
(2002) 08 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 1909 of 1999

Akaram S. Chaukekar

APPELLANT

Vs

Dalal Project Services Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 30

Citation : (2003) 1 BomCR 553

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : C.U. Singh and S.S. Chaubal, for the Appellant; P.K. Rele and R.P. Rele and Vinod Tayade, instructed by Piyush Shah, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner workman is aggrieved by the impugned judgment and order passed by the Industrial Court in Revision Application Nos. 80 of 1998 and 90 of 1998 on 19th March, 1999 allowing the revision application filed by the respondent employer and dismissing the revision application of the petitioner workman. The Industrial Court had quashed and set aside an order of the Labour Court dated 6th July, 1998 in complaint U.L.P. No. 309 of 1994 and had disposed of the complaint filed by the workman.

2. The parties had a number of rounds of litigation from the Labour Court to this Court. The skeleton of the dispute can be stated hereinafter. It appears that the petitioner who claimed to be in employment of the respondent company for a period of 17 years was charge-sheeted on 31st July, 1992 for certain acts of misconducts. It appears that there was a dispute between the company and the workman represented by the Mumbai Mazdoor Sangh over the charter of demands and the said dispute appears to have been settled on 7th August, 1992. It further appears that the said settlement was preceded by the trade Union agitation for a period of about 20 to 25 days. On 10th August, 1992, after the

settlement dated 7th August, 1992, all the workmen gave good conduct bond as per the settlement and they joined their work. On that very same date, it appears that 20 workmen including the present petitioner were served with suspension order. It appears that before the suspension of the petitioner and 20 other workmen, the petitioner was served with a charge-sheet on 31st July, 1992 which was replied to by the petitioner on 11th November, 1992 denying the charges levelled against him. It appears that the enquiries commenced in the charge-sheets were stayed by the Industrial Court on 11th September, 1992 and the stay was vacated by this Court (Dhanuka, J.) on 16th February, 1993. The complaint appears to have been withdrawn and the respondent company appears to have been allowed to proceed with the domestic enquiries. After the completion of domestic enquiry against the workmen including the petitioner, the respondent company dismissed the petitioner by an order of dismissal on 6th July, 1994. The petitioner filed a complaint of unfair labour practice under Item 1 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 (for short "the M.R.T.U. Act). There have been one more round of litigation between the parties which is not very material to be referred to herein except the final result of the complaint which was dismissed on 10th March, 1997. The only important and crucial order which has to be referred to is the order passed by the Labour Court on 6th April, 1995 holding the domestic enquiry fair and proper and findings of the Enquiry Officer not perverse. This was the order passed by the Labour Court as part I order. This order was carried by the petitioner in revision before the Industrial Court which dismissed the revision application on 20th October, 1995.

3. The petitioner preferred a revision application before the Industrial Court challenging the order of Labour Court dismissing his complaint. By his order dated 26th September, 1997, the Industrial Court partly allowed the revision by granting reinstatement with continuity of service but without backwages to the petitioner. The respondent company was aggrieved by the said order of Industrial Court and, therefore, filed a writ petition before this Court under Article 226 of the Constitution of India challenging the legality and validity of the said order of the Industrial Court. By an order dated 18th February, 1998, this Court (R.M. Lodha, J.) quashed and set aside the order of the Labour Court dated 10th March, 1997 and the Industrial Court dated 26th September, 1997 for the reasons recorded therein and remanded the matter back to the Labour Court for a fresh decision in the light of the observations made therein. It further appears that this Court specifically had directed the Labour Court to decide the question of legal victimisation as per the judgment of the Supreme Court in the case of *Colour-chem Ltd. v. A.L. Alaspurkar*, reported in 1998(3) Bom.C.R. 644 : 1998(I) C.L.R. 638. It further clearly appears from the order that the Labour Court was to decide the matter only on the basis of the available material on record without recording any fresh evidence on the issue Nos. 2 and 3 framed by the Labour Court. It was also recorded by way of clarification that the parties had no dispute regarding the findings already recorded by the Labour Court on the issue Nos. 1 and 1(a) which were affirmed in revision and the said issues would not be the

subject matter of fresh decision. It, therefore, appears clear that the Labour Court was directed to decide the question of unfair labour practice allegedly engaged in by the respondent company, in dismissing the petitioner, confining its decision within the parameters of Item 1(a) of Schedule IV of the M.R.T.U. Act in the light of the principles laid down by the Supreme Court in the case of Colour-chem (supra).

