



W.P. Nos.4539-4540-4543/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
03.08.2023	11.08.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NOS.4539, 4540 & 4543 OF 2023
AND
W.M.P. NOS.4544, 4545 & 4547 OF 2023**

The Management
Mirra & Mirra Industries Pvt. Ltd.
No.117-120, SIDCO Industrial Estate
Vichur, Manali New Town
Chennai 600 103, rep. by its
Deputy General Manager (HR & Admin) .. Petitioner in all the WPs

- Vs -

- | | |
|--|------------------------|
| 1. The Dy. Commissioner of Labour
(Conciliation)-2
Kuralagam, Chennai 600 108. | .. R-1 in all the WPs |
| 2. M.Jagadeesan | .. R-2 in WP 4539/2023 |
| 3. S.Balamurugan | .. R-2 in WP 4540/2023 |
| 4. T.Balaji | .. R-2 in WP 4543/2023 |

W.P. No.4539 of 2023 filed under Article 226 of the Constitution of India
praying this Court to issue a writ of certiorari calling for the records pertaining to



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the order passed by the 1st respondent in A.P. No.446-2019 dated 25.01.2023 and quash the same.

W.P. No.4540 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the order passed by the 1st respondent in A.P. No.448-2019 dated 25.01.2023 and quash the same.

W.P. No.4543 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the order passed by the 1st respondent in A.P. No.447-2019 dated 25.01.2023 and quash the same.

For Petitioner : Mr. L.Chandrakumar, for
Mr. K.Mohan

For Respondents : Mr.Patrick Ryan for R-2
Mr. M.S.Prem Kumar for R-1

COMMON ORDER

Assailing the respective orders in and by which the approval sought for by the petitioner with regard to the dismissal of the respective 2nd respondent having been negatived, the present writ petitions have been filed.



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2. For the sake of convenience, the petitioner/company will be referred to as the petitioner and the respective 2nd respondents will be referred to as workmen.

3. It is the case of the petitioner that the workmen were under the employ of the petitioner. As per the orders of the Government in G.O. Ms. No.113 dated 14.12.2012 with regard to installation of CCTV within the premises of the company for ensuring the safety and security of the employees and the assets of the company, the petitioner had taken steps for installation of CCTV cameras and the vendor was entrusted with the work of installation of the cameras. However, when the vendor started to install the cameras, the workmen obstructed the vendor and their men from installing the CCTV cameras, which resulted in the work not being completed.

4. It is the further case of the petitioner that on coming to know of the altercation, the Assistant General Manager (HR) of the petitioner intervened and while explained to the workmen the reasons for installation of the CCTV also issued the letter of suspension on the workmen at which time, the workmen



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along with the other office bearers assembled and physically assaulted the Assistant General Manager and also abused the authority in filthy language. In view of the said acts of the workmen, which were not conducive with the working of the petitioner company, charge memo was issued to the concerned workmen calling upon them to show cause why disciplinary proceedings should not be taken against them.

5. It is the further case of the petitioner that after receipt of the explanation, being not satisfied with the explanation submitted by the workmen, enquiry was initiated by appointment of enquiry officer. The enquiry officer, after giving sufficient opportunity to the workmen and following the principles of natural justice submitted the findings holding all the charges proved against the respective workmen.

6. It is further averred by the petitioner that after receipt of the enquiry report and after providing a copy of the enquiry report to the workmen, explanation was called for from the workmen and upon submission of the



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explanation, being not satisfied with the explanation, the disciplinary authority inflicted the punishment of dismissal from service.

7. It is the further averment of the petitioner that as per the requirement u/s 33 (2) (b) of the Industrial Disputes Act, Form-T was filed before the 1st respondent seeking approval for the dismissal of the workmen from service. The workmen were also provided with one month's salary by way of cheque on 11.5.2019 and, thereby, there was full compliance of Section 33 (2) of the Industrial Disputes Act. However, the 1st respondent, upon enquiry, dismissed the application for approval filed by the petitioner vide the impugned orders, which is challenged by filing the present writ petitions.

