indulged in serious acts of misconduct in resorting to illegal strike and continuing it for more than six months, when all other workmen reported to duty by giving an undertaking.



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Hence, there is no presumption or benefit of doubt in favour of the respondent/workman. It is also contended by the learned Senior Counsel that the issue of victimisation is totally untenable and baseless, as proof of acts of misconduct is the antithesis of victimisation, as held by the Hon'ble Supreme Court in the case of ***Bharat Iron Works vs. Bhagubai Balubai Patel [1975(32) FLR 72]***.

11. It is further contended that the Management examined five witnesses who are eyewitnesses to the incident in which the respondent was involved and continued the illegal strike. Therefore, the conclusion of the Tribunal on victimisation of the respondent by the petitioner is misleading and is liable to be set aside.

12. Learned Senior Counsel further contends that the observations of the Tribunal that transfer of employees was made with a vengence to Aurangabad and Arunachal Pradesh and therefore, workmen were justified in resorting to illegal strike, is not sustainable being unwarranted and



unjustified. The petitioner-Management has been transferring and sending its employees on deputation due to service exigencies. Therefore, the question of transfer would not amount to victimization. On these grounds, learned Senior Counsel seeks to quash the order of the Tribunal dated 23.05.2018 and consequently, to grant permission to dismiss the respondent from service vide dismissal order dated 13.03.2002.

13. Learned Senior Counsel appearing for the petitioner relies upon the following judgments in support of his case:

- i. ***Delhi Cloth General Mills Co., vs. Ganesh Dutt [1972(24) FLR 147 (SC);***
- ii. ***Bharat Iron Works vs. Bhagubhai Patel and others [1976(32) FLR 72 (SC)];***
- iii. ***Lakshmiratan Cotton Mills Co. Ltd., vs. Its Workmen [1975(2) SCC 761];***
- iv. ***John D' Souza vs. Karnataka State Road Transport Corporation [2019(18) SCC 47];***
- v. ***Karnataka State Road Transport Corporation vs. Raju M., [(2020)III LLJ 187 (DB-Kar.);***



- vi. ***B.C.Chaturvedi vs. Union of India (UOI) and Others [1995(6) SCC 749];***
- vii. ***Elastrex Ploymers Pvt., Ltd., vs. Janardhana [2012(2) LLJ 813];***
- viii. ***Management of Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangha and others [2004(8) SCC 200];***
- ix. ***Workmen and Others vs. Bharat Fritz Werner (P) Ltd., and Others, [1990(3) SCC 565];***
- x. ***Caltex (India) Ltd., vs. Their Workmen [AIR 1960 SC 1262];***
- xi. ***Metropolitan Transport Corporation vs. V.Venkatesan [2009(9) SCC 601];***
- xii. ***The State of Uttar Pradesh and Others vs. Rajit Singh [AIR 2022 SC 1551];***
- xiii. ***State of U.P. vs. Bahadur Singh and Others [1983(3) SCC 73];***
- xiv. ***Union of India (UOI) and Others vs. N.Murugesan and Others [2022(2) SCC 25];***
- xv. ***State of Rajasthan vs. Kalki and Others [1981(2) SCC 752];***
- xvi. ***Raju and Others vs. State of Tamil Nadu [2012(12) SCC 701];***



xvii. ***Ganapathi and Others vs. The State of Tamil Nadu and Others [2018(5) SCC 549].***

14. *Per contra*, Smt.Maitreyi Krishnan, learned counsel appearing on behalf of Sri K.S.Subramanya, learned counsel for the respondent-workmen vehemently contends that the entire case of the Management is based on the Settlement Agreement dated 30.08.1995 arrived at between the workmen and the Management before the formation of the Union. She contends that its authenticity is doubtful and that the settlement was not entered into in a normal manner, but the workmen were individually asked to sign without knowing its contents. She also submitted that a copy of the settlement was not given to the workmen. Therefore, reliance on the settlement is not proper and it is rightly held so by the Tribunal. It is also contended by the learned counsel for the respondent that 14 days' notice as contemplated in the alleged agreement is not sustainable, as she contends that the alleged strike was only for a period of two hours merely to attend the



