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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.5680 OF 2017**

Godrej and Boyce Manufacturing
Company Limited

... Petitioner

vs.

Ravindra Shanta Sharma

... Respondent

.....

Mr. J. P. Cama, Senior Advocate a/w. Mr. Bharat Goyal and Mr. A. K. Gopalan i/b.
M/s. Hareesh Mehta & Co. for the Petitioner.

Mr. Sanjay Singhvi, Senior Advocate a/w. Mr. Bennet D'Costa and Mr. Jignasha
Pandya for the Respondent.

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CORAM : A.K. MENON, J.

RESERVED ON : 24th FEBRUARY, 2018

PRONOUNCED ON : 28th MARCH, 2018

JUDGMENT

1. This petition filed under Article 226 of the Constitution of India challenges the final order dated 24th March, 2017 passed by the Industrial Court Mumbai in Complaint (ULP) 183 of 2010 and Revision Application (ULP) No. 83 of 2015.

The facts in brief which lead to this petition are as under:

2. The petitioner is a company engaged in the manufacturing of white goods, furniture, security, other precision equipments and tooling at its several establishment in different locations. The respondent was appointed as workman in Grade "B" vide letter dated 1st November, 1989. He was an hourly rated workman initially working in the Skilled (Category-I) in the "Interio" Division of the Company at Plant-01 at Vikhroli.

3. On 3rd November, 2010 the workman is stated to be have been working in the first shift commencing from 06.40 am to 3.20 pm with a break from 11.45 am to 12.15 pm. It is the petitioner's case that around 3.20 pm on 3rd November, 2010 the respondent along with Mr. Valerian A. Fernandes incited some workmen who had come to work in the second shift not to report for work, but to remain with him and some workmen from the first shift so as to go to the Time Office in a group to discuss non payment of money as diwali gift (Bonus) to some workmen. It is stated that the respondent and the said Mr. Fernandes along with their group stormed into the Time Office of Plant-01 and confronted the Deputy Manager, Mr. Nitin Ambaji Borkar and in a threatening manner demanded an explanation as to why some workmen were not paid bonus amount.

4. Mr. Borkar, Deputy Manager asked the respondent and other workmen accompanying him to behave in an orderly fashion and seek clarification individually, but the respondent is stated to have shouted at Mr. Borkar, suggested that the petitioner - management was being selective of the workmen to whom bonus has to be paid and Mr. Borkar would have to be taught a lesson. They shouted slogans against the management and there upon the Deputy Manager called the Senior Manager (Personnel) Mrs. Kshama Handa to the Time Office. Mrs. Handa arrived, she requested the respondent to calm down and talk appropriately, but the respondent continued shouting aggressively. Upon being told to mind his tone and language, especially since he was talking to a lady officer, she informed the group of workmen that payment of bonus was not a

condition of service and that the management in anticipation of workmen co-operating and enhancing production and productivity and maintaining industrial peace and harmony, such payments were made purely as gesture of goodwill entirely at the discretion of the management. The respondent allegedly charged towards the said lady officer in a threatening manner. Since he had lost control of his temper, he was pulled back by some of the workmen in the group after which he is alleged to have made indecent remarks and gestures. It is the contention of the workman that the incident ended there on that day.

5. The petitioner took the view that the conduct of the workman amounted to disturbing the peace and tranquility of the establishment, including threatening the officers of the company and instigating other workmen to join him in violation of the code of conduct and discipline. The petitioner therefore concluded that retaining him in services was against the interest of the company and decided to discharge him from services of the company under the Standing Order No. 21(1). Accordingly he was discharged on 18th November, 2010. Instead of paying 13 days basic pay and allowances in lieu of notice, as provided in the Standing Order, he was paid one month's salary and allowances in lieu of notice. By way of an abundant caution, retrenchment compensation was also paid and he was called upon to return the company property including identity card and the like.

6. Later, on 3rd November, 2010 an FIR was filed by the officer Mrs. Handa with the Vikhroli Police Station. The respondent challenged the company's decision by filing Complaint (ULP) No. 183 of 2010 which was contested by the company. The

application for interim relief filed by the workmen was rejected and a revision application came to be filed which was disposed of by the Industrial Court by giving directions to the Labour Court to dispose of the main complaint as expeditiously as possible. Since the petitioner had sought an opportunity to lead evidence before the Court and examine Mr. P B. Rao as its witness. He deposed to the applicability of the Standing Order. Thereafter officers Mr. Borkar and Mrs. Handa were also examined. The respondent also led evidence and examined one Mr. Umesh Kale.

