
(2023) 10 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 194, 195, 202, 203, 204, 205, 206, 207, 208, 209, 210, 212, 213, 218, 220, 1081, 998 Of 2023

Godrej and Boyce Mfg. Co. Ltd

APPELLANT

Vs

Sanjay Gangaram Dagade And Others

RESPONDENT

Date of Decision : 06-10-2023

Acts Referred:

Industrial Employment Standing Order Act, 1946 — Section 10A
Industrial Disputes Act, 1947 — Section 10, 10(4), 33(3), 33A
Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 28, 30(2), 59
Industrial Employment Standing Orders Act, 1946 — Section 10A

Citation : (2023) 10 BOM CK 0003

Hon'ble Judges : N.J.Jamadar, J

Bench : Single Bench

Advocate : J.P.Cama, Varun Joshi, Chetan Alai, Rama Soman, Chetan Alai, Nitin A. Kulkarni

Final Decision : Partly Allowed

Judgement

N.J.Jamadar, J

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. Since common questions crop up for consideration in all these Petitions, arising out of identical facts, these Petitions were heard together and are decided by a common judgment. Writ Petition No.202 of 2023 is considered as the lead Petition and the facts in the said Petition are noted for the purpose of determination.

3. Background facts can be stated in brief as under :

3.1 The Petitioner is a company incorporated under the Companies Act, 1956. The Petitioner is engaged, inter alia, in the manufacturing of motors for home

appliances and general purpose specialized motors. The Petitioner runs a factory at Shindewadi, Shirval. It employs about 172 permanent workmen; out of which 168 are in the skilled category.

3.2 The Respondents in each of the Petitions were the employees of the Petitioner. Lawkim Kamgar Sangh, a recognized union, was functioning in the establishment of the Petitioner. In the month of June 2017, the Respondents-workmen allegedly joined another Union – Engineering Kamgar Sangh. It seems, dispute arose over the right to represent the workmen employed in the Petitioner's establishment between the recognized Union and Engineering Kamgar Sangh, affiliated to Bhartiya Mazdoor Sangh.

3.3 A Complaint (ULP) No.24 of 2017 was filed by the Engineering Kamgar Sangh to restrain the Petitioner from deducting membership subscription and remitting the same to Lawkim Kamgar Sangh. Alleging that the Respondent and other workmen had resorted to illegal acts of willful and deliberate go-slow and obstructed the very ingress and egress of men, machinery and material as well as the general public at large and, otherwise, created reign of terror amongst the employees, the Petitioner preferred Complaint (ULP) No.79 of 2019 of unfair labour practices under Items 1, 2(a), 2(b), 5 and 6 of Schedule III of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971).

3.4 The Union, in turn, alleged that 58 workmen were not allowed to join the duties and filed Complaint (ULP) No.93 of 2019. Pursuant to the consent terms arrived at in the said Complaint, those 58 workers were allowed to join the duties, on 3 August 2019.

3.5 The Petitioner alleged in spite of consent terms, individual declaration, the Respondents and other workmen concerned continued to indulge in illegal acts of willful and deliberate go-slow and low output and were also found missing from the work-place over a period of time. The Petitioner was, thus, constrained to issue notice on 20 February 2020 calling upon the Respondents to show cause. It was alleged that the Respondents committed breach of the consent terms in not giving required output / productivity, not being found at the work place and also being found idling / wasting time during the working hours. The Respondents were put to notice that the management contemplated to take strict disciplinary action.

3.6 A reply was issued to the show cause notice, on 1 March 2020. As the reply was not found satisfactory, a chargesheet was served on the Respondents, on 21 August 2020. It was contended that the imputations against the Respondents detailed in the chargesheet amount to acts of misconduct under the Model Standing Order No.24(a), (e), (h) and (l), in addition to the contempt of Court. Alleging that the Respondents did not give satisfactory reply to the chargesheet within the extended period and continued to indulge in the misconduct, the Petitioner decided to dispense with domestic inquiry and, thus, terminated the

services of the Respondents vide dismissal order dated 20 November 2020.

