

(1989) 03 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 3404 of 1982

A.G. Kher

APPELLANT

Vs

Atlas Copco (India) Ltd. and others

RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 25

Citation : (1992) 1 LLJ 423

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Judgement

1. This petition arises out of the complaint filed by the present petitioner in the Labour Court at Pune making grievance about unfair labour practice in the form of victimisation, by colourable exercise of the employer's right, involving complete absence of good faith. Grievance is also made that the order of termination of the services of the petitioner was passed in utter disregard of the principles of natural justice.

2. As will be presently pointed out the petitioner is a victim of mobocracy. For no legitimate reason, the other workmen in the factory of respondent No. 1 went after the blood of the petitioner and instead of protecting her from them, respondent No. 1 - Employer, dismissed the petitioner from service, through the employer themselves have no subsisting grievance about the petitioner's work and efficiency at all. The petitioner knocked the door of the Labour Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 with particular reference to item Nos. 1(a), (b), (d), (f) and (g) of Schedule IV to the said Act, with no avail.

3. Before setting out the facts which gave rise to this petition, it is worthwhile explaining the who is in this petition. The petitioner is, or rather has been, an employee in the factory belonging to Atlas Copco (India) Ltd. (hereinafter referred to as "the company") which is situate at Pune. At all material time, the

petitioner had been working as a Senior Typist-cum-Clerk in the said company. Respondent No. 1 is the Managing Director of the said Company, respondent No. 2 is the Factory Manager of the said company and respondent No. 3 is the General Secretary of the Union which has brought about settlement on behalf of the workmen in the factory with their employer-respondent No. 1.

4. Let me now state the undisputed facts which gave rise to this petition :

(a) The petitioner has been in employment of the company from the year 1966. She started working as a Receptionist-cum-Telephone Operator. Later on, she was given the work of Typist-cum-Clerk.

(b) The grievance of the management was that after the work of Typist-cum-Clerk was given to the petitioner, she was, on occasions, called upon to do the work of Telephone Operator as well and that she was reluctant to do the additional work. The company may or may not be justified in having that grievance. All that needs to be stated here is that an enquiry was held against the petitioner after a charge-sheet dated March 27, 1979 was served on her and in those proceedings, a warning was given to her on September 3, 1980 holding that the misconduct alleged against her was proved.

(c) Against this order involving the warning the petitioner filed a complaint under the Act (ULP) No. 462 of 1980 in the Labour Court. I am informed across the Bar that the complaint is still hanging fire ! It appears that, thereafter, the petitioner's services have been terminated and, hence, the complaint has been shelved by the Labour Court and has been ignored by all concerned.

(d) On May 24, 1981, a charge-sheet was filed against the petitioner in respect of certain alleged misconduct concerning her refusal to issue stationery to the Accounts Department. The misconduct alleged was that she insisted upon written instructions for supply of stationery. The allegation was that it amounted to wilful insubordination or instigation thereof.

(e) As will be presently pointed out, on October 2, 1981, an order was passed by the management-respondent No. 1, suspending the petitioner for three days without wages. This was evidently an order passed by way of punishment for the alleged misconduct.

(f) Evidently, in view of what transpired just seven days thereafter, the petitioner did not find it necessary to call in question the legality of that order.

(g) In the meantime, certain significant events took place. On June 19, 1981, a letter was written by the petitioner to the Secretary of the Union-respondent No. 3 for advice to respondent No. 1 - management not to make deductions from her monthly salary with regard to employees' benevolent fund. On June 25, 1981, a notice came to be pasted on the notice board of the Union (for this notice board, space is allocated in the factory premises) stating that as per the negotiations between the management and the Union, a decision was arrived at that certain lump sum payment was to be made to the employees, but that a sum equivalent

to 5 per cent of this lump sum was to be deducted from this amount for the Union's services to the employees. On July 22, 1981, the petitioner wrote a letter to the management-respondent No. 1 requesting that no deductions should be made so far as her paypacket was concerned. Correspondence ensued. The Union gave reply to the petitioner's letter dated June 19, 1981, on August 29, 1981. Somewhat strange contentions were raised in the said reply. It was mentioned that the petitioner had given an irrevocable power of attorney and authority to the management to deduct an amount of Rs. 10/- every month from her monthly salary with effect from January 1978 for payment to the employees' benevolent fund maintained by the Union of which she was a member. The contention was that because of the irrevocable power of attorney, the petitioner was bound to pay the said amount to the employees' benevolent fund. It is significant and important to note that contribution by the employees to the benevolent fund is not the subject-matter of any settlement and it is not even the Union's contention, as can be verified from the letter dated August 29, 1981 that the contribution to the benevolent fund was a part and parcel of the settlement arrived at between the Union representing its members and the management. Something turns upon this position because an argument was sought to be advanced by Mr. Shrikrishna in justification of the impugned order, which argument was based upon this so-called irrevocable power of attorney.

