

(1990) 10 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No. 12455 of 1984

Cork Industries, Madras

APPELLANT

Vs

I Additional Labour Court, Madras and Another

RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A, 12, 2A, 9A

Citation : (1990) 10 MAD CK 0055

Hon'ble Judges : S. Govindaswamy, J

Bench : Single Bench

Judgement

1. The petitioner has filed the above writ petition for issue of a writ of Certiorari to quash the order of the First Additional Labour Court, Madras, the first respondent herein, in I.D. No. 72 of 1981 and published in the Tamil Nadu Gazette dated September 27, 1984. The second respondent is impleaded as a representative of the workers, Cork Industries Employees Union, Alandhur, Madras, representing about 25 workmen involved in the instant case.

2. The petitioner initiated disciplinary proceedings against 5 among the 25 workmen and dismissed them from service. The petitioner, without holding any enquiry, against the rest of the workers, about 20, dismissed them from service.

3. The petitioner Management issued a charge memo to one Kothandam and Rajendran stating that they were asked to accumulate the corks produced in each set of machines in separate bags and that they disobeyed the instructions and said that separate bag for each set will not be allowed and also argued using abusive language and further they went out of the plant without permission. The said two workmen submitted their explanation denying the charges. The Enquiring Authority after holding the necessary enquiry held that the charge against those workmen was proved and that the petitioner, concurring with the findings of the Enquiring Authority, by order dated may 16, 1980 dismissed them from service. These workmen are classified as Category "A" for convenient narration of facts. In so far as the three workmen viz. Pachiappan, Ellappan and

Ganesan are concerned, the petitioner Management issued a charge memo stating that when the Engineers of the petitioner firm were talking about the generator, Pachiappan asked the Engineer, Mr. Sargunan about what they were talking, to which he replied that it was none of his business and asked to go and attend to his work and immediately the said Pachiappan started shouting, using abusive and filthy language and thereafter the said Pachiappan along with Ganesan and Ellappan, came running in a furious manner and was about to beat both the Engineers, that but for the interference of a group of workers, the Engineer would have been assaulted. The petitioner called upon them to submit their explanation. The said three workmen submitted their explanations denying the charges. The Enquiring Authority held enquiry in which the Chief Engineer Mr. Shah was examined at the instance of the petitioner as M.W. 2, tendered evidence in English and consequently the workmen opposed the recording of evidence in English and thereafter walked out. However, the Enquiring Authority continued the enquiry and ultimately found that the charge framed against them was proved. The petitioner, concurring with the said finding, by order dated May 16, 1980 dismissed the said workmen from service. These workmen are classified as Category "B" :

4. In so far as the other workmen are concerned, the petitioner by order dated May 21, 1990 terminated them from service without holding any enquiry for the reason that when Mr. Sargunan was on his way to the works on his motor-cycle, he was waylaid near the factory by all the workmen and was assaulted causing bleeding injuries. The said Sargunan reported the matter to the petitioner and the police, who arrived at the spot, took the injured Engineer to the hospital and registered a case against 25 workmen, which was ultimately dropped. In view of the violence indulged by the said workmen, the petitioner considered their continuance in the establishment is prejudicial to the safety. Discipline and morale of the other employees, and hence by order dated May 21, 1990 terminated the services of the said workmen. These workmen are classified as Category "C".

5. Thereafter, the said 25 workmen raised an industrial dispute under Sec. 2-A of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act" and as a result of the conciliation, settlement under Sec. 12(3) of the Act was reached on December 8, 1980; whereby the petitioner and the second respondent herein, representing the said workmen, agreed to refer the issue under Sec. 10(2) of the Act for adjudication by the first respondent. On the application u/s 10(2) of the Act. The Government of Tamil Nadu by G.O.Ms. No. 170, Labour and Employment Department, dated January 24, 1981 referred the dispute to the first respondent for adjudication and that the first respondent has taken the reference as I.D. No. 72 of 1981. The terms of reference is as follows :

"Whether the demand for re-instatement of the (following) discharged workmen is justified and if so, to what relief, are they entitled to in terms of money and to compute the same".

