
(1992) 07 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 2674 of 1985

Assocn. Chemical Workers and Others

APPELLANT

Vs

B.D. Borude and Others

RESPONDENT

Date of Decision : 28-07-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10A, 11A, 33(2)

Citation : (1992) 3 BomCR 627 : (1993) 1 LLJ 1196

Hon'ble Judges : S.H. Kapadia, J; M.L. Pendse, J

Bench : Division Bench

Advocate : Miss N.D. Buch, for the Appellant; M.M. Verma, for the Respondent

Judgement

1. By this writ petition under Article 227 read with Article 226 of the Constitution, the petitioners impugn Award Part I and Award Part II dated May 17, 1982 and February 14, 1985 respectively and more particularly Award Part II dated February 14, 1985 to the extent it rejects the demand of the petitioners for reinstatement of petitioner Nos. 2 to 10 with consequential reliefs.

2. The second respondent-Company, United Carbon Ltd., (hereinafter referred to as "the company") is registered under the Companies Act, 1956 and has its registered Office and factory at MIDC Plot No. 3, ITC Industrial Area, Thane-Belapur Road in Thane District. It has in all three manufacturing units. Till October 1978, only Unit No. 1 was in operation. As a result of maintenance shut-down of Unit No. 1, Unit No. 2 was put in operation after modifications and installation of a new machinery known as Tail Gas Combuster Unit consisting of various equipments.

3. The first petitioner is a Trade Union registered under the Trade Union Act of 1926 and represents petitioner Nos. 2 to 10 employed by the company. The first petitioner union shall hereinafter be referred to as "the first petitioner-union" and petitioner Nos. 2 to 9 shall herein after be referred to as "Petitioner Nos. 2 to 9". The case of petitioner No. 10 shall be discussed separately.

4. It is the case of the petitioners that the workmen of the company enrolled themselves as members of the first petitioner-union in the month of January 1976. Till then, there was no union operating in the company. The first petitioner-union, on behalf of the workmen represented by them, submitted a charter of demands on the company in the year 1976. The dispute was referred for adjudication to the Industrial Tribunal at Thane. According to the petitioners, in the year 1977, about 200 workmen employed through the device of various contractors enrolled themselves as the members of the first petitioner-union and when the company came to know about it, they adopted vindictive attitude towards the said workmen and discontinued six of them from service. The first petitioner-union contended that thereafter they approached the company and demanded reinstatement of the said six workmen. However, the company refused to carry on any negotiations and, therefore, the first petitioner-union served a strike notice. But no settlement could be arrived at between the parties and, therefore, the workmen of the company went on a strike from May 12, 1977. The said strike was called off on July 25, 1977 in pursuance of an agreement reached between the first petitioner-union and the company. The petitioners then contend that in or about October 1978, the first petitioner-union submitted to the company a demand for bonus for the workmen but the company refused to pay bonus to their workmen, and, therefore, the workmen led by the first petitioner-union went on a strike which was subsequently withdrawn but the company prevented the workmen from entering the factory premises on the ground that the company had discontinued the contract of the contractors and hence the services of these workmen were terminated. Thereafter, the company declared a lay off on November 24, 1978. Further, the company declared its intention to effect lock out from December 15, 1978 and on or about November 23, 1978 dismissed the petitioner Nos. 2 to 10 and one B. L. Mhatre on false pretext that they refused to obey lawful and reasonable orders of their superiors while the other two workmen on the ground of absenteeism and go-slow.

5. According to the petitioners, the facts leading to the dismissals of petitioners Nos. 2 to 10 and B. L. Mhatre were that after the shut down of Unit No. 1, Unit No. 2 was put in operation after certain modification by installing a new machinery known as Combustor Unit consisting of various equipments and on or about October 16, 1978 and thereafter petitioner Nos. 2 to 9 were orally asked to operate one of the said equipments of Combustor Unit known as "Tail Gas Fan". Petitioner Nos. 2 to 9 informed their superiors of their inability to operate the said Tail Gas Fan as they did not know the operation of the same as they were not trained earlier to operate the said Tail Gas Fan. Petitioner Nos. 2 to 9, therefore, expressed their inability to operate the newly installed device for want of sufficient skill and in the absence of any training for such operations. According to them, to ask them to operate or attend to the said Tail Gas Fan and work on it did not form part of their normal duties. Petitioner Nos 2 to 9 further said that when they tendered their explanation thus showing their inability to

operate the new device, the superiors of petitioner Nos. 2 to 9 did not press them to do the said job. Petitioner Nos. 2 to 9 also contended that there were other workmen who had also expressed their inability to perform the job on the new device but the company picked and chose only petitioner Nos. 2 to 9 for disciplinary action. They were then issued show-cause notices and falsely charge-sheeted alleging wilful disobedience of the lawful and reasonable orders of their superiors. According to the petitioners, petitioner No. 10 was falsely charge-sheeted for absenteeism and the said Mhatre for going slow.

