IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2052 OF 2006

Maruti Krishana Naik and Others ....*Petitioner*

: Versus :

M/s. Advani Oerlikon Ltd. and Anr. ....*Respondents*

Mr. Rahul Kamerkar *with Ms. Aparajita R. Jha for the Petitioner.*

Mr. Kiran S. Bapat, *Senior Advocate with Mr. Gaurav S. Gawande i/b. M/s. Desai & Desai Associates for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Reserved on : 17 October 2024.

Pronounced on : 22 October 2024.

JUDGMENT :-

1) Ex-employees of the Company-M/s. Advani Oerlikon Limited have filed the present Petition challenging the judgment and order dated 7 May 2004 passed by the First Labour Court, Pune dismissing the complaints of unfair labour practices filed by them. The order of the Labour Court has been confirmed by Industrial Court, Pune by dismissing Revision Applications filed by Petitioners by its common judgment and order dated 25 November 2005, which is also subject matter of challenge in the present Petition.

2) Respondent-M/s. Advani Oerlikon Limited (**Oerlikon)** is engaged in manufacturing of welding machines

and welding equipment and has a factory at Chinchwad, Pune. It appears that at the relevant time, there were two unions representing the staff and workmen viz. (i) M/s. Advani Oerlikon Staff Union, of which Petitioner Nos.1 to 7 were members and (ii) M/s. Advani Oerlikon Ltd., of which Petitioner Nos.8 to 12 are members. It appears that several settlements have been signed between Management and the Unions relating to wages as well as service conditions of workmen and staff members of the Oerlikon. The last settlement was signed in the year 1994, which remained in force till 31 August 1996. Union sent a fresh Charter of Demand on 16 July 1996 to the Management and about 18 meetings took between the Management and the Union without fructifying in any settlement. Therefore, the Management sought intervention of Conciliation Officer. Accordingly, various meetings took place before the Conciliation Officer. According to Petitioners, due to adamant and dilatory tactics adopted by the Management, the Union decided to hold *dharna* (agitation) in front of the office of Labour Commissioner. On 10 November 1997, Union decided to call for one day strike to show support to the *dharna* of committee members of Union. That the Oerlikon avoided attending further meetings before the Conciliation Officer, which led to the Unions commencing *satyagrah andolan* since 14 November 1997. There is some variation in the pleas adopted by the Petitioners and Oerlikon with regard to what occurred on 14 November 1997 onwards. While Petitioners claim that they never went on strike, it is the case of Respondent-Oerlikon that Petitioners went on strike and refused to resume duties. The Oerlikon therefore approached

Industrial Court by filing Complaint (ULP) No.527 of 1997 in which Industrial Court passed order dated 28 November 1997 declaring the strike to be illegal. According to Oerlikon, despite declaration of strike as illegal, the workers and staff members refused to resume duties despite issuance of several written notices as well as publication of notices in the newspapers. According to Oerlikon, a final notice was published on 25 December 1997 in a leading newspaper circulating in Pune, calling upon workers and staff to join duties by 29 December 1997 failing which disciplinary action was proposed against them. According to Oerlikon, after publication of final notice several workers and staff were willing to join duties on 29 December 1997. However, 30 to 35 employees gathered at the gate at 7.30 a.m. on 29 December 1997 and prevented the workmen and staff from entering the factory and created an atmosphere of terror. According to Oerlikon, when Chief Manager-Manufacturing attempted to assess the situation at the gate, he was abused and assaulted. It is also alleged that several officers and staff members were assaulted by the agitating workers and staff.

3) In the wake of above allegations, Respondent-Management issued termination orders terminating the services of the Petitioners. The termination orders were issued either on 31 December 1997 or on 5 January 1998. The termination was effected without conducting any enquiry. However, the reason for termination indicated in the orders was participation in illegal strike, preventing other workers/staff from joining duties and creating atmosphere of terror by threatening them. Accordingly, misconduct under

various clauses of Model Standing Orders was alleged in the termination orders. It was stated that since illegality of the strike was already objected in Complaint (ULP) No.527 of 1997, it was not necessary to conduct separate enquiry in respect of the acts of Petitioners in participating any illegal strike. So far as other misconduct of Petitioners was concerned, the termination orders stated that it was not possible to conduct enquiry on account of atmosphere of terror created by them. This is how all the Petitioners came to be terminated by Respondent-Management w.e.f. either on 1 January 1991 or 5 January 1991. However, they were paid various amounts towards full and final settlement including unpaid wages and leave encashment with liberty to them to fill up forms for release of gratuity.

4) In the above factual background, Petitioners and other terminated employees filed their respective complaints of unfair labour practices before the First Labour Court, Pune seeking reinstatement in service with continuity and full backwages. This is how total 35 complaints were filed before the Labour Court, Pune. The Complaints were resisted by the Respondent-Management by filing written statements, in which Respondent-Management pleaded the factum of Petitioners assaulting the officials of Oerlikon. Both sides led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, Labour Court passed judgment and order dated 7 May 2004 dismissing all the complaints holding that termination of Petitioners effected on 31 December 1997 and 5 January 1998 did not amount to unfair labour practice under items

Nos. 1 (a), (b), (d), (f) and (g) of Schedule IV of Maharashtra Recognition of Trade Union and Unfair Labour Practices Act, 1971 (**MRTU & PULP Act)**. It was further held that Respondent-Management proved that there were just and reasonable grounds for not holding enquiry against Petitioners. It is further held that the orders of termination were justified and that therefore Petitioners were not entitled to reinstatement with continuity of service or backwages.

5) Petitioners filed various Revision Applications before the Industrial Court, Pune challenging judgment and order dated 7 May 2004 passed by the Labour Court. The Industrial Court has further dismissed all the revision applications by common judgment and order dated 25 November 2005. Accordingly, Petitioners have filed the present Petition challenging the orders passed by the Labour Court and the Industrial Court. Though initially 35 workmen /staff members were agitating before the Labour Court in respect of their termination, only 22 of them have filed the present Petition. Though individual Complaints and Revisions were filed before the Labour and Industrial Courts, 22 Petitioners have filed a common Petition challenging the orders passed by the Labour Court and Industrial Court. By order dated 21 August 2007, this Court admitted the Petition. During pendency of the Petition, some of the Petitioners have passed away and their legal heirs are brought on record.