The representative of the said workmen filed a claim statement before the first respondent herein and the petitioner also filed a counter statement.

6. After enquiry, the first respondent by order dated November 26, 1982 held that the enquiry held against the workmen classified as Category A was valid and proper, that the enquiry held against the workmen classified as Category B was vitiated and that in so far as the workmen there was no enquiry, in consequence of which the petitioner prepared to lead evidence to substantiate the charges framed against all the said workmen and ultimately the Labour Court conducted the enquiry. After holding the enquiry, the Labour court, by the impugned Award, held that the demand for reinstatement of the workmen is fully justified and directed reinstatement of all the workmen with backwages, continuity of service and other benefits.

7. The Labour Court, after examining the witnesses in so far as the charge relating to Category A is concerned, has observed that even assuming that the enquiry against these workmen is held to be valid and proper, the Labour Court could examine the correctness of the finding given by the Enquiring Authority, that Ex. M-1 the report given by the Supervisor, Yuvaraj on January 24, 1980 was the foundation for the charge framed against the workmen and that the said report would reveal that there was no allegation against Rajendran of having used any abusive language or his misbehaving with the Supervisor in a rude manner. So also, there was no allegation against Kothandam of having disobeyed the orders of the Supervisor or his behaving in an unruly manner. As such it was very clear that the charge memos (Exts. M-2 and M-3) against category "A" workmen refer to certain aspects not mentioned in the report Ex. M-1 and on that short ground the charge against Rajendran of having used any abusive language and his misbehaving with the Supervisor in a rude manner will have to be held unfounded. The Labour Court further observed that if those aspects are left out, then the only charge that remains against Rajendran is that despite the instructions of the Supervisor, he collected all the corks in one single bag and left the workspot. Likewise, the only charge against Kothandam that will remain is that he left the work spot and came to the A plant and collected all the sets of cork in one bag. The Labour Court while considering the clause relating to the misconduct in the Standing Orders of the petitioner industry, observed that leaving the workspot by any workman for a short while was no shown as a misconduct. The Labour court further observed that the Enquiring Authority has also pointed out that u/s 9-A of the Industrial Disputes Act any change in the normal practice could be introduced either in pursuance of a settlement or by giving 21 days notice and while so the behaviour of Rajendran could not be said to be disobedience of the instructions given to him amounting to misconduct and ultimately the Labour Court to the conclusion that the charge framed against Category A workmen was not proved at all.

8. In so far as the Category B workmen is concerned, the petitioner has come forward to prove the charge by leading evidence before the Labour Court. Before

the Labour Court, the Chief Engineer Thiru Shah was examined as M.W. 2. The Labour Court observed that Mr. Shah's evidence was not corroborated for the reason that Sargunar and other workmen, who were stated to have intervened and prevented any assault were not examined. M.W. 2 has adduced evidence to the effect that he submitted a report about the incident and that is the basis for framing the charge as against these workmen, that the report was not made available even before the Court and that, therefore, this Court was not in a position to find out as to what exactly that had happened. The report contains the facts that had happened on that day and that was the earliest version about the incident and that there was no explanation on the part of the petitioner herein as to why the petitioner did not produce the said earliest report, especially when these workmen were charged with serious misconduct, which prompted the petitioner for terminating their services. While so, it was the duty of the petitioner to lead proper evidence to sub-ststantiate the charges. The Labour Court observed that the petitioner has miserably failed to examine the most important witnesses viz., Sargunam and the workmen who were alleged to have intervened and whose evidence would have thrown a flood of light about the complicity or otherwise of the incident and that apart, the petitioner has not explained for not producing the report given M.W. 2, Mr. Shah containing the earliest version of the incident that took place. It is in these circumstances, the Labour Court found that the charge framed against these workmen was not satisfactorily proved and consequently held that the order of terminating the services of Category B could not be sustained.