7. On 27th August, 2015 the Labour Court passed a final order allowing the complaint and declared that the petitioner had engaged in unfair labour practices under item 1(a), (b) and (f) of Schedule IV of the MRTP & PULP Act, 1971 (the said Act) and directed the petitioner to reinstate the workmen in his original post with effect from 18th November, 2010 along with continuity of service, full back wages and consequential benefits. Being aggrieved by the said decision the petitioner filed revision application under section 44 of the said Act before the Industrial Court. The Industrial Court heard the arguments in the revision application and the impugned order dated 24th March, 2017 was passed dismissing the revision application. By the impugned order dated 24th March, 2017 in Complaint (ULP) 183 of 2010 it was declared that petitioner had engaged in unfair labour practices under items 1(a), (b) and (f) of Schedule IV and the petitioner was directed to reinstate the workman. Being aggrieved by the said order rejecting the revision, the petitioner is before this Court.

8. Mr. Cama, learned Senior Counsel appearing on behalf of the petitioners contended that the orders of the Industrial Court and Labour Court were ex facie erroneous. The petitioner had led evidence of two of its witness in support of its action discharging the respondent. He submitted that although the discharge was not as result of any domestic inquiry, it was decided on the basis of tangible evidence. The petitioner had led evidence before the Labour Court to justify its action in discharging the workman. Mr. Cama submitted that the Labour Court had concluded, erroneously, that the discharge was penal in nature and was not justified in the facts and circumstances of the case, since no domestic departmental inquiry had been conducted against him. Mr Cama further submitted that the Labour Court had erroneously come to the conclusion that the discharge of the workman was a colourable exercise of the employer's powers, not in good faith, but issued in undue haste. Mr. Cama submitted that the workman was discharged for valid reasons as set out in the evidence led before the Labour Court. According to Mr. Cama the Labour Court and Industrial Court did not appreciate that even though by Standing Order No. 22 the company had reserved its rights to lead evidence before the appropriate forum and it did.

9. Mr. Cama submitted that conduct of the respondent in particular while dealing with the Senior Manager (Personnel) Mrs. Handa was derogatory and offensive, breaching the standard of decency and also outraging the modesty of a lady officer and would certainly qualify for loss of confidence. Mr. Cama submitted that the respondent concerned was discharged for rude and arrogant

behaviour while dealing with a superior officer and police authorities acting on the FIR had asked him to furnish a bond for good behaviour. Mr. Cama relied upon the following judgments :

1. *The Tata Engineering and Locomotive Co., Ltd. vs. S. C. Prasad and Another* [1969(3) SCC 372].
2. *Kamal Kishore Lakshman vs. The Management of M/s. Pan American World Airways Inc. and others.*[AIR 1987 SC 229, 1987].
3. *The Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt. Ltd. vs. The Management and Others* [(1973) 1 SCC 813].
4. *Shankar Chakravarti vs. Britannia Biscuit Co. Ltd and Anr.* [(1979) 3 SCC 371]
5. *Delhi Cloth & General Mills Co. vs. Ludh*
6. *Welcome Group Searock, Bandra, Mumbai vs. Kashinath Iyer & Anr* [(2017) II CLR 329]

10. Mr. Singhvi, learned Senior Counsel appearing on behalf of the respondent opposed the petition. He submitted that the entire incident has been blown out of proportion. According to Mr. Singhvi the petitioner had come to the Court with a case that the respondent had instigated a group of workers and had prevailed upon them to disrupt the peace and tranquility of the establishment. He submitted that the incident had admittedly taken place at the Time Office. The Time Office was located outside the plant and the admitted facts reveal that the respondent and his colleagues were leaving the plant at the end of their shift. The situation described by the petitioner could not be believed. He submitted that on the way out of the premises a minor argument ensued which had been blown out of proportion. He submitted that the petitioner had failed to make out any case of disturbing the

functioning of the establishment or any part thereon. The incident took place only in Time Office which is not within the plant but outside the operational area of the plant. It is the place to which all workmen entering and exiting had to pass through. The petitioner had not established that the respondent and his group had prevented other workers from reaching their work place. It is a bald allegation in the petition. Mr. Singhvi submitted that an incident of this nature should have been subjected to domestic inquiry to bring out the truth. However, the petitioner had chosen not to do so. He supported the impugned order submitting that the Industrial Court had correctly concluded that the petitioners witnesses version could not be believed. While Mr. Cama had contended that the evidence of the petitioner's witness was un-contradicted, the Industrial Court found otherwise.