6) I have heard Mr. Rahul Kamerkar, the learned counsel appearing for the Petitioners, who would submit that the Labour and the Industrial Court have grossly erred in

upholding the orders of termination issued without holding any enquiry against Petitioners. He would submit that both the Courts ought to have set aside the termination orders for singular reason of failure to conduct any enquiry and for violation of principles of natural justice. That Petitioners are unceremoniously thrown out of service without granting them an opportunity of defending themselves in respect of the allegations levelled in the termination orders. That Petitioners were merely airing their grievances with regard to their lawful demands and few agitations that took place were squarely attributable to the adamant and dilatory attitude by Respondent-Management who was avoiding to extend lawful wage rise to the workmen and staff. That none of the Petitioners participated in the strike as erroneously alleged in the termination orders. That there is no evidence on record to suggest participation in the strike by any of the Petitioners. That peaceful agitation made by Petitioners through their Unions from time to time were deliberately treated as strike by Respondent-Management for ensuring their ouster from service.

7) Mr. Kamerkar would raise strong objection to the findings recorded by the Labour Court in shifting the onus of disclosing the grounds for termination. Taking me through the findings recorded by the Labour Court in Paragraphs 10 to 13 of its judgment, he would submit that the complaints are dismissed on totally perverse ground of failure on the part of Petitioners to plead reasons for termination in the complaints. That it is for the Respondent-Management to justify the reasons for termination of Petitioners, who cannot

be expected to plead the reasons on which their services got terminated. He would therefore submit that the findings recorded by the Labour Court being perverse, interference of this Court in exercise of writ jurisdiction under Article 227 of the Constitution of India is warranted in the present case.

8) Mr. Kamerkar would also object to the approach of the Labour Court in permitting Respondent-Management to lead evidence to prove the allegations, which are not included in the termination orders. He would submit that termination orders are premised on only two alleged acts misconducts viz. participation in illegal strike and preventing other workers from joining duty. That the so called allegation of threatening the company officials is not reflected in the termination orders. Labour Court erroneously allowed Respondent-Management to lead evidence to prove the allegation of assault and further erred in taking into consideration the said evidence for justifying the termination orders. That the termination orders are held to be legal by the Labour and Industrial Courts by erroneously taking into consideration such inadmissible evidence relating to assault. That even if right of Respondent-Management to justify termination order effected without conduct of enquiry by leading evidence before the Labour Court is momentarily accepted, such a right would not include leading of evidence in respect of the allegation, which do not form part of the termination orders. Mr. Kamerkar would accordingly pray for setting aside the orders of the Labour and Industrial Court.

9) Petitions are opposed by Mr. Kiran Bapat, the learned Senior Advocate appearing for Respondent-Management. He would submit that Labour and Industrial Courts have concurrently upheld termination of Petitioners, who have indulged in serious misconduct of threatening abusing and assaulting other workemne and officials, in addition to preventing them from joining duties and participating in illegal strike. That therefore no interference by this Court in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India is warranted. He would further submit that the evidence adduced by Respondent-Management to justify termination of Petitioners has been appreciated by the Labour Court in exercise of original jurisdiction and has been further examined by Industrial Court in exercise of revisionary jurisdiction under Section 44 of the MRTU and PULP Act. Since two Courts, after taking into consideration the evidence in support of valid termination of Petitioners, have upheld the termination orders, it would be impermissible for this Court to undertake exercise of re-appreciation of evidence for interfering in the orders of the Labour Court and Industrial Court.

10) Mr. Bapat would further submit that it is settled position of law that an employer can pass innocuous order of termination without holding enquiry and can subsequently justify termination of workmen by leading evidence before the Labour and the Industrial Court. That mere failure on the part of the employer to conduct enquiry does not take away its right to justify the action before the Labour and Industrial

Courts. In support, he would rely upon Constitution Bench judgment of the Apex Court in ***Workmen of Motipur Sugar Factory Private Ltd. Versus. The Motipur Sugar Factory***[1]**.** He would further submit that right to justify termination of a workman by leading evidence before the Labour/Industrial Court is not restricted only in respect of the allegations contained in the termination order but the employer has unbridled right to lead evidence to justify termination on reasons not forming part of termination order. He would submit that the view taken by the learned Single Judge of this Court in ***Wai Taluka Sahakari Kharedi Versus. Shri Bajirao Mahadeo Mahadik***[2] disapproving action on the part of the Management to justify termination order passed without enquiry by leading evidence before Labour Court has not been followed by another Single Judge of this Court in ***D.D. Shah and Co. Versus. Vajidali T. Kadri***[3], which judgment has been upheld by the Division Bench in ***Vajidal T. Kadri Versus M/s. D.D.Shah and Co.***[4]. Mr. Bapat would accordingly submit that since employer is entitled to justify action of termination taken without holding enquiry by leading evidence before the Labour Court, mere non-conduct of enquiry before termination cannot be a reason for interfering in termination orders. Mr. Bapat would take me through the evidence on record to demonstrate as to how misconduct committed by Petitioners is proved before the Labour Court. He would submit that so far as misconduct of participation in strike is concerned, since strike is held to be illegal, nothing

[1] AIR 1965 SC 1803
[2] (1992) 1 CLR 637
[3] 2007(3) Mh.L.J. 878
[4] 2007(6) Mh.L.J. 650

remained to be enquired in the same. That so far as allegations of threatening, abusing and assaulting company officials and preventing other workmen from joining duty is concerned, atmosphere of terror created by Petitioners prevented Management from conducting enquiry. That therefore, Management was left with no other alternative to take the risk of effecting termination and later justifying the action of leading evidence before the Labour Court. That the Respondent-Management has discharged the burden of leading sufficient evidence by examining the series of witnesses, who have deposed as to how they were threatened and assaulted. That various reports of company officials demonstrating prevention of entry into the premises to other workers by Petitioners are exhibited and proved. That therefore there is enough evidence on record to bring home the charges of threats and assault as well as preventing the other workers from joining duties. That since Respondents have committed grave misconduct, no interference is warranted in the concurrent findings recorded by the Labour and Industrial Courts. Mr. Bapat would accordingly pray for dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) The broad points that arise for consideration in the present petition are:

(i) Whether it is permissible for the employer to justify action of termination of an employee effected without conducting enquiry, by leading evidence before the Labour Court?