9. In so far as Category C is concerned the petitioner has not held any enquiry, but terminated the services on the ground that the act of the said workmen was subversive of discipline and consequently treated as an act of misconduct. The Labour Court observed that the alleged incident took place outside the factory and as such there cannot be a charge of misconduct in terms of Standing Orders against those persons and consequently the order of dismissal must be held to be unsustainable. The Labour Court further observed that there was absolutely no evidence on the side of the Management touching the said incident and that the Management had not chosen to examine even the victim or any other person, who had actually witnessed the said incident, but examined the Managing Partner, M.W. 3., who was not an eye witness and could not speak about the incident. Hence the Labour Court came to the conclusion that the involvement of Category C workmen in the said incident had not been established at all and consequently held that the order of dismissal cannot be sustained. Aggrieved by the said Award the petitioner has filed the above writ petition for the reliefs stated supra.

10. Mr. Meenakshisundaram, learned counsel for the Petitioner, Contended that the finding of the Labour Court that there the finding of the Labour Court that there was no misconduct is erroneous and even assuming that the misconduct is not proved, a reference was made in terms of the settlement under Sec.12(3) arrived at on conciliation, which is to the effect that "whether the demand for

reinstatement of the discharged workmen is justified and if so, to what relief are they entitled to in terms of money and to compute the same". While so, the Award by which all the workmen were reinstated with backwages, continuity of service and other attendant benefits is contrary to the terms of the reference and that the Labour Court cannot go beyond the terms of the reference and as such the Award is liable to be set aside.

11. On merits, Mr. Meenakshisundaram, learned counsel for the petitioner, contended that in so far as Category A is concerned the Labour Court, found that the enquiry was fair and proper and consequently the Labour Court erred in holding that the misconduct was not proved. In so far as Category A is concerned, learned counsel for the petitioner further contended that since the workmen disobeyed the instructions and also behaved in a rude manner using abusive language and left the workspot without attending the duty during working hours, the same will amount to misconduct and consequently the finding arrived at by the Labour Court in so far as Category A is concerned is not sustainable.

12. In so far as Category B is concerned, learned counsel for the petitioner contended that the petitioner has accepted that the enquiry was conducted in the absence of the workmen involved and consequently tendered evidence before the Labour Court in order to prove the misconduct with which those workmen were charged. Learned counsel for the petitioner further contended that non-production of the report of the Engineer cannot be said to be an error and when the Engineer, Mr. Shah has spoken to the entire incident his evidence should have been accepted and rejection of the said evidence on the ground that there was no corroboration can not be sustainable for the reason that the other Engineer, Sargunam could not be examined as a result of securing the job elsewhere.

13. In so far as Category C is concerned, learned counsel for the petitioner contended that though the assault took place outside the factory, the consequence of such an assault by the workman against the Engineer would flow within the factory and consequently that would amount to an act subversive of discipline within the premises of the factory and consequently the finding arrived at by the Labour Court to the contrary is not sustainable and is liable to be set aside.

14. In support of the above contention, learned counsel for the petitioner cited the decision M/s. Glaxo laboratories (I) Ltd. v. Presiding Officer, Meerut and Others, reported in 1984-I-LLJ-16 and referred the following passage (PP. 20-21) :

Mr. Shanti Bhushan, however, urged that the trend of decisions indicates that the expression "Committed in the premises of the establishment or in the vicinity thereof "indicates not the situs of the place where the misconduct is committed but where the consequence of such misconduct manifests or ensues. It was

submitted that if the motivation for committing an act of misconduct anywhere was to have an adverse effect on the peaceful working in the industrial establishment, then irrespective of the fact where the misconduct was committed, it would be deemed to have been committed within the premises of the establishment or in the vicinity thereof. Reliance was placed on *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, where in the language in which the relevant Standing Order was couched reads as under :-

"(1) Commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment"

The misconduct was that the delinquent workmen while travelling in a train between Thana and Mulund assaulted another workman who was on his way home after the day's work. And this led to a complaint by some of the colleagues of the victim submitting a memorandum to the management of protest against the assault on the colleague. Repelling the contention on behalf of the workmen, this Court held as under.

