
(1988) 02 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No's. 2150 and 2151 of 1986

Ganesh Rajan Servai

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Others

RESPONDENT

Date of Decision : 01-02-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1994) 3 LLJ 877

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : K.K. Singhvi and R.J. Kochar, for the Appellant; F.D. Damania and S.K. Kapadia, instructed by Kanga and Co. for R-1, for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J.—The facts and the law points involved in these three petitions being the same, they are heard together and are being disposed off by this common judgment.

2. In these writ petitions under Article 226 of the Constitution of India, the petitioners - workmen question the legality, validity and propriety of the common order passed by the Industrial Tribunal (second respondent) on 24th June, 1986, in applications filed by the first respondent - Company, M/s. Bennett Coleman and Company Limited, Times of India Building, Dr. D.N. Road, Fort, Bombay - 400 001, u/s 33(2)(b) of the Industrial Disputes Act, 1947 (Hereinafter referred to as "the Act") granting approval of the Company's action of terminating the services of the petitioners.

3. The relevant facts are as under:-

The petitioners were in the permanent employment of the first respondent company. The petitioner in writ petition No. 2150 of 1986, Ganesh Rajan Servai, was working in the Engineering Department for three years whereas the

petitioners Vilas Pandurang Manjrekar and Bhagwat Bechan Mishra, in writ petitions No. 2151 of 1986 and 2152 of 1986 were working in the Rotary Department for seven years and four years respectively. They were the members of a union called Kamgar Utkarsha Sabha". According to them, the company was not well disposed to the said union, and, therefore, it adopted a vindictive and victimising attitude towards the members of the said Sabha. by an order dated 23rd February, 1983 the company terminated the services of the petitioners with effect from the same date for the reasons separately, recorded. However, since an industrial dispute was pending before the second respondent-Industrial Tribunal applications u/s 33(2)(b) of the Act were filed by the company before the said Tribunal for approval of their action of terminating the services of the petitioners. It was alleged against the petitioners in the statement of reasons for termination of their services that they had assaulted one Miranda. However, according to the petitioners, before terminating their services neither an opportunity of being heard was granted to them nor was any domestic enquiry held into the alleged charge of misconduct. The petitioners opposed the said applications raising various contentions in their written statements. Thereafter, parties adduced oral as well as documentary evidence before the Tribunal. On considering the evidence adduced before him and hearing the parties, the Tribunal passed the impugned order on 24th June, 1986 granting approval of the action of the company in terminating the services of the petitioners.

4. Being aggrieved, the petitioners filed the present writ petitions under Article 226 of the Constitution.

5. Mr. Singhvi, learned counsel appearing on behalf of the petitioners, raised three-fold contentions. Firstly, his contention is that the orders of termination were void ab initio and, therefore, the question of approving the said action of the company did not arise and as such the approval order passed by the Tribunal is illegal. Secondly, Mr. Singhvi contended that even while giving the approval to the action of termination of the services of the petitioners u/s 33(2)(b) of the Act, it was incumbent upon the Tribunal to go into the propriety of the orders of termination or the severity of punishment. And lastly, Mr. Singhvi contended that since no domestic enquiry was held by the company into the allegations levelled against the petitioners, the punishment imposed on the petitioners does not relate back to the date of the orders of termination and the petitioners would be entitled to full back wages up to the date of the impugned order passed by the Tribunal. Mr. Damania, learned counsel appearing on behalf of the company, controverted the submission made by Mr. Singhvi and urged that the termination orders passed by the company against the petitioners were perfectly in accordance with law and there was prima facie evidence before the Tribunal to grant approval of the action taken by the company as the necessary conditions to the proviso to Section 33(2)(b) of the Act were satisfied. Mr. Damania further submitted that the law points raised by Mr. Singhvi are no longer a matter of res integra and it is well settled law now that even when no domestic enquiry is held, the Industrial Tribunal has to receive evidence which was done in the present

matters and all that was necessary for the company was to prove the prima facie case of misconduct alleged against the petitioners and that being done, the Tribunal was duty-bound in law to grant approval of the action of termination of services of the petitioners. In the submission of Mr. Damania, therefore, the impugned order suffers from no error apparent on the face of the record nor can it be said that the same is perverse in any manner and this Court sitting in a writ jurisdiction under Article 226 will not be justified in interfering with the well reasoned and speaking order passed by the Tribunal.

6. In order to appreciate the rival contentions raised by the learned counsel on both sides, it may be worthwhile to state here the relevant provisions of Section 33(2)(b) of the Act as under:-

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. (1) During the pendency of any conciliation proceedings before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,

(a) in regard to any matter connected with dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman;

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, the workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer".