4. One more important event which needs to be mentioned is that the present petitioner had challenged the Part I order of the Labour Court dated 6th April 1995 by filing a Writ Petition No. 1057 of 1998. On 16th June 1998, this Court (A.P. Shah, J.) rejected the said petition mainly on the ground of delay and laches. It, therefore, is beyond any pale of doubt that the order of the Labour Court dated 6th April 1995 holding the enquiry fair and proper and findings not perverse stands confirmed upto this Court.

5. On the basis of the following observations of the Supreme Court in the case of Colour-chem (supra), this Court (Lodha, J.) remanded the matter back to the Labour Court with a direction to decide the issue of unfair labour practice falling under Item 1(a) of Schedule IV of the M.R.T.U. Act. The Supreme Court has analysed the concept of victimisation in two parts viz., factual victimisation and legal victimisation. The Supreme Court has held that a punishment shockingly disproportionate would also fall within the meaning of Item 1(a) of the M.R.T.U. Act. It would be appropriate for me to reproduce the said principles crystalised in that judgment.

"Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term victimisation is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. As for example a militant trade Union leader who is a thorn in the side of the management may be discharged or dismissed for that very reasons camouflaged by another ostensibly different reason. Such instances amount to unfair labour practices on account of factual victimisation. Once that happens Clause (a) of Item 1 of Schedule IV of the Act would get attracted, even apart from the very same act being covered by unfair labour practices envisaged by Clauses (b), (c), (d) and (e) of the very same Item 1 of Schedule IV. But it cannot be said that Clause (a) of Item 1 which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the decision of this Court in Hind Construction (supra). It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practices by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour

practice is covered by the present Act by enacting of Clause (2) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision."

The Supreme Court has further extensively dealt with the concept of victimisation which I have borne in mind while deciding the present petition.

6. Shri C.U. Singh, the learned Counsel for the petitioner submitted that the dismissal of the petitioner from employment on the charges levelled against him in the charge-sheet amounted to legal victimisation as even on the basis of the proved misconduct levelled against him, no reasonable employer would impose the extreme punishment of dismissal for such proved misconducts. Shri Singh has taken me through the entire proceedings in support of his submissions that the charges which were levelled against him were not that serious to warrant the extreme punishment of dismissal and, therefore, according to the learned Counsel it is a case of legal victimisation by imposing a shockingly disproportionate punishment on the petitioner. According to Shri Singh, the Labour Court and the Industrial Court both have given great emphasis and stress on the charge of "go slow" indulged by the petitioner while, according to Shri Singh, that was not the charge for which the petitioner was dismissed. Shri Singh emphasised the fact that the Labour Court had unnecessarily carried an impression that the petitioner had indulged into the acts of "go slow" which were obviously very serious. Shri Singh has drawn my pointed attention to the charge-sheet dated 31st July, 1992 wherein, the heads of misconducts were given after narrating the events in detail. Shri Singh submits that these charges do not include the charge of "go slow" which had created a strong impression on the mind of the Labour Court. The charges are reproduced hereinbelow for ready reference:-

"1. Encouraging, instigating, inciting and directing the workmen in their indulgence in all sorts of unlawful activities, misconducts and misbehaviour on their part during the period from June 2, 1992 to June 6, 1992.

2. Riotous, in orderly behaviour on your part on the premises of the establishment.

3. Commission of any act subversive of good behaviour and discipline on the premises of the establishment."

Shri Singh has submitted that beyond mentioning the bare words "go slow" and "work stoppages", allegedly at the encouragement, instigation and incitement and direction of the petitioner, there are no particular details of "go slow" or stoppage of work indulged in by the petitioner. Shri Singh further pointed out that the petitioner was only a clerk and he could not have been said to have indulged in the act of "go slow" or stoppage of work. Shri Singh has further submitted that the respondent company had issued common and identical charge-sheets to 20 workmen without pinpointing individually as to who was guilty of what misconduct and when and where he was found to have committed