"In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself. In other words, an act wherever committed, if it has one effect of subverting discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24(1). We are unable to agree that Standing Order 24(1) leaves out of its scope of an act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable"

The decision proceeds on the language of the Standing Order which came for interpretation before this Court. There is a marked difference between the language of clause 10 of Standing Order 22 under which action is proposed to be taken by the appellant in this case and Standing Order 24(1) that came for interpretation in that case".

The above decision cannot be made applicable to the facts of the instant case for the reason that the provisions contained in the Standing Order referred to in *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, and considered in the above judgment, is neither similar nor identical and consequently the passage referred to by the learned counsel for the petitioner in the above decision will not apply to the facts of the present case.

15. Learned counsel for the petitioner then next cited the passage contained in the decision *M/s. Banaras Electric Light and power Co. Ltd., v. The Labour Court II Lucknow* and others reported in 1972-II-328, which is as follows :- (pp. 330-331) :

"This Court on several cases while dealing with industrial disputes of this kind, had occasion to point out that an Industrial Tribunal would not be justified in characterising the finding recorded in the domestic inquiry as perverse unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced before it. In a domestic enquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even, though it is possible for some other authority to arrive at a different conclusion on the same evidence There is also no rule of evidence which lays down that the evidence of a solitary witness cannot be relied upon or merely because there is only a solitary witness in support of the charge, no conclusion can be based upon it even though the evidence of that witness is acceptable as true."

16. Learned counsel for the petitioner also cited the decision BPL India Ltd. v. Palghat BPL Thozhilali Union and another reported in (1990) 77 FJR 155 wherein it was held that the standing order under which the employer found the workmen guilty read as follows :- "Riotous and disorderly behaviour during working hours within premises of the company or any act subversive of discipline either within or outside the premises of the company". The Court observed that a casual glance at the crucial clause of the Standing Orders will reveal prominently and strikingly the wide wording, indicating the expansiveness of the situs of the misconduct. A misconduct, inspite of its location, would be a misconduct, when committed by an employee. That is the clear meaning and the real effect of the words in the standing order. There cannot be any ambiguity whatever.

17. Mr. K. S. Janakiraman, learned counsel for the second respondent, contended that the Award of the Labour Court is based on appreciation of entire evidence and on consideration of the entire records in this case and unless there is a patent error amounting to perversity, this Court will not interfere with the well considered award on facts. The Labour Court, in exercise of the powers conferred under Sec. 11-A of the Act and on reappraisal of the entire evidence that was placed before the Labour Court passed the award, and, such an award is well within the jurisdiction and is not liable to be set aside.

18. Learned counsel for the second respondent further contended that when the Management failed to establish the charge of misconduct under the Standing Order, the consequential dismissal cannot be upheld. Learned counsel further contended that the relief granted by the Labour Court is not only in exercise of the power under Sec. 11-A of the Act, but also in accordance with the terms of the reference and hence the Award is not liable to be interfered with. Learned counsel also submitted that in so far as Category A is concerned, though the Labour Court held that the enquiry was fair and proper that does not mean that the finding given in such an enquiry is correct. In so far as the procedure with reference to domestic enquiry is concerned, the Labour Court came to the conclusion that the enquiry was fair and proper and in so far as the finding with reference to the misconduct is concerned, it is well open to the Labour Court to

examine the correctness of the finding. Learned counsel further submitted that Ex-M-1 is the report that was given by Yuvaraj and that was the basic document for framing the charges and that document was silent with reference to the use of the abusive language; with the result that the charge in so far as it relates to the use of the abusive language dies. Learned counsel further contended that the charge memo contains the facts which do not contain in the report submitted by the officer concerned, viz Yuvaraj. It is these circumstances, according to the learned counsel, the charge is vitiated.