11. Mr. Singhvi submitted that the petitioner's contention that he should prove was not required in cases of this nature to justify the charges against the workmen and the failure that the petitioner had failed to prove misconduct and the action in the present case amounted to victimisation, but the company had not led any evidence on this crucial aspect knowing fully well that the respondent workman was victimised for his trade union activities. He was seen as inconvenient to the management and the discharge of the workman from services had nexus with his trade union activities. He therefore supported the impugned order. Mr. Singhvi, relied upon the following judgments :

1. *Davinder Singh and Others vs. State of Punjab and Others* [(2010) 13 SCC 88]
2. *Amar Chakravarty and Others vs. Maruti Suzuki India Limited* [(2010) 14 SCC 471]
3. *Punjab Land Development and Reclamation Corporations Ltd, Chandigarh vs. Presiding*

Officer, Labour Court, Chandigarh and Others [(1990) 3 SCC 682]

4. *Chowgule & co. vs. Chowgule Employees' Union [(2007) 114 FLR 366]*

5. *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ed) and Others [(2013) 10 SCC 324]*

12. I have heard the learned counsel at length and perused the impugned order. The complaint filed under section 28 and 30(2) of the Act proceeds on the basis that there are 4500 permanent workman employed in the petitioner company all of whom owe allegiance to three unions. The Godrej & Boyce Shramik Sangh is a recognised union but is supportive of the management for many years. It is contended that the said union has ignored the cause of workers and deliberately failed to take up their cause on several occasions. In the affidavit in reply the respondent contended that initially the the petitioners transferred staff committee members including the respondent to various other locations. Thus a background is laid by the respondent. It is contended that the company had issued show cause notice to the respondent in the past and for remaining away from work on one occasion. According to the complainant for the year 2008-09 bonus was paid @ 16000/- to all workers other than to member workers of the second union and the union supported by the respondent.

13. The complainant has narrated that on 3rd November, 2010 he along with the said Mr. Fernandes had lodged a complaint at the Vikhroli Police station against the company . According to the complainant he was unemployed since termination of his services and does not have an alternative source of employment. He therefore sought interim relief on the basis that his services were abruptly terminated and

thereby the petitioner's have committed unfair labour practices under Item 1(a), (b), (c), (d), (f) and (g) of Schedule IV of the said Act. But the respondent contended that the petitioner had filed a false complaint before Vikhroli Police Station and the services of the respondent has been terminated with undue haste, disregarding principles of natural justice by not conducting a departmental enquiry. No opportunity was given for filing his say. The punishment meted out to the respondent was disproportionate. He therefore sought reinstatement with continuity of service and dismissal of the petition.

14. The case of the company in its reply filed before the Labour Court indicates that said complaint disclosed no cause of action. It reiterates the incident and narrates how retrenchment compensation has been paid by the way of abundant caution. The affidavit in lieu of examination in chief filed before the Industrial Court proceeds on the basis of the same averment.

15. Mr. Borkar in charge of the plant at the material time was also examined on oath. He narrated the incident including the complainant's conduct in charging at Mrs. Handa, Senior Manager Personnel. Mr. Borkar was cross examined and during the cross examination he deposed that bonus was not given to each and every workman and he could not say how many workmen were given bonus. He admitted that bonus was not offered to the respondent and his colleague Mr. Fernandes. He admitted that he had not given a written complaint to Mrs. Handa that the respondent workman were shouting slogans. According to him there was no reason to record the incident in writing and after the incident he lodged an FIR

in Vikhroli police station. He deposed that the security personnel had also attended the police station. The witness admitted that the respondent was discharged without conducting any inquiry in respect of the complaint. No show cause notice was issued by the complainant or the other workman and the witness was not authorised to issue such a complaint. That the appropriate disciplinary authority was the manufacturing head of the petitioner who had also not authorised any disciplinary action. Furthermore it was disclosed in the deposition that between 3rd November, 2010 and 18th November, 2010, the respondent was on duty and there is no allegation of the respondent having behaved in an untoward manner. The witness Mr. Borkar had not called the security personnel and the other witness examined was Mrs. Handa. She was not aware whether the respondent was working in the company during 3rd October, 2010 to 18th October, 2010. No written complaint or incident was made to any Senior Officer in the company. That only Mr. Borkar and she had made a written complaint of the incident. The conversation which is now set out in the affidavit and the discharge letter is not part of the FIR. The witness admitted that the respondent was not given show cause notice stating that his services was liable to be terminated on account of procedure provided in the Standing Orders.