the alleged acts of misconducts. In the absence of such individualised details, the petitioner could not have been held guilty of all the charges levelled against in the common charge-sheet. Shri Singh further submitted that the petitioner was working at the office of the respondent company at Worli Naka while the head office was at Worli Sea face. According to Shri Singh, he was not going to the head office where agitations were going on. He further submitted that in the reports submitted by the officers, the name of the petitioner was not specifically mentioned to be committing any particular act of misconduct. According to Shri Singh a large number of workmen of the respondent company were carrying on their trade Union agitations and the company had picked up only 20 workmen including the petitioner, who was a committee member of the Union. Shri Singh further submitted to stress the point of discrimination and victimisation that though a large number of workmen were involved in the agitation, 10 such workmen were not issued even charge sheets, though they were found to have indulged in serious acts of misconducts and the respondent company did not take any action against them. Shri Singh further submitted that in all 20 workmen were served with the common cyclostyled charge-sheets but the company had settled with 12 workmen out of 20 at the stage of either before or after the orders of dismissal were passed against them. They were given ex gratia amounts and they were also issued good conduct certificates, though they were also charged with serious acts of misconducts including the acts of violence. Shri Singh submitted that the said 12 workmen were also guilty of the same or similar charges levelled against the petitioners but the petitioner was singled out along with seven others to be dismissed for the same or similar acts of misconducts. According to Shri Singh this amounts to an act of discrimination between the similarly placed workmen. It is an admitted position that out of 20 workmen 8 workmen were dismissed and the petitioner was one of them. The cases of seven others are pending before the Labour Courts. According to Shri Singh, there was no charge of violence against the petitioner and he was very peaceful in his behaviour and that no serious charges of any nature were levelled against him and, therefore, Shri Singh points out that the case of the petitioner is squarely covered by the act of legal victimisation as contemplated by the Supreme Court in the case of Colour-chem (supra) to fall under Item 1(a) of Schedule IV of the M.R.T.U. Act. Shri Singh, therefore, submits that the findings of the Labour Courts were baseless and perverse as there was no charge of "go slow" at all and still the Labour Court held that the petitioner was guilty of the said charge. There was no specific charge of "go slow" repeats the learned Counsel. He further submits that even the Enquiry Officer did not find him guilty of the charge of go slow. The past record of 18 years service of the petitioner was clean. According to Shri Singh, the punishment of dismissal was very harsh and amounted to shockingly disproportionate punishment falling within the realm of legal victimisation. Shri Singh submitted that the petitioner should be reinstated even without backwages. Denial of backwages from July 1994 till reinstatement as ordered by the Labour Court would be sufficient and commensurate punishment for the petitioner for the alleged acts of misconduct,

concludes Shri Singh.

7. Shri P.K. Rele, the learned Senior Counsel for the respondent, on the other hand, submits that the attempt of Shri Singh to read the evidence in the enquiry was not permissible for two reasons. According to Shri Rele, this Court should not appreciate or reappraise the evidence on record of the enquiry. He further submits that the Labour Court has already found that the enquiry was fair and proper and that findings of the Enquiry Officer were not perverse. This order of the Labour Court has been finally confirmed by this Court. Even before that the petitioner had already accepted the judgment and order of the Labour Court on the said two points of enquiry and findings. Shri Rele submits that once the enquiry is held to be fair and proper and the findings not perverse, in that case, there is hardly any scope for this Court under the extra ordinary jurisdiction of Article 226 of the Constitution to probe further in the matter. Shri Rele submits that in the enquiry the company had led sufficient evidence to bring home the charges levelled against the petitioner. He further submits that there was sufficient material before the Enquiry Officer in support of the charges against the petitioner. The company had led evidence of three witnesses and had produced documentary evidence to prove the charges levelled against the petitioner. Those witnesses were cross-examined by the petitioner and the enquiry held was rightly found to be in compliance with the principles of natural justice by the Labour Court. Shri Rele, further pointed out a very significant and crucial aspect that in rebuttal the petitioner did not step in the witness box before the Enquiry Officer to deny the factual charges which were set out by the witnesses. He did not offer any explanation or did not make any oral statement before the Enquiry Officer in reply to the evidence given by the witnesses on behalf of the company. Shri Rele further took me through the material on record to show that the charges which were proved against the petitioner were serious and, therefore, he was legally and properly and rightly dismissed from employment along with seven other similarly placed workmen. According to the learned Counsel, there was no discrimination between the petitioner and the other seven workmen, who sailed in the same boat. As far as the charge of discrimination between the two sets of the workmen i.e. 12 workmen with whom the company had settled and the remaining eight who did not settle with the company. Shri Rele submitted that the Labour Court has rightly recorded a finding to discard the charge of discrimination on this count. Shri Rele pointed out that the twelve workmen had tendered their resignation and had accepted the monetary settlement and, therefore, there is no question of discrimination between the petitioner or between the other dismissed workmen and those who had resigned and accepted the settlement. According to Shri Rele, the petitioner did not offer his resignation and, therefore, there was no question of discrimination qua the petitioner and the other dismissed workmen. Shri Rele has further pointed out the distinction made by the Labour Court that it was not the case of the petitioner that he had also offered to resign and that his resignation was not accepted while the resignation given by 12 workmen were accepted. Shri

