
(1961) 04 GAU CK 0008
In the Gauhati High Court

Cinnamara Tea Estate

APPELLANT

Vs

Labour Court

RESPONDENT

Date of Decision : 04-04-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 10, 2, 31, 33

Citation : (1962) 1 LLJ 21

Hon'ble Judges : S.K. Dutta, J;G. Mehrotra, J

Bench : Division Bench

Judgement

G. Mehrotra, J.—This rule arises out of an application under Article 226 of the Constitution praying for issue of a writ of certiorari, mandamus or any other appropriate writ quashing the award of the labour court, Assam, dated 15 September 1960.

2. By notification, dated 29 July 1959, the following points were referred to the labour court, Assam, for adjudication by the State Government of Assam:

- (1) Whether the termination of services of Banamali Pradhan, a sirdar is justified?
- (2) If not, is he entitled to reinstatement or any other relief in lieu thereof ?

The labour court by its award, dated 15 September 1960, held that the workman deserves some punishment and that it was evident from the facts and circumstances that the workman was negligent in performing his duty on 8 March 1958, in not reporting against the labourer or labourers who did not mind his warnings and tried to be in a hurry and thus the action of the manager in giving some punishment to him cannot be challenged. He however held that the punishment was harsh. He directed that the workman should be demoted to the post of a ghaiwalla (assistant sirdar) and during the period he was without any employment, due to his termination of services in pursuance of the orders of the manager, he should be entitled to the pay of a ghaiwalla (assistant Birdar).

3. The contention raised by the counsel for the management is that the labour

court acted without jurisdiction in interfering with the quantum of punishment given by the management after proper inquiry.

4. Before examining the argument advanced by the counsel, it will be necessary to refer to the facts. The case of the management was that on 19 January 1957 and 10 December 1957, Banamali, sirdar, the workman concerned was duly warned, and on the second occasion his commission for a month was also out as he did not supervise the work of the garden labourers properly. It was expected that by these punishments he would be more active and serious in his duties, but he did not do so and on 8 March 1958, when the manager went to inspect planting work, he found that the work of the labourers under his supervision and control was not up to the required standard.

5. Certain charges were then framed against him on 10 March 1958, and he was asked to submit his explanation on 14 March 1958. Along with Banamali two other Birdars Bharjan and Dhoniram were also charge-sheeted for defective supervision and they were all asked to show cause against dismissal or any other punishment. On 14 March 1958, a joint explanation was submitted by the workmen concerned, admitting inter alia their guilt and also praying for mercy.

6. After the perusal of the explanation, the manager passed an order on the 18 March 1958, terminating the services of Banamali with one month's notice. The other two sirdars were given only warning. The matter went up before the conciliation officer but there was no settlement. An industrial dispute was thus raised which was referred to the labour court for adjudication.

7. The case of the union was that on the previous two occasions when a warning was given to Banamali, it was done without sufficient reasons. As to the incident of the 8 March 1958, the union contended that Banamali was not solely to be blamed for any defect in the planting, as it was done under the constant supervision of the head mohoror also. The union further contended that in the explanation the workman never admitted his guilt but asserted that as it was a pay day, the labourers would not mind his warnings for proper planting and hurriedly did the work. In the meantime the manager arrived and discovered defective planting.

8. It was also contended by the union that the services of the workman were terminated without any proper hearing and further that the punishment was unwarranted and was extremely harsh. Witnesses were examined before the labour court both by the management as well as the union and several documents were filed. It is not disputed that the workman was serving in the garden as a sirdar for fifteen years and his duty was to supervise the work of the garden labourers engaged in pruning, planting, etc. It is also not disputed that he was warned on two earlier occasions and on one occasion his commission for one month was also out down.

9. The labour court has rightly observed that whether those orders were justified or not could not be scrutinized by the Court in these proceedings. The labour

court has further observed as follows:

It appears that the manager thought that Banamali and two others clearly admitted their guilt and on this basis he immediately inflicted punishment on them without any enquiry whatsoever as to whether or not 8 March 1958, was really a pay day and the labourers were restless to leave the garden as early as possible. No enquiry was also made as to whether or not Banamali and the other two sirdars had been warning the labourers to do their work properly. To my mind, the manager was not justified in taking Ex. 3 as a clear admission of guilt on the part of Banamali and two others. It may be, that had the manager given some opportunity to the sirdars, they would have been able to satisfy him that the sirdars were really warning the labourers all along, but the latter could not put their mind properly to work as it was a pay day and they were anxious to leave early. In such a case the manager might have exonerated the sirdars and would have proceeded to take steps against the negligent labourers, or the manager would have at least left Banamali with a warning this time also.