8. Learned counsel appearing for the petitioner submitted that the 1st respondent acted beyond his jurisdiction and authority by reappreciating the evidence, which is impermissible in a petition filed u/s 33 (2). It is the submission of the learned counsel that it is beyond the jurisdiction of the 1st respondent to reappreciate the evidence and substitute its findings to that of the enquiry officer, as the 1st respondent is estopped to undertake such an exercise u/s 33 (2).



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9. It is the further submission of the learned counsel that the 1st respondent failed to appreciate that the enquiry officer has conducted the proceedings by following the principles of natural justice and analysed the evidence in proper perspective and, therefore, there was no occasion for the 1st respondent to reappreciate the evidence.

10. It is the further submission of the learned counsel that the findings rendered by the 1st respondent, by negating the findings rendered by the enquiry officer, is wholly erroneous, as the 1st respondent has not taken into consideration the evidence in proper perspective. When it is the duty of the 1st respondent to see to it as to whether the provisions of Section 33 (2) have been complied with before inflicting the punishment of dismissal on the workmen.

11. It is the further submission of the learned counsel that the letting in of fresh evidence by the 1st respondent without examining the evidence already let in during the domestic enquiry, which has clearly proved the delinquency and conduct of the workmen have not been appreciated by the 1st respondent, who



has traversed beyond its jurisdiction in allowing letting in of fresh evidence, which is impermissible and, therefore, the impugned orders deserve to be interfered with by this Court.

12. In support of the aforesaid contentions, learned counsel placed reliance on the following decisions :-

- i) *Lalla Ram – Vs – DCM Chemical Works Ltd. (1978 (3) SCC 1); and*
- ii) *John D'Souza – Vs – Karnataka State Road Transport Corporation (2019 (18) SCC 47)*

13. Per contra, learned counsel appearing for the workmen submitted that the 1st respondent has properly appreciated the materials and the evidence let in at the time of domestic enquiry and felt that the scales of justice warranted additional evidence to be let in, which alone could throw light on the delinquency of the workmen and had ordered recording of additional evidence and, after recording evidence, the 1st respondent had analysed all the evidence clubbed together and had found that the enquiry was not properly conducted and the evidence has not been properly analysed and, therefore, the approval of



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dismissal sought for was rejected. The findings rendered by the 1st respondent being balanced and legally permissible, no interference is warranted with the said orders.

14. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decision relied on by the learned counsel for the petitioner.

15. The petition seeking approval of the dismissal of the workmen had been filed u/s 33 (2) (b) of the ID Act and for better appreciation, the said provision is quoted hereunder :-

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

* * * * *

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman –



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(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

* * * * *

16. The matters, upon dismissal of the workmen, have been placed for approval before the 1st respondent in compliance of the procedure contemplated u/s 33 (2) (b). Therefore, this Court has to first satisfy itself that the requirements contemplated u/s 33 (2) (b) stands complied with so that the approval petitions could be entertained.

17. The ingredients of Section 33 (2) (b), which needs to be complied with by the petitioner are that there should be a misconduct by the workman, which is



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not connected with any dispute and in such a case, punishment may be imposed on the workmen by way of discharge or dismissal from service and before such discharge or dismissal, one month wages should have been paid to the said workmen, whereinafter alone, the approval petition could be laid before the 1st respondent.

18. In the cases on hand, the disciplinary proceedings are the off-shoot of the misconduct of the workmen at the time of installation of CCTV cameras by the vendor, which was on the basis of the directions of the Government to the industrial establishment. The misconduct thereafter continued with the workmen misbehaving and abusing the Assistant General Manager of the petitioner when suspension orders were sought to be issued to the said workmen. Thereafter enquiry was initiated in the manner known to law, which resulted in the dismissal of the workmen. Before filing the approval petition, the petitioner has also paid the wages for one month to the workmen, thereby, there is compliance of the provision of Section 33 (2)(b). Further, it is to be noted that there was no pending industrial dispute and the misconduct is not relatable to



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any industrial dispute and, therefore, the action initiated by the petitioner is fully in consonance with Section 33 (2) (b).