Rele, therefore, seriously criticised the charge of discrimination being totally unfounded and baseless besides being without pleading in the complaint. Shri Rele also pointed out that the charges were not identical and all the details were given as far as possible. The learned Counsel further pointed out that all those who had taken part in the agitation, could not have been issued with charge-sheets and could not have been dismissed and it was not necessary to do so. There were practical and physical limits on the respondent company to have initiated disciplinary proceedings en masse against all the workman. Shri Rele submitted that the respondent company had charge-sheeted those who had actively taken part in the agitation and who were on the forefront. Shri Rele also pointed out from the enquiry how the petitioner was actively involved in the agitations committing one or the other acts which were serious. According to the learned Counsel, there was neither legal nor factual victimisation of the petitioner and there was no error in the order of the Labour Court or the Industrial Court to warrant interference by this Court under Article 226 of the Constitution of India.

8. I do not find any merit or substance in the submissions of Shri Singh that the respondent company was guilty of discrimination as against the petitioner to impose the extreme punishment of dismissal. Both the Labour Court and the Industrial Court have rightly held that the petitioner was not discriminated against in any manner as against any other charge-sheeted workmen. The sheet anchor of the charge of discrimination is that the respondent company had allowed 12 of the charge-sheeted workmen to leave the company with a good amount of compensation (VRS) and a good service certificate while the petitioner and the other seven workmen were dismissed from employment though all of them were subjected to the same charge-sheets for identical charges. Shri Singh, unfortunately glossed over a very crucial factor of tendering of resignation by the 12 workmen and offering to settle their dues amicably while the petitioner did not offer to resign and leave the employment. The charge of discrimination could certainly have merit if even the petitioner had offered to resign and his resignation was not accepted and instead he was dismissed from employment. Admittedly, the petitioner never offered to resign and never opted for VRS and, therefore, he was to be in the array of 8 dismissed workmen. The Courts below have rightly turned down the allegations of discrimination against the respondent company on this count.

9. I also do not find any substance in the submissions of Shri Singh that the respondent company allowed the similarly charge-sheeted workmen to go without any blemish of dismissal. It appears that the petitioners desired that every one of the 20 similarly charge-sheeted workmen should have been similarly dismissed from employment. Such submissions are merely to be recorded to be rejected outright. If the respondent company got an opportunity to get rid of the troublesome charge-sheeted/dismissed workmen who offered to accept the VRS, resign and go away with compensation, I do not find anything wrong in the decision of the respondent company to have acted in the manner in which it acted. No prudent and wise employer would incur unnecessary and

avoidable litigation but would prefer to buy industrial peace in his establishment. By doing so, the respondent company has certainly bought industrial peace in its establishment and has also saved the huge cost of litigation after the orders of dismissal of the workmen having already wasted huge amount in holding the domestic enquiries on such a large scale simultaneously. We have to take a judicial note that by and large and very often than not the domestic enquiries held by professional Enquiry Officers get prolonged over a long period and finally result in a huge bill. That itself is a huge cost of dismissal of a workman in compliance with the principles of natural justice. Therefore, avoidance of litigation is certainly a wise decision in every respect. I fail to understand how the petitioner is prejudiced and how he could make a grievance against the respondent company that it allowed the 12 charge-sheeted dismissed workmen to go with compensation and with good certificates. If the petitioner were also to offer to similarly go away, the respondent company would also have been certainly happy to welcome his decision. Even this parting limb of attack in respect of discrimination cannot be accepted.

10. Similarly, I do not find even an iota of substance in the charge of victimisation of the petitioner by the respondent company in dismissing him from employment for the proved acts of misconducts. It has been well settled and established that proved misconduct is anti thesis of victimisation, except where for the charge of minor or technical nature an extreme punishment of dismissal is imposed, which certainly would amount to victimisation as the theory of punishment is very well entrenched in the industrial jurisprudence that punishment has to be commensurate with the acts of misconduct. Punishment must always match with the crime committed. If it were not so, it would be struck down as shockingly disproportionate justifying an inference of legal victimisation as per the principles laid down by the Supreme Court in the case of *Colour-chem* (supra). We cannot lose sight of the fact that the respondent company had complied with the principles of natural justice. Both the courts below have held and even this Court has not interfered with the said findings that the enquiry was fair and proper and that the findings of the Enquiry Officer were not perverse. The net outcome of these findings is that the charges levelled against the petitioner by the respondent company have stood proved. The Supreme Court has time and again reminded us that once the charges of misconduct are proved in a fair and proper enquiry and the findings flow from the evidence and material on record, the question of punishment is in the discretion of the employer and the Courts/Tribunals should not lightly interfere with such orders of punishment unless, they fail to satisfy the test of proportionality and reasonableness. Shri Singh, the learned Counsel for the petitioner has tried to take me through the whole evidence on the record of the enquiry and also the findings recorded by the Enquiry Officer in his endeavour to show that the petitioner was not guilty of any of the serious charges levelled against other workmen who were allowed to resign and go. Shri Singh has further tried to put forward the so called innocence of his client and to stress the

