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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO. 270 OF 2009
IN
REVIEW PETITION NO. 86 OF 2009
IN
WRIT PETITION NO. 2791 OF 2009

- 1. AWADESH SINGH YADAV**
R. No. 311, Sai Villa Complex,
Athal
- 2. SHANKAR C VASAVA**
Sai Villa, Naroli Road, Athal, Silvassa
- 3. CHETAN M PATEL**
At : Post Borigam (Borifaliya)
Tal. Umergam, Dist. Valsad
- 4. ASHWIN R SINGH**
Opp. Ramkuben S Patel,
Bhurkud Falia, Near Ayappa Mandir,
Silvassa

... Appellants
(ORIG. PETITIONER)

~ VERSUS ~

- 1. LABOUR & ENFORCEMENT
OFFICER**
Dadra & Nagar Haveli
Silvassa, Dadra & Nagar Haveli

2. M/s IPCA LABORATORIES LTD

Plot No. 255/1, Athal
Silvassa, Dadra & Nagar Haveli

**3. THE REGIONAL
DY.COMMISSIONER**

(Labour Commissioner),
Dadra & Nagar Haveli, Silvassa
Dadra & Nagar Haveli.

... Respondents
(ORIG. RESPONDENTS)

**WITH
LETTERS PATENT APPEAL NO. 83 OF 2010**

IN

WRIT PETITION NO. 2791 OF 2009

M/s IPCA LABORATORIES LTD

Plot No. 255/1, Athal
Silvassa 396 230,
Dadra & Nagar Haveli

... APPELLANT
(ORIG. RESPONDENT No.2)

~ VERSUS ~

1. AWADESH SINGH YADAV

R. No. 311, Sai Villa Complex,
Athal

2. SHANKAR C VASAVA

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Silvassa

**5. LABOUR ENFORCEMENT
OFFICER**

Dadra & Nagar Haveli
Silvassa.

**6. THE REGIONAL
DY.COMMISSIONER OF LABOUR**
Dadra & Nagar Haveli, Silvassa

... Respondents
(ORIG. PETITIONERS)

APPEARANCES	
FOR THE APPELLANTS/PETITIONERS IN LPA/270/2009 AND FOR RESPONDENTS NOS. 1 TO 4 IN LPA/83/2010	Ms JANE COX
FOR RESPONDENTS NO. 2 IN LPA/270/2009 AND FOR APPELLANT IN LPA/83/2010	MR SK TALSANIA, SENIOR ADVOCATE, <i>with SS Deshmukh.</i>

**CORAM : G.S. Patel &
Gauri Godse, JJ.**

**RESERVED ON : 6th October 2022
PRONOUNCED ON : 23rd November 2022**

JUDGMENT (Per Gauri Godse J):—

1. The Letters Patent Appeal No. 270 of 2009 challenges Judgment and Order dated 18th August 2009 passed by the learned Single Judge in Review Petition No. 86 of 2009 in Writ Petition No. 2791 of 2009 (“the review order”). Appellants in this Letters Patent Appeal—Awadesh Singh Yadav and others (“the workmen”) are the original Petitioners.

2. By Judgment and Order dated 24th April 2009 passed in Writ Petition No. 2791 of 2009 (“Order in Writ Petition”), the Learned Single Judge set aside the approval granted by the Respondent No. 1 in the Writ Petition (“the Conciliation Officer”) under Section 33(2)(b) of the Industrial Disputes Act, 1947 (“the said Act”) to the order of dismissal of the workmen. In paragraph 16 of the Order in Writ Petition, it was observed that since the matter is being referred by the Regional Deputy Commissioner (Respondent No. 3 in the Writ Petition) (“the Deputy Commissioner”) to the Industrial Court, all the other questions were kept open and the employer was held entitled to prove the alleged misconduct to the Industrial Court by leading evidence. The workmen filed the Review Petition seeking clarification regarding observations in paragraph 16 of the Order in Writ Petition.