Thus, Section 33(2)(b) of the Act envisages that during the pendency of the conciliation proceedings before a Conciliation Officer or any proceeding before an arbitrator or a Labour Court or an Industrial Tribunal or a National Tribunal in

respect of an industrial dispute, the employer may, for any misconduct not connected with the dispute, discharge or punish a workman whether by dismissal or otherwise, provided that the workman has been paid wages for one month and an application has been made by the employer to the concerned authority before whom such proceeding is pending for approval of the action taken by the employer. It is, therefore, incumbent upon the concerned authority to consider, while entertaining an application u/s 33(2)(b) of the Act, whether certain prerequisites are satisfied before permission or approval is accorded to the employer for discharge or dismissal of any workman during the pendency of the proceeding before the said authority. In according or withholding approval to the dismissal or discharge of a workman, in such a case, the concerned authority has to consider whether a proper domestic enquiry, in accordance with the relevant standing orders and the principles of natural justice, has been held and whether there was legal evidence on the record to sustain a misconduct warranting the dismissal of the workman. Upon such considerations, the authority either accords or withholds the approval to the dismissal or discharge of the workman. In view of such an enquiry permissible u/s 33(2)(b) of the Act, all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out or not, if before dismissing an employee the employer has held a proper domestic enquiry and then proceeded to pass the order of dismissal or discharge. If prima facie case is proved, the authority has further to see whether the conditions prescribed under the proviso to Section 33(2)(b) of the Act are satisfied. The scope of the enquiry envisaged u/s 33(2)(b) of the Act becomes limited in its nature in this manner only when before proceeding to dismiss or discharge a workman a proper domestic enquiry has been held by the employer.

7. But what happens when no domestic enquiry is made before proceeding to discharge or dismiss a workman and an application for approval of the said action is made before the authority u/s 33(2)(b) of the Act by the employer ? This exactly had happened in the instant case where the employer proceeded to terminate the services of the petitioners without holding a domestic enquiry and made applications to get an approval of their action. That could not have been done in view of the fact that the petitioners could be dismissed or discharged only in accordance with the standing order applicable to them or in accordance with the terms of the contract, whether expressed or implied, between the parties. Mr. Damania urged that the service conditions of the employees of the first respondent company are governed by the certified standing orders and the employer in our case had terminated the services of the petitioners in accordance with standing Order 20 of the said certified standing orders. Mr. Damania pointed out that as per this standing order all that was required of the employer was to give reasons for the termination of the services of the petitioners, in writing and communicate the same to them and give them a month's notice in writing. Mr. Damania further pointed out that it is not in dispute that the reasons for the termination of services of the petitioners here were recorded in writing and

communicated to them and that in lieu of one month's notice the petitioners were also paid one month's notice pay and in substance therefore the requirements of standing Order 20 were complied with. Controverting this submission of Mr. Damania, Mr. Singhvi pointed out that standing Order 20 applies only when there is discharge or dismissal simpliciter and the course adopted by the employer here was wrong in the sense that the petitioners services were not terminated simpliciter but on account of misconduct alleged against them. In the submission of Mr. Singhvi, therefore, the petitioners were governed by standing Order 22 and not 20. I find substantial force in the submission of Mr. Singhvi because in this case the petitioners were sought to be discharged or dismissed by way of termination of their services not simpliciter but on account of the misconduct of assault on Miranda alleged against them. A perusal of standing Order 22 shows that a workman guilty of misconduct may be dismissed without notice but no order or dismissal shall be made except after holding an enquiry against him in respect of the alleged misconduct in the manner set out in Clause (4) of the said standing order. In other words, a workman against whom a misconduct is alleged cannot be dismissed or discharged unless a domestic enquiry is held against him in respect of the alleged misconduct for which a specific procedure is prescribed in Clause (4) of standing Order 22. It may also be pertinent to note here that under standing Order 22(6) while awarding the punishment, the gravity of the misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist have also be taken into account. To put it differently, even if the alleged misconduct is proved against the workman, under standing Order 22(6) the punishment may vary dependent upon the gravity of the misconduct, the previous record of the workman and any other extenuating or aggravating circumstances. To clarify the position further, it may be noted that despite the proof of the misconduct alleged against the workman, the punishment may not be one of discharge or dismissal and it may be any other punishment short of dismissal or discharge. This can be effectively done only if a proper domestic enquiry is held against the workman when a misconduct is alleged against him. In the instant case, admittedly the services of the petitioners were terminated on account of the alleged misconduct of assault committed on Miranda and, therefore, it was incumbent upon the company to have held a proper domestic enquiry into the allegations made against them and then after taking into consideration the gravity of the misconduct and the previous record, if any, of the workmen and any other extenuating or aggravating circumstances, a proper order inflicting punishment should have been passed. That being so, the various contentions raised by Mr. Singhvi assume great importance.

8. Dealing with the first contention of Mr. Singhvi, therefore, it is clear that the termination orders passed against the petitioners were in contravention of the certified standing orders governing the service conditions of the petitioners. In that case, the termination orders would be void ab initio , They do not exist in

the eyes of law. Such termination orders could not have been passed by the company without following the proper procedure laid down in standing Order 22. In other words, the termination orders in the present case were not non est. It was held by the Supreme Court in *Workmen of The Food Corporation of India Vs. Food Corporation of India*, that:

"No employer since the introduction of the I.D. Act, 1947, and contrary to its Certified Standing Orders as statutorily required to be drawn up under the Industrial Employment (Standing Orders) Act, 1946 can dispense with the service of any workman without complying with the law in force. Any termination of service contrary to the provisions of the Standing Orders and the provisions of the I.D. Act, 1947 would be void".