19. In so far as Category B is concerned, learned counsel for the second respondent contend that M.W. 2 has admitted that he has given a report to the Management and that report was not made available; with the result adverse inference has to be drawn. The non-examination of the other workmen, who have intervened, is fatal for the reason that there was no corroboration of the evidence tendered by M.W. 2. Even if Sargunar is not available, the other workman who has intervened, is available and he could have been examined. Leaving the workspot per se is not an offence. The Labour Court held that the domestic enquiry held by the petitioner not proper and called upon the Management to prove the charge and such an order was not challenged and consequently the finding in the domestic enquiry cannot be taken into account for the purpose of imposition of the punishment and it is not open to the petitioner to canvass the finding of the domestic enquiry. Learned counsel further contended that the finding of the Labour Court is based on appreciation of evidence and this Court will not interfere with the said finding. The evidence of M.W. 2 was not corroborated by other persons who intervened in the alleged accident and that the report was also not furnished.

20. In so far as Category C is concerned, learned counsel for the second respondent contended that it is an admitted fact that enquiry was not held, however the Management dismissed 20 workmen contrary to the procedure prescribed in the Standing order. In this case, without holding enquiry and without following the procedure prescribed in Clause 20 of the Standing Order, the order of dismissal was passed and such an order is vitiated. The whole incident is said to have taken place outside the factory and consequently the alleged incident cannot be the basis for framing a charge on the ground of misconduct so as to bring within the scope of 19-A of the Standing Order. There is no evidence with reference to any act subversive of discipline within the premises of the Factory. On appraisal of the evidence, the Labour Court has come to the Conclusion that there is no evidence that such an act took place within the premises of the factory and that is subversive of discipline and consequently the Labour Court has held that the charge falls under Sec. 19-K of the Standing Order. While so, there cannot be any punishment at all.

21. In support of the above contention, learned counsel for the second respondent cited the following passage contained in the decision *Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management & others*

reported in 1973-I-LLJ-278 at pp. 295-296 :

"We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal has no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. (Supra) existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an interference of victimisation or unfair labour practice. This position, in our view, has now been changed by Sec. 11-A. The words "in course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Irons & Steel Co. Ltd. case (supra), can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer has caused to be so and now it is the satisfaction of the Tribunal that finally decides the matter."

Therefore, it will be seen that both in respect of cases where a domestic inquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under S.11-A about the guilt or otherwise of the workmen concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or the other. Even in cases where inquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved."

22. Learned counsel for the second respondent next cited the decision Hindustan Machine Tools Ltd. Bangalore v. Mohd. Usman and another reported in 1983-II-LLJ-386 wherein it was held as follows. (p. 386) :

"S.11-A confers power on the Labour Court to evaluate the severity of misconduct and to assess whether punishment imposed by the employer is commensurate with the gravity of the misconduct. This power is specifically conferred on the Labour Court under S.11-A. If the Labour Court after evaluating the gravity of the misconduct held that punishment of termination of service is disproportionately heavy in relation to misconduct and exercised its discretion, this Court, in the absence of any important legal principle, would not undertake

to re-examine the question of adequacy or inadequacy of material for interference by Labour Court."

23. Learned counsel of the second respondent also cited the decision *Shri Rasiklal Vaghajbhai Patel v. Ahmedabad Municipal Corpn.* and another reported in 1985-I-LLJ-527 wherein it was held as follows. (p. 529).

"It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct."

24. Considering the aforesaid contentions and the ratio of the authorities cited by both the counsel, it is clear that after the commencement of Sec. 11-A of the Act, the Labour Court is clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. The Labour Court is at liberty to consider not only whether the finding of misconduct recorded by the employer is correct, but also to differ from the said finding if a proper case is made out. It is the satisfaction of the Labour Court that finally decides the matter. The Labour Court has to consider the evidence and come to conclusion one way or the other even in a case where an enquiry has been held by an employer and finding of misconduct arrived at, the Labour Court can differ from that finding in a proper case and hold that no misconduct is proved. In view of the aforesaid position of law, it cannot be contended the Labour Court cannot interfere with the finding of the domestic enquiry even if the enquiry is held to be fair and proper in so far as Category A workmen is concerned.