Since the manager failed to make any enquiry about the story of the sirdars, it may perhaps be said that the manager punished the sirdars without any proper enquiry. But then I am not going to hold like that.

10. After this the labour court proceeds to consider whether the sirdars can be said to be negligent in their duties on 8 March 1958, and has come to a finding that the sardars were negligent and thus the action of the management was Justified. He has however held that the punishment terminating the services of Banamali was harsh. The point was raised before him that the labour court had no power to interfere with the punishment awarded by the management if it came to the conclusion that the workman was guilty of misconduct, but the labour court repelled the contention of the management on this behalf and held that the Court had Jurisdiction under the Act to see if the termination of the services of the workman was proper or if a discharged workman should be reinstated in service or if compensation would be an adequate and appropriate relief, and if the Court has jurisdiction to decide these matters, it necessarily follows that it has jurisdiction to decide whether the punishment is so unjust that an interference is called for in the interest of justice. It can in the circumstances of a particular case and in the light of the materials before it, decide what the proper punishment should be.

11. The point mainly raised before this Court by the counsel for the management is that the proposition of law thus enunciated by the labour court is palpably erroneous and it cannot be sustained. The approach of the labour court thus being erroneous, the Court has committed a manifest error of law and this Court can quash the award. The argument covered a wide range but for the purposes of the present petition it may not be necessary to examine the correctness or otherwise of every submission made by the counsel for the management.

12. As has been pointed out by the Supreme Court in the cases of Kays

Constructions Co. (Private), Ltd. v. Its workmen 1958 II L.L.J. 660 and Niemla Textile Finishing Mills Ltd. Vs. The 2nd Punjab Industrial Tribunal, the function of labour court is not to decide academic questions of law. This Court in exercise of its powers under Article 226 of the Constitution will not thus go into the abstract questions of law divorced from the facts of the case before it.

13. Sri Goswami for the petitioner has contended that the labour court can interfere with the exercise of managerial function, such as termination of the services of an employee only

(i) when there is a want of good faith;

(ii) when there is victimization or unfair labour practice;

(iii) when the management has been guilty of a basic error or violation of principles of natural justice; and

(iv) when on the materials, the finding is completely baseless or perverse.

The labour court has no jurisdiction to interfere with the finding of the management except on grounds mentioned above.

14. This principle is well recognized and has been laid down by their lordships of the Supreme Court in the case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, This view was subsequently reiterated in the case of Mckenzie and Co. Ltd. Vs. Its Workmen and Others, The case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, referred to above was, however, a case where the matter went up to the Supreme Court in appeal against the order of the tribunal.

15. An inquiry had been held by the management against its workman and she was found guilty of the charge. The tribunal however found that the charge against her was completely baseless and the enquiry report against her made a mountain of a mole-hill. On these findings the tribunal set aside the order of dismissal and directed the reinstatement. Before the Labour Appellate Tribunal the case of this particular workman was not even argued by the management. Before the Supreme Court, the board's contention which was raised by the management was that the management has absolute right to direct its own internal administration and discipline and the tribunal had no jurisdiction to interfere with the exercise of the managerial powers.

16. Dealing with this argument it was observed by their lordships of the Supreme Court that undoubtedly the management of a concern has such a power but the power is not unlimited and when a dispute arises, industrial tribunals have been given power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, it was observed in this case that the tribunal does not entirely act as a Court of appeal and substitute its own judgment for that of the management. Thereafter their lordships laid down that the tribunal can thus interfere with the exercise of the

managerial functions on grounds mentioned above.

17. Two principles emerge out of this decision,--firstly, that howsoever extensive the power possessed by the management to regulate its internal administration and discipline may be, it cannot take away the power of the industrial tribunal when the dispute has arisen, to examine the order of termination of service and see for itself whether it is justified or not and to give appropriate relief, and secondly, that when the tribunal is adjudicating the dispute which has arisen between a workman and the employers, it does not sit as a Court of appeal against the management.