3. By the review order, the learned Single Judge partly allowed the review petition and the observations made in paragraph 16 of the Order in Writ Petition were withdrawn and substituted with fresh directions which are as under:

“(i) Respondent No. 2 in the original Petition are permitted to lead evidence before the Labour Enforcement Officer/Conciliation Officer under section 33(2)(b) for proving charges of misconduct against workmen.

(ii) Liberty is granted to original petitioners to apply for subsistence allowance.

(iii) If an application for subsistence allowance is made by petitioners, Conciliation Officer shall decide it in accordance with law.”

4. The Letters Patent Appeal No. 83 of 2010 is filed by M/s IPCA Laboratories Ltd (“the employer”) for challenging the Order in Writ Petition.

FACTS IN BRIEF:

5. Writ Petition was filed by the workmen for challenging order dated 21st July 2008 passed by the Conciliation Officer. By Order dated 21st July 2008, approval was granted by the Conciliation Officer for dismissing the workmen from the employment. In the Writ Petition, the workmen also prayed for directing Respondent No. 2 in the Writ Petition-the employer, to reinstate the workmen with full back wages and continuity of service with effect from 30th March 2007. In the Writ Petition, the workmen further prayed for directing the Conciliation Officer to admit into conciliation the demand raised on the employer on 28th February 2008 as per intervention letter dated 31st March 2008 and direct the Deputy Commissioner to refer the matter for adjudication under Section 10 of the said Act.

6. Ms Cox, learned Counsel for the workmen has submitted a list of relevant dates and events. During the pendency of the Charter of Demands before the Conciliation Officer, the employer on 11th April 2007 issued chargesheet under the Central Standing Orders (“CSOs”). The CSOs provided for the charge-sheeted workmen to be represented in an Enquiry by an office bearer of a trade union of which workmen is a member. On 23rd July 2007, the workmen filed an application for permission to be represented in the enquiry by a law graduate. On 8th August 2007, the enquiry officer disallowed the said request on the ground that CSOs only provided for representation by office bearers of the trade union. Thereafter the workmen on 12th September 2007, again requested for representation by a law graduate, as there was no defense representative available in the union who was a law graduate. On 25th November 2007, the workmen appointed office bearer of the union as defense representative. However, this was also not allowed by the enquiry officer on the ground that union must be a union recognized by the management.

7. In the meantime, the enquiry continued, however the union defense representative was not allowed. Hence the workmen appointed a fellow workman to defend them. On 5th December 2007, the workmen submitted an application to the enquiry officer again requesting to be represented by union representative. However, the enquiry continued without allowing the workmen a proper representation. On 12th January 2008, the enquiry officer submitted a report and the workmen were found guilty. The enquiry report was furnished to the workmen on 7th February 2008 and were called upon to give their reply in two days. On 11th February

2008, the workmen requested for two weeks time to file their reply, however the employer rejected this request. On 14th February 2008, the workmen again requested for two weeks time to enable them to study the report and file their written submissions. However, on 16th February 2008, the employer issued show cause notice, said to have been issued under Dadra and Nagar Haveli Industrial Employment Standing Orders 2005. In the Show Cause Notice, the workmen were called upon to give their reply within 48 hours.

8. On 19th February 2008, the employer issued a letter purporting to modify the charge-sheet, for stating that the charge-sheet dated 11th April 2007 was in fact issued under the Dadra and Nagar Haveli Industrial Employer Standing Orders 2005 and not under the CSOs. Thereafter, on 22nd February 2008, orders were issued by the employer thereby dismissing the workmen from the employment. On the same day an application was filed by the employer before the Conciliation Officer for approval. On 21st July 2008, approval was granted by the Conciliation Officer. Hence the workmen filed the Writ Petition for challenging the approval order and other reliefs, as stated above.

9. Feeling aggrieved by the directions issued by the learned single Judge in the Writ Petition for making a reference by the Deputy Commissioner to the Industrial Court and allowing the employer to prove the alleged misconduct to the Industrial Court by leading evidence, the workmen had filed the Review Petition. In the Review Petition, it was contented that since the order of approval was set aside, the workmen automatically stood reinstated and thus there was no scope of reference. It was further contended that a reference would lie only if the order of approval was upheld.