19. When there has been full compliance of the provisions of Section 33 (2) (b), the filing of the approval petitions have resulted in the 1st respondent reappreciating the evidence and also permitting adducing of fresh evidence, which is put in issue before this Court.

20. The issue relating to the grant of approval for the dismissal of a workman u/s 33 (2) (b) was dealt with by the Apex Court in the case of *Lalla Ram (supra)* and in the said decision, the Apex Court held thus :-

“8. In Agnani's case (supra), this Court held as under :

“It is true that if a domestic enquiry is properly held and the employer terminates the services of his employee, the industrial tribunal dealing with industrial disputes arising out of such dismissal is not authorized to sit in appeal over the findings of the enquiry committee, or to examine the propriety of the ultimate order of dismissal passed by the employer.”

9. Though it is true that private quarrel between an employee and a stranger with which the employer is not concerned as in



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Agnani's case (supra) falls outside the categories of misconduct, it cannot be reasonably disputed that acts which are subversive of discipline amongst employees or misconduct or misbehavior by an employee which is directed against another employee of the concern may in certain circumstances constitute misconduct so as to form the basis of an order of dismissal or discharge. It cannot also be disputed that the extent of jurisdiction exercisable by an approving authority Under Section 33(2)(b) of the Act is very limited as has been clearly and succinctly pointed out by this Court in a number of decisions. In Lord Krishna Textile Mills v. Its Workmen MANU/SC/0216/1960 : (1961)ILL J211SC this Court after referring to its earlier decisions and explaining the distinction between 'permission' and 'approval' observed as follows :

“Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry Under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted Under Section 33(1), and in exercising its powers Under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by the Legislature in separating the two classes of cases falling under the two Sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the authority to pass



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such order in relation to the application made before it under the proviso to Section 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order, x x x In view of the limited nature and extent of the enquiry permissible Under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal ? Has an enquiry been held as provided by the Standing Orders ? Have the wages for the month been paid as required by the proviso ?; and, has an application been made as prescribed by the proviso ?”

10. In another case between Kalyani (P. H.) and Air France, Calcutta [1963] 1 L.L.J. 679, Wanchoo, J. (as he then was) speaking for a bench of five judges of this Court said :

“If the enquiry is not defective, the labour court has only to see whether there was a prima facie case for dismissal, and whether the employer had come to the bona fide conclusion that the employee was guilty of



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misconduct. Thereafter, on coming to the conclusion that the employer had bona fide come to the conclusion that the employee was guilty, i.e. there was No. 1 unfair labour practice and no victimization, the labour court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the labour court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified, its approval of the order of dismissal made by the employer in a defective enquiry would still relate back to the date when the order was made.”

11 . In *Central Bank of India Ltd., New Delhi v. Shri Prakash Chand Jain* MANU/SC/0416/1968 : (1969)IILLJ377SC , this Court laid :

“These decisions of this Court make it clear that when an industrial tribunal is asked to give its approval to an order of dismissal Under Section 33(2)(b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all.... A finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at



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by the domestic tribunal is one at which no reasonable person could have arrived on the material before it."

12. The position that emerges from the above quoted decisions or this Court may be stated thus : In proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and, the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co, v. Ram Probesh Singh MANU/SC/0136/1963 : (1963)ILL J291SC*, *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511*, *Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964*, *Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd." v. Management and Ors. MANU/SC/0305/1973 : (1973)ILL J278SC*, and *Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.)* that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether excessive or too severe yet an inference of mala fides may in



certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay Wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant: the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

13. Let us now see whether the aforesaid requirements are satisfied in the present case or not. As stated earlier, the Enquiry Officers had, after a regular enquiry properly made according to the requirements of the Standing Orders and principles of natural justice, come to a categorical and bona fide conclusion that the appellant obstructed Shyam Singh in the execution of his