16. In the course of submissions Mr. Singhvi had relied on affidavit of evidence of the respondent who deposed that he is not gainfully employed and faces great hardship. He was extensively cross examined on various dates. In respect of his other employment options he has deposed that he has four members in his family.

There are two children. The elder son has completed his degree in Electronics and Telecommunication and his younger son is in standard 12th and his spouse is a house wife. He was unable to obtain a job despite making attempts in some company named therein and that due to allegation in the present complaint, the company concerned had refused to offer him a job and had not even accepted the application forms. He has deposed that he is managing his livelihood based on his provident fund amounts and that he had withdrawn his children from the school run by the company.

17. The second witness Mr Umesh Raghunath Kale was also examined and cross examined. The impugned order proceeds to hold that the petitioner had engaged in unfair labour practices under item 1(a) (b) and (f) of schedule IV. The complainant was directed to be reinstated after adjusting the amounts paid to him as wages and retrenchment compensation. The impugned order dated 27th August, 2015 passed in Revision Application No. (ULP) 83 of 2015 whereby the impugned order passed by the Labour Court was upheld. The Labour Court after evaluating the evidence held that the impugned order records that the discharge order did not reveal the impracticality of holding department inquiry, even though it observed that the acts of complaint was so grave and serious act of indiscipline amounts to misconduct as per Certified Standing Orders No.22. The Court found that the Government authority had contemplated the need for leading evidence, but the discharge order mentioned that the company reserved its rights to adduce evidence to justify its action before the appropriate forum if and when the respondent chose to raise a

dispute. The Court therefore inferred that the petitioner was keen to terminate the services of the respondent, thus amounting to colourable exercise of employer's rights lacking in good faith and in undue haste.

18. The impugned order observed that the Certified Standing Order no. 21 entitled the company to discharge a permanent workman and that reasons are required to be recorded. However, no reasons were recorded. In this behalf Certified Standing Order no. 21 reads as follows :

21(1) Procedure for the termination of the services of a workman .

The establishment may at any time discharge a permanent workman by giving him fourteen days' notice or by payment of thirteen days basic pay and allowances admissible in lieu of notice. The reason for the termination of services of a permanent workman shall be recorded in writing and shall be communicated to the workman if he so desires at the time of discharge, unless such communication, in the opinion of the Manager may directly or indirectly lay the establishment and/or the Manager or the person signing the communication open to criminal or civil proceedings at the instance of the workman.

It sets out the procedure for termination of services of workman. The Tribunal observed that scrutiny of the said Standing order reveals that the reasons for termination are to be recorded in writing and shall be communicated to the workman, if he so desires, at the time of discharge unless the petitioner felt that such communication may expose the establishment or the Manager to civil or criminal proceedings at the instance of the workman. I am unable to accept the

plea of the petitioner that no reasons were required to be given. A plain reading of Standing order 21(1) requires the company to give reasons. It is only communication of reasons that is subject to the desire of the / at the option of the workman, if he has chosen to demand reasons at the time of discharge and an agreement that the reasoning in the impugned order to the effect that the requirement of mentioning reasons in the discharge order is not a formality..

19. On a reading of Standing Order 21, 22 and 23 dealing with procedure for termination, acts of misconduct and the result of misconduct leading to enquiries to procedure and punishment are all to be read together. In the instant case it is not possible to accept the petitioner's contention that the discharge order pursuant to Standing Order 21 need not contain any reasons. If this plea is accepted this would grant unbridled power to deal with the work force which is impermissible and not contemplated in the scheme of the Act. The Labour Court found that the plea of loss of confidence is also not established. Mr. Cama had contended that the finding of the Labour Court to the effect that the petitioner's witness Mr. Borkar had admitted in his cross examination that no employee had complained in writing that they were restrained by the respondent or Mr. Fernandes from doing their work was perverse. According to Mr. Cama the witnesses had not so deposed. I however find this submission incorrect because the witness has in his cross examination in paragraph 2 answer to the second question has stated as follows: "*No employee had given in writing.*" Thus there is no merit in the contention that the impugned order is perverse because as it attributes a statement to a witness which the witness

had not made. In appreciating the evidence of Mr. Borkar, the Court has disbelieved his version of the alleged incident.