6. The petitioners then contended that petitioner Nos. 2 to 10 and the said Mhatre were at the relevant time office bearers and active members of the local committee of the first petitioner-union and had taken a leading part in organising the 75 day old strike in support of the demand for reinstatement of the six workmen of the contractor and also for pressing their demand for bonus on account of which ex-parte enquires were held against them and discharge orders were issued. However, a reference, being Reference (IT) No. 5 of 1976 regarding general demands of the workmen of the company was pending adjudication before the Industrial Tribunal, Thane, and, therefore, the company made applications for approval of their action of discharge of petitioner Nos. 2 to 10 and the said Mhatre u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act"). It appears that during the pendency of the said applications u/s 33(2)(b) of the I.D. Act, both parties agreed to refer the disputes of reinstatements of petitioner Nos. 2 to 10 and the said Mhatre for arbitration to the sitting Member of the Industrial Tribunal (the first respondent) u/s 10-A of the I.D. Act.

7. Thus, the following dispute was referred to the arbitration of the first respondent.

"(a) Whether the discharge orders passed against (1) A. V. Pinto (2) R. Fernandes, (3) Suresh S. Desai, (4) B. L. Mhatre, (5) S. S. Raje, (6) F. R. Shaikh, (7) Girish Jadhav, (8) A. C. Sabadhikari, (9) B. L. Ghosh and (10) Maruti Jadhav, are proper, justified, legal and valid, and

(b) If the answer to (a) above is in the negative the workmen concerned shall be reinstated with full backwages and continuity of services and/or any other benefits of reliefs with effect from the date of their discharge till reinstatement."

8. After pleadings were filed by the parties before the first respondent-arbitrator, the petitioners raised a preliminary objection as to whether it could be said that the so-called domestic enquiries held against petitioner Nos. 2 to 10 and the said Mhatre were valid in law. The first respondent passed quite a lengthy Part I Award on May 17, 1982 holding that the domestic enquiries held against petitioner Nos. 2 to 10 and the said Mhatre were fair, legal and proper. The petitioners thereafter filed an application dated August 12, 1982 before the first respondent arbitrator for permission to lead evidence to show that there was no misconduct committed by petitioner Nos. 2 to 10 and the said Mhatre as alleged

against them and that the punishment inflicted on them was in colourable exercise of employer's right by way of victimisation for their trade union activities and that the company was actuated by mala fides in punishing petitioner Nos. 2 to 10 and the said Mhatre by orders of discharge and further that the punishment was out of all proportions to the alleged charges of misconduct. The first respondent-arbitrator by his order dated September 21, 1982, directed the petitioners to lead evidence on merits and also granted liberty to the company to lead evidence in rebuttal.

9. The petitioners thereafter led evidence of petitioner Nos. 2 to 9 and the said Mhatre and also of one Mohan Raya Phal who was not the affected workman before the first respondent - arbitrator in support of their case that they had committed no misconduct and, on the contrary, they were victimised for lawful trade union activities. In rebuttal, the company led oral evidence of Peter Sequeira, the Plant Manager. Parties also filed written arguments and were also orally heard. The first respondent-arbitrator then, by his Part II Award dated February 14, 1985, rejected the demand of the petitioners for reinstatement with continuity of service with back wages of petitioner Nos. 2 to 10 on a conclusion that the discharge orders passed against them were just and proper. The first respondent, however, by the said Award granted relief of reinstatement with full back wages to B. L. Mhatre.

10. Being aggrieved, the petitioners invoked the writ jurisdiction of this court under Article 227 read with Article 226 of the Constitution of filing the present writ petition.

July 28, 1992.