3.7 The Respondents raised an industrial dispute. As the conciliation failed, the appropriate government referred the said industrial dispute for adjudication to the Labour Court on 21 October 2021.

3.8 The Respondents filed statements of claim. An application for interim relief was also filed.

3.9 By an order dated 28 April 2022, the learned Presiding Officer, Labour Court, Satara was persuaded to allow the interim application and direct the Petitioner – first party to allow the Respondents – second party, to temporarily join their duties till the final disposal of the main reference and to pay wages from the date the second party resumed work.

3.10 Being aggrieved, the Petitioner approached this Court in Writ Petition No.7482 of 2022 and connected matters. By an order dated 29 June 2022, this Court allowed the Petitions by setting aside the interim order passed by the Labour Court as the said interim relief amounted to grant of final relief. However, the Respondents-workmen were granted liberty to move the Labour Court seeking interim relief other than that of reinstatement in service.

3.11 Armed with the aforesaid liberty, the Respondents-workmen filed second application for interim relief seeking directions to the Petitioner – employer to pay wages during the pendency of the Reference, month to month, till the disposal of the Reference.

3.12 The Petitioner resisted the application.

3.13 By the impugned order dated 9 November 2022, the learned Presiding Officer, Labour Court, allowed the application and directed the Petitioner to deposit the subsistence allowance @ 50% of the monthly gross wages of the Respondents-workmen from the date of dismissal of the workmen till the decision of the Reference. The Respondents-workmen were also granted liberty to withdraw the amount of subsistence allowance to be deposited by the Petitioner-employer. The learned Presiding Officer was of the view that the Respondents-workmen were dismissed without holding domestic inquiry, in violation of the Industrial Employment (Standing Orders) Act, 1946 and the exercise of option of justifying the dismissal order by establishing the misconduct before the Labour Court gave rise to a deemed relationship of employer-employee and, thus, subsistence allowance can be paid on the analogy of Section 10A of the Act, 1946.

3.14 Being further aggrieved, the Petitioner has again approached this Court.

When the Writ Petitions were listed before this Court on 10 January 2023, this Court was persuaded to direct that the order to pay subsistence allowance be kept in abeyance.

4. In the backdrop of the aforesaid facts and the orders passed by this Court and

the Labour Court in the industrial References, consequent upon the termination of the services of the Respondents, I have heard Mr. J.P.Cama, learned Senior Advocate for the Petitioner, and Mr. Nitin A. Kulkarni, learned Counsel for the Respondents-Workmen, at some length. With the assistance of the learned Counsel for the parties, I have also perused the pleadings, documents on record and the impugned order.

5. Mr. Cama, the learned Senior Advocate for the Petitioner submitted that the Presiding Officer, Labour Court committed grave error in law in granting interim relief in the absence of any authorization to grant interim relief under the governing statute. Amplifying the submission, Mr. Cama would urge that the wages directed to be paid to the Respondents-workmen, disguised as subsistence allowance, are nothing but wages in lieu of reinstatement, which the Court cannot grant till the dismissal holds the field. Mr. Cama would further urge that the Labour Court had proceeded on an incorrect premise that since no disciplinary inquiry was held against the Respondents-workmen, the workmen were entitled to the subsistence allowance. The Labour Court lost sight of the fact that the dismissal brought about by the defective inquiry and dismissal sans any inquiry, stand on one and the same footing. The Presiding Officer, Labour Court was, thus, swayed by an irrelevant consideration that there was no domestic inquiry preceding the termination. Even in a case of no inquiry, the employer is entitled in law to justify the dismissal order for the first time before the industrial adjudicator, urged Mr. Cama.

6. Mr. Cama forcefully submitted that the legal position that in a reference under Industrial Disputes Act, the Industrial adjudicator is not empowered to grant interim relief is well neigh settled. To bolster up these submissions, Mr. Cama placed a very strong reliance on the Division Bench Judgment of this Court in the case of MRF Limited, Goa V/s. Goa MRF Employees Union, Goa and Anr. 2003(4) L.L.N. 1182 and the decision of the Supreme Court in the case of Goa MRF Employees Union V/s. MRF Limited (2014) 14 SCC 483.