20. Furthermore, the Court observed that Mrs. Handa, Senior Manager – Personnel had admitted to the presence of one Mr. Lekhwar in the office of Mr. Borkar but even Mr. Lekhwar had not reported of the alleged incident. On the other hand, the said Mr. Fernandes has separately lodged a complaint against Mr. Borkar and Mrs. Handa. The impugned judgment of the Labour Court records that the incident is said to have taken place on 3rd November, 2010 and thereafter no further investigation has been carried out in the alleged offences under section 504 and 506 of the IPC since there were cross allegations between respondent and Mrs. Handa regarding the incident. Although the complaint against the respondent included charges of attempt to outrage the modesty of women. No such offence of outraging the modesty of women was recorded against respondent or his colleagues in his group. The Court concluded that the complaint filed on behalf of the company by Mrs. Handa was by the respondent witness probably was a counter blast and was disbelieved. The impugned order has recorded that both witnesses on behalf of the company had made written complaints. However, no other persons are stated to have witnessed the incident. In view of this position and the fact that there were cross complaints filed in the police station, it was concluded that the version of the company's witness could not be believed.

21. In *TELCO Ltd (supra)* the Supreme Court while considering the powers of the Industrial Tribunal upon discharge and dismissal of workmen and whether

rules of natural justice have been violated rendering the discharge / dismissal malafide, observed that the company had two alternatives, either to act under the Standing Order or hold a domestic enquiry. Opting for a domestic enquiry would mean that an enquiry would be going on parallel to that before the committing magistrate. The company preferred to invoke the Standing Order. The Tribunal held that the domestic enquiry which had meanwhile been commenced against other employees had been vitiated. Considering extraneous matter it was held that the Tribunal could not dis-regard the finding and decide for itself that the orders of dismissal were unjustified and no question of victimisation or bias against the workman could arise once it is held that the finding of misconduct alleged against the employees was properly arrived at and the domestic inquiry would in no way be vitiated. I do not see how *TELCO Ltd. (supra)* is of any assistance to the petitioner in the present case. The impugned order has evaluated the evidence led and come to a conclusion on appreciation of evidence after the company opted the Standing Order route.

22. In *Kamal Kishore Lakshman (supra)* the Court observed that loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and that an allegation of loss of confidence amounted to a stigma. Further it was held that if a domestic enquiry had not been held before the disciplinary action was taken, it is open to the employer to ask an opportunity during the course of adjudication and in the facts of that case, the order of separation based on loss of confidence was justified before the Labour Court. In

the present case the petitioner seems to have adopted but the course of its choice and had tried to established its case before the Labour Court and thereafter in revision before the Industrial Court. These Courts have given their finding which are in my view, fair and reasonable. *Kamal Kishore Lakshman (supra)* merely contemplates a course of action namely seeking to establish a case of misconduct at the time of adjudication. This judgment is of no assistance to the petitioner in the facts of the present case.

23. *Firestone (supra)* lays down in no uncertain terms that even if no enquiry was held, the parties could adduce evidence before the Industrial Tribunal and in that case the Industrial Tribunal had to decide whether misconduct had been established. It was held that the Industrial Court had no power to straightaway order reinstatement if the enquiry is held to be improper or no enquiry was held provided the employer sought opportunity to lead evidence. If the misconduct was established either in the enquiry or in evidence before the Industrial Tribunal, the punishment cannot be interfered with, except when it is so harsh as to suggest victimisation and that if a dismissal order was set aside it was within the discretion of the Industrial Tribunal whether or not to reinstate the workmen. *Firestone (supra)* further held that the provisions of welfare legislation suggests that as per the Industrial Disputes Act Courts should adopt a beneficent rule of construction. In my view *Firestone (supra)* does not come to the assistance of the petitioners. No doubt the company may have been justified in leading evidence before the Labour Court, rather than conducting a domestic inquiry. However the question that

arises is, having adopted such course of action and a failed challenge, whether the impugned order called for any interference. In this respect the decision in *Firestone (supra)* is of no avail.