(ii) If answer to Point No.1 is in the affirmative, whether it is permissible for such employer to justify action of termination for reasons not specified in the termination order? To paraphrase, if employer specifies only reason 'X' in the termination order, whether it can justify termination by leading evidence on reasons 'X' and 'Y'.

(iii) Whether there is perversity in the findings recorded by Labour and Industrial Court while upholding the termination of Petitioners?

13) So far as the first point of permissibility for employer to terminate services of employee without holding enquiry and later justifying the same before the Labour/Industrial Court by leading evidence is concerned, the law appears to be fairly very well settled. It would be necessary to make reference to the various judgments on the issue.

14) As early as in 1965, four Judge bench of the Apex Court in ***Workmen of the Motipur Sugar Factory Private Ltd.*** (supra) dealt with a case where 119 workmen employed as cane carrier mazdoors or as cane carrier supervisors or

jamadars were discharged after it was noticed that the workmen in cane carrier department had commenced 'go-slow' activity hampering the production. After the situation had become serious, the employer published a general notice calling upon the workmen to voluntarily record willingness to discharge their duties faithfully and diligently by feeding the cane carrier with specified quantity of cane, failing which their services were to be discharged without any further notice. As there was no improvement in the 'go-slow' activity of the concerned workmen, further notice was issued discharging the services of the concerned workmen, who had failed to record their willingness as specified in the earlier notice before the stipulated time. Thus, the discharge was made without holding any enquiry as required by Standing Orders. After reference to the Industrial Tribunal, it assessed the evidence and concluded that there was 'go-slow' during the concerned period and that therefore discharge of the workmen was fully justified. Before the Apex Court, it was contended that the Tribunal had misdirected itself by enlarging the scope of Reference as the Tribunal was required to restrict its consideration to the validity of discharge on account of non-giving of undertaking and it was not part of Tribunal's duty to decide whether there was 'go-slow' or not. This contention raised on behalf of the Appellants before the Apex Court is recorded in paras-4 and 6 of the judgment which reads thus:

> **4.** We are concerned in the present appeal only with the first question which was referred to the tribunal. Learned counsel for the appellants has raised three main contentions before us in support of the appeal. In the first place it is contended that the tribunal misdirected itself as to the scope of the reference and that all that the tribunal

> was concerned with was to decide whether the discharge of the workmen for not giving an undertaking was justified or not, and, that it was no part of the duty of the tribunal to decide whether there was go-slow between the relevant dates which would justify the order of discharge. Secondly, it is urged that the respondent had given no charge-sheets to the workmen concerned and had held no enquiry as required by the Standing Orders. Therefore, it was not open to the respondent to justify the discharge before the tribunal, and the tribunal had no jurisdiction to go into the merits of the question relating to go-slow. Lastly it is, urged that the finding of the tribunal that go-slow had been proved was perverse and the tribunal had ignored relevant evidence in coming to that conclusion. We shall deal with these contentions seriatim.
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> **6.** But the argument on behalf of the appellants is that the notice of December 17 gives the reason for the discharge and the tribunal is confined only to that notice and has to consider whether the reason given in that notice for discharge is justified. We have already set put that notice and it certainly says that the workmen mentioned at the foot of the notice had failed to record their willingness to work faithfully and diligently in accordance with the respondent's notice of December 15, 1960, and therefore they stood discharged from the respondent's service and their names had been struck off the rolls from December 18, 1960. So it is argued that the reason for the discharge of the workmen concerned was not go-slow but their failure to record their willingness to work faithfully and diligently. The tribunal had therefore to see whether this reason for the discharge of the workmen was justifiable, and that it had no jurisdiction to go beyond this and to investigate the question of go-slow.

15) The Apex Court thereafter went on to decide the issue as to whether the Tribunal could have investigated the question of ‘go-slow’ tactics when the discharge was without holding any enquiry and only on account of failure to submit undertakings. The Apex Court held that the Reference made to the Tribunal was in wide terms, which encompassed the scope for going into the issue of ‘go-slow’ tactics as well. The Apex Court further held that the workmen were made aware in the first notice that they were guilty of ‘go-slow’ tactics and that therefore, it could be held that there was no charge

against them. The Apex Court thereafter held that where an employer fails to make an enquiry before dismissing or discharging the employee, it is open for him to justify the action before the Tribunal by leading all relevant evidence before it. The Apex Court held in paras-10, 11 and 12 of the judgment as under:

> *Re. (ii).*
> **10.** Then we come to the question whether it was open to the tribunal when there was no enquiry whatsoever by the respondent to hold an enquiry itself into the question of go-slow. It is urged on behalf of the appellants that not only there was no enquiry in the present case but there was no charge either. We do not agree that there was no charge by the respondent against the workmen concerned. The first part of the notice of December 15, 1960 which was served on each individual, workman was certainly a charge by the respondent telling the workmen concerned that they were guilty of go-slow for the period between November 27 and December 15, 1960. It is true that the notice was not headed as a charge and it did not specify that an enquiry would follow, which is the usual procedure when a formal charge is given. Even so, there can be no doubt that the workmen concerned knew that was the charge against them which was really responsible for their discharge from December 18, 1960.
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> **11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it.** In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been property held (see *Indian Iron & Steel Co.* v. *Workmen* [(1958) SCR 667]) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to *Sana Musa Sugar Works (P) Limited* v. *Shobrati Khan* [1959 Supp (2) SCR 836] , *Phulbari Tea Estate* v. *Workmen* [(1960) 1 SCR 32] , and *Punjab National Bank Limited* v. *Workmen* [(1960) 1 SCR 806] . These three cases were further considered by this Court in *Bharat Sugar Mills Limited* v. *Jai Singh* [(1962) 3 SCR 684] , and reference was also made to the decision of the Labour Appellate Tribunal in *Ram*

Swarath Sinha v. *Belsund Sugar Co.* [(1954) LAC 697] . It was pointed out that "the important effect of omission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except *Phulbari Tea Estate case* [(1960) 1 SCR 32] , were on applications under Section 23 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. *Phulbari Tea Estate case* [(1960) 1 SCR 32] was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.

12. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the enquiry has in fact been held. We must therefore reject the

> contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal.
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> *(emphasis and underlining added)*

16) Mr. Bapat particularly highlights the finding of the Apex Court in para-11 of the judgment in ***Workmen of the Motipur Sugar Factory Private Ltd.*** that the employer can justify action by leading 'all relevant evidence' before it. According to Mr. Bapat, the four Judge Bench decision in ***Workmen of the Motipur Sugar Factory Private Ltd.*** thus permits leading of 'all relevant evidence' available with the employer to justify the termination. Apart from permissibility to lead 'all relevant evidence' the facts in ***Workmen of the Motipur Sugar Factory Private Ltd.*** appear somewhat similar to the present case. In the case before the Apex Court as well, a specific contention was raised, similar to the one raised by Mr. Kamerkar in the present case, that if termination is on a specific ground specified in the order, it is impermissible to lead evidence in respect of the grounds not specified in the termination order. In the case before the Apex Court, the reasons specified in the termination notice was failure to submit undertaking to work faithfully and diligently and later evidence was led before the Industrial Tribunal to prove 'go-slow' tactics by the concerned workmen. The Apex Court permitted leading of such evidence as well as consideration thereof by the Labour Court.

17) In ***The Workmen of M/s. Firestone Tyre and Rubber Co. Of India (P.) Ltd. Versus. The Management and Ors.***[5], the Apex

[5] AIR 1973 SC 1227

Court has reiterated the right of the employer to justify termination by leading evidence before the Labour Court when no enquiry is held. The Apex Court has summed up the principles as under:

> **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."
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> *(emphasis and underlining added)*

18) Mr. Bapat has fairly invited attention of this Court to the view taken by Single Judge of this Court (*B.N. Srikrishna, J., as he then was*) where this Court struck a sort of discordant note in ***Wai Taluka Sahakari Kharedi*** (supra) by holding that it was impermissible for the employer to lead evidence to justify action of termination, when no enquiry is held. This Court dealt with case of the employee who was abruptly terminated from service without holding any enquiry on the ground that there was no improvement in his work and his work was found unsatisfactory. When the dispute was referred to the Labour Court, the employee persuaded the Labour Court to permit it to lead evidence to prove the unsatisfactory nature of services of the employee. It appears that the Labour Court framed a chargesheet at the instance of the employer and the proceeded to determine the issue as to whether the employee misappropriated amount of

Rs.1519/- by debiting the amount in his own name. The issue before the Single Judge of this Court was whether such chargesheet could be framed by the Labour Court and whether enquiry into misappropriation could be held before the Labour Court when the same was not a ground for termination. This Court held that it was impermissible for the Labour Court to frame chargesheet and to permit employer to lead evidence where no enquiry was held at all. It would be apposite to reproduce paras-2 and 5 of the judgment:

> 2. The Respondent was in the employment of the Petitioner from 26th January, 1974, as a clerk. His services were abruptly terminated by the effect from 1-5-1979 pursuant to a Resolution passed by the Petitioner-Society on 8-5-1979. By the said resolution, the Petitioner purported to terminated the services of the Respondent with effect from 1.5.1979 on the ground had not shown any improvement in his work despite his attention being drawn several times to his unsatisfactory work. The Petitioner-Society therefore, resolved that the Respondent's work was unsatisfactory and theat the society did not need his services. The Respondent raised a demand for reinstatement in service. The Society having declined to accede to the demand, the Respondent got his demand processed under the provisions of the Act and ultimately obtained a reference for adjudication to the Labour Court, Sangli, which is marked as Reference (IDA) No. 2 of 1981. The industrial dispute referred for adjudication was the demand of the Respondent for reinstatement in service with full back wages and continuity in service. Before the Labour Court, the Petitioner-Employer had to accept that the employment of the Respondent had been terminated without resorting to any disciplinary procedure as there was not even a charge-sheet served on the Respondent, much less any explanation sought for his alleged misconduct or unsatisfactory services. The Petitioner-Society persuaded the Labour court to permit it to lead evidence to prove the unsatisfactory nature of the Respondent's service. Since there were no precise charges with regard to which evidence could be led, the learned Judge of the Labour Court allowed himself to be persuaded to frame a charge-sheet. Such a charge-sheet came to be framed at the instance of the Petitioner-Society on 21st April, 1982. Upon appreciation of the evidence led by the rival parties, the learned Judge answered the issues framed by him as under:
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> **Issues:**

> (1) **Whether the First Party proves that the Second Party has misappropriated any amount viz. Rs. 1,519/- by debiting the amount in his own name?**
> .....
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> **5.** Having heard the counsel for the Petitioner at length, I am satisfied that the award does not suffer from any infirmities. To start with, there is no doubt that the Respondent was summarily removed from service by the Resolution which, without doubt, casts a stigma upon him. It is also not disputed that no semblance of charge-sheet was given to him, nor was any enquiry held before the Respondent was removed from service. The Petitioner should have failed on this very ground. **The Labour Court was, however, persuaded to accept the charge-sheet drafted by the Petitioner as the accusation upon which the petitioner wanted to lead evidence and justify its action against the Respondent. In my view, this was wholly impermissible. It is only if there is a charge-sheet in existence, with respect to which a defective enquiry has been held, that the liberty to satisfy the Tribunal upon material in support of the charge could be exercised**. It is no function of the adjudicating Tribunal to frame the charges, *suo motu* or at the instance of the employer. As if this was not sufficient, the material produced on record by the Petitioner is woefully short of establishing any of the allegations made in the so-called charge-sheet.
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> *(emphasis added)*

19) According to Mr. Bapat, the view taken by the learned Single Judge of this Court in ***Wai Taluka Sahakari Kharedi*** could possibly be the best judgment in favour of the Petitioners wherein this Court did not approve leading of evidence to support termination when no enquiry was held. Mr. Bapat goes a step ahead and submits that one may well argue that the judgment in ***Wai Taluka Sahakari Kharedi*** can also be read in support of proposition that it is impermissible for employer to justify the termination on reasons not reflected in termination order.

20) However, in subsequent judgment in ***D. D. Shah and Co.*** (supra), view expressed in ***Wai Taluka Sahakari Kharedi***

was brought to notice of another Single Judge of this Court (*R.M.S. Khandeparkar, J.*). In ***D. D. Shah and Co.***, no chargesheet was served on the employee leading to the termination of his services. But the Labour Court had allowed the employer to lead evidence to support the order of termination and had dismissed the complaint of unfair labour practice. The Industrial Court reversed the order of the Labour Court holding that it was impermissible to lead such evidence to justify termination when no chargesheet was served on the employee. This Court formulated the point for determination of the judgment in para-5 as under:

> 5. The point for determination which arises in the matter is whether in a case of termination simpliciter, without being preceded by any chargesheet and domestic inquiry, disclosing and establishing the nature of the misconduct on the part of the employee, can the employer be allowed to lead evidence, before the Labour Court to justify the action of termination of services?