25. It is also well settled that Sec. 11-A of the Act confers powers on the Labour Court to evaluate the severity of misconduct. However when the finding of the Labour Court is based on appreciation of evidence and in the absence of any perversity in the finding, the High Court will not go into the question of adequacy or inadequacy of the material for interference with the findings of the Labour Court. In the instant case, the Labour Court has considered the entire evidence with reference to the charge relating to the misconduct and ultimately came to the conclusion that the charge has not been satisfactorily proved.

26. In so far as Category A is concerned, the Labour Court has observed that the report given by the Officer, Yuvaraj does not contain any thing about the use of abusive language, whereas the charge based on the said report contains fresh material relating to the misbehavior of the workmen i.e., use of abusive language by the workmen against the officer concerned. The Labour Court on consideration of the materials on record observed that leaving the workspot by any workman for a shortwhile was not shown to be misconduct in the Standing Orders; with the result the charge fails. The Labour Court has considered that even assuming that any change could be introduced, that could introduced after

following the procedure prescribed under the Act and consequently the act complained of against Category A cannot be said to be disobedience of the instructions, amounting to misconduct, While so, such a finding cannot be said to be perverse or otherwise liable to be interfered with.

27. In so far as Category B is concerned, the Labour Court has found that the Chief Engineer, M.W. 2 alone was examined and there was no corroboration for such evidence inspite of the fact that another Engineer, Sargunam and other workman, who intervened could have been examined. Even assuming that Sargunam was not in employment, it is not the case of the petitioner that the other workman, who intervened in the incident is not in employment, and therefore the said workman could have been examined so as to corroborate the evidence of Mr. Shah, M.W. 2. The Labour Court has also stated that M.W. 2 has admitted that he has submitted his report and that report, as per the Labour Court, was not made available and such report contained the earliest version about the incident and if such a report was made available it would have been made known to the employees concerned so that the delinquent employee would be in a position to ascertain and elicit the truth of the incident so as to disprove his guilt. It is only on appreciation of the facts, the Labour Court has come to the conclusion that the charge as against Category B was not proved.

28. The contention of the learned counsel for the petitioner is that even when there is the testimony of a single witness, that could be accepted and there is no reason as to why the Labour Court has not considered such evidence. The Labour Court has clearly stated the reason as to why Shah's evidence could not be totally relied on for the purpose of the proof of the charge against Category B. Such a finding arrived at by the Labour Court cannot be said to be vitiated for the reason that the Labour Court on appreciation of the entire evidence on record, held that the charge against Category B was not proved. When the finding of the Labour Court is based on evidence and if there are valid reasons for arriving at such a finding, this Court will not interfere with the findings of fact on the ground that the evidence available is adequate to come to the conclusion that the charge against the delinquent employee was proved.

29. In so far as Category C is concerned, it is an admitted case that there was no enquiry at all and that the employees were terminated on the short ground that the act alleged against them was subversive of discipline, which falls under Clause 19-K of the Standing Orders. It is also not in dispute that the act alleged to have been committed, had been committed outside the factory premises. It is relevant to point out the Clause 19-K in the Standing Order, which is as follows :-

"Riotous or disorderly behavior or any act subversive of discipline within the premises of the factory."

It is clear from the Standing Order that the act subversive of discipline committed within the premises of the factory will be treated as misconduct and in the instant case it is not in dispute that the act alleged to have been