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legitimate official duties (of protecting the immovable property of the Company and preventing its improper and unauthorised use) by abusing, threatening and roughly handling him and thereby committed misconduct as contemplated by Standing Order 27(i). The Industrial Tribunal had itself also clearly found that the Enquiry Officers were not biased against the appellant; that the domestic enquiry held against the appellant was not violative of the principles of natural justice and that it could not be said that the findings of Enquiry Officers were not based upon evidence or were perverse. The material on record also disclosed that the employer paid one month's wages to the appellant and simultaneously made an application to the specified authority before which the main industrial dispute was pending, for grant of approval of the dismissal of the appellant. Further the misconduct for which the disciplinary action was taken against the appellant was undoubtedly directed against Shyam Singh to prevent him from investigating into a matter relating to immovable, property belonging to the Company which he was bound to protect in discharge of the duties which devolved upon him as a security officer. In face of all the aforesaid factors which make out a strong prima facie case against the appellant, it is difficult to understand how the Additional Industrial Tribunal could legitimately ignore the bona fide findings of the Enquiry Officers which it had itself endorsed by holding that there was no rational nexus between the appellant's misconduct and his employment and that of Shyam Singh and withhold its approval of the action



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taken by the management of respondent No. 1 On a careful consideration of the entire facts and circumstances of the case, we are therefore clearly of the view that the requisite nexus was there and the Industrial Tribunal unauthorisedly assumed the role of an appellate authority and exceeded the well defined limits of its jurisdiction in refusing to accord its approval of the action taken against the appellant by holding not on the basis of any legal evidence but purely on the basis of conjectures and surmises that the present was a case of victimisation. We would like to call attention at this stage to the decisions of this Court in Tata Engineering & Locomotive Co. Ltd. v. Prasad (S.C.) and Anr. [1969] 2 L.L.J. 799 and Hamdard Dawakhana Wakf v. Its Workmen and Ors. [1962] 2 L.L.J. 772 and reiterate and re-emphasize that no question of victimisation or management having a bias against the appellant can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and the domestic enquiry was in no way vitiated. We would also like to emphasize that it is not necessary as stressed by the learned Counsel for the appellant that both the victim and the delinquent workman should be engaged in the performance of their official duties when the act which is the subject matter of misconduct is said to have been committed. It is sufficient if the victim and the delinquent workman are both employees of the same concern and the misconduct is directed against the former while he is acting in the discharge of the duties imposed him by virtue of his office. Thus the jurisdiction of the Industrial Tribunal



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being a limited one, as stated above and all the essential requisites of the proviso to Section 33(2)(b) of the Act being present in the instant case, the Industrial Tribunal was not, in our opinion, justified in withholding its approval and the High Court was perfectly right in passing the impugned judgment and order.”

21. From the aforesaid decision, it is explicitly evident that if the domestic enquiry is properly held and the employer terminates the services of its employee, the industrial tribunal dealing with such disputes arising out of such dismissal is not authorised to sit in appeal over the findings of the enquiry committee or to examine the propriety of the ultimate order of dismissal passed by the employer.

22. It has been further held in the said decision that so long as the enquiry is not defective the Court has to only see whether there was a *prima facie* case for dismissal and whether the employer had come to the *bona fide* conclusion that the employee was guilty of misconduct. What is further to be seen is that the conclusion arrived at by the employer is *bona fide* as to the guilt of the employee and that there was no unfair labour practice or victimization involved



and satisfaction of the same, approval is to be given from the date on which the employer had ordered the dismissal. However, if the enquiry is found to be defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified.

23. In the case on hand, the misconduct alleged for which the order of dismissal had come to be passed relates to misbehaviour of the workmen with the Assistant General Manager and also the employees of the vendor, who had come for installation of CCTV cameras. Therefore, there could be no quarrel that the same would be a misconduct relatable to Section 33 (2)(b).

24. Further, the petitioner, as the employer, had resorted to domestic enquiry and the enquiry officer, upon analysis of the evidence placed in the domestic enquiry had returned the findings that the guilt fastened on the workmen stood proved, which has resulted in the order of dismissal. Thereafter, calling upon further explanation and upon receipt of the same, the order of dismissal had come to be passed and after paying one month wages to the workmen, the approval petitions have been laid before the 1st respondent.