21) This Court thereafter considered various judgments of the Apex Court on the issue and held in paras-10 and 11 as under:

> **10.** It is, therefore, clear that irrespective of the fact whether there was inquiry held or not and not merely in case of illegality or invalidity of the inquiry held by the employer, that the employer is entitled to establish the charges against the employee by leading the necessary evidence in that regard before the Labour Court before which the proceedings are initiated consequent to the order of termination issued against the employee. **Even in a case where no inquiry was held prior to dismissal of the employee, his right to justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.**

> **11. The decisions by the learned single Judge of this Court in the matters of *S.V. Kotnis* (supra), *Bajirao Mahadeo Mahadaik* (supra) and *Bank Karmachari Sangh* (supra) were in the peculiar facts of each of those decisions**. In any case, the law on the point being clearly laid down by the decision of the Apex Court, the decisions of this Court contrary to the decisions of the Apex Court can be of no help to the respondent to justify the impugned order.
>
> *(emphasis and underlining added)*

22) This Court thus held that the judgment in *Shri. Bajirao Mahadeo Mahadik* (***Wai Taluka Sahakari Kharedi***) was rendered in peculiar facts of that case and that since the law is laid down by various decisions of the Apex Court, any decision of this Court contrary to the said decisions of the Apex Court could not help the employee to justify the order of the Industrial Court.

23) The judgment of *R.M.S. Khandeparkar, J.* in ***D.D. Shah and Co.*** came to be upheld in Appeal by the Division Bench in ***Vajidali T. Kadri,*** referring to the various judgments of the Apex Court including the judgment in ***The Workmen of M/s. Firestone Tyre and Rubber Co. Of India (P.) Ltd.,*** concurred the view of the learned Single Judge that even in a case where no enquiry is held prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence in support of the action for the first time before the Labour Court remains unaffected. The Division Bench held in para-15 as under:

> 15. In view of the above judgments, the appellant's contention that the learned Single Judge has erred in holding that the management can adduce evidence before the Labour Court must be rejected. Reliance placed by

> the appellant on the judgments of this Court which taken a contrary view is wholly misplaced. **We concur with the learned Single Judge that even in a case where no inquiry was held prior to dismissal of the employee, the employer's right to justify the action by leading necessary evidence in support of such action for the first time before the Labour Court remains unaffected.**
>
> *(emphasis added)*

24) More pertinently, the attention of the Division Bench was also invited to the judgment of *Justice B.N. Srikrishna* in ***Wai Taluka Sahakari Kharedi*** but the Division Bench proceeded to uphold the view taken by *R.M.S. Khandeparker, J.* in ***D.D. Shah and Co.***

25) The law thus appears to be fairly well settled that in a case where no enquiry is held, employer still has right to justify termination by leading evidence for the first time before the Labour Court.

26) This takes me to the second point for determination which is about permissibility for the employer to justify termination on reasons not specified in a termination letter.

27) In the present case, termination letters are similarly worded. So far as allegations of misconduct are concerned, Mr. Kamerkar has placed on record 18 termination orders with compilation. The misconduct alleged in all the termination letters appears to be identical. It would be apposite to reproduce one of the termination letters:

महाशय,
तुम्हांस कळविणेत येते की,

१. तुम्हीं कंपनीमध्ये नोकरीस आहात. दि. २७/११/१९९७ पासून कोणतीही पूर्वसूचना अथवा नोटीस न देता इतर स्टाफसमवेत एकत्रितरित्या, अडवानी ऑर्लीकॉन वर्कर्स युनियन यांनी पुकारलेल्या संपात सामील झालात व तुमच्या मागण्यांच्या पृष्ठयर्थ कामावर रुजू होण्यास नकार देत असून संपावर आहात.

२. या संपासंबंधी कंपनीने तक्रार (यू.एल.पी.) क्र. ५२७/९७ या केसमध्ये हा संप बेकायदेशीर आहे असे जाहीर करावे असा अर्ज दाखल केला असता त्यावर सुनावणी होऊन मा. औद्योगिक न्यायालयाने दि. २८/११/९७ रोजी सदरचा संप बेकायदेशीर असल्याचे जाहीर केलेले आहे.

३. सदरचा संप बेकायदेशीर असल्याचे जाहीर होऊनही व तशी जाहीर सूचना देवूनही तुम्ही ४८ तासाचे आत कामावर रुजू झाला नाहीत.

४. त्यानंतर कंपनीने दि. ६/१२/९७, १२/१२/९७, १६/१२/९७, १८/१२/९७, २५/१२/९७ रोजी स्थानीक वृत्तपत्रांमध्ये जाहीर नोटीस देऊनही सर्वांसह तुम्हांस कामावर हजर होणेबाबत सूचना दिली होती. परंतू तरीसुध्दा तुम्ही कामावर हजर झाला नाहीत.

५. या दरम्यान कंपनीने दि. १९/१२/९७ व २४/१२/९७ रोजी तुम्हांस घरी पत्र पाठवून कामावर हजर होणेसंबंधी सूचना केली असतां तुम्ही अद्यापही कामावर हजर झाला नाहीत.

६. कंपनी आणि स्टाफ मधील सेवाशर्तीसंबंधीचा करार दि. ३१/१२/९६ रोजी संपूष्टात आला. त्यानंतर युनियनने सर्वसाधारण मागण्या सादर केल्या. त्यावर व्यवस्थापन, युनियन व स्टाफ प्रतिनिधी मध्ये काही बैठका झाल्या.

७ मा. अतिरिक्त कामगार आयुक्त, पुणे यांचे कार्यालयातही व्यवस्थापन व कामगार, कामगार प्रतिनिधी व सुनियन यांचे दरम्यान तोडगा काढण्यासाठी चर्चा झाली, परंतु तोडगा निघाला नाही म्हणून व्यवस्थापनाने जॉईंट रेफरन्स करुन मा. न्यायाधिकरणाकडे प्रश्न सोपविण्याची सूचना केली. परंतू ती कामगार प्रतिनिधींनी ती मान्य केली नाही व तुम्ही तुमचा संप तसाच पुढे चालू ठेवला. अशा प्रकारे तुमचा सदरचा संप असमर्थनीयसुध्दा आहे.