point of victimisation. In the valiant effort of the learned Counsel he tried to single out his client from the riotous mob of the workmen on the premises of the establishments to submit that his client was not guilty of the acts of misconducts as levelled against the others. To my mind it only means to say that other workmen had thrown paper weights and cups but the petitioner had thrown only saucer that he was only whistling while the others were cat calling; that his client was only sitting in the canteen beating the table while the others were beating the drums! Such distinctions are absurd. According to Shri Singh, the charge of go slow was not at all proved. Shri Singh also tried to point out from the cross-examinations of the company's witnesses that there were serious discrepancies in their depositions which would prove that his client was innocent. Shri Singh also tried to point out that in various reports submitted by the officers his client's name did not appear to show that he indulged in the alleged acts of misconducts. Shri Rele, the learned Counsel for the respondent company has taken me through the oral evidence of the company's witnesses, who have in no ambiguous language have proved the charges of misconducts levelled against the petitioners. From the evidence of these witnesses it is clear that even the petitioner indulged into one or the other kind of misconduct charged against him. A few extracts from the evidence starting from page 735 of the paper book onwards, of the enquiry are enough to justify the conclusions of the Enquiry Officer as to the guilt of the petitioner and to justify the punishment imposed on the petitioner.

"Page 735(iii) Because of refusal to do overtime by the peons/messengers, the office remained uncleared; tables remained uncleared and the water jugs were not filled. He was informed that Mr. Akaram Chaukekar and other committee members had instructed the peons/messengers and other employees not to do overtime. Mr. Akaram Chaukekar also stopped doing overtime which he was earlier doing as and when required." Page 736(vii) On 8-6-1992 he (Mr. Pereira) was informed that whistling and shouting was going on by the workmen who are the members, of the Union at head office, at intervals. In the afternoon at about 2.30 p.m. Mr. Akaram Chaukekar and Mr. Nandi who work at Worli Naka Office went to the H.O. and held meetings at H.O. with workmen who are members of the Union and other committee members, without permission during working hours. After Mr. Akaram and Mr. Nandi left the H.O. the workmen increased their shouting and whistling."

(viii) On 9-6-1992 the workmen who are members of the Union resorted to illegal activities such as cat calling, shouting, whistling etc. at the Worli H.O. and Worli Naka Office. At Worli Naka Office Mr. Akaram Chaukekar was going around the office instigating the workmen to carry out an accute go slow and also to carry out illegal activities such as cat calling, shouting etc. during working hours."

(ix) On 9-6-1992 in the afternoon Mr. B.D. Patel, Director Corporate Affairs called Mr. Prabhakar Mulam, peon/messenger to his cabin in presence of Mr. Pereira and asked him to fill his water jug; however, Mr. Mulam refused to fill the water jug

and stated that he had been instructed by Mr. Akaram Chaukekar and other committee members not to do that work.

(x) On 10-6-1992, Mr. Akaram Chaukekar and other committee members who are at the Worli Naka Office instigated the workmen to carry out an accute go slow and also to carry out illegal activities like whistling, cat calling etc. Mr. Akaram Chaukekar and other committee members held meetings without permission in cabins not authorised for use by them, with the other employees who are members of the Union. These meetings were held during working hours and even outside working hours without permission. On his visits to Worli Naka Office he saw Mr. Akaram Chaukekar and others sitting and having such meetings. No work was carried out by Mr. Akaram Chaukekar during that period and department heads used to complain to him regularly about the same.

(xi) On 11-6-1992 the workmen who are members of the Union, at the instigation of Mr. Akaram Chaukekar and others continued with the go slow and other illegal activities from about 9.00 a.m. in the morning. In the afternoon the workmen intensified their illegal activities like cat calling, whistling, banging on the tables, rolling of paper weights etc. and therefore no work was done during the entire afternoon session. Mr. Akaram Chaukekar and others continued instigating the other workmen to indulge in those illegal activities.