7. Mr. Cama would urge that the learned Presiding Officer, Labour Court, was equally in error in resorting to the analogy contained in Section 10A of the Industrial Employment Standing Order Act, 1946, and hold that there was deemed employer-employee relationship.

8. Mr. Cama would further urge that the grant of wages disguised as subsistence allowance where the employee has been terminated on disciplinary ground was equally erroneous. Reliance was placed on a decision of the learned Single Judge of this Court in the case of Mumbai Cricket Association V/s. Pramod G. Shinde 2011(5) Mh.L.J.36. wherein the said course was disapproved by this Court.

9. Mr. Cama would urge, payment of subsistence allowance, at the rate of 50% of the wages, as ordered by the Labour Court, would aggregate to huge amount. It would imply that the employer despite having dismissed the employees on disciplinary ground would be required to pay wages without any productive work

at all. The Labour Court did not advert to the aspect of the balance of convenience and irreparable loss. Since the Labour Court also allowed Respondents-workmen to withdraw the amount to be deposited by the Petitioner-employer, the question of recovery of the amount would arise in the event the Respondents-workmen do not succeed. In that situation, the Petitioner – employer would be left in the lurch. To buttress this submission, reliance was placed on a decision of the learned Single Judge of this Court in the case of Zilla Parishad, Jalgaon V/s. Maya Tukaram Sonawane 2016(2) Mh.L.J. 66.

10. Per contra, Mr. Kulkarni, the learned Counsel for the Respondents-workmen, stoutly submitted that none of the contentions raised on behalf of the Petitioner-employer merit consideration. Mr. Kulkarni joined the issue of absence of power to grant interim relief by forcefully canvassing a submission that the decision of this Court in MRF Ltd., Goa (supra) turned on the peculiar facts wherein the question of grant of interim relief in the nature of injunction arose in a complaint under Section 33-A of the Industrial Disputes Act.

11. Mr. Kulkarni would urge that the decision of the Supreme Court in the case of Goa MRF Employees Union (supra), makes it abundantly clear that the aspect of grant of interim relief by the Industrial adjudicator in a proceeding under ID Act, 1947 is covered by a number of judgments including the decision of the Supreme Court in the case of Management of Hotel Imperial, and Ors. V/s. Hotel Workers' Union AIR 1959 SC 1342 which enunciated that the industrial tribunal has the power to grant interim relief which does not partake the character of final relief.

12. Mr. Kulkarni submitted with tenacity that the broad submission that since the employer has a right to justify the dismissal before the Labour Court, even where no disciplinary inquiry has been conducted, and, therefore, the fact that a disciplinary inquiry was not held is of no consequence, cannot be accepted. Placing reliance on the decision of the Supreme Court in the case of the Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. V/s. The Management and Ors., (1973) 1 SCC 813 Mr. Kulkarni would urge that the failure to hold disciplinary inquiry cannot be pressed into service as a virtue in itself. Where the employer proceeds to terminate the services of the employee by an order, which is stigmatic in nature, without holding a domestic inquiry, the industrial adjudicator would be within his rights in granting appropriate interim reliefs.

13. Mr. Kulkarni would urge that the grant of subsistence allowance where the workman has been dismissed without holding appropriate disciplinary inquiry stands on a different footing. Placing reliance on the decision of the Supreme Court in the case of Fakirbhai Fulabhai Solanki V/s. Presiding Officer and Anr., (1986) 3 SCC 131 Mr. Kulkarni would urge that the approach of the Labour Court in directing the employer to pay 50% wages by way of subsistence allowance cannot be faulted at, lest the employees would be rendered in a hapless position of defending the order of termination without any means to sustain themselves.

14. Mr. Kulkarni made an earnest endeavour to draw distinction between the cases wherein the order of termination is passed post disciplinary inquiry and the cases where the dismissal is not preceded by any domestic inquiry. Lastly, Mr. Kulkarni would submit, as the impugned orders are passed as and by way of an interim relief and no by stretch of imagination the order of deposit of 50% of wages can be said to be perverse, no case for interference in exercise of the writ jurisdiction is made out.