inaugural programme of the Union in front of the factory participating in the Union's programme of action of Upavasa Satyagraha (hunger strike) against the Management's vindictive transfers of five leaders of the Union to far-away places and suspension of ten of active members on false allegations. The Management was bent upon victimising the workmen as they formed a Union and did not agree to give up their cause. She further contends that the action of the Management in this regard is illegal and not justified. It is further contended that the workmen have right to resist any illegal actions and programmes of the Management by forming a trade union, and any orders contrary passed to resist formation of a trade union or lawful agitation of protest cannot be termed as strike and an extreme shocking punishment cannot be imposed which is disproportionate to the alleged acts of misconduct. She contends that the Tribunal is justified in passing the order relying upon various judgments of the Hon'ble Apex Court, whereby the Management sought



permission to dismiss the workmen. Hence, she contends that there is no illegality or perversity in the order passed by the Tribunal. It is further contended by the learned counsel that the Settlement Agreement entered into between the petitioner-Management and the employees is one-sided, as there was no collective bargaining and there being no Union of its workmen until its formation in June 1998. The settlement relied upon by the Management was arrived at in the year 1995 with individual workers before the formation of the Union in 1998.

15. Learned counsel for the respondent further contends that the Management has not implemented the settlement and has resorted to victimisation and unfair labour practices. They have also not recognised the Union, which was a party to the Minutes of the understanding reached between the petitioner-Management and the Union before the Deputy Chief Minister on 01.01.1999 regarding payment of strike wages and other issues.



Learned counsel further contends that the domestic enquiry held came to be set aside and on challenge by the Management, the Writ Petition came to be rejected. Therefore, the Tribunal has rightly concluded to reject the application of the petitioner-Management seeking permission for dismissal. The petitioner-Management has paid a mere subsistence allowance since the respondent was kept under suspension and the same was only for a short period of 20 months, which is liable to be paid by the Management. The legitimate claims and dues of the respondent have been denied by the Management. Learned counsel further contends that there is no much material for consideration in favour of the Management, as all the materials placed have been negated by the Tribunal by appreciating the evidence of the witnesses of the management.

16. It is further contended that the workmen are not at all responsible for the prolonged strike, as it is the



Management which is solely responsible for taking unwarranted decisions to keep the workers out of their participation in two hours gate meeting during working hours which was called by the Union for inauguration programme of Upavasa Satyagraha in protest against five leading functionaries of the Union and ten active members of the Union. Therefore, it is the Management itself that is to be blamed for its actions.

17. It is also contended that the Tribunal is right in holding that the action of the Management in seeking undertakings amounts to unfair labour practice based on Point No.8 of the 5th Schedule, as the strike by the workmen is held to be a legal strike. It is further contended that a strike for two hours and absence cannot be considered a serious act of misconduct by any stretch of imagination. Therefore, the impugned order passed by the Tribunal holding that the strike is legal and justified, and the petitioner-Management making efforts to term it



as untenable and illegal, is unsustainable and deserves to be rejected outright.

18. It is also contended that the respondent-workman has not been paid Rs.1,65,368/- and he has undergone mental and financial difficulties so also his family members. On these grounds, she seeks to dismiss the petition and sustain the impugned order passed by the Tribunal.

19. Learned counsel for the respondent further contends that had the undertaking was sought by the Management from the first-shift workers, the respondent came in the second shift. Hence, there was no question of the respondent having participated in the strike, as according to the Management, the strike commenced on 16.07.1998 between 8:15 a.m., and 10:15 a.m., whereas the respondent came for duty in the second shift. She further contends that having dropped enquiry for 14



workmen, it is only the respondent who is victimised. Therefore, it is clearly apparent on the face of the record and from the material placed that the respondent has been clearly separated and victimised.