There would have been, therefore, nothing wrong if the Tribunal were to reject the approval applications of the company on this ground alone. However, law does not prevent the Tribunal from taking evidence on both sides and then decide the matter on merits in its entirety. But that has to be a full-scale inquiry by the Tribunal and not just the one of finding out prima facie case of misconduct.

9. That being so, the Tribunal here was advised to take evidence of both the parties and decide the approval applications. It accordingly recorded the evidence adduced by the parties and took on the record the documents. And after considering the oral as well as documentary evidence, he passed the impugned order granting approval to the action of termination of the services of the petitioners. The moot question is whether while granting such approval the Industrial Tribunal could go into the propriety of the orders of termination and/or severity of the punishment. As said earlier, the emphatic submission of Mr. Singhvi is that once having gone into the entire gamut of the matter it was incumbent upon the Tribunal to have gone into the propriety of the orders of termination and the severity of punishment. The submission of the learned counsel is that had there been a domestic enquiry held by the employer all that was required of the Tribunal was to find out whether on the evidence adduced by the employer at the domestic enquiry there was prima facie case of misconduct and whether the action taken by the employer was bona fide, not amounting to victimisation or unfair labour practice and whether the other ingredients of the proviso to Section 33(2)(b) of the Act were satisfied but since no domestic enquiry was held here and the Tribunal having received all the evidence adduced by the parties it was his duty to have gone into the entire merits of the matter and also find out whether the punishment inflicted on the petitioners was warranted in the facts and circumstances of the case. In support of his submissions, Mr. Singhvi relied upon a judgment of this Court in *Shantilal Khushaldas & Bros. Pvt. Ltd. v. Asstt. Labour Commissioner and Conciliation Officer (Central), Goa* and Ors. 1986 Lab. I.C. 732. In that case my learned brother C.F. Couto, J. held after taking into consideration the Supreme Court judgments and a judgment of a Division Bench of this Court in *Borosil Glass Works Ltd. v. M.G. Chitale & Richard M.D. Souza* (1974) 2 Lab. LJ 184 that

while considering an application of approval of an order of discharge or dismissal under the proviso to Section 33(2)(b) of the Act, the Industrial Tribunal has to see whether the punishing authority has, inter alia applied his mind not only to the allegations but also to the kind of punishment that can ultimately be meted out. Mr. Singhvi also brought to my notice a decision of the Supreme Court in *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, in which it was held:

"It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (See *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may, in this connection refer to and reference was also made to the decision of the Labour Appellate Tribunal in *Shri Ram Swarath Sinha v. Belsund Sugar Co. Ltd.* 1954 Lab. AC 697 . It was pointed out that the important effect of omission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prime facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases except *Phulbari Tea Estate Vs. Its Workmen*, were on applications u/s 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval u/s 33 or on a reference u/s 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. *Phulbari Tea Estate Vs. Its Workmen*, was on a reference u/s 10 and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper".

The Supreme Court in that case further held:

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime.

This course would mean delay and on the second occasion it will entitled the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the . disposal of industrial disputes".

Unfortunately, the Industrial Tribunal in our case was unmindful of this legal position. Although he observed in the impugned order that the company has made out a case for discharging the workmen from service, he did not apply his mind to the full merits of the case and did not deal with it on the basis of a full-scale inquiry. The impugned order, therefore, suffers from this error apparent on the face of the record which has to be corrected in the interest of justice. This court is duty-bound in law to correct this grave legal error made by the Tribunal.

10. In order to canvass that this is not the correct position in law and all that the Tribunal was required was to find out the proof of a prima facie case of misconduct as the Tribunal cannot go into the severity of punishment inflicted on the workman, Mr. Damania invited my attention to a number of decisions of the Supreme Court, this Court and other High Courts as under:

" Bharat Sugar Mills Ltd. Vs. Shri Jai Singh and Others, : Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, : The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, ; Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, ; The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others, ; The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co., ; Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, ; The Premier Automobiles Ltd. v. B.P. Talathi Industrial Tribunal and Anr. 1981 (42) FLR 154 ."

11. Thus in Bharat Sugar Mills Ltd. Vs. Shri Jai Singh and Others, certain workmen charged with the misconduct of go-slow were suspended pending enquiry. At the domestic enquiry held by the management, the concerned workmen were found guilty of go slow.

The domestic enquiry was held after a lone delay of nearly six months and the application for permission u/s 33 of the Industrial Disputes Act was made by the management after nearly fifteen months of the domestic enquiry. The management let in evidence before the Industrial Tribunal to prove the charges of go-slow against the concerned workmen. The Industrial Tribunal found that the domestic enquiry was not proper and that the charges of go-slow was

established against one worker only. It also found that the charge of mala fide and victimisation made against the management in seeking permission to dismiss the workmen was made out. Hence, he refused permission to dismiss the other concerned workmen except one. The Industrial Tribunal relied on the ground that the management decided to take action against the concerned workmen because of their union activities. The Supreme Court allowed the special leave preferred by the management in respect of some of the workmen. Mr. Damania invited my attention to the following observations made by the Supreme Court.

"It could not be contended that once it is found that the enquiry by the domestic tribunal has been defective, it is not open to the industrial tribunal before which an application u/s 33 is made to allow any evidence to be adduced before it in support of the charges against the concerned workmen. When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment, the tribunal has to satisfy itself that there is a prima facie case for such dismissal, where there has been a proper enquiry by the management itself, the tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prime facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the tribunal itself that the workman was guilty of the alleged misconduct. It would be neither just to the management nor indeed even fair to the workman himself that in such a case the industrial tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct".