24. In *Shankar Chakravarti(supra)* the Supreme Court after relying on various decisions in *Firestone (supra)* the Court observed that even if no enquiry has been held by an employer or if the enquiry held was found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the orders, has to give an opportunity to the employer and employee to lead evidence. The Tribunal has jurisdiction to consider evidence before it for the first time only, if no enquiry is conducted or the enquiry held was found to be defective. The law did not recognise the Tribunal reinstating the dismissed employee merely on finding that no domestic inquiry is held or if the inquiry was found to be defective. In the instant case the management has adopted this route. *Shankar Chakravarti(supra)* therefore reiterates *Firestone (supra)* holding that the management itself must seek an opportunity to lead evidence. In that case the High Court had corrected the Tribunal in appeal. It was incumbent on the Industrial Court to give an opportunity to the employee to lead evidence to prove charges alleged. The Court found that there was no pleading seeking additional evidence nor was a request made before the Tribunal when the proceeding was going on till the award was made. The Supreme Court held that the Calcutta High Court was in error in granting an opportunity which had not even been sought. In the case at hand the petitioner sought opportunity to lead evidence before the Tribunal which was

granted and availed of. I do not see how *Shankar Chakravarti (supra)* is of any assistance to the petitioner in the instant case.

25. Furthermore in *Delhi Cloth & General Mills Co. (supra)* it was held that where no enquiry had been held, the employer or employee has a right to adduce evidence before the Tribunal. This was recognised in *Firestone* wherein it was reiterated that while the right to take disciplinary action and the quantum of punishment is a managerial function, but if the dispute is referred to the Tribunal, the Tribunal had the power to see whether the termination of service of a workman is justified and to give appropriate relief. The employer is expected to conduct a proper enquiry according to provisions of Standing Orders and principles of natural justice, to ensure that the enquiry was not an empty formality and the interference with the decision of the employer would be justified only when the findings were found to be perverse and if the management had victimised the workman. Even if no enquiry was held the Tribunal was required to satisfy itself of the validity of the order and offer an even opportunity to parties to lead evidence before it. The one who seeks to avail such an opportunity, should ask for it at the appropriate stage and if so asked, the Tribunal has no power to refuse the same.

26. In the course of his submissions Mr. Cama had also relied on the decision of this Court in *Welcome Group Searock, Bandra, Mumbai vs. Kashinath Iyer & Anr [supra]* in which the High Court had remanded the matter for determination of backwages and monetary compensation payable. The Industrial Courts order was therefore set aside. The direction for resumption of duties and continuity of

services was also set aside. In my view the judgment is not applicable to the facts of the present case which essentially involved the question of appreciation of evidence led before both the Courts, the Labour Court and by the Industrial Court in Revision under Application (ULP) No. 83 of 2015.

27. As far as judgments referred to on behalf of respondent are concerned in *Davinder Singh and Others (supra)* the Supreme Court while dealing with an order of termination for indiscipline at a Railway Station found that the order invoking discharge passed based on compendium of instructions on Home Guards and Rules were not exercised upon the guards concerned on the basis of rule providing for discharge of any member by the authority which had appointed him when his services are no longer required. The Court held that the ground of indiscipline would amount to an act of misconduct and due procedure under Rule 27 had to be followed which provided that no order of dismissal would be passed without giving a reasonable opportunity of showing cause against action proposed to be taken. The Court quoted that the expression 'discharge' was interpreted by the *State of Kerala vs. Mother Anasthasia, Superior General* [5 (1997) 10 SCC 79] and wherein it was held that discharge should be read ejusdem generis which in that case would indicate abolition of post or course of study etc. except for discharge due to misconduct.

28. In *Amar Chakravarty and Others vs. Maruti Suzuki India Limited (supra)* the Supreme Court reached a conclusion that if no enquiry is held, the onus of proving that it was not possible to hold an enquiry and that the termination was justified, lay

on the management. It was for the management to prove that the employees conduct was tantamount to misconduct. In the present case the management sought an opportunity to lead evidence in the Tribunal. This cannot in my view be faulted in view of the decision in *Firestone (supra)* and *DCM (supra)*. It was not necessary for the management in the instant case to show that it was not possible to conduct an enquiry since in the Labour Court evidence had in fact been led. This decision is therefore of no assistance to Mr. Singhvi.