20. Learned counsel for the respondent relies upon the following judgments in support of her case:

- i. ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others [(2002)2 SCC 244];***
- ii. ***Mysore Steel Works Private Limited vs. Jitendra Chandra Kar and Ors., [(1971)1 LLJ 543 (SC)];***
- iii. ***Lalla Ram vs. D.C.M. Chemical Works Ltd., and Another, [(1978)3 SCC 1];***
- iv. ***John D' Souza vs. Karnataka State Road Transport Corporation [(2019)18 SCC 47];***
- v. ***Pandian Roadways Corporation Ltd., (represented by its Managing Director), Madurai vs. Presiding Officer, Industrial Tribunal, Madras and others, [2005(1) LLN 889];***
- vi. ***M/s. Chandrana Brothers and Others vs. K.Venkat Rao and Others, [ILR 1976 KAR 513];***



- vii. ***M.R. Achar vs. Syndicate Bank [ILR 2006 KAR 3380];***
- viii. ***Vaman Maruty Gharat and Another vs. M.S.Apte and Others [1998 LLN 2 375];***
- ix. ***Aditya Mills Ltd. Madanganj vs. Ram Dayal in Special Appeal No.478/1971 decided on 27th July, 1972];***
- x. ***Workmen vs. M/s Williamson Magor and Co. Ltd. and another [(1982)1 SCC 117];***
- xi. ***Colour-Chem Ltd., vs. A.L.Alaspurkar and Others, [(1998)3 SCC 192];***
- xii. ***Hind Construction and Engineering Co., Ltd., vs. Their Workmen [AIR 1965 SC 917];***
- xiii. ***Sangram Singh vs. Election Tribunal, Kotah and another [AIR 1955 SC 425];***
- xiv. ***Syed Yakoob vs. K.S.Radhakrishnan and Others [AIR 1964 SC 477];***
- xv. ***Bosch Limited vs. Labour through Karnataka Rakshak and General Workers Union in Writ Appeal No.399/2019 dated 19.12.2024.***

21. I have heard learned senior counsel for the petitioner-Management and learned counsel for the respondent-Workman.



22. It is not in dispute that the petitioner-Management approached the Tribunal under Section 33(1)(b) of the ID Act seeking permission of proposed order of dismissal of the respondent workman from service. It is also not in dispute that industrial dispute was already pending with regard to charter of payment before the Tribunal in ID No.28/2001 wherein the respondent-workman was one of the concerned workmen. In view of the same, an application came to be filed by the petitioner-Management as Serial Application No.8/2002 under Section 33(1)(b) of the ID Act seeking permission for dismissal of the workman and accordingly, led evidence to establish the misconduct on the part of the workman. Upon evidence being adduced by the Management, the workman and by producing necessary materials by marking them as Exs.A1 to A28 and Exs.O1 to O22 and after hearing the arguments, the learned Tribunal dismissed the application of the Management filed under



Section 33(1)(b) of the ID Act, due to which the petitioner is before this Court.

23. The point that arises for consideration before this Court is whether the petitioner-Management has made out any substantial case and good ground to set aside the impugned order passed by the Tribunal, consequent to grant of permission for dismissal of the workman vide order dated 13.03.2002.

24. Apparently, it is seen that the settlement dated 30.08.1995 was accepted by 216 workmen out of 245 workmen. Though few of the workmen did not sign the settlement, the benefit was extended to the said workmen as well. It is alleged by the Management that the respondent workman participated in illegal strike on 16.07.1998 and 29.07.1998 conducted picketing/ demonstrating opposite the Management/factory and prevented the workmen and officers from work. Therefore, the allegations are made against the workmen for having violated the provisions of the standing order. The