15. I have given anxious consideration to the rival submissions canvassed across the bar. In the backdrop of the nature of the controversy which crops up for consideration, I deem it appropriate to explore an answer in two parts. First, the legality of the impugned orders in the light of the challenge that in an industrial reference, the industrial adjudicator has no jurisdiction to grant interim relief. Second, whether in the facts and circumstances of the case, the Labour Court was justified in passing the impugned orders of deposit of 50% of the wages.

16. On the first question, the submission of Mr. Cama was that unlike the provisions contained in Section 30(2) of the MRTP and PULP Act, 1971, there is no provision under the Industrial Disputes Act, 1947 which empowers the Court/Tribunal to grant interim relief. In substance, the remit of the jurisdiction of the Court/Tribunal is to decide and answer the Reference. In the absence of the specific provision, the Court/Tribunal, being the creature of the statute, could not have granted interim relief.

17. Mr. Cama would urge that the controversy is no longer res-integra. The decision of the Division Bench of this Court in the case of MRF Limited, Goa (supra), according to Mr. Cama, sets the controversy at rest. In the said case, the question before the Division Bench was whether in a complaint under Section 33A of the Act, 1947 alleging that the employer was changing the service conditions of the workmen, the Tribunal could have, by way of interim injunction, restrained the employer from making any changes in the service conditions. The Tribunal had held that it had no power to grant interim relief. The learned Single Judge of this Court, however, set aside the order of the Tribunal, holding that the Tribunal had all the powers to deal with the complaint as it would have while dealing with the Reference under Section 10 of the Act.

18. Disagreeing with the learned Single Judge, the Division Bench, after adverting to the decisions of the Supreme Court in the cases of Management of Hotel Imperial, New Delhi V/s. Hotel Workers Union (supra), Delhi Cloth and General Mills Company Ltd. V/s. Sri Rameshwar Dayal and Anr. AIR 1961 SC 689 and the Division Bench judgment of this Court in the case of Bharat Petroleum Corporation Ltd. V/s. Petroleum Employees Union, Mumbai 2001(2) L.L.N. 240 , enunciated that there was nothing in the ID Act, 1947 or the Rules either express or implied which could be read that the Tribunal has a right to grant interim relief in the form of injunction. The expression 'incidental' appearing in Section 10(4) of the Act, 1947, would not include an interim relief by way of preventive injunction. It was further held that there was no machinery to enforce the

interim order passed by the Tribunal/Court either by execution or otherwise.

19. At this stage itself, it may be advantageous to note that when the said decision was carried in appeal before the Supreme Court, a two Judge Bench of the Supreme Court referred the following question for consideration by a larger Bench :

"Does the Industrial Tribunal have the power to grant reliefs including in the nature of injunction in a complaint filed before it under Section 33-A of the Act ?

20. A three Judge Bench of the Supreme Court in the case of Goa MRF Employees Union (supra), having regard to the facts of the case and the statements of the parties, did not consider it necessary to answer the question. The Supreme Court, however, clarified that there were already decisions of the Supreme Court which govern the determination of the question of grant of interim relief by the Industrial Tribunal under the Act, 1947. The observations of the Supreme Court in paragraph 10 read thus :

"10. Having regard to the above statement of the parties and the facts of the case, we are satisfied that it is not necessary to answer the question formulated in the order dated 8-3-2006. The decision of this Court in Hotel Imperial (supra) is holding the field for the last 53 years. Then there are decisions of this Court in Delhi Cloth and General Mills Co. (supra), Grindlays Bank Ltd. V/s. Central Govt. Industrial Tribunal 1980 Supp SCC 420 , Lokmat Newspapers (P) Ltd. V/s. Shankarprasad (1999) 6 SCC 275 which also have some bearing on the aspect of grant of interim reliefs by the Industrial Tribunals under the Act. Obviously, when such question arises in a given case, the same shall be decided by the Industrial Tribunal concerned appropriately having regard to the scheme of the Act and the above decisions." (emphasis supplied)

21. The aforesaid observations indicate that the Supreme Court has made it clear that there are decisions which govern the field, especially, the decision in the case of Hotel Imperial (Supra), which has been operating in the field for more than 50 years.