The Supreme Court further observed :

"For a long time now it has been settled law that in the case of an adjudication of a dispute arising out of a dismissal of a workman by the management (as distinct from an application for permission to dismiss u/s 33), evidence can be adduced for the first time before the industrial tribunal. The important effect of the omission to hold an enquiry is merely this : that the tribunal would not have to

consider only whether there was a prime facie case but would decide for itself on the evidence adduced whether the charges have really been made out. The reasons for which it is proper for the tribunal to take evidence itself as regards the alleged misconduct when adjudicating upon a dispute arising out of an order of dismissal which has been made by the management are equally present in the case where the management makes an application for permission to dismiss without having held a proper enquiry".

I am afraid, this judgment of the Supreme Court is of no use to Mr. Damania because it does not lay down a proposition of law that when no domestic inquiry is held and when the Tribunal receives the evidence, it is only for a limited purpose of finding out a prima facie case as submitted by Mr. Damania. The authority, on the contrary, points out that it is the duty of the Tribunal to take evidence so as to satisfy itself about the guilt of the workman on merits when no domestic enquiry was held by the employer .

12. The next authority relied upon by Mr. Damania is in the case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, and invited my attention to para 60 of the judgment in which Their Lordships of the Supreme Court observed as under:

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it".

Once again, this principle of law enunciated by the Supreme Court does not held Mr. Damania because what the Supreme Court says here is that when the evidence is adduced before the Tribunal it has to give decision on merits. This is clear from the further observations in the same para 60 which read as under:-

"(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the

Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct".

The Supreme Court also made it clear that the above principles apply to the proceedings before the Tribunal, which have come before it either on a reference u/s 10 or by way of an application u/s 33 of the Act.

13. Mr. Damaniathen relied upon another Supreme Court judgment in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and drew my attention to paragraphs 33, 42 and 46 thereof to canvass his point that all that the Tribunal is required is to find out a prima facie case. In my opinion, that is not the law laid down by their Lordships of the Supreme Court in the said case as can be seen from the broad principles as under which their Lordships laid down in paragraph 27 of the judgment after examining various other decisions of the Supreme Court.

"(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective".

Even in paragraphs 33, 42 and 46 of the judgment, the Supreme Court has observed that if there has been no enquiry held by the employer or if the enquiry

held is defective it is open to the employer even now to adduce for the first time before the Tribunal justifying the order of discharge or dismissal. Citing the case of the Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, their Lordships observed that it was specifically contended before the Supreme Court by the workmen therein that when an employer had held no enquiry, as required by the standing orders, it was not open to him to adduce evidence before the Tribunal for the first time and justify the order of discharge. The said contention was rejected and it was held that if the enquiry was defective or no enquiry had been held as required by Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. Considering the scope of an enquiry u/s 33 of the Act, the Supreme Court observed in para 46 that though the Tribunal is exercising only a very limited jurisdiction under this Section nevertheless, it would have applied its mind before giving permission or approval. Therefore, this judgment is really on the point that the mere fact that no enquiry or defective enquiry has been held by the employer would not deprive the employer from adducing evidence before the Tribunal and in that case the question would be at large and the employer will have to prove not only the misconduct of the workmen but also justification for his dismissal or discharge.

14. The next decision relied upon by Mr. Damania is in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, a perusal of which shows that in case of no enquiry or defective enquiry the labour authority will have to assess the evidence adduced before it to find out justification for the dismissal or discharge, of the workmen which proposition of law in fact is not helpful to Mr. Damania. In para 9 of the said judgment it was held:

"In view of the limited nature and extent of the enquiry permissible u/s 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal ? Has an enquiry been held as provided by the Standing Orders ? Have the wages for the month been paid as required by the proviso? and, has an application been made as prescribed by the proviso ?"

There is no dispute about this proposition of law, if the domestic enquiry was held. And what is more important to note is the observations made by the Supreme Court in para 12 that :

"If, however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will

grant approval of the order of dismissal....."

15. Mr. Damania then emphatically relied upon a decision of the Supreme Court in the case of *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Others*, and invited my attention specifically to para 8 of the said judgment which reads as under:

"But even if the view were taken that the impugned order of termination of service of the respondent was punitive in character and could not have been passed save and except as a result of a disciplinary inquiry held under Clause (2) of Standing Order 21 read with Standing Order 23, the impugned order cannot be struck down as invalid on the ground of non-compliance with the requirement of these Standing Orders, since the appellant availed of the opportunity open to it before the Labour Court and adduced sufficient evidence justifying the action taken by the management. The appellant produced satisfactory evidence to show that the impugned order terminating the service of the respondent was justified and hence the impugned order must be sustained despite its having been passed without complying with the requirements of Clause (2) of Standing Order 21 read with Standing Order 23. We are fortified in this view by a catena of decisions of this Court where it has been consistently held that no distinction can be made between cases where the domestic enquiry is invalid or defective and those where no enquiry has in fact been held as required by the relevant Standing Orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it. (See *The Punjab National Bank Ltd. Vs. Its Workmen*, *Management of Ritz Theatre (P) Ltd. Vs. Its Workmen*, , *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, , *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , *State Bank of India Vs. R.K. Jain and Others*, , *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, ".