Submissions on behalf of the workmen:

10. It is submitted by Ms Cox that under sub section (2) of Section 33 of the said Act, the employer was not entitled to dismiss the workmen without approval of the Conciliation Officer. It was further submitted that once the approval granted by the Conciliation Officer was set aside by the learned Single Judge, there was no question of permitting the employer to lead evidence. Once the approval order is set aside there is automatic reinstatement of the workmen and at the highest, the employer thereafter is at liberty to initiate fresh proceedings. However, there is no question of leading fresh evidence in support of the enquiry already conducted and/or dismissal pursuant to the enquiry held. Even otherwise the employer had never reserved right to lead evidence at the threshold of the proceedings i.e. at the time of filing the application for approval before the Conciliation Officer. She submitted that the employer was at the most entitled to reserve right to lead evidence before the proceedings concluded. Since the employer never reserved any such right, now the employer is not entitled to lead evidence. In support of the said submission, Ms Cox relied upon the judgment of the Supreme Court in the case of *Karnataka State Road Transport Corporation Vs Lakshmidevamma*,¹ and in the case of *Divyash Pandit Vs Management, NCCBM*.²

11. It was further submitted that in any case the workmen were not allowed a proper representation and thus on the said ground the learned Single Judge had already correctly held that the enquiry

¹ AIR 2001 SC 2090

² 2007 (15) SCC 787

conducted by the enquiry officer was vitiated and thus has quashed and set aside the order of approval. In such circumstances, what followed was cancellation of the dismissal order of the workmen which has resulted into automatic reinstatement of the workmen. However, in paragraph 16 of the Order in the Writ Petition, the Learned Single Judge observed that since the matter was referred to the Industrial Court, all other questions were kept open and the employer was held entitled to prove alleged misconduct to the Industrial Court by leading evidence. There was infact no proceedings pending in the Industrial Court, hence even otherwise there was no question of leading evidence before the Industrial Court. Hence the workmen had filed Review Petition. In the Review Order the Learned Single Judge held that the observations in paragraph 16 of the Order in Writ Petition were withdrawn and thus substituted that paragraph. But in the substituted paragraph the Learned Single Judge permitted the Employer to lead evidence before the Labour Enforcement Officer/Conciliation Officer. In fact, there were no proceedings pending before the Labour Enforcement Officer/Conciliation Officer, either. Order by Conciliation Officer granting approval for dismissal, was already set aside by the Learned Single Judge in the Order in Writ Petition, hence the Application by the Employer for approval before the Conciliation Officer stood dismissed. Hence, there was no question of leading evidence before the Conciliation Officer. It was thus submitted that, once, in the Review Petition the Learned Single Judge held that the observations in paragraph 16 of the Order in the Writ Petition, were required to be substituted, there was no reason for allowing the employer to lead evidence for proving charges of misconduct against the workmen. Thus it was prayed that the result of clarifying the observation in

paragraph 16 of the Order in Writ Petition regarding reference under Section 10 of the said Act and permission to lead evidence, would necessarily be allowing the Writ Petition in terms of prayer clause (a) and (b) of the Petition wherein the workmen have specifically prayed for reinstatement with full back wages.

Submissions on behalf of the employer;

12. In response to the submissions made on behalf of the workmen and in support of the grounds raised in Letters Patent Appeal No. 83 of 2010, Mr Talsania, the learned Senior Counsel for the employer made the following submissions.