Management has examined 06 witnesses as AW1 to AW6. The evidence of these witnesses have been taken into consideration by the Labour Court and the evidence of some of the witnesses have been culled out in the impugned judgment of the Tribunal. After analyzing the evidence on record, the Tribunal has come to the conclusion that certain witnesses examined on behalf of the Management had not personally seen the respondent-workman participating in the strike. The Tribunal has, therefore, held that the evidence tendered by the Management witnesses is biased and partisan in nature. What requires to be seen is whether the respondent-workman was involved in the strike warranting dismissal from his services. The Tribunal has come to a conclusion that to protest the transfer of workmen, who are the office bearers of the union, had scheduled 'Relay Hunger Strike' and its opening ceremony was scheduled on 16.07.1998 at morning 8:00 a.m. In view of the said 'Relay Hunger Strike', the workman could not attend the work for first



half of the first shift and general shift. Apparently, there is workers union namely 'Fouress Engineering Karmika Sangha'. Though petitioner contended that there was a settlement between the workman and the Management, the same is disputed by the workman.

25. It is also seen that in the said settlement between the workman and the Management of Fouress Engineering India Limited, all the workmen had not signed the settlement agreement. The Tribunal has come to a conclusion that there was no participation of "Union" on behalf of the workmen, for the reason that name of the "Union" is not stated, but only it is stated just "workmen". It is also seen that the Management had transferred some of the workmen to a far off places like Aurangabad and Arunachal Pradesh. Therefore, when the workmen wanted to form union, the same was resisted by the Management which would amount to unfair labour practice, as forming of a union is a right vested in the Act.



26. Having considered all these aspects and by relying upon several judgments of the Hon'ble Apex Court, including the case of ***Colour Chem Ltd.***, (supra), the Tribunal did not find any good or cogent reason to accept the argument of the petitioner-Management to consider its case for dismissal of the workman from duties.

27. The Hon'ble Apex Court in the case of ***Jaipur Zilla Sahakar Bhoomi Vikas Bank Ltd.***, case (supra), at paragraph No.13 held as under:

"13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the



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mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

28. The Hon'ble Apex Court in the case of **Mysore Steel Works** (supra), at paragraph No.10 held as under:

"10. The question as to the scope of the power of an Industrial Tribunal in an enquiry under Section 33(2) of the Industrial Disputes Act has by now been considered by this Court in a number of decisions and is no longer in dispute. If the Tribunal comes to the conclusion that the domestic enquiry was not defective, that is, it was not in violation of the principles of natural justice, It has only to see if there was a prima facie case for dismissal, and whether the



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employer had come to a bona fide conclusion that the employee was guilty of misconduct. In other words, there was no unfair labour practice and no victimisation. It will then grant Its approval. If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the dismissal was justified. If it comes to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified it would give its approval to the order of dismissal made by the employer in a domestic enquiry. (See P.H. Kalyani v. Air France) where, therefore the domestic enquiry is conducted in violation of the principles of natural justice evidence must be adduced before the Tribunal by the employer to obtain its approval. Such evidence must be adduced in the manner evidence is normally adduced before the Tribunal, that is, witnesses must be examined and not by merely tendering the evidence laid before the domestic enquiry, unless the parties agree and the tribunal given its assent to such a procedure. (See K.N. Barmab v. Management of Badla Beta Tea Estate). It is clear, therefore, that the jurisdiction of a tribunal under Section 33(2) is of a limited character. Where the domestic enquiry is not defective by reason of violation of principles of natural justice or its findings being perverse or by reason of any unfair labour practice, the tribunal has only to be satisfied that there is a prima facie case for dismissal. The tribunal in such cases does not sit as an appellate Court and come to its own finding of fact."

29. The Hon'ble Apex Court in the case of **Lalla**

Ram (supra) at paragraph No.12 held as under:

12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under Section 33(2)(B) of the Act, the jurisdiction of the industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural



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justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singh, Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar, Hind Construction & Engineering Co. Ltd. v. Their Workmen, Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors, and Eastern Electric and Trading Co. v. Baldev Lal that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment;

(iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of



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the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