It is difficult to understand how these observations made in their Lordships of the Supreme Court would render any assistance to Mr. Damania in his contention that when no domestic enquiry is held by the employer he could adduce evidence before the Industrial Tribunal or Labour Court to prove only the prima facie case of misconduct alleged against the employee. As a matter of fact, the above observations made by the Supreme Court show that even in a case of punitive action in contravention of the standing orders, the employer would be entitled to adduce evidence before the Labour Court or the Industrial Tribunal and that proposition of law is not in dispute. The moot question is that at such an enquiry before the Labour Court or the Industrial Tribunal the employer cannot stop by proving a prima facie case of misconduct against the workmen but he has to further justify his action of discharge or dismissal of the workmen. In other words, besides proving the misconduct on the part of the employee, the employer has further to prove that in the facts and circumstances of the case, the punishment of the discharge or dismissal was justified.

16. In the case of *The Management of U.B. Dutt and Co. Vs. Workmen of U.B. Dutt and Co.*, which was relied upon by Mr. Damania, it was observed by the Supreme Court that it was too late in the day for an employer to raise a claim which amounts to a claim "to hire and fire" an employee as the employer pleases and thus completely negatives security of service which has been secured to industrial employees through industrial adjudication for over a long period of time. It was held therein that:

"In any case even if the enquiry was not held by the appellant (employer) and action was taken under Rule 18(a) it is now well-settled, in view of the decisions cited above, that the employer could defend the action under Rule 18(a) by leading evidence before the tribunal to show that there was in fact a misconduct and therefore the action taken under Rule 18(a) was bona fide and was not colourable exercise of the power under that rule".

17. Mr. Damania then posed at question as to what is the effect even if what the Company (the first respondent) did was wrong and no application u/s 33(2)(b) was made and submitted that even in such a situation the order of dismissal passed by the employer would not be inoperative so as to entitle the aggrieved workman to say that he continues to be in service and is entitled to receive wages from the employer. In support of his contention, Mr. Damania relied upon a decision of the Supreme Court in *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*. In my opinion, the decision cited by Mr. Damania is not relevant to the facts of the present case because in the said case the issue was that the contravention of Section 33 does not render the order of discharge or dismissal void and inoperative and that the only remedy available to the workman for challenging the order of discharge or dismissal is the one that was provided u/s 33-A of the Act, apart from the remedy u/s 10 of the Act and he cannot maintain an application u/s 33C(2) of the Act for the determination and payment of wages on the basis that he continues to be in service. It was held by the Supreme Court in that case that the workman can proceed u/s 33C(2) only after the Tribunal has adjudicated, on a complaint u/s 33-A or a reference u/s 10 of the Act, that the order of discharge or dismissal passed by the employer was not justified and has set aside the order and reinstate the workman.

18. Thereafter, Mr. Damania relied upon a decision by a Division Bench of this Court (B.N. Deshmukh, C.J. and Mrs. Manohar, J) in the *Raymond Woollen Mills Ltd. v. A.K. Thorat*, Industrial Tribunal 1980 (40) FLR 13 and submitted that the Tribunal cannot go into the adequacy of punishment. It is true that it was so held in that judgment by the Division Bench of this Court but it is important to note that that was in the facts and circumstances of the case where a regular departmental enquiry was held and it was observed that it is not the part of the Industrial Tribunal's job either to reassess the evidence or to consider the sufficiency or stringency of the sentence imposed and that the Tribunal's duty is to see the principles of natural justice are observed and a prima facie case was made out. If a regular departmental enquiry was held in our case, the

observations made by the Division Bench would have been of great assistance to Mr. Damania. But ours is a case where no domestic enquiry was held and, therefore, the observations made by the Division Bench are of no avail to Mr. Damania.

19. Mr. Damania then relied upon a judgment of a Single Judge of this Court (S.C. Pratap, J) in *The Premier Automobiles Ltd. v. B.P. Talathi Industrial Tribunal and Anr.* (1981) (42) FLR 154 in which it was held that finding in the proceedings u/s 33 of the Act is no bar to a decision in a reference u/s 10 of the Act and the bar of res judicata is not created. The same was the view taken by a Full Bench of the Calcutta High Court in *The General Electric Co. of India Ltd. and Ors. v. The Fifth Industrial Tribunal, West Bengal and Ors.* 1988 (1) CLR 80. In my view, both these judgments are not germane and relevant to the issues involved in the present case as it is not the case of the petitioners that the findings recorded in a proceeding u/s 33(2)(b) of the Act will operate as res judicata in a subsequent proceeding u/s 10 or Section 33-A of the Act.