13. It is submitted on behalf of the employer that the workmen were indeed allowed proper representation as prayed by the workmen. In support of the submissions a gist of events cum synopsis was submitted. In the said list it is stated that enquiry officer had allowed workmen to appoint Ram Kailash Rai as defense representative as prayed by the workmen on 21st May 2007. Thereafter on 21st May 2007, one Chetan Patel was granted permission to keep present one Hiru Barot as defense representative. It was further submitted that it was only on 8th August 2007, that the enquiry officer rejected the application of the charge-sheeted workmen for permission to appoint an Advocate as defense representative. It is also stated that on 1st December 2007 request to allow one Brijesh Dewadi as defense representative was allowed and on 26th December 2007, a request to cross examine the management witness was also granted by the enquiry officer. The workmen were also allowed to reopen cross examination of Suresh on 4th January 2008 and thereafter also were allowed to reopen the

cross examination of other witnesses. Thus it was submitted that it is incorrect on the part of the workmen to submit that they were not allowed proper representation.

14. It was further submitted that the workmen were already convicted in the criminal proceeding initiated against them and that the submission made on behalf of the workmen that they will be entitled to reinstatement cannot be accepted. It was submitted that the Conciliation Officer had rightly granted approval application filed by the employer and that the learned Single Judge overlooked the findings of the Conciliation Officer on the point of fairness of enquiry. It was thus submitted that the workmen were indeed allowed proper representation and the approval application was rightly granted in favour of the employer.

15. The learned Senior Counsel for the employer relied upon judgment of *State Bank of Patiala and Ors. Vs S. K Sharma*.³ Specific reliance was placed on paragraph 33 of the said judgment and was submitted that violation of any procedural provision cannot be said to automatically vitiate the enquiry already held or any order passed, except for cases falling under “no notice”, “no opportunity” and “no hearing” categories. Thus, it was submitted that the case of the workmen did not fall under any of these categories and hence they are not entitled to the prayer as sought by them in the Writ Petition.

16. It was thus submitted on behalf of the employer that the enquiry conducted against the workmen was a fair enquiry and the workmen have not raised any valid ground for quashing and setting aside the same. With these submissions it was prayed that the

³ (1996) 3 SCC 364

workmen were not entitled to any of the prayers made in the Writ Petition and thus the Judgment and Order passed by the learned Single Judge deserved to be quashed and set aside and resultantly the Writ Petition filed by the workmen deserved to be dismissed.

Points for determination:

- 1) Whether the enquiry conducted by the employer was fair and proper ?
- 2) Whether Learned Single Judge is justified in setting aside the approval granted by the Conciliation Officer under section 33(2)(b) of the said Act ?
- 3) Whether the Learned Single Judge was right in granting permission to the employer to lead evidence before the Conciliation Officer under section 33(2)(b) of the said Act, for proving charges of misconduct against the workmen ?
- 4) Whether setting aside of the order of grant of approval would result in automatic reinstatement of the workmen ?

Consideration of point nos. 1 and 2;

- 1) Whether the enquiry conducted by the employer was fair and proper ?
- 2) Whether Learned Single Judge is justified in setting aside the approval granted by the Conciliation Officer under section 33(2)(b) of the said Act ?

17. We have carefully examined the list of dates and events submitted by Ms Cox as well as Mr Talsania. It is necessary to note that in the list of dates and events submitted by Mr Talsania, crucial dates are missing. According to us the crucial date for making an

application for representation by a law graduate was 23rd July 2007, when such a request was made on behalf of the workmen after the charge-sheet was filed on 11th April 2007. Moreover, the said request made on 23rd July 2007 was rejected. Thereafter, on 25th November 2007, even the office bearer of the union was not allowed to represent the workmen. Such an approach by the enquiry officer of not allowing adequate representation to the workmen vitiates the entire process of the enquiry. The argument by Mr Talsania that the workmen had their 'representative of choice' is not persuasive. Repeatedly, the workmen had asked for proper representation in view of the serious charges. The workmen were ultimately forced to make do with only other workmen as defense representative and were denied a choice of a legally trained representative as also a union representative. Thus, reliance placed by the learned Senior Counsel for the employer upon judgment of *State Bank of Patiala and Ors. Vs S. K Sharma* is of no avail in the present case.