5. It is the grievance of the petitioner that on September 22, 1981, a six page notice was displayed on the notice board of the Union in the factory premises casting certain aspersions about the petitioner. The petitioner enquired whether this was done by the Union with the permission of the employer. Her enquiries were unanswered.

6. On September 27, 1981, a serious incident took place. A large number of workmen collected themselves outside the office room in which the petitioner was working, shouting slogans against her. According to the petitioner, they abused her and threatened her during the course of those slogans. It is also her case that on September 27, 1981, respondent No. 2, the Factory Manager, instigated the employees to shout slogans against the petitioner.

7. On September 28, 1981 at 7.20a.m., a mob collected outside the office room of the petitioner and started shouting slogans against her. The petitioner tried to get help from the Security Manager. According to the petitioner, the Security Manager refused to give her any help, probably at the instance of the management. At 8.30 a.m. on the same day, another mob fury broke out. The petitioner wanted help from the management to go to the police station for making complaint. That help was not given to her. Somehow or other, the petitioner managed to go to the police station and lodged a complaint against the workmen for the atrocious acts committed against her. The fact that such a complaint was filed by her is not in dispute. About her going to the police station, a grievance is made by the management by their letter dated September 29, 1981, given to the petitioner, that letter blames her for having left the factory

premises without permission and without getting a gatepass. On that day, the petitioner could not report for duty obviously because of the incident that took place on the earlier day. But on October 2, 1981, she made an endorsement below the office copy of the company's letter dated September 29, 1981, mentioning that she had informed. Mr. Anil Deshpande, an officer of the company, on the phone of the Factory Manager that she was required to leave the factory for getting police help. I may mention here that the fact that she was required to go to the police station for police help is not seriously disputed. No arguments were advanced before me that the petitioner did not go to the police station for police help on that day. In fact, it is nobody's contention that the incident of mob fury dated September 28, 1981, was not the truth. On the other hand, Mr. Shrikrishna has sought to make capital out of this fact contending that it was general body of the employees and workmen who were making common cause against the petitioner. They were making the factory work virtually impossible because they were boycotting the petitioner.

8. As mentioned above, an order dated October 2, 1981 was passed by the management contained in their letter dated October 2, 1981 in pursuance of the earlier charge-sheet dated May 24, 1981. It is significant to note that this is precisely the same day on which the present petitioner had given her explanation to the letter dated September 29, 1981 written by the management to the petitioner complaining about her leaving the factory premises without permission. She gave an explanation which is seen from her endorsement dated October 2, 1981 and on the same day she received an order suspending her for 3 days, without salary, because, according to the company, the charge levelled against her by the charge-sheet dated May 24, 1981 was established.

9. It will thus be seen that so far as the grievance of the management against the petitioner reflected in the charge-sheet dated May 24, 1981 was concerned, the order of punishment against her on October 2, 1981 exhausted the charge and the chapter ended. The management had no subsisting grievance on that day against the petitioner. Their grievance related to whatever she had done before May 24, 1981. I have my own doubt whether there was any justification for those grievances. But I assume that there was some wrong committed by the petitioner for which the management found a punishment of three day's suspension to be necessary as well as sufficient.

10. What transpires just seven days thereafter is something which has given rise to the present bone of contention. On October 9, 1981 the impugned order was passed by the management terminating the services of the petitioner without any reason whatsoever. By that letter she was informed in a blunt manner that her services were terminated and one month's wages in lieu of notice were being given to her and that, further, by way of abundant caution she was being paid compensation of Rs. 13,893.75 u/s 25-F(b) of the Industrial Disputes Act. She was further informed that her other dues would be intimated to her in due course.

11. One can see as he runs that this was the blanket order passed and an

employee who has been working with the company for a period of 17 years was removed from service by stroke of pen offering a paltry sum of Rs. 13,893.75 by way of compensation. It is this order which has given rise to the proceedings out of which the present petition arises.