11. Now, the show-cause notices were issued to petitioner Nos. 2 to 9 almost in identical language stating that they refused to operate Tail Gas and thereby committed misconduct of disobeying lawful and reasonable orders of their superiors and to show case within 24 hours why disciplinary proceedings should not be initiated against them. Almost in the same identical language they were chargesheeted for committing misconducts of (a) wilful insubordination or disobedience of the lawful and reasonable order of superior and (b) refusal to accept the show-cause notices. At the hearing, emphasis was laid by both sides' advocates on the so-called misconduct of petitioner Nos. 2 to 9 of wilful insubordination or disobedience of the lawful and reasonable orders of their superiors. It may be noted here that as petitioner Nos. 2 to 9 felt that they were justified in not operating the Tail Gas Fan because they were not trained to do so, they believed that they had not committed any misconduct and, therefore, neither replied the show-cause notices nor participated in the domestic enquiries. They may be right or wrong in doing so but the fact remains that exparte domestic enquiries were held against them and they were found guilty of the misconduct alleged against them followed by the orders of discharge passed by the Company. At the hearing of the reference by the first respondent-arbitrator, as stated above, a submission was made by filing an application on behalf of the

petitioners that they be given an opportunity to adduce evidence to show that they had not indulged in any misconduct and that the action of discharge taken against them was not justified. Such a prayer made by them was granted and petitioner Nos. 2 to 9 adduced their evidence in addition to that of another workman by name Mohan Raya Phal who was not one of the discharged workmen. In rebuttal, the company adduced the evidence of Peter Paul Sequeira and on appreciation of the evidence thus available on record, the learned Arbitrator came to the conclusions that petitioner Nos. 2 to 10 were guilty of the misconduct alleged against them and they were not entitled to the relief of reinstatement.

For the sake of convenience, we shall confine our discussion to the merits of the matter as regards petitioner Nos. 2 to 9 first and the case of petitioner No. 10 will be separately dealt with.

12. It is not necessary for this Court to re-appreciate the entire evidence adduced by the parties but a perusal of the evidence of petitioner Nos. 2 to 9 shows that the petitioner No. 2 was an active member of the union, petitioner No. 3 was a member of the local committee of the union, petitioner No. 4 was an active member of the Union, so was petitioner No. 5, petitioner No. 6 was a committee member of the union, petitioner No. 7 was an active member of the union, petitioner No. 8 was a member of the Union as also petitioner No. 9. In other words, all of them were the members of the first petitioner-union and some of them were active and some of them were not so active. It may be noted that there was a history of the strained relationship between the company and the Union of petitioner Nos. 2 to 9, inasmuch as earlier to the orders of discharge passed against petitioner Nos. 2 to 9, there was a lay off by the Company and a strike by the workmen and a lock out by the company and so on and so forth. There was also a fight put by the workmen and the union representing them against the termination of the services of six workmen who were in the employment of the contractor on account of which also lot of struggle took place between the company and its employees. The entire evidence will have to be, therefore, viewed keeping in mind this background.

13. The record shows that petitioner Nos. 2, 3, 5, 7 and 9, who were operators, refused to operate the Tail Gas Fan on the ground that earlier they had not done any work on this equipment and they were not trained to operate the said machine and that it was not a part of their duty. Petitioner No. 4, who was instrument mechanic, really did not refuse to carry out the orders of his superior but when he was asked by his superior but when he was asked by his superior Panicker to attend to one of the Combustor equipment, he said that at that moment he was busy doing some other work and he should be allowed to complete the same and thereafter he would go and attend the Combustor equipment but the said Panicker kept quiet and went away and thereafter did not call him again. Likewise, petitioner No. 8, who was an electrician, also really speaking did not refuse to obey the orders of his superior as when he was

approached to attend the Tail Gas Fan he told the engineer by name Alinsali that he was already engaged in one break down job and after completing the same he would accompany him and would do the work that would be shown to him but the said Alinsali did not say anything and went away and thereafter did not approach him again but the workman himself went to him at about 4.35 p.m. after completing his earlier work but was told that there was no work for him. Petitioner No. 6 was a fitter. He was approached at about 11.00 a.m. on October 17, 1978 by electrical engineer Alias Ali asking him to tighten the belt of Tail Gas Fan. He informed the said Ali that he would go there along with him to the place to be shown by him but the said Ali went away and did not return. Therefore, really speaking petitioner No. 6 also had not refused the order of his superior. In other words, petitioner Nos. 4, 6 and 8, strictly speaking, cannot be said to have disobeyed the lawful and reasonable orders of their superiors. And petitioner Nos. 2, 3, 5, 7 and 9 did refuse to carry out the orders of their superiors but they had an explanation to offer that they were not trained to operate or to work on Tail Gas Fan and, therefore, they would not do such work.