18. The Learned Single Judge after examining the record has rightly arrived at a conclusion that the entire enquiry is vitiated on account of principles of natural justice not being followed by the enquiry officer. The Learned Single Judge has recorded that (i) admittedly the workmen are illiterate persons, (ii) the purpose of model standing order is to ensure that an employee gets proper representation before the enquiry officer, (iii) the enquiry officer ought to have permitted the office bearer of the trade union of which workmen were member to represent them in the enquiry and that (iv) the entire enquiry stands vitiated and thus findings of enquiry officer could not have been relied upon by the Conciliation Officer.

Thus, by recording these findings the Learned Single Judge quashed and set aside the order granting approval to the order of termination passed by the employer on the basis of enquiry report.

19. It is submitted on behalf of the employer that criminal proceedings were initiated against the workmen and the workmen are convicted in the criminal proceedings. In our view, when serious charges were leveled against the workmen, where even criminal proceedings were initiated, it was all the more necessary that the workmen ought to have been allowed proper representation as prayed for by them. No material was produced before us to show that the workmen were not entitled in law for proper representation through a law graduate as prayed by them before the enquiry officer. Since the company was being represented by a person with legal training, the workmen ought to have been allowed correspondingly qualified representation to ensure fairness. Admittedly the workmen who were illiterate were not assisted by anyone during the course of enquiry. We find that the Learned Single Judge has correctly arrived at the conclusion that the enquiry conducted by the employer was not fair and proper and is vitiated on account of breach of natural justice. Thus, the Learned Single Judge is fully justified in setting aside the approval granted by the Conciliation Officer under section 33(2)(b) of the said Act.

Consideration of point no. 3;

- 3) Whether the Learned Single Judge was right in granting permission to the employer to lead evidence before the Conciliation Officer under section 33(2)(b) of the said Act, for proving charges of misconduct against the workmen ?

20. The employer charge-sheeted the workmen during the pendency of the charter of demands before the Conciliation Officer. Hence the employer was under obligation to obtain approval from the Conciliation Officer for effecting dismissal order of the workmen pursuant to the enquiry report. At highest the employer could have made an application to lead evidence before the Conciliation Officer at the time of initiation of the proceedings for grant of approval under section 33(2)(b) of the said Act. Though there is no scope of recording any evidence by the Conciliation Officer, it is not even the case of the employer that any such application was made. The employer intended to dismiss the workmen on the basis of the enquiry report and to give effect to the dismissal order the employer was required to file application for approval. Such proceedings are obviously during the pendency of the charter of demands by the workmen, hence the endeavour of the workmen would be to prove that the enquiry initiated and conducted by the employer was malafide and to defeat their rights. Therefore, natural justice warrants that, at the threshold of the proceedings, the workmen should be put to notice that the employer wishes to lead evidence. This will enable the workmen to put forward his/their case accordingly for opposing grant of approval as prayed by the employer. If at the threshold, the employer reserves right to lead evidence in support of the action of dismissal, the workmen gets an opportunity to put up his defence accordingly. If Employer is allowed to lead evidence at a later stage, the workmen is put to a disadvantageous position, thereby causing irreparable prejudice to the workmen. Once the proceedings for grant of approval are completed by the Conciliation Officer and the prayer for dismissal of workmen is disallowed by the Conciliation Officer, the natural consequence is

that the employer is disallowed to rely upon the enquiry report in detriment to the workmen. Once the order of grant of approval is quashed and set aside, the result is that the application made by the employer under section 33(2)(b) of the said Act stands dismissed. Hence the employer cannot act upon the enquiry and order of dismissal. Thus, in facts of the present case there was no scope left for the employer to lead evidence in support of the enquiry report and/or to prove the charges against the workmen. In our view, in such circumstances, after the order of approval is quashed and set aside, there is neither a proceeding pending nor there is any scope for making reference. Hence there is nothing pending for leading evidence. Thus, the Order by Learned Single Judge in the Review Petition permitting the employer to lead evidence is not sustainable. Such an order could not have been made in the Review Petition because it could not have been made in the Writ Petition itself.