22. In the case of Hotel Imperial (supra), a three Judge Bench of the Supreme Court had considered the question as to whether the Industrial Tribunal was competent to grant interim relief without making an interim award which should have been published. In the said case, the Supreme Court repelled the submission that in a Reference under Section 10, the Tribunal was required to confine its adjudication to those points and could not adjudicate upon the question of interim relief. The Supreme Court in terms held that in view of the words 'incidental thereto' appearing in Section 10(4), if the question of reinstatement and/or compensation is referred to Tribunal for adjudication, the question of granting interim relief till the decision of the Tribunal with respect to the same matter would be a matter incidental thereto under Section 10(4) and need not be specifically referred in terms to the Tribunal.

23. It must be noted that the Supreme Court further clarified that ordinarily interim relief should not be the whole relief that the workman would get if they succeed finally.

24. Mr. Cama would urge that the judgment in Hotel Imperial (supra), was also considered by the Division Bench in the case of MRF Limited, Goa (supra), and, thereafter, it was held that the Industrial Tribunal has no power to grant interim relief.

25. I am afraid to accede to this submission unreservedly. Undoubtedly, the Supreme Court in Goa MRF Employees Union (supra), did not consider it necessary to answer the question of grant of interim relief in a complaint under Section 33-A of the Act. However, the Supreme Court in terms clarified that there were decisions which govern exercise of the discretion to grant interim relief and specifically referred to the binding efficacy of the Hotel Imperial (supra). Therefore, properly considered, the decision in the case of Hotel Imperial (supra), can be said to have been reaffirmed by the Supreme Court in the case of Goa MRF Employees Union (supra).

26. It may be advantageous to note the question that arose before the Supreme Court and the decision thereon. In the case of Hotel Imperial (supra), a three Judge Bench of the Supreme Court considered, inter alia, the following question :

"Is an Industrial Tribunal competent to grant interim relief without making an interim award which should have been published ?

27. A submission was made before the Supreme Court that upon reference under Section 10 of the ID Act, 1947, the Tribunal had to confine itself to adjudicate on the point referred and that as the question of interim relief was not referred to it, the Tribunal could not have granted the interim relief. The Supreme Court ruled in clear and explicit terms that there was no force in the said contention. The observations of the Supreme Court in paragraph 21 are material and, hence, extracted below :

"21. After a dispute is referred to the tribunal under S. 10 of the Act, it is enjoined on it by S.15 to bold its pro- ceeding expeditiously and on the conclusion thereof submit its award to the appropriate government. An " award " is defined in S. 2(b) of the Act as meaning " an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto." Where an order referring an industrial dispute has been made specifying the points of dispute for adjudication, the tribunal has to confine its adjudication to those points and matters incidental thereto; (s. 10(4)). It is urged on behalf of the appellants that the tribunal in these cases had to confine itself to adjudicating on the points referred and that as the question of interim relief was not referred to it, it could not adjudicate upon that. We are of opinion that there is no force in this argument, in view of the words " incidental thereto " appearing in S. 10(4). There can be no doubt that if, for example, question of reinstatement and/or compensation is referred to a tribunal for adjudication, the

question of granting interim relief till the decision of the tribunal with respect to the same matter would be a matter incidental thereto under S. 10(4) and need not be specifically referred in terms to the tribunal. Thus interim relief where it is admissible can be granted as a matter incidental to the main question referred to the tribunal without being itself referred in express terms.” (emphasis supplied)

28. The Supreme Court has, thus, held in clear terms that where the question of reinstatement and/or compensation is referred to Tribunal for adjudication, the question of granting interim relief till the decision of the Tribunal with respect to the same matter, would be a matter incidental thereto under Section 10(4), and, thus, interim relief where it is admissible can be granted as a matter incidental to the main question referred to the Tribunal. As noted above, the Supreme Court has further clarified the aspect of grant of interim relief by enunciating that the interim relief should not be the whole relief that the workmen would get if they succeeded finally.