18. Any finding arrived at by the management after proper inquiry can thus be interfered with only on grounds on which ordinarily this Court will interfere with the findings of a tribunal in issuing writs of certiorari. It has been pointed out by their lordships of the Supreme Court that the primary object of industrial legislation and the creation of the industrial courts is to bring about industrial peace. The main object underlying the creation of different machineries to settle or adjudicate the industrial dispute, is to see that peace is maintained in industrial concerns and any dispute does not affect the production which is likely to hamper the economy of the country and when a dispute has arisen, the industrial courts have thus been given powers to see if the order of termination of service is justified and to grant appropriate reliefs.

19. To my mind the two broad propositions which emerge out of these discussions can be reconciled by holding that though the industrial tribunal has jurisdiction to interfere with the order passed by the management, it will only exercise its powers in the circumstances set out by their lordships of the Supreme Court in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, (supra) or otherwise it would be exercising an appellate power over the order of the management.

20. These are however all cases where the Supreme Court has laid down the grounds on which the tribunal can interfere with order passed by the management. But these cases to my mind do not circumscribe or limit the jurisdiction of the tribunal in adjudicating an industrial dispute. These cases do not deal with the question as to whether when an industrial dispute has been raised before a tribunal, the tribunal can or cannot for itself examine whether an offence has been committed.

21. There may be cases where there has been no inquiry at all, or cases where the Inquiry cannot be said to be bona fide. In such circumstances it can be said that there has been no exercise of managerial function at all and the question thus of interference with such an exercise would not arise. It may be even argued in these cases that it is not a case where the tribunal is seeking to interfere with the finding of the management as in the eye of law there is no inquiry at all.

22. But the tribunal is exercising its powers of deciding the dispute between the

employer and the workman. The action of the management comprises of two parts,--

(1) the finding that the workman has committed an offence after making due Inquiry; and

(2) the awarding of the punishment.

If the tribunal interferes with the finding of the management with regard to the offence committed by him and based on an inquiry, the tribunal can only do so if it finds that the management has been guilty of a basic error or violation of the principles of natural justice in the course of the inquiry or on the materials the finding is completely baseless or perverse.

23. If it however intends to interfere with the punishment awarded, it may do so if there is want of good faith or when there is a victimization or unfair labour practice. But if the tribunal examines the materials for itself and comes to its own conclusion that the offence has been committed, It cannot be said that it has acted without jurisdiction Inasmuch as It has not specifically come to the conclusion that there is a basic error or violation of the principles of natural justice In the inquiry or that on the materials the finding as completely baseless or perverse before itself deciding If the offence has been committed.

24. The action of the tribunal or the Court may be upheld on the ground that there was no inquiry held and thus the question of violation of the principles of natural justice In conducting the Inquiry does not arise, or that the Inquiry was not a bona fids Inquiry and thus it will be deemed to be no Inquiry at all in the eye of law. In that case also the question of observance of the principles of natural justice in the course of the inquiry would not arise.

25. At this stage another decision of their lordships of the Supreme Court in The Punjab National Bank Ltd. Vs. Its Workmen, may be considered. The matter arose in the following circumstances. The point which was referred to the tribunal for adjudication was with regard to the dismissal of 150 workmen by the Punjab National Bank. In the various branches of the Punjab National Bank pen-down strike was resorted to by the employees.

26. The workmen concerned In the dispute were dismissed by the bank as they had participated in a strike which according to bank was illegal. When the strike was declared, the bank had issued notices calling upon the striking members of the staff to resume their duties and it further warned them that if they did not comply with the notice, it would be taken that they had voluntarily ceased to be its employees and their services would be deemed to have terminated.

27. Certain events followed thereupon and ultimately the termination of the employment of 150 employees was questioned by raising an industrial dispute. The tribunal held that the strikes wore illegal and that the bank was entitled to dismiss the employees solely on the ground that the said employees had participated in an illegal strike. The tribunal did not in this view of the matter

think it proper to examine the question whether the strikers were guilty of specific subversive or violent acts and further did not record evidence to ascertain if the dismissal was the result of victimization.

28. The tribunal however directed the bank to pay certain amounts to the employees on compassionate grounds. Appeals were filed to the Labour Appellate Tribunal both by the management and the employees. The Labour Appellate Tribunal held that the strike started by the workers was illegal. But it further held that even if the mere participation in an illegal strike by workmen is assumed to give the employer certain rights against the striking workmen, the employer can waive those rights, and on the facts of that case the Appellate Tribunal held that the employers waived that right.