20. In this view of the matter, I am not able to persuade myself to agree with the submission of Mr. Damania that in case of no domestic enquiry and when evidence is led before the Tribunal or the Labour Court all that the Tribunal or the Labour Court has to find out is whether a prima facie case of misconduct is proved against the workmen for the purpose of granting approval to an action of discharge or dismissal by the employer u/s 33(2)(b) of the Act. On the contrary, the settled law, as discussed above is that when no domestic enquiry is held and when evidence is adduced before the Industrial Tribunal or the Labour Court, the matter is at large before such an authority on the bases of a full-scale inquiry and the employer has not only to prove the misconduct alleged against the workmen but also to satisfy the authority that in the facts and circumstances of the case the infliction of a certain kind of punishment on the workmen was justified. The further settled law is that when an employer holds a domestic enquiry and takes an action of discharge or dismissal of a workman and seeks approval or permission of a Industrial Tribunal or Labour Court u/s 33(2)(b) of the Act, all that the authority has to find out is whether a proper domestic enquiry was held and that the action of the employer was not mala fide and that he had not indulged in an act of victimisation or unfair labour practice and if the conditions laid down in the proviso to Section 33(2)(b) of the Act are satisfied, the authority may approve of the action of discharge or dismissal of the workman or grant permission to do so.

21. This being the position in law, let us find out on merits whether the employer in this case adduced sufficient and satisfactory evidence before the Industrial Tribunal to prove the misconduct alleged against the petitioners and even if so proved whether in the facts and circumstances of the case, the action of the Company in terminating the services of the petitioners was justified.

22. The oral evidence adduced by the Company before the Industrial Tribunal to prove the charge of assault on Miranda levelled against the petitioners consists of

Arun Sakhri, Personnel Manager of the Company, Shivraman, Circulation Director of the Times of India Publication, Anil S. Pathak, Security Officer of the Company, K.S. Madame, Police Inspector of Azad Maidan Police Station and Jacob John, Assistant Superintendent in the Rotary Department of the Company. So long as evidence of Arun Sakhri is concerned, it is of formal nature of producing a report signed by Personnel Manager Lalchandani of the Company. He does not claim to be an eye-witness to the incident. M. Shivraman deposed that on the day of the incident he heard a lot of commotion when he saw one of the petitioners by name Ganesh Rajan slapping Miranda. He further deposed that Miranda was surrounded by other people also out of whom he could identify the other two petitioners viz. Manjrekar and Mishra and further stated that they were also trying to assault Miranda and Miranda was having a bleeding nose injury. Now, this evidence contradicts the evidence of Anil Pathak inasmuch as according to Pathak, Mishra and Manjrekar assaulted Miranda whereas according to Shivraman, Mishra and Manjrekar were trying to assault Miranda. But that apart, his evidence shows that there was a crowd of people and about 50 to 60 workmen were arrested out of those who were present. Anil Pathak also stated that about 60 to 80 workers from the mob were arrested by the police. That being so, it would be risky to conclude that the petitioners were the only persons responsible for causing bleeding nose injury to Miranda. It is no doubt true that both Shivraman and Pathak deposed that petitioner Ganesh Rajan slapped Miranda. But it is important to note that he was slapped near the ear and it is difficult to accept that by a slap near the ear a bleeding injury to the nose would be caused. Police Inspector Madame's evidence as to the identity of the petitioners was doubted by the Industrial Tribunal. All that Jacob John had seen was a big crowd in which Miranda was present with a bleeding nose injury at about 4.00 a.m. when he entered the New Rotary Hall and he heard a lot of commotion. He therefore, does not directly involve the petitioners for having assaulted Miranda. As against this evidence adduced by the Company, all the three petitioners examined themselves before the Tribunal. They categorically denied having assaulted Miranda. They deposed that at the relevant time and in the night in question Miranda was not on duty. In view of such a defence of the petitioners, it was the bounden duty of the Company to have examined Miranda before the Tribunal. Miranda would have been the best person to depose as to who actually committed an assault on him more particularly when he knew the three petitioners very well. It is not the case of the Company that Miranda was not available for giving evidence. It has not been explained why Miranda's evidence was withheld from the Tribunal. There is no reason why an adverse inference should not be drawn against the Company that had they examined Miranda before the Tribunal his evidence would have perhaps not established that Miranda was actually assaulted by the petitioners. It was held by a Division Bench of the Calcutta High Court in *Broja Ballav Ghose v. Union of India* (1986) Lab.I.C. 1166 that:

"It is now well-settled that in conducting disciplinary enquiries, the authorities

are required to comply with the principles of natural justice apart from me Rules. There was a fundamental breach of such a principle when real witnesses who could have either proved or disproved the charge were held back from the enquiry...."

Hence, it is difficult to conclude that the company proved the charge of misconduct of assault on Miranda by the petitioners.

1st February, 1988.