(xii) On 12-6-1992 the workmen who are members of the Union at the instigation of Mr. Akaram Chaukekar and others began their illegal activities like shouting, cat calling etc. from around 9.00 a.m. At about 11.30 a.m. Mr. Akaram Chaukekar and others collected all the workmen of Worli Naka Office on the 2nd floor and incited and instigated them to bang on the tables, to whistle, shout loudly abusive slogans at the Managers, bang, on the partition walls of the cabins, roll paper weights on the floor and generally disturb the functioning of the office. No work was carried out by Mr. Akaram Chaukekar and the other workmen. In the afternoon at around 1.30 p.m. Mr. Akaram Chaukekar and others collected all the workmen on the 4th floor of the Worli Naka Office where they indulged in all sorts of illegal activities like whistling, shouting loudly abusive slogans, banging on the tables, rolling of paper weights etc. As a result of these activities the others could not work on the preparation of society. Mr. Brian Pereira put up a notice on 12-6-1992 which is at Exhibit 11. The said notice is signed by him and the contents of the same are true and correct. In spite of the said notice Mr. Akaram Chaukekar and other workmen continued their illegal activities till the close of working hours. The said notice was put up at Worli H.O. as well as Worli Naka Office at around 4.00 p.m. He also put up a notice regarding his inability to make payments to the society members, although it was agreed to make payment earlier."

(xiii) On 15-6-1992 he put up a notice dated 15-6-1992 which is at Exhibit 12. The said notice is signed by him and the contents of the same are true and correct. In spite of the said notice Mr. Akaram Chaukekar and other workmen continued with their illegal activities like banging on tables, whistling etc. for the

whole day. No work was carried out by any of the workmen who are members of the Union." (xiv) On 16-6-1992 he again put up a notice dated 16-6-1992 which is at Exhibit 13. The said notice is signed by him and contents of the same are true and correct. In spite of the said notice the workmen at Worli Naka Office and Worli H.O. continued with their illegal activities. At the Worli Naka Office Mr. Akaram Chaukekar and others carried on instigating and inciting the workmen to indulge in illegal activities and he indulged in those illegal activities himself. No work was carried out for the whole day.

(xvi) On 17-6-1992 Mr. Akaram Chaukekar and the other workmen who are members of the Union continued with their go slow inspite of the assurance given by Mr. Karambelkar, General Secretary of the Union. He visited the Worli Naka Office and he saw Mr. Akaram Chaukekar and others sitting in the hall on 2nd floor not doing any work but instead holding a meeting. When they saw him Mr. Akaram Chaukekar called and the other workmen followed him." "When he (Mr. Pereira) was leaving the office he once again saw Mr. Akaram Chaukekar shouting slogans and whistling."

(xvii) On 18th and 19th June, 1992 Mr. Akaram Chaukekar and the other workmen who are members of the Union continued with their agitation and severe go slow. He took up the matter with Mr. Karambelkar, who assured him that he would prevail upon the workmen to resume normal work."

(xviii) On 22-6-1992 Mr. Akaram Chaukekar and the other workmen who are members of the Union continued with their agitation and go slow. In the afternoon at about 2.30 p.m. Mr. Akaram Chaukekar and Mr. Nandi who work at the Worli Naka Office came to the H.O. during working hours without permission. He saw Mr. Akaram Chaukekar and Mr. Nandi going around the office having meetings with the committee members and other workmen without permission. He was informed by some of the workmen that though they were willing to work, they were being pressurised by Mr. Akaram Chaukekar and other committee members to stop the work completely. They also informed him that on 22-6-1992 Mr. Akaram Chaukekar and other committee members had met them and had instructed them to stop working completely and to sit at their place of work without doing any work. On 22-6-1992 the workmen at the instigation of Mr. Akaram Chaukekar and other committee members carried on a severe go slow and after the visit of Mr. Akaram Chaukekar and Mr. Nandi to the H.O. the work came to almost a complete stand still."

(xx) On 25th and 26th June, 1992, Mr. Akaram Chaukekar and other workmen who are members of the Union did not do any work but sat at their place of work. Those who were inclined to work were coerced by Mr. Akaram Chaukekar and other committee members not to do any work. On 26-6-1992 the management put up a notice on notice board dated 26-6-1992 which is at Exhibit 14. This notice is signed by Mr. Pereira and the contents of the same are true and correct. In spite of that notice the workmen continued with their severe go slow and stoppage of work at the instigation of Mr. Akaram Chaukekar and other

committee members."

(xxi) "Some of the workmen collected the forms to sign them on 29-6-1992 but were coerced by Mr. Akaram Chaukekar and other committee members not to sign the forms." "..... At around 11.00 a.m. when he was at the Worli Naka Office he saw Mr. Akaram Chaukekar and others shouting abusive slogans at the management and the managers. He also received telephone calls from various suppliers who informed him that they were not allowed to enter the Worli Naka Office by Mr. Akaram Chaukekar and others who informed them that the company was closed. In the evening at around 4.00 p.m. on 29-6-1992 he saw Mr. Akaram Chaukekar and other workmen shouting abusive slogans at the management and the managers. At around 5.30 p.m. when he was leaving the office along with other managers and officers, Mr. Akaram Chaukekar and other workmen blocked their path....."