14. The crucial point is whether petitioner Nos. 2, 3, 5, 7 and 9 can be said to be guilty of insubordination of refusing to obey the lawful and reasonable orders of their superiors. It is an admitted fact that the equipment called Tail Gas Fan was newly installed equipment and before the day in question when they refused to operate this machine, they had never worked on this machine and they were also not given any training to operate the same. Prior to October 17, 1978, there was no occasion for these petitioners to operate or work on this new device introduced for the first time sometime in October 1978 and according to them the new device was more sophisticated and complicated which required intensive practical training and written instructions in the absence of which they thought it fit not to operate the same. It is also an admitted fact that upto April 5, 1980 this new equipment was not operated by any operators and it was only after instructions, manual and practical training for one and a half months that the said equipment came to be operated by others. Other operators who had also refused to operate this new equipment were not dealt with in the same manner as these petitioners were dealt with as can be seen from the evidence of Mohan Raya Phal. It is no doubt true that as per the evidence of the company's witness Peter Sequeira, the equipment in question was not so difficult to operate and no training was necessary for operating the same and it is also no doubt true that the petitioners' witness Mohan Phal had also stated that only one push button was required to be pressed to operate the Tail Gas Fan. But, all said and done, Tail Gas Fan was a new device, the operation of which would require at least 9 conditions to be fulfilled before push button can be pressed as can be seen from Exh. M to the petition which shows that the Tail Gas Fan had to be operated from the time it was cold and then

(1) Put on main switches for 440V, 230V, 110V, 24V.

(2) Start combustion air fan and push button. If both fans start, put one of them

off by pressing the stop button.

(3) Wait for 2 to 3 minutes to stabilise condition and purge combustor. The air supply valve to combustor have been preset and locked.

(4) The air flow energizes the local control panel and light indicates it is on.

(5) Keep the drier temperature control instrument manually at No. 1. Put the small oil heater on. Push ignition button with one hand and the constant oil pilot burner push button with the other. The gas pilot ignites to enable the flame to energize the photo cell which holds the oil supply. After a couple of minutes leave the oil push button and the oil flame will continue. If there is no burning repeat after 2 minutes till flame is established.

(6) See that water supply to quench chamber is open. The bottom set of quenches are controlled through a temperature controller and this is set 375 Deg. C. The top quenches are controlled by a servo tram and this is set at 400 Deg. C. Do not change these settings. Excess water if any will flow out of the quench chamber.

(7) Open the fuel to the main burner after putting the heater on. Open the bypass on the main fuel slowly to obtain a smokeless combustion. Let it remain at least for 15 minutes.

(8) If drier has to be started now, put the drier instrument at "9" and close the bypass on the main fuel, than keep the instrument between 10 to 15 to obtain a smokeless combustion. Keep drier turning. The drier is now supplied hot gases from oil combustion. If the drier has to be run the ratio controller can be set as per the mixer water flow requirement, the drier exhaust set gradually and the drier controlling instrument put on Auto. The controlling of drier temperature will now be automatic, and

(9) When the combustor refractory is red hot (Temperature 1000 C) and has remained in that condition for at least an hour only then the tail gas fan can be put on.

If this is all to be done before a Tail Gas Fan can be started by pressing the push button, I am afraid, it cannot lie in the mouth of the company to say that no training whatsoever was necessary before asking an operator to work on the Tail Gas Fan. Be that as it may, the understanding and the feeling of the operators, i.e. petitioner Nos. 2, 3, 5, 7 and 9, was that it would not be right for them to operate the Tail Gas Fan without being trained in that behalf. If on account of such understanding and feeling, they refused to obey the orders of their superiors, it cannot be said that they wilfully refused to obey lawful and reasonable orders of their superiors.

15. Therefore the finding of the first respondent-arbitrator that the misconduct of wilfully refusing to obey lawful and reasonable orders of their superiors by petitioners Nos. 2 to 9 was established, to say the least was a perverse finding

and, in my judgment, no reasonable person would arrive at such a finding regard being had to the facts and circumstances of the case.