12. The petitioner filed a complaint in the Labour Court, as mentioned above, on October 14, 1981. She also applied for interim relief by way of payment of interim wages. In spite of her repeated application to the Labour Court for order on her application of interim relief, no order on her application for interim relief was passed for quite sometime. On October 21, 1981 reply was filed by the management through Anil Deshpande, the officer mentioned above, I am informed across the Bar that no reply was filed by the Union-respondent No. 3, although grievance was made by the petitioner on September 11, 1981 that the Union had gone to the extent of publishing a notice on the notice board exhorting the workmen to boycott the petitioner.

13. On January 17, 1982, arguments were heard by the Labour Court in relation to the interim relief relating to payment of interim wages as also relating to the expeditious hearing of the complaint. But nothing was done by the Court right till February 2, 1982 in relation to interim relief. On January 21, 1982, the petitioner, therefore, made a complaint to the President of the Industrial Court as regards the delay in disposal of her application for interim relief. Again no order was passed on the said application. But on February 2, 1982, an order was passed by the Labour Court refusing to grant to the petitioner any interim relief.

Against this order, Writ Petition No. 490 of 1982 was filed by the petitioner in this Court. In that writ petition, this Court directed expeditious hearing of the Petitioner's complaint and the petitioner was also allowed to withdraw the amount offered by the respondent-management (Rs. 13,000/- and add) without prejudice. On February 17, 1982, written statement was filed by respondent No. 2. Not even any written statement was filed (apart from the absence of reply to the application for interim relief) by the Union-respondent No. 3.

The petitioner's evidence was recorded on August 3, 1982 and August 11, 1982. Evidence was given on behalf of the management by said Anil Deshpande on August 18, 29 and 31, 1982. Written arguments were given by the parties and, thereafter, the order was passed by the Labour Court on September 29, 1982, dismissing the complaint.

14. When this petition reached hearing, Mrs. Mhatre, learned counsel appearing for the petitioner, was not present. Mr. Shrikrishna was present and he narrated the facts to the Court. At that time, Mr. Shrikrishna made a categorical statement to this Court that the Management as such has no grievance against the petitioner. The thrust of his contention was that the other workmen were not seeing eye to eye with the petitioner and that they were boycotting her and that the situation has gone to such a stage that the work of the factory was likely to be affected. Prima facie, the Court found this contention to be anomalous

because the employer has no grievance against the petitioner and still the employee has been case off to the wolves. Normally, there cannot be any justification for the order of dismissal of an employee merely because the other employees did not like the shape of the nose of the employee or the colour of her hair. Whether an employee is to be retained in service or not will be normally considered on the touchstone whether the employee's services are satisfactory or not and whether the employee is committing any misconduct or not. If the services of the employee are not satisfactory, by all means, the employer can get rid of the employee in accordance with the provisions of law. Likewise, if the employee is guilty of any misconduct towards the employer, or towards anybody for that matter in the factory premises, may be that the employer will be entitled to take appropriate proceedings for termination of the employee's services. But it is unheard of that an employee should be removed from service by stroke of pen because a large number of other employees do not approve of the presence of the employee in the factory premises. Prima facie, this appeared to be a somewhat unjustified argument on the part of Mr. Shrikrishna. However, as Mrs. Mhatre was not able to remain present for some good reason, I adjourned the matter.

15. On the next day of hearing, Mrs. Mhatre pointed out all the above mentioned facts and I was satisfied that as a general principle sought to be formulated by Mr. Shrikrishna that because the other employees did not like the presence of an efficient employee in the premises of the factory, the employer was entitled to discharge or dismiss the employee, his plea could not be accepted, But Mrs. Mhatre was right in going a step further by inviting my attention to the ruling of a Division Bench of this Court in *S. D. Nadkarni v. New India Industries* and another 1988 II LLJ-392. The relevant observations of the Division Bench will be set out by me presently. But it may be stated here that the employer's power to remove any employee merely because the Union or the other employees do not pull on with him is not recognised by this Court.

16. When called upon to give reply to this position, Mr. Shrikrishna executed a veritable volteface and started contending that the impugned order or termination passed against the petitioner was not an order of termination simpliciter but was based upon the report of the Factory Manager.