८. अशा परिस्थितीमध्ये दि. २९/१२/९७ रोजी सकाळी ७.३० वा. तुम्ही स्वतः इतर सहकाऱ्यांसमवेत कंपनीचे गेटजवळ कापावर हजर होऊ इच्छिणाऱ्या इतर कामगारांस मज्जाव केला व दमदाटी करून दहशत निर्माण केली.

९. मा. औद्यागिक न्यायालयाने तक्रार यु. एल. पी. क्र ५२७/९७ मध्ये कोणतीही दहशतीचे अथवा सक्तीचे कृत्प करण्यास मनाई केली असतानांही मा. न्यायालयाने हुकमाचा तुम्ही अवमान केलात. तुम्ही स्वतः संपात भाग घेतला आहे व इतरासही त्याबाबत प्रवृत केले आहे व भाग पाडले आहे.

१०. अशा प्रकारे तुम्ही केलेली वरील सर्व कृत्ये ही तुम्हास लागू असलेल्या स्थायी आदेशांप्रमाणे पुडील प्रकारच्या गैरवर्तणुक या सदरात मोडतात.

> २२ अ - बुद्धीपुरस्तर उद्याम बर्तन किंवा दुसऱ्या कोणाशी संगनमत करुन वरिष्ठ अधिकाऱ्याने दिलेला कायदेशीर आणि योग्य हुकूम न मानणे,
>
> २२ ब - बेकायदेशीर संपावर जाणे किंवा प्रोत्साहन देणे, चिथावणी देणे, दवाब आणणे किंवा तशीच कृत्ये करीत राहणे.
>
> २२ के - दंगामस्ती किंवा असभ्य वर्तन आस्थापनाच्या जागेत करणे.
>
> २२ ल - शिस्तीच्या किंवा चांगल्या वर्तणुकीच्या नियमाला बाधा आणणारे कृत्य आस्थापनाच्या आवारात करणे.
>
> ११. संपाचा बेकायदेशीरपणाबाबत मा. औद्योगिक न्यायालय यांचे कोर्टात तक्रार यु.एल.पी. क्र. ५२७/९७ मध्ये संपूर्ण चौकशी झालेमुळे याबाबत कोणतीही इतर चौकशी करण्याची गरज नाही.
>
> १२. बाकी आरोपांबाबत घरेलू चौकशी करणे हे तुम्ही निर्माण केलेल्या दहशतीचे वातावरणामुळे शक्य होत नाही. तसेच तुम्ही केलेल्या गैरकृत्यांबाबत व्यवस्थापनाची पूर्ण खात्री झालेली आहे व तुम्ही त्याबाबत पूर्णतः दोषी आहात.
>
> १३. तुमचे नोकरीचा पूर्व इतिहास लक्षात घेण्यात आलेला आहे. कंपनीची कामगाज पध्दती, तुमचे कामाचे स्वरुप, तुम्ही केलेले गैरकृत्य या सर्वांचा एकत्रितपणे विचार करता तुम्हास यापुढे नोकरीस ठेवणे हे कंपनीचे अस्तित्वाचे दृष्टीने धोकादायक असल्याने तुम्हांस दि. ०१-०१-१९९८ रोजी पासून कामावरुन बडतर्फ करण्यात येत आहे.
>
> १४. तुमचे कायदेशीर देय रकमेचा चेक यापत्रासोत्रत जोडण्यात येत आहे.
>
> *(emphasis added)*

28) The only difference in the termination orders issued to various Petitioners is about specification of clauses of Standing Order depending on whether a particular Petitioner is workman or member of staff.

29) Thus, the misconduct alleged against the Petitioners is about taking part in illegal strike and preventing other workers from joining duties on 29 December 1997 at 7.30 a.m. by threatening them and creating an atmosphere of terror. It is also alleged that Petitioners violated the order passed by the Industrial Tribunal in Complaint (ULP) No. 527/1997 which restrained them from creating any act of terror or compulsion. That Petitioners not

only themselves participated in the strike they also coerced others in such participation.

30) However, evidence led before the Labour Court would indicate that in addition to the misconduct specified in the termination letters, various Management witnesses led evidence of assaulting them. Such evidence relating to assault on Management witnesses was led in pursuance of specific averments made in the Written Statement. It would be apposite to reproduce relevant averments in the Written Statement as under:

> (01) The Respondent submits that on 29/12/97 Mr. S.H. Lala, Chief Manager Manufacturing, came to the factory at about 7.30 am. and after parking his car he came near the gate to assess situation. Mr. Lala saw 10 to 15 workers were standing in groups near small shops opposite main Sign Board. Mr. Lala was trying to approach the group at that time Mr. H. N. Babar, Mr. Anthony William, Mr. N.N. Kukade, MR. D.B. Mandekar and Mr. D. B. Gujar came rushing to Mr. Lala and they started abusing him in filthy words. Mr. Lala started discussing with them but they started giving him blows and also slapped him. He thereafter immediately ran back to the factory and the workers standing thereby also ran away towards Khandoba Temple.
>
> (02) The Respondent submits that on 26/12/97 at about 9.30 a.m. Mr. S.S. Bhoi, by Mgr. (Design & Dev.) was coming to the factory as usual. When he was passing through the Khandoba Temple he saw about 15 to 20 striking workmen and staff members near the temple. When they saw Mr. Bhoi they shouted 'Catch him, Catch him'. Mr. G.B. Shinde and Mr. A. G. More came in front of Mr. Bhoi as if they wanted to beat him. Mr. Mandekar came in front and caught his collar and he wanted to give fist blow to Mr. Bhoi. Mr. Bhoi managed to escape but Mr. D.B. Gujar caught him from behind. Mr. Bhoi shouted for police and could got rid from them. Mr. Solankar who was standing there started that he will be seen afterwards and his legs will be broken.