16. Miss Buch, appearing on behalf of the petitioners, submitted that, in the facts and circumstances of this case, by no stretch of imagination, it can be said that the alleged refusal by petitioner Nos. 2 to 9 can amount to wilful disobedience or wilful insubordination of the orders of the superiors as these petitioners were not bound to carry out the job which was not a part of their duty. In support of her contention, Miss Buch relied upon the judgments in the cases of (1) *Burn & Co. Ltd. v. Their Workmen* 1959 I LLJ 450 SC , (ii) *Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another* , (iii) *Mercantile Bank Ltd. v. Presiding Officer Central Govt. Industrial Tribunal and others* 1982 LIC 203, (iv) *Relief & Sadhna Soap Syndicate v. The Mah. Mazdoor Congress & Ors.* 1987 2 CLR 370 and (v) *Amalgamated Electricity Co. Ltd. v. The Workmen of M/s. Amalgamated Electricity Co. Ltd. and Ors.* 1990 I CLR 693. I find the argument of Miss Buch of substance and merit and I am of the opinion that in the present case it cannot be said that petitioner Nos. 2 to 9 were guilty of disobedience of lawful and reasonable orders of their superiors although it is a submission of Mr. Varma, learned Counsel appearing on behalf of the company, that the cases relied upon by Miss Buch were decided in the facts and circumstances of those cases.

17. There is again lot of substance and merit in the argument of Miss Buch that the petitioner Nos. 2 to 9 here were the victims of victimisation. She submitted that the word "victimisation" as interpreted by the Supreme Court in the context of industrial law is that when an employee becomes a victim of an unjust act of the employer he is said to be victimised and the word "victimisation" in the context of the present case should be used in the said wide sense. According to learned Counsel, petitioner Nos. 2 to 9 have been victimised for their legitimate trade union activities. In support of her contention, she relied upon the Supreme Court judgment in the case of *Workmen Vs. Williamson Magor and Co. Ltd. and Another* . There is force in this submission of Miss Buch because, as stated above, there was a background of the trade unions activities going on in the establishment of the company leading to lay off and strike and lock out and so on and so forth for long which had given rise to the strained relationship between the company and the trade union activists in which background petitioner Nos. 2 to 9 were dealt with by the company by passing orders of discharge for a solitary act of disobedience of certain orders as clarified above. It is also important to note that admittedly there were other operators who had also refused to carry out the orders of their superiors but they were not dealt with the manner in which petitioner Nos. 2 to 9 were dealt with which shows that petitioner Nos. 2 to 9 were picked and chosen and discriminated against which would tantamount to nothing else but an act of victimisation on the part of the company.

18. It is pertinent and important to note here that the solitary act of petitioner Nos. 2 to 9 in refusing to obey the orders of their superiors could be a bona fide

act and merely because they did so would not give the company a right to immediately proceed against them by issuing show-cause notices and then holding domestic enquiries and discharging them. A just, fair and reasonable employer in such a situation would talk over to his employees as to what was their problem and why were they refusing to carry out such orders and help them, guide them, and make them understand that fear, if any, in their minds was misplaced and there was no reason for them to be afraid of in operating the new equipment and if there was any problem, the same would be solved by imparting necessary training and education to them. Instead of making such an amicable approach, the company here pounced upon petitioner Nos. 2 to 9 immediately by issuing show-cause notices, holding domestic enquiries, albeit ex-parte, and discharging them in undue haste as if the employer here was waiting for an opportunity to teach a lesson to their workmen by finding some fault or the other on their part. Any excuse was good ground in this case for the employer to throw out of job petitioner Nos. 2 to 9, it appears to me very clearly.

19. All this goes to show that the acts of the company in issuing the show-cause notices, holding domestic enquiries and discharging petitioner Nos. 2 to 9 in great haste was not a bona fide act on their part but an act in the colourable exercise of the employer's right.

20. Under these facts and circumstances, the learned Arbitrator (first respondent) should not have come to the conclusion that petitioner Nos. 2 to 9 were guilty of the misconduct alleged against them which finding, according to me was perverse.

21. Mr. Varma appearing on behalf of the company was quite emphatic in submitting that the learned Arbitrator was justified in holding that the defence put up by petitioner Nos. 2 to 9 at the trial for the first time was an "after thought" because, according to Mr. Varma, for two long years neither the Union nor the workmen raised the plea that they could not operate or work on the new device in the absence of training and that such a plea, for the first time, was taken at the time of filing the statement of claim. I am unable to persuade myself to agree with Mr. Varma because there was no evidence led by company in support of any contention that the petitioners' justification for alleged refusal was an "after thought" and on the contrary the show-cause notice dated October 18, 1978 issued to the petitioner No. 7 itself shows that the said petitioner had stated that it was not his job. But assuming for the sake of argument, that there is substance in the contention of Mr. Varma that such a defence put up by petitioner Nos. 2 to 9 was an "after-thought" because they had not raised such a plea before the statement of claim was filed, even then there was nothing wrong in the petitioner Nos. 2 to 9 doing so because they were under impression that it was none of their job to operate the new device for which they were not trained and, therefore, they did not commit any misconduct and as such were not liable to answer the show-cause notices and the chargesheets and thereafter they could put up the defence as they did only when they filed their statement of

claim before the first respondent-Arbitrator.