23. But assuming for the sake of argument that such a charge was proved against the petitioners, even then, in my judgment, this is not a fit case which warrants dismissal or discharge of the workmen. In this connection, it may be pointed out that the Tribunal while granting approval to the action of the Company in terminating the services of the petitioners took into consideration only one aspect of the matter that the charge levelled against the petitioners was proved. In my opinion, that alone was not sufficient to warrant dismissal or discharge of the workmen here. For the purpose of finding out as to how grave the charge of assault on Miranda was so as to take a drastic action of terminating the services of the petitioners, it was incumbent upon the Tribunal to have deeply gone into the nature of the assault on Miranda and the injury suffered by him. All that has come on the record is that Miranda was bleeding from his nose. There is nothing on the record to show the exact cause or reason to Miranda's nose bleeding. It may be on account of a cause or a reason other than the assault. In fact, as stated earlier, it was the case of the Company's witnesses that Miranda was slapped near the ear. In that case, it was unlikely that he would bleed from the nose. Therefore, the possibility of Miranda bleeding from his nose on account of a cause or a reason other than the actual assault cannot be ruled out. No medical evidence was brought on the record to establish the gravity of the injury received by Miranda and the cause for nose bleeding. Except the scanty evidence that Miranda was slapped on the ear by one of the petitioners and two tried to assault him, there is nothing on the record to show the kind and extent of violence in which the petitioners had indulged along with other 60 to 80 workman. Such allegations of assault can be easily made. Therefore, I do not think that this is a fit case which warranted a drastic punishment of removal of the workmen from service. Discharge or dismissal of a workman from employment is a very drastic punishment that can be inflicted on a workman for which there should be very strong and sufficient and satisfactory evidence of misconduct against the workmen. But here is a case where there appears to be some kind of mob violence and on a bold allegation that one of the petitioners slapped Miranda and the other two tried to assault him would not justify an action of discharge or dismissal of the petitioners. The petitioners could have been visited with some kind of punishment much milder than the one of discharge or dismissal even if the misconduct that the alleged against them was proved. It is not always that once a misconduct is proved, a workman has to be dismissed or discharged. There are various types of punishments prescribed

under the Standing Orders and any one of the milder punishment other than discharge or dismissal would have served the ends of justice. And it is important to note that as per standing Order 22(6) while awarding punishment the management has to take into consideration the gravity of the misconduct the previous record, if any of the workman and any other extenuating or aggravating circumstances that may exist. As stated above the gravity of the misconduct was never looked into by the Tribunal while approving the action of the Company of terminating the services of the petitioners. It is also not the case of the company that the previous record of the petitioners and any other extenuating or aggravating circumstances were taken into consideration by them while inflicting punishment on the petitioners. That being so, there was total non-application of mind not only on the part of the first respondent employer but also on the part of the second respondent- Industrial Tribunal as regards the infliction of punishment on the petitioners. In these facts and circumstances, I am more than convinced that the punishment inflicted on the petitioners of terminating their services was not called for and the Company miserably failed in justifying its action of terminating the services of the petitioners.

24. Before parting with this discussion, let me deal with two Supreme Court judgments on which Mr. Damania relied with a view to canvass his submission that jurisdiction of the High Court under Article 226 and/or 227 of the Constitution of India to interfere with an order like the one on hand is very much limited. Mr. Damania submitted that in the facts and circumstances of this case, only one view is possible that on account of the violence in which the present petitioners indulged, they deserve no other punishment but one of discharge or dismissal but even if two views are possible, this Court should not interfere with the well reasoned order passed by the Tribunal. The judgments cited by Mr. Damania are first in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, in which it was laid down by the Supreme Court as under:

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited " to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision".

The second ruling of the Supreme Court on which Mr. Damania relied is in the case of Jagdish Prasad Vs. Smt. Angoori Devi, in which it was held::

"The jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a court of appeal. That necessarily means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of

certiorari, but not an error of fact, however, grave it may appear to be",

There is absolutely no quarrel about the propositions of law enunciated by their Lordships of the Supreme Court. But the point here is that in the facts and circumstances of the case, the only possible view is that regard being had to be the nature of the misconduct alleged to have been committed by the petitioners, they could not have been visited with a drastic punishment of economic death as and by way of discharge or dismissal from service. In my judgment, the Industrial Tribunal gravely erred in law in exercising his powers of granting approval to the action of the employer here of terminating the services of the petitioners. If the Industrial Tribunal were to apply the tests as has been pointed out above in the foregoing paragraphs, he would have perhaps not granted approval to the action of the company of terminating the services of the workmen. It is important to bear in mind that in construing the provisions of a welfare legislation like the one under reference, Courts should adopt beneficent rule of construction. As far as reasonably possible, construction furthering the policy and object of the Act and one that is more beneficial to the employees has to be preferred. The Act which intended to improve and safeguard the service conditions of employees should be liberally interpreted bearing in mind the mandatory sanction of the Constitution of India of doing social justice. Therefore, although I am quite conscious of the legal position that while exercising jurisdiction under Article 226 and/or 227 of the Constitution, this Court does not exercise the power of an Appellate Court but when it is brought to me notice of this Court that in interpreting and appreciating the evidence on record, the lower Court or the Tribunal forgot the principles of benevolent construction especially in a social welfare legislation like the one with which we are concerned, nothing prevents this Court from interfering with the orders like the one under scrutiny now. Hence, in the peculiar facts and circumstances of this case, the two Supreme Court judgments cited by Mr. Damania are irrelevant.