21. Ms Cox has correctly relied upon the Judgment of the Supreme Court in the case of *Karnataka State Road Transport Corporation Vs Lakshmiddevamma*. In this case Hon'ble Judges of the Supreme Court differed in their views. However, the majority view held that the law laid down in the case of *Shambu Nath Goyal Vs Bank of Baroda*⁴ is the correct law. Thus, as per the law laid down by the Supreme Court the management had to exercise its' right of leading fresh evidence at the first available opportunity and not at any time thereafter. However the Supreme Court further held that this did not place a fetter on the powers of the Court/Tribunal to permit parties to lead additional evidence at any stage of the

⁴ AIR 1984 SC 289

proceedings, before they are concluded. Thus, in any event application to lead evidence is to be made before the proceedings are concluded. Mr Talsania has relied upon the Judgment of the Supreme Court in case of *Divyash Pandit Management, NCCBM*. Here, Supreme Court referred the Judgment in the case of *Karnataka State Road Transport Corporation Vs Lakshmiddevamma*, and held that Court/Tribunal can permit parties to lead additional evidence at any stage of the proceedings, before they are concluded.

22. Mr Talsania relied upon paragraph 13 of the case of *Karnataka State Road Transport Corporation Vs Lakshmiddevamma*. This paragraph refers to paragraph 22 of the Judgment in *Cooper Engineering Limited Vs Sri P P Mundhe*.⁵ In the case of *Cooper Engineering Limited Vs Sri P P Mundhe* it was held that when there is controversy regarding domestic enquiry that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. In our view this is of no help to Mr Talsania's submission. In the present case there is no proceeding pending before Labour Court or Industrial Court. The Judgment in *Cooper Engineering Limited Vs Sri P P Mundhe* is specifically referred to in paragraph 16 of the Judgment *Karnataka State Road Transport Corporation Vs Lakshmiddevamma*. Thus, after considering all these Judgments Supreme Court in the case of *Karnataka State Road Transport Corporation Vs Lakshmiddevamma*, has held that the management had to exercise its' right of leading fresh evidence at the first available opportunity and/or at the highest before the

⁵ AIR 1975 SC 1900

proceedings are concluded and not at any time thereafter. We must note here that, all the aforesaid decisions are rendered where the dispute regarding validity of disciplinary enquiry and/or termination order was referred to industrial court/labour court. The scope of adjudication in proceedings pending before the Conciliation Officer under section 33(2)(b) of the said Act, is limited. Thus, even otherwise in the facts and circumstances of the case where the approval order is set aside by the Learned Single on the ground that the enquiry is vitiated on account of breach of principles of natural justice, there is no reason to permit the employer to lead evidence at this stage to prove the allegations of mis-conduct against the workmen. It is always open for the employer to initiate fresh action as permissible in law.

Consideration of point no. 4:

- 4) Whether setting aside of the order of grant of approval would result in automatic reinstatement of the workmen ?

23. Ms Cox submits that once the order of granting approval under section 33(2)(b) of the said Act is quashed and set aside, there is automatic reinstatement of the workmen. In support of this submission, she relies upon the decision of Supreme Court in the case of *Jaipur Zilla Sahkari Bhoomi Vikas Bank Ltd Vs Shri Ram Gopal Sharma*.⁶ In this Judgment Supreme Court decided reference made to a five Judge bench in view of conflicting views expressed by benches consisting of three Judges. Two benches consisting of three Judges, in *Straw Board Manufacturing Co. Vs Gobind*⁷ and *Tata Iron*

⁶ (2002)2 SCC 244

⁷ AIR 1962 SC 1500

and Steel Co. Ltd. Vs S N Modak ⁸ had taken a view that if the approval is not granted under Section 33(2)(b) of the said Act, the order of dismissal becomes ineffective from the date it was passed and therefore the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another bench of three Judges in *Punjab Beverages Pvt. Ltd. Chandigarh Vs Suresh Chand and Another* ⁹ had expressed a contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the said Act and the remedy of the employee is either by way of a complaint under Section 33A or by way of a reference under Section 10(1)(d) of the said Act. The question that arose for consideration was as follows:

“If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act 1947, whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative?”