22. Be that as it may and assuming for the sake of argument that the misconduct alleged against petitioner Nos. 2 to 9 was established even then, in my opinion, the punishment of discharge inflicted on them by the company was shockingly disproportionate. Admittedly, this was a solitary and first instance of petitioner Nos. 2 to 9 refusing to obey orders of their superiors and that too under a bona fide belief that what they were called upon to do was not their job and it would not be right for them to operate Tail Gas Fan in the absence of training in that behalf. For such an act of solitary misconduct, the company was not at all justified in visiting petitioner Nos. 2 to 9 with a sentence of economic death of throwing them out of their jobs. In such facts and circumstances, the just, fair and proper action which the company could have taken against petitioner Nos. 2 to 9 was to warn them or to censure them or to visit them with some minor punishment so as to make them realise that what they did was not a right thing to do and that they must behave themselves in future. Instead of making such a humane and reasonable approach, the company took a drastic action of inflicting an extreme penalty of discharge from service which action on the part of the company shakes judicial conscience as this punishment was shockingly disproportionate to the charge levelled and, if it can be said, proved against petitioner Nos. 2 to 9. The learned Arbitrator should have well advised himself to bear these things in his mind before he put a seal of approval of the action taken by the Company of discharging petitioner Nos. 2 to 9 from service.

23. Going through the impugned Part II Award made by the first respondent-Arbitrator, I find that although he held that the charges levelled against petitioner Nos. 2 to 9 were proved in which case he should have held that the discharge orders passed against petitioner Nos. 2 to 9 were valid and nothing could be done but he proceeded further to grant compensation to petitioner Nos. 2 to 9 as he was of the opinion that reinstatement was not possible which shows that even in the mind of the learned Arbitrator there was a lurking idea that petitioner Nos. 2 to 9 were entitled to some relief because the punishment inflicted on them was too harsh in the facts and circumstances of the case. The learned Arbitrator thus was conscious that this was not a fit case of discharge and, therefore, he granted compensation to petitioner Nos. 2 to 9 with a view to rehabilitate them in life. With respect to the learned Arbitrator, I have not been able to follow the rationale of such an approach to the problems before him and the argument put forward by him while granting compensation to petitioner Nos. 2 to 9 instead of granting reinstatement which he thought was not possible in the facts and circumstances of the case.

24. Thus, regard being had to the totality of the facts and circumstances available from the record produced, I am of the opinion that the allegations made against petitioner Nos. 2 to 9 were not established and even if they were established, this was not a fit case of discharge of petitioner Nos. 2 to 9 from their services and, therefore, the company was not justified in doing so and the learned

Arbitrator committed grave error in putting a seal of approval to the action of the company.