29. In *Punjab Land Development (supra)* reliance has been placed on paragraph 77 in support of the respondent's plea that the termination amounts to retrenchment without following due process. However this aspect need not be gone into as it is beyond the scope of the present petition. In *Chowgule & Co. (supra)* this Court observed that if evidence had been led by the company and had been taken into consideration, the company had material on record to show that the workman was responsible for the purpose of acts of calling illegal strike and / or intimidating the workman for following their dictates, it was imperative for the company to have examined at least one workman to show that he was intimidated or to bring any other material on record to substantiate its allegation. Mr. Singhvi relies on this judgment on the aspect of the allegation that the respondent had prevented other workman from attending their duties. I am in agreement with Mr. Singhvi on this aspect since the petitioner in my view had not led evidence before the Tribunal.

30. In *Deepali Gundu Surwase (supra)* reliance was placed on the proposition set out by the Supreme Court in the case of *Rudhan Singh and Uday Narain Pande* that on termination reinstatement and back wages is the normal rule and while taking a decision in that behalf the authority concerned would take into consideration certain criteria such as nature of misconduct, financial condition of the employee etc. and once employee showed that he was unemployed the onus on the employer to prove that he was gainfully employed and was getting substantially similar emoluments. This principle can be usefully applied to the facts of the present case where the court was satisfied that the evidence on record established the respondent was not gainfully employed after the termination of his services and that the petitioner had not led any evidence to the contrary.

31. On behalf of the petitioners, Mr. Cama, learned Senior counsel has contended that the finding of the Labour Court in paragraph 24 and 25 of the impugned judgment to the effect that the petitioner shall not engage in unfair labour practices by way of victimisation and that by issuing discharge order which was penal in nature and without conducting any domestic enquiry and without bonafide reason resulted in unfair labour practices under items 1(a), (b) and d(f) of Schedule IV of the said Act. He submitted that there was no basis for arriving at such a finding, the Labour Court in my view was justified in reaching its conclusion on issues (3) to (6) with consequences to follow. As far as the order in revision is concerned the Revisional Court has upheld the order of the Labour Court. The respondent continued to attend work between 3rd November, 2010 and 18th November, 2010

when he was eventually discharged. If the conduct of the respondent had been so grave and serious, then there was no reason why the petitioner company allowed him to attend to work for 15 days during which period the presence of the employee was not found detrimental to the interests of the company. Thus, the revisional Court found in favour of the respondent. Furthermore, although retrenchment compensation was said to have been paid by way of abundant caution provisions of Chapter V-B and Section 25N of the Industrial Disputes Act, 1947 had not been followed

32. The Revisional Court has observed that the incident took place at the end of the first shift and there was no question to preventing other employees from attending to their duties who were the very employees who had come and gone along with the respondent to the Time Office. In my view the contention that the incident took place in the Time Office outside the operational area of the plant is also an indicator of the fact that there was probably no disruption of work. The two witnesses who on behalf of the company have not deposed to any disruption having been caused. In the affidavit in reply filed on behalf of the respondent, the respondent has taken up the contention that termination simplicitor did not amount to retrenchment, in law seems illegal. The allegations are made of the tactics of the union to which the petitioner took allegiance by victimising the workman joining the respondent union MNKS. According to the respondent, the petitioner was targeting the respondent by issuing a show cause notice and framing false charges. According to him the company has made identical allegations against the respondent and Mr. Fernandes. Mr. Singhvi had invited my

attention to the comparative table of allegations in paragraph 14 of the affidavit in reply. Whereas statements attributed to the respondent were in english those attributed to Mr. Fernandes were in marathi. I find it difficult to believe that both persons made almost identical statements.

33. Furthermore it was contended that if there had been a real attempt at outraging the modesty of the lady, it was only expected under Vishakha guidelines to institute an inquiry against the respondent. The impugned judgment of the Labour court also records that if there were a series of altercations and slogan shouting, the security guards would have immediately arrived on the spot. This is one more reason according to the Courts below as to why deposition of Mr. Borkar could not be believed.

34. As I have observed earlier, the Labour and Industrial Courts have clearly recorded there was no evidence as such of the workman being so obstructed, this read with the fact that the respondent was allowed to work for a further 15 days during which period presence of the employee was not found detrimental to the interests of the company and no other impediment in the working of the establishment were recorded, the impugned orders do not call for any interference. Accordingly, I pass the following order :

- (i) Rule discharged. Writ Petition is dismissed.
- (ii) Ad-interim order dated 7th June, 2017 extending the stay granted by the Industrial Court on 25th May, 2017 is hereby vacated.
- (iii) No order as to costs.

(A.K. MENON, J.)