In *Jaipur Zilla Sahkari Bhoomi Vikas Bank Ltd Vs Shri Ram Gopal Sharma*, on the reference made to a five-Judge bench in view of these conflicting views, the Supreme Court endorsed the view taken in the case of *Straw Board Manufacturing Co. Vs Gobind and Tata*

⁸ AIR 1966 (SC) 380

⁹ (1978) 2 SCC 144

Iron and Steel Co. Ltd. Vs S N Modak. It held that view expressed in *Punjab Beverages Pvt.Ltd. Chandigarh Vs Suresh Chand and Another* is not the correct view.

24. The law laid down by the larger bench of the Supreme Court in the decision in the said reference squarely applies to the present case. Once the learned Single Judge has held that the enquiry stands vitiated on account of breach of natural justice and has quashed and set aside the order of approval under section 33(2)(b) of the said Act, the order of dismissal of the workmen has become ineffective from the date it was passed and therefore the workmen have become entitled to wages from the date of dismissal order till the date of reinstatement. Once the ground on which an employer had sought approval under section 33(2)(b) of the said Act is no longer available, the employer will not be entitled to refuse reinstatement on the same ground. Thus, the stage as on the date of dismissal of the workmen i.e. 22nd February 2008, will revive and the workmen will be entitled to reinstatement with continuity of service, subject to superannuation date and necessary retirement benefits as per law.

25. The question whether the workmen can be held entitled to full back wages needs to be decided by examining the facts and circumstances of the present case. In paragraph 19 of the Writ Petition the workmen had pleaded that they were paid only 50% wages from April 2007 and no wages were paid whatsoever for one year. It was further pleaded that they were in absolute dire straits to even survive and sustain themselves and their families. The workmen have filed Civil Application No. 170 of 2011 in the present Appeal for directing the employer to pay full back wages. In the Application they have pleaded that they have no source of livelihood

to maintain themselves and their families since February 2008. The workmen have also filed Civil Application No. 228 of 2011 in the present Appeal seeking direction against the Employer to pay wages to them under section 17B of the Industrial Disputes Act 1947. In the said Application the workmen have filed supporting affidavits of each workmen thereby stating that they were not engaged in any fresh employment/occupation and have not earned any income. Thus, the case of the workmen is that they were never gainfully employed. The Employer has not controverted any of these pleadings. In the Writ Petition the workmen have pleaded regarding certain facts about some dispute between the employer and two unions and also about certain pending proceedings. However, nothing is produced on record about the present status of the litigation. A case is sought to be made out that the employer always attempted to deprive the workmen of their legitimate dues. However, nothing is produced on record before us in support of the same. It is argued on behalf of the employer that the workmen are convicted in the criminal proceedings that were initiated against them. On behalf of the workmen, it is argued that they have challenged the conviction order in Criminal Revision Application No. 106 of 2017 and the same is pending in this Court. It is submitted that the substantive sentence imposed upon them is suspended and they were directed to be released on bail.

26. The workmen were not dismissed from service on the ground of conviction in criminal proceedings. The workmen were dismissed from service on the basis of domestic enquiry, which is held vitiated on the ground of breach of natural justice. Without even getting a fair opportunity of being represented in the inquiry proceedings, the

workmen were dismissed from service. Thus, action of the Employer is held to be unjustified.

27. In the case of *Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya*¹⁰ ((2013) 10 SCC 324) Supreme Court in paragraph 21 has defined the word “reinstatement” as follows:

“21. The word “reinstatement” has not been defined in the Act and the Rules. As per *Shorter Oxford English Dictionary*, Vol. 2, 3rd Edn., the word “reinstatement” means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word “reinstatement” means the action of reinstating; re-establishment. As per *Law Lexicon*, 2nd Edn., the word “reinstatement” means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per *Merriam-Webster Dictionary*, the word “reinstatement” means to place again (as in possession or in a former position), to restore to a previous effective state. As per *Black's Law Dictionary*, 6th Edn., “reinstatement” means:

“To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed.”