25. That takes me to consider some law points raised by Mr. Varma.

26. Mr. Varma submitted that an arbitration u/s 10A of the I.D. Act is different from adjudication u/s 10 of the said Act and the position of an Arbitrator is such that he is not to be equated with an industrial adjudicator because the parties had chosen a private person who did not have a statutory recognition as he had not been appointed by the State under the provisions of the Industrial Disputes Act. But in the same breath Mr. Varma further submitted that even though parties can choose any private person, he is clothed with the rights and powers of a statutory adjudicator and his decision is akin to a quasi-judicial decision which is amenable to the writ jurisdiction of the High Court if the said decision is contrary to law or not based on evidence available on record or such that no reasonable person could arrive at such a decision or conclusion. Mr. Varma drew my attention to a Supreme Court ruling in case of Engineering Mazdoor Sabha and Others v. Hind Cycles Ltd. and Ors. 1962 II LLJ 760 and submitted that prima facie a writ would not lie against the Award of an Arbitrator u/s 10A. He also relied upon another judgment of the Supreme Court in case of Karnal Leather Karmachari Sanghatan (Regd.) v. Liberty Footwear Co. (Regd.) & Ors. 1989 - II - LLJ - 550, according to which no appeal, review or writ lies against an award of an arbitrator. However, Mr. Varma was fair enough to draw my attention to another Supreme Court judgment in Gujarat Steel Tubes Ltd. etc. v. Gujarat Steel Tubes Mazdoor Sabha and Ors. 1980 - I - LLJ - 137 in which it was held that writ would lie under the amended Article 226 of the Constitution against an Award of an Arbitrator u/s 10A if the award was either contrary to law or not based on any evidence or is such that no reasonable person would come to such a conclusion. Miss. Buch heavily relied upon this judgment of the Supreme Court in Gujarat Steel Tubes. However, Mr. Varma tried to distinguish this judgment of the Supreme Court on the ground that Their Lordships had taken such a view, as stated above, considering the facts and the circumstances of that particular case wherein the Arbitrator had totally disregarded the then existing law and had held that over 400 workmen were found guilty without examining the part played by each of them and also in view of the fact that the terms of reference in that particular case were wide enough stating that even the punishment was subject to the scrutiny of Arbitrator. Mr. Varma then pointed out that. Their Lordships of the Supreme Court in Gujarat Steel Tubes (supra) had accepted the ratio laid down in the Engineering Mazdoor Sabha (supra) by a five member bench but in the case of Gujarat Steel Tubes Their Lordships disapproved the total non-application of mind by the Arbitrator who had held the summary removal of over 400 workmen as valid because they simply participated in an illegal strike. As submitted by Mr. Varma himself, even though the parties have chosen a private person to be their Arbitrator, he is clothed with the rights and powers of a statutory adjudicator and his decision is akin to a quasi-judicial decision amenable to the writ jurisdiction if the decision is contrary to law or not based on

evidence or such that no reasonable person would arrive at such a decision or a conclusion. In the instant case, I have already held that the first respondent-Arbitrator came to the conclusion that the misconduct alleged against petitioner Nos. 2 to 9 were proved which finding was not based on evidence and in the facts and circumstances of the case no reasonable person could have arrived at such a decision or a conclusion and, therefore, the same was perverse. That being so, the ratio laid down by Their Lordships of the Supreme Court in the case of Gujarat Steel Tubes (supra) would govern the contentions raised by the parties here and a writ petition would lie to this Court although the impugned Award was passed by an Arbitrator appointed u/s 10A of the Industrial Disputes Act. It may be noted here that before Their Lordships of the Supreme Court who decided the Karnal Leather Karmachari Sanghatan (supra), the earlier decision of the Supreme Court in Gujarat Steel Tubes (supra) was not brought to the notice of Their Lordships who constituted a bench of two members as against the bench of three members in the case of Gujarat Steel Tubes (supra).

27. Mr. Varma then submitted that the first respondent-Arbitrator here had examined the entire evidence on record and discussed and evaluated the same in great detail and, therefore, this is not a fit case for interference under Article 226. In this context Mr. Varma relied upon a decision of the Supreme Court in Jitendra Singh Rathor v. Shri Baidhyanath Ayurved Bhawan Ltd. and another 1984 - II - LLJ - 10 and submitted that while applying Section 11A of the Industrial Disputes Act, Their Lordships of the Supreme Court have clearly held that the scope of interference under Article 226 is limited and the High Court cannot substitute an Award. He also referred to and relied upon another case of the Supreme Court in Sadhu Ram, v. Delhi Transport Corporation 1983 II LLJ 383 in support of his contention and a judgment of this Court in Relief & Sadhna Soap Syndicate v. The Mah. Mazdoor Congress & Ors. 1987 II CLR 370 to submit that it is not possible to re-appreciate the evidence while exercising the discretionary jurisdiction under Article 226 of the Constitution. Mr. Varma also relied upon a judgment of the Division Bench of this Court in case of Hirendra Mohan Basu v. Textile Committee 1992 II CLR 102 and submitted that it is not open to High Court to disturb the quantum of punishment imposed in a disciplinary proceeding as the Court cannot exercise powers as provided u/s 11A of the Industrial Disputes Act. 1947 in respect of disciplinary enquiry. In reply, Miss Buch rightly submitted that the powers conferred on the Industrial Tribunal (in the present case the first respondent-Arbitrator) are very wide as held by the Supreme Court in case of Workmen of M/s. Firestone Tyre Rubber Co. of India (Pvt.) Ltd. v. The Management (1973 I LLJ 278) and urged that the first respondent-Arbitrator here failed to comply with the provisions of Section 11A of the Industrial Disputes Act in their proper perspectives and the findings recorded by him are perverse, contrary to the evidence on record and suffer from errors of law for non-compliance with the provisions of Section 11A of the Industrial Disputes Act. Again, as pointed out earlier, if the findings of an Arbitrator are perverse and not based on the evidence available on record or contrary thereto or no reasonable

person would come to such a conclusion, while interpreting and applying the provisions of Section 11A of the Industrial Disputes Act, this Court can always interfere with the Award passed by an Arbitrator appointed u/s 10A of the I.D. Act.