(xxii) On 30-6-1992 and 1-7-1992 the workmen who are members of the Union including Mr. Akaram Chaukekar continued standing outside the office and shouting abusive slogans at the management and the managers and stopping suppliers and others coming to the office."

(xxiii) ".....The company put up this order outside the Worli Naka Office and the H.O. In spite of this order, the workmen including Mr. Akaram Chaukekar continued hurling abusive language at the management and the managers and continued preventing visitors and others from entering the office. He himself saw Mr. Akaram Chaukekar on numerous occasions when he was entering and leaving the office. Mr. Akaram Chaukekar was shouting abusive slogans at the management and the managers and instigating the other workmen to shout abusive slogans at the management and the managers. Mr. Akaram Chaukekar and other workmen carried on with this agitation everyday and hence the management was forced to file a criminal Complaint (U.L.P.) No. 90 of the 1992 on 22-7-1992. In spite of this Mr. Akaram Chaukekar, continued instigating the workmen and himself indulged in shouting abusive slogans at the management and the managers and other illegal activities."

I have carefully gone through the other evidence of the company's witnesses. Each one of them has made a statement in the enquiry how the petitioner was involved in the acts of misconducts. As I have stated earlier that the petitioner was indulging in one or the other kind of illegal acts on the premises of the establishment. The situation was akin to riots. In the collective fracas on the premises, it cannot be said that the witnesses should have specifically narrated and pointed out the actual acts or movements of misconducts levelled against the petitioner or the other charge-sheeted workmen. It is an absurdity to assess or appreciate the evidence in a departmental or domestic enquiry in the manner of a sessions trial to find out loop holes, defects or lacunae in the evidence. We have to take an overall assessment of the evidence and material on record and not to subject it to the test of arithmetical accuracy. Further it is not that the petitioner was a silent spectator or only an onlooker of the untoward and riotous

activities of his colleagues. As a committee member it was his bounden duty to pacify the riotous workmen and to restore peace in the establishment and to fight for the demands in accordance with law and not by taking the law and allowing the law to be taken in hand. There is sufficient material and evidence on record that even the petitioner had actively participated in the en mass and collective agitation of the unruly mob of the workmen which continued for more than 20 days on the premises of the establishment. It appears that the workmen had taken the full charge of the premises and created virtually terror in the mind of the management. All the three witnesses of the company have deposed that though the petitioner was working in the Worli Naka Office he was specially coming to the head office at Worli Seaface to incite and instigate and to encourage the workmen for creating a fracas or riot on the premises of the establishment. It is an admitted fact that the agitations had taken place at both the places i.e. Worli Naka Office and also at the Worli Seaface head office. It is furthermore important and significant to note that the petitioner did not say a word before the Enquiry Officer to rebut the clear evidence given by the three witnesses of the company against him nor did he make a statement before the Enquiry Officer to explain his conduct or to say how quiet he remained! His defence that he was victimised because he was a committee member can never be accepted in the circumstances of the matter. Besides, even as a committee member he failed in his duty to lead the workmen peacefully towards the aim of achievement of their demand. Though sitting under Article 226 of the Constitution of India in deference to the learned Counsel of both the parties and in particular, Shri C.U. Singh for the petitioner, I have carefully gone through the entire evidence and material and in my opinion, both the courts below have come to a right conclusion which cannot be faulted with as baseless or perverse that the misconducts levelled against the petitioner were proved in the domestic enquiry held by the respondent company.

11. In my opinion, the charges which are proved and which have been held to have been proved by the two courts below are sufficiently serious to warrant the extreme punishment of dismissal. The establishment was not allowed to work or function from 2nd June, 1992 to 29th June, 1992. The agitation was over their charter of demands. The Union should have approached the adjudication machinery for getting their demands adjudicated in accordance with law. The legislature has created a special machinery for the redressal of the grievances of the workmen under different labour laws, so that the industrial peace and industrial production does not suffer. Though Shri Singh wanted me to analyse and spin the evidence and though I have personally gone through the material on record which is not warranted under the extra ordinary jurisdiction of the writ Court, I did so only with a view that this Court should not fail to do the justice to the petitioner on whose behalf Shri Singh was vehemently submitting that his client was innocent and that he was a victim of discrimination at the hands of the respondent company. I am fully satisfied that there is no discrimination or legal victimisation of the petitioner since the serious charges levelled against him have

been rightly held to be proved and there is sufficient evidence and material on record to prove his guilt and involvement in the unfortunate incidents which continued for about 30 days.