30. The Hon'ble Apex Court in the case of **John D'Souza** (supra), at paragraph Nos.32 and 33 held as under:

"32. The Three-Judge bench decisions of this Court in Punjab National Bank and Mysore Steel Works (P) Ltd., as well as the Division Bench judgment in Lalla Ram were unfortunately not cited before this Court in Cholan Roadways Ltd. There is yet no conflict of opinion as in Cholan Roadways Ltd. also this Court reiterated the past consistent view that while exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see only whether a prima facie case has been made out as regard to the requirement of domestic enquiry. Cholan Roadways nonetheless deals with only 1st phase of the jurisdiction exercisable under Section 33(2)(b) and it falls short to elucidate as to whether, in the event of a defective domestic enquiry, the Labour Court/Tribunal can also the parties to adduce evidence. The second phase of Jurisdiction exercisable under Section 33(2)(b) was not debated in Cholan Roadways apparently for the reason that on facts this Court was satisfied that the delinquent workman was guilty of the misconduct attributed and proved against him in the domestic enquiry. On the other hand, Mysore Steel Works (P) Ltd. and Lalla Ram



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have gone a step ahead to hold that the Tribunal can permit the parties to adduce evidence if it finds that the domestic enquiry suffers from any defect or was violative of the principles of natural justice or was marred by unfair labour practice, it may then independently examine the evidence led before it to embark upon the question whether or not the punitive action deserves to be accorded approval.

33. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be "preponderance of probability" and not a "proof beyond all reasonable doubts" suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

31. The Hon'ble Apex Court in the case of **M/s Williamson Magor and Co.Ltd**, (supra) at Paragraph No.12 held as under:



"12. "Mr Pai, learned counsel appearing for the management, made two submissions before us. Firstly, he submitted that unlike in public sector undertakings, promotion is not a condition of service in a private company. We are unable to accept the submission of Mr Pai in toto. If there is no scope of any promotion or upgradation or increase in salary in a private undertaking, the submission of the learned counsel may be justified but if there are grades and scopes of upgradation/promotion and there are different scales of pay for different grades in a private undertaking, and, in fact, promotion is given or upgradation is made, there should be no arbitrary or unjust and unreasonable upgradation or promotion of persons superseding the claims of persons who may be equally or even more, suitable. The second submission of Mr Pai is that although there were no norms, the promotions of the persons in question were not arbitrary and that the findings of the Tribunal in this regard were incorrect. He led us through the material evidence of the witnesses examined. We are unable to agree with learned counsel and do not find any reason to differ from the findings of the learned Tribunal that the promotions of the 15 persons were arbitrary and unjustified. Mr Pai also submitted that unless victimisation was proved by the Union, the management's action should not be disturbed. The word 'victimisation' has not been defined in the statute. The term was considered by this Court in the case of *Bharat Bank Ltd. v. Employees*. This Court observed, "It (victimisation) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that 'victimisation' had acquired a special meaning in industrial disputes and connoted a person who became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed. This submission, however, was not considered by the Court. When, however, the word 'victimisation' can be interpreted in two different ways, the interpretation which is in favour of the labour should be accepted as they are the poorer section of the people compared to the management."



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32. The Hon'ble Apex Court in the case of **Colour Chem Limited** (supra), at paragraph No.13 held as under:

"13. The term "victimisation" is not defined by the present Act. Sub- 9 section (18) of Section 3 of the Act which is the definition section lays down that:

"Words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to any industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act

Bombay Act is the Bombay Industrial Relations Act, 1946 and the Central Act is the Industrial Disputes Act, 1947 as laid down by definition Sections 3(1) and 3(2) of the Act. The term "victimisation" is defined neither by the Central Act nor by the Bombay Act. Therefore, the term "victimisation" has to be given general dictionary meaning. In Concise Oxford Dictionary, 7th Edn., the term "victimisation" is defined at p. 1197 as follows:

"make a victim; cheat; make suffer by dismissal or other exceptional treatments."

Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term "victimisation" is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances amount to unfair



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labour practices on account of factual victimisation. Once that happens clause (a) of Item 1 of Schedule IV of the Act would get attracted, even apart from the very same act being covered by unfair labour practices envisaged by clauses (b), (c), (d) and (e) of the very same Item 1 of Schedule IV. But it cannot be said that d clause (a) of Item I which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the decision of this Court in Hind Construction. It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour practice is covered by the present Act by enactment of clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision. On the same lines is a latter decision of this Court in the case of Bharat Iron Works v. Bhagubhai Balubhai Patel wherein a Bench of three learned Judges speaking through Goswami, J. laid down the parameters of the term "victimisation" as understood in labour laws and as contemplated by industrial jurisprudence. It has been observed that ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own. If actual fault or guilt meriting punishment is established, such action will be rid of the taint of victimisation. The aforesaid observations obviously refer to factual victimisation. But then follows further elucidation of the term "victimisation" to the following effect: (SCR Headnote

"Victimisation may partake of various types, as for example, pressurising an employee to leave the union or union activities, treating an employee in a



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discriminatory manner or inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like."

The aforesaid observations in this decision fall in line with the observations in the earlier decision of this Court in Hind Construction. Consequently it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned b involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. On the facts of the present case there is a clear finding reached by the Labour Court and as confirmed by the Industrial Court that the charges levelled against the respondent-delinquents which were held proved even though reflecting major misconducts, were not such c in the light of their past service record as would merit imposition of punishment of dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquents. Imposition of such a shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimisation apart from not being factual victimisation as on the latter d aspect the Labour Court has held against the respondent-workmen and that finding has also remained well sustained on record. Thus it must be held that the management even though not guilty of factual victimisation was guilty of legal victimisation in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in Hind Construction and Bharat Iron Works. It is easy to visualise that no reasonable management could have punished a delinquent workman who in the late hours of the night shift by about 3.30 a.m. had gone to sleep keeping the machine in a working condition especially in the absence of any gross misconduct reflected by



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the past service record, with the extreme penalty of dismissal. It is also interesting to note that this was a peculiar case in which the Plant-in-Charge found during his surprise visit at 3.30 a.m. in the early hours of the dawn the entire work force of 10 mazdoors and 2 operators like the respondents and the supervisor all asleep. It is also pertinent to note that so far as the 10 mazdoors were concerned they were let off for this very misconduct by a mere warning while the respondents were dismissed from service. It is, of course, true that the respondents were assigned more responsible duty as compared to the mazdoors, but in the background of the surrounding circumstances and especially in the light of their past service record there is no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly disproportionate, as rightly held by the Labour Court and as confirmed by the revisional court and the High Court. By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill a fly with a sledgehammer. Consequently it must be held that the appellant was guilty of an unfair labour practice. Such an act was squarely covered by clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation. The ultimate finding of the Labour Court about maintainability of the complaint can be supported on this ground. The second point is answered in the affirmative against the appellant and in favour of the respondent-workmen."

33. The Hon'ble Apex Court in the case of **Hind Construction and Engineering Co.Ltd.,** (supra), at paragraph No.5 held as under:

"5. The next question is whether the Tribunal was justified in interfering with the punishment of dismissal after it had come to the conclusion that



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the workmen had gone on a strike even though the strike was not illegal. Reference is made to a number of cases in which the principles for the guidance of the Tribunals in such matters have been laid down by this Court. It is now settled law that the Tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the Tribunal as it is ordinarily before a court of appeal. The Tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the Tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimization of employee or employees or unfair labour practice. The Tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the Standing Orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the Tribunal should' not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. These principles can be gathered from the following cases :-