29. It further held that the participation in an illegal strike by itself does not justify a dismissal and directed the tribunal to inquire into certain issue without which the Appellate Tribunal thought that it could not consider the relief to be granted to the workmen. Against this Interim order an appeal was filed to their lordships of the Supreme Court which was rejected. The Supreme Court held that for the purposes of that appeal it was not necessary to go into the larger question.

30. It was enough to point out that as there was violation of the provisions of Section 33 of the Industrial Disputes Act, even if the strike was held to be illegal, the order of dismissal was equally illegal and the Appellate Tribunal could go into the question as to whether the circumstances existed on which reinstatement should or should not be ordered. When the matter went back to the Appellate Tribunal, the Appellate Tribunal disposed of the matter finally after giving the finding on the issues and directed reinstatement of some of the workmen while rejected the claim of others.

31. Appeals were again filed to their lordships of the Supreme Court by both the employers as well as employees. The two preliminary points raised by the Attorney-General on behalf of the employees were rejected. He firstly contended that the Supreme Court at an earlier stage having dismissed the appeal on the ground that there was a violation of the provisions of Section 33 of the Industrial Disputes Act, the tribunal could not go into the question of justification of the order of the management and make any further inquiry as to whether the workers were guilty of subversive activity or not.

32. Secondly he urged that as no inquiry was held about the misconduct of the workman by the management, the order of the termination of service could not be maintained. Answering the first contention raised by the Attorney-General, the Supreme Court held that the effect of violation of Section 33 of the Industrial Disputes Act was only that the ban imposed on the action of the management during the pendency of an industrial dispute if violated, makes the contravention an offence u/s 31(1) of the Industrial Disputes Act.

33. The object of Section 33 is to provide for the continuance and termination of

the pending proceedings in a peaceful atmosphere undisturbed by any causes of friction between the employer and his employees. It insists upon the maintenance of the status quo pending the disposal of the Industrial dispute between the parties; nevertheless it recognizes that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employees; and so it allows the employer to take such action subject to the condition that before doing so he must obtain the express permission in writing of the tribunal.

34. The effect of the violation of Section 33 however will not render the order of discharge a nullity. The Industrial dispute u/s 10 can still be raised relating to the dismissal of the workmen and the industrial tribunal will have full powers to examine the point referred to it whether such a dismissal was or was not justified. It cannot in such an inquiry treat the order as a nullity and declare that the workman continued to be in service in spite of the order of discharge.

35. As regards the other contention, their lordships examined the entire scope of the power exercised by the tribunal in deciding Industrial disputes and observed that the order of dismissal by a management cannot be put on a par with the order of dismissal passed against a civil servant and the failure to hold any Inquiry will not vitiate by itself the order of dismissal as in the case of Article 311(2) of the Constitution, but it will keep the question of misconduct at large and the tribunal may for itself examine the question of misconduct on the evidence produced before it. The failure to hold an inquiry will not by itself make the order of dismissal a nullity.

36. Their lordships of the Supreme Court after considering the earlier authorities have at Section 679 of the report, made the following observations:

In cases where an industrial dispute is raised on the ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a proper enquiry or not. Where such a proper enquiry has been held in accordance with the provisions of the relevant standing orders and it does not appear that the employer was guilty of victimization or any unfair labour practice, the tribunal is generally reluctant to interfere with the impugned order. The limits of the tribunal's jurisdiction in dealing with such industrial disputes have been recently considered by this Court in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, and it has been held that the powers of the tribunal to interfere with cases of dismissal are not unlimited because the tribunal does not act as a Court of appeal and substitute its own judgment for that of the management. In this judgment this Court has indicated the classes of cases in which the tribunal would be justified in interfering with the impugned order of dismissal. It would and should interfere when there is want of good faith, when there is victimization or unfair labour practice, when the management has been guilty of a basic error or violation of the principles of natural justice, or when, on the materials, the finding of the management is completely baseless or perverse.

37. At p. 682 of the report dealing with the other point, their lordships observed as follows:

There is one more point which still remains to be considered and that is the effect of the bank's default in not holding an enquiry in the present case. If the bank has not held any enquiry, it cannot obviously contend before the tribunal that it has bona fide exercised its managerial functions and authority in passing the orders of dismissal and that the tribunal should be slow to interfere with the said orders. It is true as we have already pointed out that if the employer holds a proper enquiry, makes a finding in respect of the alleged misconduct of the employee and then passes an order of dismissal, the tribunal would be slow to interfere with such an order and would exercise its jurisdiction within the limits prescribed by this Court in the case of *Indian Iron and Steel Co., Ltd.* 1968 I L.L.J. 260 (supra).