17. Let me refer to the report upon which so much of reliance was placed by the learned counsel (after telling the Court initially that the company was required to pass the order of termination of the petitioner's services only because the other workmen refused to co-operate with her.) That report is dated October 5, 1981. Obviously, the report is made after enquiries which purport to have been made by the concerned officers of the company behind the back of the petitioner. I have already mentioned above that as a sequence to the charge-sheet dated May 24, 1981, the order of three days suspension, without wages, was passed by the company on October 2, 1981. That chapter, therefore, ended there. The fresh report dated October 5, 1981, had no justification. It may be open to the

company still to make discreet enquiry behind the back of an employee as regards the various aspects of his mode of working in the company. In fact, this is what every employer does. But if any adverse order is to result from such enquiry, a due and necessary proceeding has got to be held in which the employee concerned has got to be given appropriate opportunity to defend himself. That is the settled rule of our procedural law and it is based upon sound principles of natural justice which are deeply entrenched in our corpus juris, not to be uprooted to suit the whims of the employer.

18. The report makes allegations against her that the petitioner is argumentative in nature and starts arguments against colleagues and superiors on trifling issues. It is stated that she has been orally advised and warned on many occasions in the past. It is further stated that instead of improving, she continued to indulge in indiscipline by committing acts such as refusal of work even when ordered by the superiors, etc. The report says that she was cautioned in writing on February 6, 1979 and she was, thereafter, warned on September 3, 1980 for acts of indiscipline and insubordination and that a warning was also issued to her after conducting an enquiry. There is grievance made also as regards the warning that was allegedly given to her on April 28, 1981 (obviously meaning thereby the charge-sheet dated May 24, 1981).

What is next stated is important :

"Of late, over last one year or so, her relations with the recognised Federation have been continuously straining. She has initiated various litigations against the company and we understand that she has challenged the Federation that without their support she will win the cases which presently are sub judice before the Industrial Court.

It is reported that :

(1) Mrs. Kher has refused to renew membership of the Federation as a result of which all other employees are agitated against her.

(2) She has demanded the refund of subscription made to the benevolent fund which is run by the Federation to give financial assistance to the families of the deceased employees.

As a result of total non-co-operative attitude towards the Federation and its activities, the Federation had issued a social boycott call to all the members against Mrs. Kher. This boycott is effective since September 11. As a result no employee keeps any contact whatsoever with Mrs. Kher and day-to-day work in the company as regards despatch and receipt of material, stationery storing and issues etc., are suffering badly. In a situation like this, it has not been possible for the company to take action against the employees who have boycotted her which would mean action against almost all the staff and workers. Even if the company were to contemplate action it is strongly feared that the entire situation will go out of hand seriously affecting the working of the company. Discreet

enquiries reveal that the Federation would even be prepared to strike work, should the company proceed against any member for non-performance of duties as a result of boycott order."

In the next para of the report, it is alleged that the petitioner (who is a lady) is reported to have teased some of the office bearers of the Federation. The further allegation is that discreet enquiries made by the management revealed that the petitioner had attempted to instigate some of the employees against the Union as well as the management. The report makes a grievance as follows :

"It is also reliably learnt that she has refused to patch up her relations with the Federation when they made the attempts in this direction."

It is further stated as follows :

"In view of the above it is strongly felt that continuance of Mrs. Kher in the employment of the company is posing serious threat to the so far harmonious relations between the Federation and management and also creating serious disruption in the normal day-to-day work of the company."

The fear expressed and the recommendation made in the report as follows :

"As such -

- (1) To date the work continues to suffer.
- (2) There is an element of suspense in the situation.
- (3) As a result of social boycott Mrs. Kher can hardly be provided any productive and meaningful work.
- (4) It is feared that there may be untoward incident endangering the person and life of Mrs. Kher.

Taking stock of the entire situation it is strongly felt that continuation of Mrs. Kher in the employment of the company is not in the interest of smooth and harmonious working of the company.

I, therefore, recommend that her services can be terminated with immediate effect."

The learned Judge has relied more or less exclusively upon the report and has given a clean chit to the company and has upheld the order of termination of the petitioner's services.

19. When the initial argument was advanced by Mrs. Shrikrishna, I wanted to know the contention of the Union in this behalf. The Union had filed no written statement in the Labour Court. In the present proceedings, the Union has appeared through counsel, but none appeared on that day. The petitioner was, therefore, kept back for the purpose of enabling the Union's counsel to appear and express his stand before the Court. Accordingly, Miss Kher appeared on

behalf of the Union. She made an unequivocal statement before the Court that so far as the Union is concerned, it has never asked for the petitioner's removal from the service.