28. In the aforesaid premises, I have unhesitatingly come to the conclusion to interfere with the impugned Award passed by the learned first respondent-Arbitrator. I am of the clear view that the discharge orders passed against petitioner Nos. 2 to 9 were neither justified, nor proper, nor legal nor valid. They are, therefore, entitled to the relief of reinstatement with continuity of services which should be followed by the normal relief of payment of full back wages. As pointed out above, B. L. Mhatre was granted full relief by the learned Arbitrator and, therefore, we are not concerned with his case. So long as Maruti Jadhav (petitioner No. 10) is concerned, I shall presently deal with his cases separately. In other words, the discharge orders passed against (1) A. V. Pinto, (2) J. R. Fernandez, (3) Suresh S. Desai, (4) S. S. Raje, (5) F. R. Shaikh, (6) Girish Jadhav, (7) A. C. Sarbadhikari and (8) B. L. Gosh (petitioner Nos. 2 to 9) are held by me as improper, unjustified, illegal and invalid. They are, therefore, entitled to the relief of reinstatement with full back wages and continuity of services. The impugned Awards passed by the first respondent-Arbitrator to the extent of confirming the discharge orders passed against petitioner Nos. 2 to 9 by the company are quashed and set aside. The second respondent-company is directed to reinstate petitioner Nos. 2 to 9 in their original positions with continuity of services and pay them full back wages from the day of termination of their services by orders of discharge till they are reinstated minus the amount of compensation which they have already been paid. The second respondent is further directed to work out the arrears of back wages due and payable to petitioner Nos. 2 to 9 and pay up the same to them as early as possible but at any rate by the end of August, 1992 failing which they shall pay interest at the rate of 18 % per annum on the sums of money due and payable to petitioner Nos. 2 to 9 as and by way of arrears of back wages, effective from September 1, 1992.

29. Now we shall deal with the case of petitioner No. 10, Maruti Dagdu Jadhav. The claim made on his behalf was totally rejected by the first respondent-Arbitrator by the impugned Award. The record shown to me indicates that the case of Maruti Jadhav was one of chronic absenteeism. A show-cause notice on April 10, 1978 alleging that he had remained absent from duty without permission and why disciplinary action should not be taken against him was sent to him. But the same was returned undelivered. Thereafter, he was served with a charge-sheet dated October 3, 1978 alleging that he was very irregular in his attendance and that he had continuously and habitually remained absent unauthorisedly without obtaining prior permission and, therefore, was guilty of misconduct for (a) habitual absence without leave or absence without permission for more than 10 consecutive days or staying away without sufficient grounds on proper or satisfactory explanation, (b) staying away from work on false

representation, and (c) commission of acts subversive of discipline. He did not participate in the domestic enquiry. He also did not adduce his evidence before the first respondent-Arbitrator. On his behalf, Miss Buch submitted that he had produced medical certificate in respect of his illness in justification of his absence from service and was hospitalised for treatment of infectious hepatitis which was a serious disease which facts were not taken into consideration by the Enquiry Officer. I am not able to persuade myself to accept any of the submission made by Miss Buch on behalf of Maruti Jadhav as he not only failed to appear before the enquiry officer but also remained absent before the first respondent-Arbitrator and his case, therefore, goes by default. The record shows that voluminous documents were produced before the enquiry officer and the first respondent-Arbitrator that for months and months together Maruti Jadhav remained unauthorisedly absent. The medical certificates produced by him contradict each other inasmuch as on a particular day he claimed to be in jail whereas during the same period he was shown to be taking treatment in a hospital as an indoor patient. As stated above, his was a case of chronic absenteeism unauthorisedly and his demand was rightly rejected by the learned Arbitrator (first respondent). The impugned Award of the learned Arbitrator (first respondent) to that extent is, therefore, correct and valid and needs no interference.

30. In the result, the writ petition partly succeeds and the same is allowed as stated above. Rule is made absolute in the terms aforesaid with regard to the claims of petitioner Nos. 2 to 9 and Rule is discharged as regards the claim of petitioner No. 10 Maruti Jadhav. There shall, however, be no order as to costs.

31. Office is directed to supply certified copies of judgment to both sides out of turn on priority basis.