25. And the last contention of Mr. Singhvi is that the punishment imposed on the petitioners does not relate back to the date of the order of termination of their services but the workmen are entitled to the full back wages upto the date of the order passed by the Tribunal as this was a case of no domestic enquiry held by the employer. The discussion on this aspect of the matter will now become absolutely academic as I have held that the approval granted by the Industrial Tribunal to the action of the Company in terminating the services of the petitioners is bad in law and deserves to be quashed and set aside. However, as submission are made at the Bar on this legal aspect of the matter, I feel it necessary to deal with the same and dispose of the contention raised by the learned counsel on both sides. Thus, in support of his contention Mr. Singhvi relied upon a Supreme Court ruling in the case of a Sasa Musa Sugar Works (P) Ltd. Vs. Shobrati Khan and Others, in which it was held:

"But as the management held no enquiry after suspending the workmen and proceedings u/s 33 were practically converted into the enquiry which normally

the management should have held before applying to the industrial tribunal, the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings u/s 33 (see the decision of this Court in the The Management of Ranipur Colliery Vs. Bhuban Singh and Others, .

Mr. Singhvi also relied upon another decision of the Supreme Court in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, in this connection and pointed out paragraphs 12 and 13 from that judgment which read as under:

"12. Counsel for the appellant also relied on the decision of this Court in Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan (supra) out that case is clearly distinguishable. As pointed out by this Court in P.H. Kalyani's case, Sasa Musa was a case where an application had been made u/s 33(1) of the Industrial Disputes Act for permission to dismiss the employees and such permission was asked for, though no inquiry whatsoever was held by the employer and no decision was taken that the employees be dismissed. The case for dismissal of the employees was made out for the first time in the proceedings u/s 33(1) and it was for that reason that it was held that the employees were entitled to back wages until the decision of the application filed u/s 33. Commenting on the decision in Sasa Musa, this Court observed in P.H. Kalyani's case that the matter would have been different if in Sasa Musa, an inquiry had been held, the employer had come to the conclusion that the dismissal was the proper punishment and had then applied u/s 33(1) for permission to dismiss the employees.

"In those circumstances the permission would have related back to the date when the employer came to the conclusion after an inquiry that dismissal was the proper punishment and had applied for removal of the ban by an application u/s 33(1)".

"13. The second contention must also therefore fail. We would, however, like to add that the decision in P.H. Kalyani's case is not to be construed as a charter for employers to dismiss employees after the pretence of an inquiry. The inquiry in the instant case does not suffer from defects so serious or fundamental as to make it non est. On an appropriate occasion, it may become necessary to carve an exception to the ratio of Kalyani's case so as to excluded from its operation at least that class of cases in which under the facade of a domestic inquiry, the employer passes an order gravely detrimental to the employee's interest like the order of dismissal. An inquiry blatantly and consciously violating principles of natural justice may well be equated with the total absence of an inquiry so as to exclude the application of the "relation back" doctrine".

And the last case of the Supreme Court on which Mr. Singhvi relied in order to substantiate his argument is in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, wherein it was held in paragraphs 149, 150 and 151 as under:

"149. We are mindful of the submission of Sri Tarkunde, urged in the connected appeal by the Sabha, that where no enquiry has preceded a punitive discharge and the Tribunal, for the first time, upholds the punishment this Court has in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, , taken the view that full wages must be paid until the date of the award. There cannot be any relation back of the date of dismissal to when the management passed the void order".

"150. Kalyani was cited to support the view of relation back of the award to the date of the employer's termination orders. We do not agree that the ratio of Kalyani corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore, relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shall of the management's order, pre-dating of the nativity does not arise. The reference to Sasa Musa in Kalyani enlightens this position. The latter case of D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Ors. (supra) specifically refers to Kalyani's case and Sasa Musa's case and holds that where the management discharges a workman by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a Tribunal which is granted, cannot be obfuscated".

"151. We agree that the law stated in D.C. Roy (supra) is correct but now that the termination orders are being set aside the problem does not present itself directly".

26. In order to give a fitting reply to the submissions of Mr. Singhvi on this aspect of the matter, Mr. Damania drew my attention to a Supreme Court judgment in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, and relied upon para 12 of the judgment which reads as under:

"12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings u/s 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal, is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. Vs. Ram Prabesh Singh and Others, , Titaghur Paper Mills Co. Ltd. v. Ram Nakesh Kumar (1961) I LLJ 511 : (1960) 19 FJR 15 , Hind Construction and Engineering Co.

Ltd. Vs. Their Workmen, , The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and Management of Eastern Electric and Trading Co. Vs. Baldev Lal, that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or "whether it is excessive or too severe yet, an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him".

I am afraid, the above observations made by their Lordships of the Supreme Court are of no avail to Mr. Damania as they were made in the facts and circumstances of that case in which the dismissal order was passed against the workmen after holding a detailed domestic inquiry in accordance with the Standing Orders governing the service conditions of the workmen. Therefore, that case is distinguishable on the facts and circumstances of the case. This being the clear position in law, the only conclusion that can be drawn is the one in agreement with the submission made by Mr. Singhvi that in case of no domestic enquiry the order of punishment does not relate back to its original date but the workmen would be entitled to full back wages upto the date of the order made by the Tribunal approving the action of the management of terminating the services of the workmen.

27. In this view of the matter, the petitions succeed and the same are allowed. The impugned common order passed by the second respondent Tribunal in Application (IT) Nos. 24, 26 and 27 of 1983 in Reference (IT) No. 19 of 1978 on 24th June, 1986, granted approval of the first respondent - Company's action of terminating the services of the petitioners is quashed and set aside. Rule in each of the petitions is accordingly made absolute with costs.