I put this position to Mr. Shrikrishna, but he placed strong reliance upon the report, the stand of the Union against his initial contention notwithstanding.

20. In my opinion, placing reliance upon the report is futile. The report is given by the Factory Manager. The report itself leaves no room for doubt that because the petitioner had certain grievance against the Union, the Factory Manager, wanting clutches on behalf of the Union, made common cause with the then office bearers of the Union to make the petitioner suffer for it. In no part of the conduct of the employer any element of justice surfaces. I put this point to the learned counsel Mr. Shrikrishna. He says that his argument is that the company is not there for doing justice, but for the purpose of doing its business. In my opinion, these two things cannot be separated from each other. You can't go on doing business by heaping injustice upon others. What the company has done is either it has instigated a faction of the employees against the petitioner and has taken help of some of the office bearers of the Union who have grievance against the petitioner to remove her from service or else the company has allowed itself to be guided by mobocracy. In fact, the Factory Manager has used this very expression in his report, portion of which is extracted above. He complains as follows :-

"She also alleged that the management in connivance with the Federation is using mobism against her."

This is precisely the view of this Court. If the company had any grievance against the petitioner, they did give a charge-sheet to her on May 24, 1981 and passed order, willy-nilly, on October 2, 1981. All the allegations which are made in the report against her are prior to the order. No charge-sheet was given to her as regards any other offence or misconduct. Obviously, everything that is stated in the report is an after-thought to be used as a stick for beating the petitioner with. I do not mean to suggest that the petitioner might not have given rise to any grievance in the mind of the company or her colleagues. But if that is so, appropriate proceedings should have been initiated, evidence of her colleagues should have been recorded, enough material should have been brought on record after giving the petitioner an opportunity to meet the same and then if it was legally possible for the company, as per the Standing Orders, she could have been given appropriate penalty in that behalf. What we find today is that an order of termination simpliciter appears to have been passed and when the validity of the order is challenged, the company is trying to hide behind the report made by the Factory Manager which was given without any kind of opportunity to the petitioner to meet the same.

21. In my opinion, the abiding principle that permeates through our entire corpus juris is delivery of real justice to all concerned. History of industrial growth show

that for long injustice that the underdog, viz., the workmen suffered stemmed from plutocrats the employers wielding the money-bags. This injustice was meted out in the form of exploitation, victimisation, etc. It is the universally accepted dictum that alongwith the workmen and the underdog, even democracy suffered from injustice, not only economic but also political. Our various labour and industrial laws aim at remedying this evil. It is unnecessary to dwell upon this form of injustice any further. What we are concerned with in this petition is the menace to democracy, both political and economic, that emanates from another formidable quarter, viz. mobocracy. Ayatollah Khomeinis instigate mobs against an individual and the individual is sought to be liquidated. This is an equally formidable menace to our freedom, both political and economic. The Courts must have its face set against injustice springing from this formidable quarter as well. Let me, in this connection refer to a decision of a Division Bench of this Court in Santosh Dattaram Nadkarni, Bombay Vs. New India Industries Ltd. and another, , which has voiced the identical feeling. In that case as well as, the employee's services were terminated as other employees threatened to go on strike if he was not displaced. On this back-drop, it was held by the Division Bench (para 4, p. 394) :

"It is no part of the business of the company to take sides in intra-union disputes or rivalries If such grounds are allowed for termination of services of an employee, it would open a floodgate of abuses and it would also lead to closed - shop policy. It would suppress freedom and dissent and encourage union-bossism."

The feeling which are expressed by me above could not be better expressed than the words tersely employed the Division Bench.

22. In a different context, reliance was placed by the learned counsel upon the decision of the Supreme Court in the case of O. P. Bhandari v. Indian Tourism Development Corpn. Ltd. 1988 II LLJ 509. The facts of the case with which the Supreme Court was dealing were identical on material particulars. Even in that case, the relations between the victim employee and the punishing employer were strained. Likewise, the Union had some grievance against the employee. The Trade Union held out threats to strike in the context of some acts of the employee. An order of termination simpliciter was passed by the employer, viz., Indian Tourism Development Corporation Ltd., which is obviously a "State" within the meaning of Article 12 of the Constitution. The Supreme Court held that the rule giving power to the State to terminate the services of the employee without giving any reason is ultra vires Article 14 of the Constitution. The termination was, therefore, held to be wrongful.