But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make.

Sri Sanyal who had appeared in this case on behalf of the bank in one of the appeals, relied upon the decision of the Labour Appellate Tribunal In *Madras Electric Tramways (1904), Ltd. Madras v. Their workers* 1951 II L.L.J. 204 in support of his contention wherein it was held that in dealing with cases of dismissal where the management had acted bona fide and with knowledge and experience of the problem which confronted in the daily work of the concern, it should be considered to be well qualified to judge what sentence would be appropriate and the sentence imposed by the management should normally stand subject to the qualification that it must not be unduly severe.

38. Their lordships of the Supreme Court not only distinguished the case on the ground that in that case the punishment was imposed by the management after inquiry, but they further pointed out that so far as the jurisdiction of the tribunal in dealing with an industrial dispute arising from an order of dismissal passed by an employer, after holding a proper inquiry was concerned, the limits have already been set out in the case of *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*,

39. Reference may then be made to the case of *Assam Oil Company Vs. Its Workmen*, "In this case Miss P. Scott was employed by the Assam Oil Company at Delhi. On 28 February 1957, her services were terminated by Mr. Gowan, the Delhi representative of the company on the ground that the faults which were pointed out to her earlier, had not been corrected by her and that her performance during her service had not matched up to the standard required. The services were terminated after giving a month's salary in lieu of notice.

40. The matter was taken up by the union and an industrial dispute was raised.

The tribunal held that she was a workman u/s 2(s) of the Industrial Disputes Act and since the union had sponsored her cause, the dispute was an industrial dispute. The tribunal further held that the termination of Miss Scott's services in substance amounted to dismissal for misconduct and as no inquiry had been held, it was illegal and unjust. The tribunal further held that even if Miss Scott had been guilty of some negligence, the punishment of dismissal was unduly severe.

41. The tribunal passed an order of reinstatement. On appeal their lordships of the Supreme Court upheld the finding of the tribunal that her dismissal was unjustified, but in the circumstances of the case, the order of reinstatement was not approved and in lieu thereof she was awarded compensation. One of the points raised on behalf of the management-employers was that as the termination of service was in accordance with the terms of the contract, the Industrial tribunal had no jurisdiction to interfere with such an exercise of the rights under the contract.

42. This contention was repelled and it was held that if the contract gives the employer the power to terminate the services of his employee after a month's notice or subject to some other condition, it would be open to him to take recourse to the said term or condition and terminate the services of his employee; but when the validity of such termination is challenged in industrial adjudication, it would be competent to the Industrial tribunal to enquire whether the impugned discharge has been effected in the bona fide exercise of the power conferred by the contract.

43. If the discharge has been ordered by the employer in bona fide exercise of his power then the industrial tribunal may not interfere with it; but the words used in the order of discharge and the form which it may have taken are not conclusive in the matter and the industrial tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not. If it appears that the purported exercise of the power to terminate the services of the employee was in fact the result of the misconduct alleged against him, then the tribunal will be justified in dealing with the dispute on the basis that despite its appearance to the contrary, the order of discharge is in effect an order of dismissal.

44. It is in this context that the industrial tribunal must consider whether the discharge is mala fide or whether it amounts to victimization or an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motive and not in bona fide exercise of the power conferred by the contract. Whether or not the termination of services in a given case is the result of the bona fide exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case. Just as the employer's right to exercise his option in terms of the contract has to be recognized, so is the employee's right to expect security of tenure to be

taken Into account.

45. The examination of the authorities referred to above leads to the result that if a bona fide enquiry has been held and as a result of such an Inquiry the management has terminated the services of an employee in that case, the tribunal will be reluctant to interfere with the finding of misconduct unless the action of the management is mala fide or that It amounts to victimization or in holding the Inquiry It has violated any principles of natural justice or the finding is based on no materials or Is baseless.