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25. The workmen had not raised any quarrel with respect to the conduct of the enquiry with regard to principles of natural justice. The grievance raised is only with regard to certain evidences recorded in the domestic enquiry. On the basis of the above, the 1st respondent had embarked upon reappraisal of the evidence placed before the domestic enquiry and also allowed further evidence to be let in.

26. The whole order of the 1st respondent nowhere speaks about the defective nature of the enquiry nor has it been held by the 1st respondent that the enquiry has not been properly conducted. Further the 1st respondent has also not held that there has been violation of principles of natural justice nor was it so the case of the workmen. As has been held in *Lalla Ram's case (supra)*, when there is no defect in the conduct of the enquiry, the 1st respondent has to only see whether a *prima facie* case for dismissal has been made out by the employer and whether the conclusion arrived at is *bona fide* and that there is no unfair labour practice involved so as to cause any victimization of the workmen.



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27. A careful perusal of the whole order of the 1st respondent reveals that the 1st respondent has not recorded any finding as to the perversity of the findings recorded by the enquiry officer, but has merely embarked upon reappreciation of the evidence, which is not within the domain of the 1st respondent so long as no perversity is made out in the findings recorded by the enquiry officer. Therefore, what is to be seen by the 1st respondent in a proceedings u/s 33 (2) (b) is that whether a proper domestic enquiry in accordance with the relevant rules/standing orders and principles of natural justice has been held; whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out and whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee.

28. In the case on hand, the three conditions as stipulated u/s 33 (2)(b) stands fully complied with. In fact, the workmen have not taken a stand that there is no misconduct on their part. In fact, they have admitted to the occurrence and what they have submitted is that the infliction of punishment is



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disproportionate to the misconduct alleged. In fact there is a categorical admission by the workmen in their explanation that the incidents alleged have happened only in the discharge of their functions as union office bearer at the behest of the rest of the workers. When there is an admission from the workmen with regard to the misconduct alleged against them and the domestic enquiry had been conducted in a fair and proper manner and that there is neither violation of principles of natural justice nor there is any unfair labour practice or victimisation involved, the roving enquiry by reappreciating the evidence embarked upon by the 1st respondent is not only erroneous, but it is illegal and impermissible and against the provisions of Section 33 (2)(b) as also the decision of the Apex Court in *Lalla Ram's case (supra)*.

29. Further, the 1st respondent, while holding enquiry u/s 33 (2)(b) of the ID Act could not invoke the adjudicatory powers vested in it u/s 10 (i)(c) and (d) of the ID Act nor can it, in the process of formation of a *prima facie* view u/s 33 (2)(b), dwell upon the proportionality of punishment. The above view propounded by the Apex Court in *John D'Souza case (supra)* is squarely applicable



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to the case on hand as the present case falls squarely within the four corners of the said decision.

30. From the above, it is implicitly clear that the act of the 1st respondent in reappreciating the evidence is nothing but exceeding the jurisdiction vested in the 1st respondent when there is no defect in the conduct of the domestic enquiry. In fact, the workmen, in their explanation to the findings of the domestic enquiry had only pleaded on the disproportionality of the punishment and not on the findings in the domestic enquiry. Therefore, applying the ratio laid down in *Lalla Ram's case*, the act of the 1st respondent is wholly vitiated and the 1st respondent was not right in reappreciating the evidence once over and such an act of the 1st respondent deserves interference at the hands of this Court.

31. For the reasons aforesaid, the dismissal of the approval petitions, filed by the petitioner, by the 1st respondent is wholly perverse, impermissible and erroneous and the same deserves to be interfered with by allowing the present writ petitions. Accordingly, all the writ petitions are allowed by setting aside the orders of the 1st respondent, impugned herein, and confirming the order of



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dismissal passed by the petitioner. Consequently, the miscellaneous petitions filed by the workmen deserve to be dismissed and, accordingly, the same are dismissed. In the circumstances of the case, there shall be no order as to costs.

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To

The Dy. Commissioner of Labour
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GLN

**PRE-DELIVERY ORDER IN
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& 4543 OF 2023**

Pronounced on



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