committed had had been committed outside the premises of the factory and consequently it cannot be brought within Clause 19(K) of the Standing Order. Even the decision referred to by the learned counsel for the petitioner cannot be made applicable in so far as the present case is concerned for the reason that the provision relating to the Standing Order that was referred to in that decision is not similar to that of the provision contained in this Standing Order applicable to the petitioner Industry. It is very clear from the ratio of the decision in M/s. Glaxo Laboratories (I) Ltd. case (supra) that an act committed outside the factory will not come within Clause 19(K) of the Standing Order in the instant case. That was a case where the Standing Orders of the Establishment provides the certain acts would constitute misconduct if "committed within premises of the establishment or in the vicinity thereof" The Supreme Court opined that any misconduct committed anywhere irrespective of the time-place content where and when it is committed cannot be comprehended to be misconduct within the meaning of the Standing Orders merely because it has some remote impact on the peacefully atmosphere in the establishment. The Supreme Court has also observed that the words "committed within premises of the establishment or in the vicinity thereof" are words of limitation and they must out down the operation of the Standing Order and that the misconduct prescribed in a Standing Order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours. It is clear that the Standing Order referred to therein provides for misconduct if certain acts committed within the premises of the establishment or in the vicinity thereof. While construing the said provision, the Supreme Court has observed, as explained hereinabove. While so, the Standing Order in the instant case does not contemplate any act committed within the vicinity of the premises of the establishment and consequently it cannot be said that the act committed in the instant case by Category C workmen outside the factory premises, even assuming it is true and proved, cannot constitute a misconduct within the meaning of Clause 19(K) of the Standing Order. While so, the contention of the learned counsel for the petitioner is that the place at which the act was committed is not relevant, but the consequence which would flow as a result of the commission of the act, within the factory that is relevant and such a contention cannot be accepted in view of the ratio laid down in the decision referred to hereinabove and in view of the Standing Order, which is very clear to the effect that any act of subversive of discipline within the premises of the factory, which in turn contemplates that the act should have been committed within the premises of the factory.

30. The Labour Court has further gone into the entire evidence on record and ultimately came to the conclusion that there was absolutely no evidence on the side of the Management touching the said incident and also came to the conclusion that the involvement of Category C in the said incident has not been established at all and consequently held that the order of dismissal cannot be sustained.

31. On a perusal of the aforesaid findings, it cannot be said that such a finding is vitiated by any valid reasons set forth by the learned counsel for the petitioner. The reasoning set forth by this Labour Court for arriving at such a finding cannot be said to be to a valid reason. This Court, while exercising jurisdiction, as stated already, cannot go into the question of adequacy of evidence. It is in these circumstances, the findings arrived at by the Labour Court are sustainable in law. Apart from the above, it may be relevant to state that it is manifest that the Standing Order 20 provides procedure for dismissal of workmen. Admittedly, such a procedure was not followed by the petitioner while dismissing the Category C workmen. Hence the order of dismissal of Category C workmen has to be set aside on this score also. The contention on the part of the learned counsel for the petitioner is that a reference was made under Sec. 10(2) of the Act and consequently the Labor Court has no jurisdiction to go beyond the terms of the reference. Learned counsel also contended that even assuming that the demand for reinstatement on the part of the workmen is justified, it should be computed in terms of money and that the direction on the part of the Labor Court to restate with back wages etc., is contrary to the terms of the reference. It is in this context, learned counsel of the second respondent contended that by virtue of the power conferred under Sec. 11-A of the Act, the Labor Court can examine not only with reference to the validity of the finding of the domestic enquiry, but also with reference to the imposition of penalty as to whether such a penalty is disproportionate to the gravity of the charges proved. After the introduction of Sec. 11-A of the Act, it cannot beside that the power of the Labour Court to interfere with the punishment is limited. In support of the above contention, learned counsel for the second respondent cited the decisions : Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd., (supra) and Hindustan Machine Tools Ltd., Bangalore (supra), which elaborately dealt with the scope of the power under Sec. 11-A of the Act as well as the scope of the High Court to interfere with the finding of the Labour Court to interfere with the finding of the Labour Court in so far as its exercise of power under Sec. 11-A is concerned. Considering the ratio of the said decisions it cannot be said that the Labour Court has no power to interfere with the punishment, in case where it is justifiable in law. The Labour Court has valid reasons for coming to such a conclusion that the reinstatement of the workers should be made with backwages etc. Such conclusion is based on valid reasons. When there are valid reasons, this Court will not interfere unless it is brought to the notice that such reasons are not correct or bad in law or otherwise not sustainable. It is in this context the Award of the Labour Court cannot be said to be vitiated for any reason as adduced by the learned counsel for the petitioner, but on the other hand the Award is sustainable in law and consequently there is no warrant for interference with the impugned Award of the Labour Court.

32. In the result, the writ petition fails and is dismissed. However, there will be no order as to costs.