23. This authority was sought to be relied upon by Mr. Shrikrishna in support of his contention that if the order of termination is set aside, reinstatement would not be an appropriate order. He may or may not be right on that point. I will consider that question a little later. But at this stage I may state that even the Supreme Court authority gives a strong reinforcement to this Court's view that

merely because the Union takes in its head desire to taste the blood of one of the employees, the employer can't take sides and remove the employee bag and baggage.

24. In this view of the matter, the order passed by the Labour Court cannot be justified. The order rests principally upon the report which is a bad piece of document having regard to the elementary principles of natural justice. The order has got to be set aside.

25. The next question is as to what relief is to be given to the petitioner. Mr. Shrikrishna was right in placing reliance upon the abovementioned Supreme Court authority. In that case, the second point formulated by the Supreme Court for consideration was whether the employee of the "State" whose services were terminated under the rule of regulation which was ultra vires the Constitution is always and invariably entitled to reinstatement and whether option to pay compensation in lieu of reinstatement can be given to the employer in fit cases. In this connection, the Supreme Court observed in para 6 of its judgment as follows (para 6, p. 513) :

"No doubt in regard to "blue-collar" workman and "white-collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception."

Predictably, strong reliance was placed by Mrs. Mhatre herself upon this observation. At least Prima facie, the observation goes a long way to substantiate her case that the petitioner is entitled to reinstatement in the context of the facts of the case and not mere compensation in lieu of reinstatement. I may also mention here that this view has been considered and followed by the Division Bench in the abovementioned case of S. D. Nadkarni (supra). I fully appreciate the view taken by the Division Bench in that case.

26. But I must state that the facts of the present case have somewhat peculiar feature. In my opinion, in the context of the facts of this case, ordering reinstatement will not be in the interest either of the company or of the employee. The petitioner has been out of employment for more than seven years and a half. Mrs. Mhatre stated that she would be having three years for retirement. She has lost touch with the work for the last several years. Her efficiency which was doubted by the employer previously will not have bettered by virtue of absence from work for such a long period. But this is a case where almost full justice can be done by ordering payment of all the past dues as also payment of the further dues on the assumption that she would be in employment for the full period of three years. The order I propose to pass will give her full compensation even for the coming three years wages that would be lost to her if she was not allowed to work. She will be getting all the money without working even for the future, although as per the principle upon which insurance policy is based, it would be legitimate contention that some deduction should be made in

the total compensation to be received for the future emoluments. In my opinion, therefore, the ends of justice will be fully met if the employer is directed to pay to the petitioner all the back wages together with future compensation on the bases of the salary that she would earn in the coming three years.

27. The next question is as to how the amount for the past dues is to be computed. On this point, there was only one dispute raised by Mr. Shrikrishna. According to him, after the petitioner's removal from service, three settlements have taken place between the Union and the management. According to Mr. Shrikrishna, the petitioner would not be entitled to benefits under the settlements because, according to him, she could not eat the cake and have it. According to him, the petitioner has ceased to be a member of the Union, and hence, she would not be entitled to the benefits of these settlements like other employees who were parties to the settlements as members of the Union.

28. I am afraid Mr. Shrikrishna is wrong on facts. The memorandum of the last settlement dated June 12, 1988 was placed before me. There is no dispute that the other settlement followed the same pattern so far as the applicability of the settlements was concerned. Para 1.3 of the settlement refers to applicability thereof, and para 1.3. 1 states in terms that the terms and conditions of service as laid down in the settlement shall be applicable to all permanent staff and permanent workmen who are in the company's employment on the date of signing of the settlement. Mr. Shrikrishna contended that the petitioner was not in the employment of the company on that date and, hence, she was not entitled to the benefit of the settlement. His argument ignores the position that once I set aside the order of termination, which I have hereby done, the petitioner shall be deemed to have been in employment for all the years. The fact that I would not order reinstatement does not mean that the termination of her services was not wrongful. If it was wrongful termination, she must be deemed to be in the employment. It is only at the request of Mr. Shrikrishna that I am directing that instead of allowing the petitioner to resume her duties henceforth, the employer will be at liberty to give her the back wages plus the future wages. It will be only after the date of this order and after the petitioner has received all the future compensation that she shall be deemed not to be in the service of the company. It is, therefore, clear that the petitioner is entitled to the terms and conditions of service as laid down in the settlements.