31) The findings recorded by the Labour Court while discussing the evidence of Management witnesses in paras-33 to 42 read thus:

> 33. Considering all these principles now let me true to the evidence laid by the Respondent in the present case.
>
> The Respondent has examined Mr. S.S. Bhoir in Complaint (ULP) No. 26, 58, 60, 27, 76, 79, 68 and 73/98. Mr. Bhoir has narrated that he know all these complainants. He says that workers had gone on difinite strike and they were issued notice in the local newspaper to join duties from time to time. The final notice was given by the Respondent to the workers to join duty from 29.12.97. It was a final notice and the management has instructed him to help the workers, if they are willing to join. On 26.12.97, when he going to the factory at 9.30 a.m. he saw 15 to 20 striking workers standing. Thereafter he has given all the details how the complainants assaulted him. He confirmed his report which is produced at Exh. C-19. He has also naratted the incidence happended on 30.12.97, and explained how concerned employees assaulted him. He proved his report at Exh. C-20. He was cross examined by the complainants. He agrees that he does not fall in the workers category and he was a Dy. Manager. He agrees that it was not his job to get the workers resume to duties. But he says that there were verbal instructions at that particular time. He agreed that his report was not in order as per the normal hierarchy. He has denied the suggestion of giving false report and he has denied he was promoted because of false report. He has agreed that he has not flied any Police complaint and he has not gone for medical check-up. He has denied the suggstion that he has given false evidence only with an intention to implicate the complainants.
>
> 34. The Respondent has examined Mr. Dilip Kothmire in Comp (ULP) 10, 11, 27, 37, 49, 72, 69, and 74/98. He has stated that he knows all these complainants. He has also naratted the same version that the management has given a call to the workers by a notice dt. 25.12.97 to return for duties on or before 29.12.97 and the management has instructed him to help the workers to join. He has naratted the incidence held on 29.12.97 and has given the details how the complainants have assaulted him. He has proved his report at Exh. C-15. He has also naratted the incidence dt. 31.12.97. The complainants have assaulted him. He has submitted his report which is at Ex. C-6. He has also cross examined on the similar lines. He has denied the suggestion of giving false report. This witness has given evidence regarding incidence taken place on 29.12.97 and 31.12.97.

Accordingly, the complainants who were involved in particular incidence their names are appearing in the report of that particular day. He has denied that he has given false complaint as the instance of the Company.

35. Respondent has examined Mr. R. Srinivasan in Comp (ULP) 28, 80 and 72/98. He has stated that he knows all these complaintants. He has stated that on 29.12.97 the workers were expected to join the duties. He has narratted the incidence reported on 30.12.97. He has naratted that how the complainants have assaulted him and abused him. He has stated that he has given report on Exh. C-16. He is also cross exmined on the same lines and he has denied the suggestion of giving false evidence.

36. The Respondents has examined Mr. V. B, Thamboli in respect of Mr. Chavan, Tilekar, Naik, Kalbhor. He has naratted the incidence taken place on 31.12.97 as to how these complainants have assaulted him and he has confirmed his report at Exh. 20. He is similarly cross examined on the same lines.

37. The Respondent has also examined Mr. Nathe in Comp (ULP) 27, 37, 38, 59 and 86/98. He has naratted the incidence how he was assaulted by the complainants on 29.12.97, and the circumstances thereof. He has approved his report at Ex. C-14. He was also cross examined on the same lines.

38. The Respondent has examined Mr. S.H. Lala. He has narratted how the complainants assaulted him and he has confirmed his report. He has deposed in respect of Comp (ULP) 81, 26, 80, 58, and 57/98. He was cross on the same lines.

39. The Respondent has also examined Mr. Rajkumar Pherwani. He has deposed in Comp (ULP) 66, 67, 77 and 85/98. He has approved his report at Exh. 20 wherein he has given all the details of assault committed by the Complainants.

40. The Respondent has examined Mr. Shrikrishan Bashikar in respect of the complainants. He started that he has witness in Comp (ULP) 527/97 in the Industrial Court. He has stated that the staff union filed some documents in that case. He has stated that Advani Oerlicon Employees Union was not in existence in the Co. He has naratted that how Dharna was taken place in front of the Govt. Labour Office. He has stated that there was only one pandal erected by both the unions in front of Govt. Labour Office. He used to attend to Labour Office for discussions before the G.L.O. Representative of staff union and workers union jointly used to attend and discuss about their demands at the same

time. He has approved some of documents which were filed by the Respondent, like letters written to the Commissioner of Labour, telegrams filed etc. He has naratted that on 29.12.97 it was possible that many of the employees could join the duties. He has naratted the incidence dt. 29.12.97. He has naratted that Mr. More along with some of the employees of Adore Power Tron assaulted him. He has proved his report at Exh. 70. He has stated that Mr. Parshuram was Factory Manager under the Factory Act. He is thoroughly cross examined by the Advocate for the complainants. He had denied the suggestion that he is deposing falsely.

41. The Respondent has also examined Mr. R.A. Bijalan in Complaint (ULP) 68 and 75/98. He has naratted incidence of 3.1.98. He has given the details how Mr. Nalk opened the door of his car and pulled him out of the car and Mr. Gharat broken the glass of the car. He has denied of the suggestion that he is deposing falsely.

42. The Respondent has examined Mr. A. Parashuram who is the Factory Manager and who is the signatory to
the termination letters Mr. Parashuram is the main witness in this case, He is the factory manager as well as the punishing authority. He has naratted what was the approach of the management towards the employees. He has stated that the settlement was signed with the staff union as well as workers union. He naratted that the management was not in financial position to meet the demands of the union and therefore requested the Government to take steps under the I.D.A. He has naratted that all the officers who were assaulted reported to him and he himself has verified all the reports of the victims and convinced that assault was taken place. He considered the situation and decided not to hold any enquiry. He clarified in examination in chief that in termination letters he has referred to the assault of the workers and according to him everybody is a worker even though he is a manager, supervisor etc. He has stated on Page 6 that: "In the termination letter I have mentioned that the complainants have obstructed other workmen". By this sentence I wanted to convey that all the employees including the workers, officers and myself are workmen and hence I mentioned the same". He has explained as to why he has not reproduced the entire incidence in the termination letter. He has stated that he himself had talk with all the victims, officers and got it confirmed that they were really assaulted. He has naratted the situation prevailing at that time. He was thoroughly cross examined by the complainants but there is nothing contradictory.