46. In oases where no Inquiry has been held, the question of misconduct is at large and it is open to the tribunal to decide for itself on the evidence produced before it as to whether any misconduct was or was not committed by the workmen. The question whether even on the finding that the misconduct was established, the tribunal could or could not interfere with the order of the management terminating the services of an employee on the ground that it was severe and harsh, did not directly arise in these oases.

47. It also has not been decided in any of these cases whether the finding that the punishment of dismissal was harsh and severe will necessarily lead to the inference that the action of the management was mala fide and amounted to victimization. But for the purposes of the present case It is not necessary to examine these broader questions, as In the present case the labour court has on consideration of the evidence come to its own conclusion that the action was justified and the workman was guilty of negligence.

48. That being: so, the only question which Is to be considered is if the labour court had jurisdiction to substitute Its own punishment to that of the management on the finding that the workman was guilty of misconduct. The labour court has directly dealt with that point and is of opinion that if the Court Is of opinion that the punishment is so unjust that a remedy Is called for In the interest of justice, there is no bar to the labour court in Interfering with the punishment and substituting its own punishment to that of the termination of service or dismissal.

49. The labour court has absolute discretion to decide what punishment in the circumstances of each particular case should be inflicted upon a guilty workman. The labour court seems to be of the view that this power is inherent in a labour court when it is called Upon to adjudicate about the validity of the order of dismissal and is implicit In the power to direct reinstatement or compensation whichever it considers adequate and appropriate relief. It is here that the labour court has gone wrong.

50. Undoubtedly the labour court has got power to direct reinstatement, but it can only direct reinstatement if It comes to the conclusion that the termination was not justified. If it cannot go into the question of misconduct as there has been a bona fide Inquiry or after having gone Into that question, it has come to the conclusion that the misconduct has been established and thus the

termination of service was justified, it cannot then sit as a Court of appeal and substitute its own punishment to that of the management.

51. The power of reinstatement as I have said, can be exercised only on the finding that the dismissal was not justified. What the authorities have laid down, is that even on the finding that the termination of service was not justified, the workman cannot claim reinstatement as a matter of right. There may be a variety of circumstances which may compel the labour court to grant a relief of compensation in lieu of reinstatement. But such a power does not include a power to direct reinstatement even on the finding that the action was justified or that the misconduct has been established.

52. In the present case the tribunal has found that the workman was guilty of negligence but Instead of dismissal it has directed that he should be demoted to the post of a ghaiwalla (assistant sirdar). In effect it has directed the employer to take him back in service though in a lower grade. As I have already pointed out, the power to direct reinstatement itself includes the power to direct the employer to take into service one whom he did not want to employ.

53. Such a power is implicit in the labour court which has to adjudicate industrial disputes. But in cases where the negligence has been established, the question of exercise of the power to direct the employer to employ a workman does not arise and if the labour court could not direct reinstatement of a workman, it could not direct that he should be kept in employment though in a lower grade. Even if the argument of the workmen is accepted that in the present case the finding of the labour court is that there was no Inquiry at all, the question of misconduct was at large and the labour court in the present case has decided for itself on the materials before it as to whether the misconduct has been established or not.

54. But that does not give him power to impose a punishment different from the one awarded by the management on the finding that the action was justified. The argument of the workman is that once it is conceded that there was no Inquiry, the whole matter is at large and it is open to labour court not only to find out whether an offence has or has not been committed but even on the finding that the offence has been committed, to decide the quantum of punishment.

55. In that case It will not amount to interference with the punishment awarded by the management, but it will only be deciding for itself what punishment is adequate on the finding arrived at by the labour court itself and the principles laid down in the case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, will not be attracted. I have already discussed the limits of the power of the labour court in interfering with the order of termination of service in cases where there has been a bona fide inquiry.

56. But apart from those considerations, one of the answers to this argument of the workmen Is that even the labour court could not award a punishment which

Is not permissible under the standing orders. If the standing orders provide that the management, can on a finding of misconduct, dismiss a workman, the labour court cannot invent for itself any other punishment. The labour court could not have said that the workman Instead of being dismissed should be fined.

57. In the result, therefore, the labour court in our opinion, has committed a manifest error of law in holding that It could award any punishment and has gone beyond the limits of its jurisdiction In directing that Banamali should be kept in employment In the post of a ghaiwalla (assistant sirdar). For the reasons given above we are of opinion that a writ at certiorari should issue quashing the award of the presiding officer, labour court, Assam. The parties will bear their own costs.

S.K. Dutta, J.

58. I agree.