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Bengal Bhatdee Coal Co. Ltd. v. Ram Probesh Singh, Buckingham & Carnatic Co. Ltd. v. Workers; Titagar Paper Mills Co. Ltd. v. Ram Naresh Kumar, Doom Dooma Tea Co. Ltd. v. Assam Chah Karamchari Sangh, Punjab National Bank Ltd. v. Workmen; Chartered Bank Bombay v. Chartered Bank Employees Union. In the present case the dispute was whether the punishment amounted to victimization or unfair labour practice. Mr. Sen Gupta referred to various parts of the record of the enquiry to show that the conduct of the workmen was regarded as collective, that it was described as a strike, that it was considered to be the result of a conspiracy and that there was a demand for over time. Mr. Sen Gupta contended that, in the circumstances, this must be regarded as a case of victimization because only the permanent workers were subjected to this treatment. Mr. Sen Gupta hinted that there was an ulterior motive in dismissing the permanent workers and getting the work done by temporary hands so that the Union may break down and even the re-employment of three workmen, who were probably indispensable to the employer, was with the same motive. On the other hand, Mr. Setalvad argued that there was nothing on the record to show that this was a case of victimization. These persons were found guilty at the enquiry and also by the Tribunal and it was merely a question of what Punishment should be imposed and that was a matter entirely within the, competence of the employer.

34. The Hon'ble Apex Court in the case of **Sangram**

Singh (supra), at paragraph No.14 held as under:

14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by



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the Courts on, themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as special as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

35. The Hon'ble Apex Court in the case of **Bosch Limited** (supra), at paragraph Nos.30 and 31 held as under:

30. Though the learned senior counsel appearing for the appellant attempted to draw our attention to the details of the evidence led before the Labour Court, we are of the opinion that re-appreciation of the evidence led before the Labour Court would be impermissible by the learned Single Judge exercising jurisdiction under Articles 226 and 227 of the Constitution of India and indeed by us in an intra-Court appeal in these proceedings. The contention that the Union which espoused the cause of the workmen was not the recognised Union of the establishment would also be of no avail in a case, where the specific contention is that the contract relied on by the Management is sham. In such circumstances, it is clear that the workmen can themselves raise the dispute. The contentions, if any, taken by the workmen in an earlier suit would also not make any difference to the situation since the Labour Court which is the adjudicating authority empowered to decide an industrial dispute considers and decides the dispute raised before it on the basis of the evidence led by both sides.



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31. It is trite law that an award of the Labour Court, which is rendered after considering the evidence placed on record is not liable to be lightly interfered with by the Constitutional Court exercising the power of judicial review. The Apex Court in the case of State of Andhra Pradesh and Others v. S. Sree Rama Rao reported in MANU/SC/0222/1963: 1963: INSC: 97, has held that, "It is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence." It is only when the findings arrived at by the Labour Court are patently illegal, totally unreasonable or perverse that the Constitutional Court would be justified in interfering with such findings. It is also clear that what is being exercised is not any power of appeal since no such appeal is contemplated under the provisions of the statute.

36. Having considered the arguments of learned counsels for both the parties and having gone through the impugned award, I do not find any good ground or cogent reason calling for interference in the impugned order passed by the learned Tribunal at the hands of this Court, as this Court is not sitting in appeal jurisdiction. What is to be seen is only whether the Tribunal has committed any illegality or perversity and has ignored any of the materials placed on record, both oral and documentary.

37. In the present case on hand, it appears that there is victimization of the respondent, which amounts to



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unfair labour practice, so also, the Tribunal has come to a conclusion that the respondent came for duty in the second shift and the strike commenced in the first shift between 08.15 a.m. to 10.15 a.m. Therefore, the question of respondent participating in illegal strike would not be sustainable as he came for the second shift. It is also to be seen that the scope and powers of this Court under Articles - 226 and 227 of the Constitution of India is limited and narrow as this Court cannot step into the arm chair of an appellate court jurisdiction, to review the evidence once again to arrive at a independent finding on the basis of evidence. What is required to be seen is whether the Tribunal has committed any patent illegality and the order passed is unreasonable or perverse, warranting interference of this Court. Having adverted to all these issues, the Tribunal has rightly come to a conclusion dismissing the application filed by the Management, which in my opinion does not call for interference.



38. In view of the above discussions, I do not find any such illegality or perversity in the order passed by the Tribunal.

39. Accordingly, I pass the following:

ORDER

- i. Writ petition is ***dismissed***.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

NB/VNR
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