32) Thus, in addition to the misconduct of participation in illegal strike, preventing willing workers from joining duties and threatening and creation of atmosphere of terror, the Management also led evidence of Petitioners assaulting the Management witnesses. The issue therefore is whether the Respondent-Management can be permitted to lead evidence on allegations not incorporated in the termination letter. Here reliance of Mr. Bapat on four Judge Bench decision of the Apex Court in ***Workmen of Motipur Sugar Factory*** (supra) becomes apposite. As discussed above, the case before the Apex Court also involved the issue as to whether the Industrial Court could have considered evidence relating to 'go-slow' tactics when the termination was effected only on the charge of failure to submit undertaking to work diligently and faithfully. The Apex Court has held that the employer could lead 'all relevant evidence' to justify its action before the Industrial Court.

33) What must also be borne in mind is the position in law that it is open for the employer to issue an innocuous order of termination without holding an enquiry and take the risk of justifying such termination by leading evidence. In a case where the employer chooses to terminate employee without holding enquiry, the employer takes the risk of justifying such termination subsequently before the Labour Court. In a given case, on account of passage of time, it may happen that the employer may not be able to produce the required evidence, which is a reason why I have held that the employer in such cases takes a calculated risk of terminating the employee without holding enquiry. Thus, the innocuous

order of termination not containing even a single reason can be justified by leading evidence before the Labour Court to justify such termination. In that case, the employer is permitted to lead all relevant evidence to prove the circumstances which led to termination of the employee. Therefore, if the employer can justify innocuous order of termination by leading 'all relevant evidence', I do not see a reason why an employer specifying one reason in the termination order cannot be permitted to lead evidence in respect of the supplementary reasons, which are not reflected in the termination letter.

34) Also of relevance is the fact that the evidence led by the Management witnesses relating to assault are not independent of the reasons mentioned in the termination letter. The termination letter makes specific reference to the incident of 29 December 1997. The termination is effected essentially on account of conduct of Petitioners in participating in illegal strike and preventing willing persons from joining duties. The termination order clearly refers to creation of atmosphere of terror at the gate of the company. Thus, the allegations of assault, which came to be added in the Written Statement and proved by leading evidence, have clear connection with the allegation of creation of atmosphere of terror specified in the termination letters. Thus, this is not a case where the employer dug out some unconnected material completely different from the one disclosed in the termination letter to justify the same before the Labour Court. Thus, as held by the Apex Court in ***Workmen of Motipur Sugar Factory***, in the present case as well,

the additional reason of assault, for which evidence is led, has direct connection with the reasons specified in the termination letter.

35) I am therefore not impressed with the submissions of Mr. Kamerkar that entire evidence relating to allegation of assault is required to be ignored. In my view, the evidence of assault on Management witnesses is clearly associated with the other acts alleged in the termination letters and therefore the said evidence cannot be ignored while deciding the validity of termination orders.

36) Even if the evidence of assault on Management witnesses is to be momentarily ignored, the misconduct of participation in illegal strike, preventing other willing persons from joining duties and threatening them, together with creation of atmosphere of terror, by itself, constitutes grave misconduct to justify termination of services. In ***Bengal Bhatdee Coal Co. Versus. Ram Probesh Singh***[6], the Apex Court has held that physically obstructing other employees from joining duties by striking employees is a serious misconduct, worthy of dismissal. It is held thus:

> 6. Now there is no doubt that though in a case of proved misconduct, normally the imposition of a penalty may be within the discretion of the management there may be cases where the punishment of dismissal for the misconduct proved may be so unconscionable or so grossly out of proportion to the nature of offence that the tribunal may be able to draw an inference of victiminsation merely from the punishment inflicted. But we are of opinion that the present is not such a case and no inference of victimisation can be made merely from the fact that punishment of dismissal was imposed in this case and not either fine or suspension.

[6] AIR 1964 SC 486

> It is not in dispute that a strike was going on during those days when the misconduct was committed. It was the case of the appellant that the strike was unjustified and illegal and it appears that the Regional Labour Commissioner Central, Dhanbad, agreed with this view of the appellant. **It was during such a strike that the misconduct in question took place and the misconduct was that these thirteen workmen physically obstructed other women who were willing to work from doing their work by sitting down between the tramlines. This was in our opinion serious misconduct on the part of the thirteen workmen and if it is found as it has been found proved punishment, dismissal would be perfectly justified.** It cannot therefore be said looking the nature of the offence that the punishment inflicted in this case was grossly out of proportion or was unconscionable, and the tribunal was not justified in coming to the conclusion that this was a case of victimisation because the appellant decided to dismiss these workmen and was not prepared to let them off with fine or suspension.
>
> *(emphasis added)*

37) Mr. Kamerkar has submitted that Respondent-Management did not examine any worker who was prevented from entering the company premises. However, evidence relating to assault also clearly proves that they were prevented from joining their duties on account of acts committed by the Petitioners. Additionally, various Management witnesses have also produced reports relating to various incidents which contemporaneously took place. The said reports have been marked in evidence which clearly prove acts on behalf of the Petitioners in preventing other workers and staff members from joining duties.

38) Considering the overall conspectus of the case, I am of the view that the Respondent-Management has justified the action of termination of Petitioners. The Management was prevented from holding fair enquiry in the present case on account of atmosphere of terror created by the Petitioners. Petitioners had erected a tent in front of the office of

Additional Commissioner of Labour and camped there. Petitioner showed the audacity of camping outside the Government Office from 7 November 1997 till 30 January 1998 when the tent was ultimately removed. Petitioners have assaulted the Management officials. They had created an atmosphere of terror. They prevented other officials, staff and workers from joining duties. In such circumstances, it was not possible to conduct fair enquiry and the Management rightly took the risk of terminating the services of Petitioners and latter justifying the action by leading evidence before the Labour Court. The Management has examined several witnesses before the Labour Court who have given account of various incidents that occurred suggesting rash, offensive and callous behaviour on the part of Petitioners.

39) The evidence on record has been appreciated by the Labour Court. The Industrial Court has examined whether there is any perversity in the findings of the Labour Court by exercising its revisionary jurisdiction under Section 44 of the MRTU & PULP Act and has thereafter dismissed the Revision Applications. Two Courts having considered the evidence on record and it would not permissible for this Court to again re-appreciate the said evidence and arrive at a different conclusion than the one recorded by Labour and Industrial Courts. I accordingly proceed to hold that the orders passed by the Labour and Industrial Court to be unexceptional. The Writ Petition is devoid of merits and the same is **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]