Emphasis Added

¹⁰ (2013) 10 SCC 324

28. In the case of *Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya* Supreme Court has also discussed catena of its earlier Judgments on the issue of back wages. Supreme Court in paragraph 38 has held as follows:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he

was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no

justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 :

1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

Emphasis Added

Considering the facts and circumstances of the case and the findings recorded above regarding the breach of principles of natural justice in conducting enquiry, we find it appropriate that the workmen be granted full back wages from the date of the dismissal order.

CONCLUSIONS:

29. In view of our reasons recorded above, we agree with the findings and decision of the Learned Single Judge in the Order in Writ Petition, to the extent of holding the enquiry to be vitiated on account of breach of natural justice, as well as setting aside the order of granting approval by the Conciliation Officer. We find that the employer has failed to prove that principles of natural justice were followed in conducting the enquiry. There is no valid ground made out by the employer, thereby warranting any interference in the Appeal filed by the employer. Thus, the employer is no longer entitled to rely upon the enquiry report. The employer is also not entitled to seek dismissal of the workmen on the ground on which the application for approval was made by the employer and/or by relying upon the enquiry report. The quashing and setting aside of the order of granting approval results in dismissal of the application made by the employer under section 33(2)(b) of the said Act. Hence the workmen are entitled to reinstatement with continuity of service and back wages as stated herein above. No proceedings under section 33(2)(b) of the said Act are now pending before the

Conciliation Officer. It is nobody's case that any proceedings are pending in Labour Court or Industrial Court. Hence there is no reason to permit the employer to lead any evidence to prove charges of mis-conduct against the workmen.

30. In the event if any of the workmen have reached the age of superannuation, apart from back wages they will be entitled to retirement benefits.

31. Hence, we pass following Order;

a) Judgment and Order dated 18th August 2009 in Review Petition No. 86 of 2009 in Writ Petition No. 2791 of 2009 is quashed and set aside.

b) Judgment and Order dated 24th April 2009 in Writ Petition No. 2791 of 2009 is confirmed to the extent of;

(i) holding that the enquiry initiated by the employer stands vitiated on account of breach of natural justice; and

(ii) quashing and setting aside the approval granted by the Conciliation Officer (Respondent No. 1 in Writ Petition No. 2791 of 2009) under section 33(2)(b) of the said Act to order termination of the workmen (Petitioners in Writ Petition No. 2791 of 2009)

c) Thus, Writ Petition No. 2791 of 2009 stands allowed in following terms:

(i) Enquiry initiated pursuant to letter/chargesheet dated 11th April 2007 (Exhibit A to Writ Petition) stands vitiated on account of breach of natural justice.

(ii) Order dated 21st July 2008 passed by the Conciliation Officer under section 33(2)(b) of the said Act is quashed and set aside and Application dated 22nd February 2008 made by the employer under section 33(2)(b) of the said Act stands dismissed.

(iii) Status of employment of the workmen i.e. the Petitioners in Writ Petition No. 2791 of 2009, as on the date of order of dismissal i.e. 22nd February 2008, will revive and the workmen will be entitled to reinstatement with continuity of service and necessary retirement benefits as per law, subject to superannuation date.

(iv) The workmen i.e. the Petitioners in Writ Petition No. 2791 of 2009 are entitled to full back wages from the date of order of dismissal i.e. 22nd February 2008 till date of reinstatement.

d) Direction regarding reinstatement and payment of back wages shall be complied with from three months from today. In case of workmen who have already reached age of superannuation, retirement benefits shall be paid within a period of three months from today.

e) Letters Patent Appeal No. 270 of 2009 in Review Petition No. 86 of 2009 is allowed in above terms.

e) Letters Patent Appeal No. 83 of 2009 in Writ Petition No. 2791 of 2009 is dismissed.

f) There shall be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)