29. Mr. Shrikrishna further contended that the petitioner was not a member of the Union and, hence, she was not entitled to get the benefits of the settlements arrived at between the employer and the Union.

Here again, Mr. Shrikrishna is wrong on facts. The petitioner has never ceased to be a member of the Union. I repeatedly asked Mr. Shrikrishna and Miss Kher to point out any resolution of the Trade Union removing her from the roll of membership of the Union. They could not point out any such resolution. It may be that she is in arrears in payment of subscription but that does not make her membership of the Union invalid ipso facto. Moreover, it is not the Union's

contention that she is not a member of the Union. But as seen above, the applicability of the settlement is not contingent upon the incumbent's relations with the union. The petitioner must be, therefore, held to be entitled to be benefits flowing from all the three settlements.

30. An agreed figure as regards the amount of past and future wages that the petitioner would be entitled to on the basis that my judgment is correct, is placed before me. The total amount comes to Rs. 5,87,772.54. Out of this, I am not inclined to allow to the petitioner the compensation for sick leave as she would have been entitled to which is calculated at Rs. 5,884.49. In my opinion, sick leave is not available to the employee unless she falls sick. Mrs. Mhatre contended that an employee is entitled to accumulate the sick leave. She is very much right, but the point is that the employee is not entitled to sick leave unless she has the misfortune of falling sick. Sick leave is granted upon the happening of certain contingency. In the present case, there is no evidence of such contingency and no plea is raised that such contingency existed. I do not suggest that during all this period, the petitioner may not have fallen ill. All the same, it cannot be made as an abstract rule that in every case of payment of back wages, sick leave should be quantified and paid for. In my opinion, therefore, the said amount of Rs. 5,884.49 shall have to be deducted.

The total amount receivable by the petitioner from the employer as all backwages as well as future wages as compensation in lieu of reinstatement will be Rs. 5,81,888.00. The employer shall be liable to pay the above amount to the petitioner within one month from to-day.

31. I must mention a few arguments advanced by Mrs. Mhatre which I am not inclined to accept.

Mrs. Mhatre claimed that every employee is given some ex-gratia payment at the end of his/her tenure of service. Likewise, according to her, every employee is given half a tola of gold by the employer and some gift. She says that the petitioner is entitled to the value of those benefits while computing the future wages.

I am not inclined to accede to this submission because in the first place, I could see that the future salary that the petitioner is getting is full salary without doing any work and that too in lump sum. On the scientific basis, when a person receives wages in one lump sum in advance he will be liable to suffer some deductions made from this amount simply because he is getting the sum which would be spread over a long period in future, at one time, in advance. Computing the interest on the amount, he will be getting a much larger amount in anticipation, than he would have got in the aggregate at the end. Moreover, gifts and ex-gratia payments are something which are within the discretion of the management at the end. A gift is not something which can be specially enforced. Having regard to all these facts, I am not inclined to accede to these submissions.

32. It is, moreover, agreed between Mrs. Mhatre and Miss Kher that the

petitioner shall be liable to pay all the past subscription to the Union as also the Union levy. The employer shall make the necessary calculation as regards the total amount to be paid by the petitioner to the Union till this date and that amount will be deducted from the abovementioned amount. The employer shall also be entitled to deduct a sum of Rs. 15,598.75 which amount is already received by the petitioner.

33. Mrs. Mhatre relied upon a direction given in similar case by the Supreme Court in the case of O. P. Bhandari (supra). In that case, by virtue of the order of the Supreme Court, the employee became entitled to receive back wages in one lump sum for a period of quite a few years, as also advance payment of the future wages. In that case, the Supreme Court gave a direction to the employer-Corporation to assist the employee through its Tax Consultant for obtaining the relief u/s 89 of the Income Tax Act as also under other relevant provisions of the Act. The petitioner shall be entitled to make suitable application to the authorities concerned and since the question has arisen on account of wrongful order passed by the company, the company is directed to give assistance, through its Tax Consultant, to the petitioner for making suitable application for relief in this behalf.

34. In the result, the petition succeeds. The rule is made absolute. The employer shall be liable to pay to the petitioner a sum of Rs. 5,63,615.30 within one month from to-day. If the amount is not paid, the petitioner shall be entitled to interest at the rate of 12 per cent per annum on the said amount from to-day. The petitioner is also entitled to the costs of the petition.