12. In support of his submissions, Shri Singh the learned Counsel for the petitioner has cited the following judgments:---

- a) Bank of India v. T.S. Kelawala & others, 1990(1) C.L.R. 748;
- b) Raghunath Vishnu Patil v. R.N. Gavande and others, 1993(II) C.L.R.50;
- c) Vijay Kumar v. Calico Chemicals Plastic & Fibres Div. & others;
- d) Colour Chem Ltd. v. A.L. Alaspurkar & others, 1998(1) C.L.R. 638.

13. As far as the judgment in the case of Bank of India is concerned, there is absolutely no quarrel with the propositions of law laid down by the Supreme Court on the point of go slow. The Supreme Court has definitely said that there should be proof of go slow and that involves investigation into various aspects as the nature of process of production, stages of production, their relevant importance, role of workers engaged at each stage of production, principal production activities and facilities of production and activities of the workmen connected therewith and their effect on production etc. Paragraphs 35, 36 and 37 have laid down the principles to find out whether the charge of go slow is established or not. In the present case, in my opinion, the ratio of the said judgment is not applicable in the sense that the agitation started by the workmen of the respondent company is not only of go slow or restricted to working. This is case of en mass agitation where the work was wholly halted and there was nothing that was going on. The establishment of the respondent company is not a factory where manufacturing activities are going on and where go slow in the terms of production can be measured per workman or per stage of the production as the case may be. In the present case, there is no doubt that in the charge-sheet the charge of go slow along with a number of other charges is mentioned. The petitioner was not involved in any manufacturing activities. He was employed as a clerk and he was not found performing his duties and was found in the agitation and, therefore, the charge of go slow i.e. stoppage of work is added. It appears that the petitioner was perhaps doing his work as and when he was free from the agitations. It was in that sense that the charge of go slow is added in the charge-sheet. Virtually for the entire period of agitations there was total stoppage of work. The workers were entering the establishment only to stop work and to start agitations of the nature mentioned in the charge-sheet. The petitioner has been found not only guilty of go slow or the stoppage of work but was also found worthy of many other charges and, therefore, the punishment of dismissal included all the charges which made the situation in the establishment very difficult and absolutely abnormal.

14. In the case of R.V. Patil, the facts were totally different. It was a case of assault by the conductor on a passenger. This Court set aside the extreme

punishment of dismissal and granted reinstatement with continuity of service and without backwages i.e. fresh employment. Shri Singh has relied upon this judgment for the kind of relief which may be given to the petitioner. The question of punishment depends on the facts of each and every case which are peculiar and different in each of such cases. There cannot be a ratio emerging from the said judgment that in each and every case reinstatement without continuity of service and without backwages should be granted. Reliance on the said judgment is also misplaced. In the case of Vijay Kumar the petitioner was held to be on illegal strike. It further appears that during the entire strike period, there was absolutely no charge of overt act by the petitioner. He was merely a dumb follower in the strike. In the said case the Division Bench directed reinstatement with 50% backwages. There is no ratio laid down by the Division Bench that in each and every case reinstatement with 50% backwages should be granted. In that case, the workman was merely on strike with all other workers. There was no allegations of overt act or violence of any nature. He did not throw any objects at the personnel of the management or did not shout or did not whistle or did not do cat calling or did not indulge into any of the acts of which petitioner is charged. In these circumstances, the petitioner was granted reinstatement with 50% backwages. In the present case, the petitioner has indulged in a number of acts of misconducts which are held to be proved for which he was punished.

15. In the case of Colour chem, the Supreme Court has analysed the concept of victimisation in a greater detail. The Supreme Court has laid down the principles to appreciate the question of victimisation factual or legal. If the punishment imposed is not commensurate with the act of proved misconduct in that case, it could be held that it was a case of legal victimisation as no reasonable employer would impose such a punishment which is shockingly disproportionate. I have followed the said principle laid down by the Supreme Court. I have held that the misconducts levelled against the petitioner have been proved in a fair and proper enquiry and the findings flow from the evidence on record and the same are not perverse. I have also held on the basis of the material that the charges are serious and of grave nature. I have also held that there is no substance in the allegations of discrimination against the petitioner. The serious misconducts having been proved against the petitioner, it cannot be said that there is either a factual or legal victimisation.

I do not find any illegality, infirmity and impropriety in the impugned orders of the courts below. The petition, therefore, deserves to be dismissed and the same is dismissed with no orders as to costs. Rule is discharged.