29. In view of the aforesaid exposition of law, in no uncertain terms, and the approval thereof in the case of Goa MRF Employees Union (supra), by another three Judge Bench with the observations that, the precedent has been holding the field for more than 53 years, the broad submission of Mr. Cama that the Industrial Court has no power to grant interim relief of whatsoever nature in an industrial reference cannot be acceded to. Indisputably, the interim relief which the Industrial Court grants cannot partake the character of final relief to which a party would be entitled to upon adjudication of the reference.

30. This principle was reiterated by the another three Judge Bench of the Supreme Court in the case of the Delhi Cloth and General Mills Co. Ltd. (supra).

After referring to the pronouncement in the case of Hotel Imperial (supra), it was held that the order of the Tribunal in the said case allowing reinstatement as an interim relief or in lieu thereof payment of full wages, was manifestly erroneous, and, thus, required to be set aside. It is of importance to note that in the case of the Delhi Cloth and General Mills Co. Ltd. (supra), the Supreme Court did not rule that no power was vested in the Industrial Tribunal to grant interim relief. The decision turned on the nature of the interim relief (which was granted by the Industrial Tribunal) and not on the power of the Tribunal to grant the interim relief.

31. In the case of Lokmat Newspapers Pvt. Ltd. V/s. Shankarprasad (1999) 6 SCC 275 which arose out of a complaint under Section 28 of the MRTP and PULP Act, 1971, the Supreme Court after referring to Section 59 of the Act, 1971, which bars the proceedings under the Industrial Disputes Act, 1947 and Bombay Industrial Relations Act, 1946, if any proceedings in respect of any matter falling within the purview of the said Act is instituted under the said Act and vice-versa, observed that the court to which the industrial reference is made under the Industrial Disputes Act, 1947 has ample jurisdiction to pass interim orders. Paragraph 49 reads as under :

"49. It is because of the aforesaid provision of Section 59 of the Maharashtra Act that the referred dispute under Section 10 of the ID Act got disposed of. However, the fact remains that on the failure report submitted by the Conciliation Officer the appropriate government had thought it fit to prima facie hold that the dispute was a real one which required adjudication by the competent court under the ID Act. It is also necessary to note that in such references received by the competent court under the ID Act in appropriate cases, the court to which such references are made has ample jurisdiction to pass interim orders and if the court had found that the impugned retrenchment order was required to be stayed even though it had been passed after conciliation proceedings were over and when there was no prohibitory order from any authority such retrenchment order could have been stayed. Further implementation of the impugned change could have been stayed vide Hotel Imperial V/s. Hotel Workers' Union (supra) and Hind Cycles Ltd. V/s. Workmen (1973) 3 SCC 544"

32. The legal position which thus emerges is that the Court/Tribunal has power to grant appropriate interim relief during the pendency of the industrial reference under the ID Act, 1947.

33. The endeavour of Mr. Cama to urge that all the aforesaid decisions were referred to by the Division Bench of this Court in MRF Limited, Goa (Supra), and, therefore, it must be held that qua this Court the legal position is settled that the industrial tribunal has no power to grant interim relief during the pendency of the industrial reference, does not merit countenance in view of the observations of the Supreme Court in Goa MRF Employees Union (supra), (extracted above).

34. In my considered view, the position in law which has crystalized is that the industrial tribunal has the power to grant interim relief during the pendency of an industrial reference, which is incidental to the dispute which is referred to the Tribunal. However, the Industrial Tribunal cannot grant a relief which partakes the character of the final relief to which the successful party would be entitled. This embargo, however, touches upon the extent of the power to grant interim relief rather than the very authority to grant interim relief.

35. This propels me to the question of justifiability of the impugned order of deposit of 50% of the wages. The learned Judge, Labour Court, was of the view that the employer had, prima facie, dismissed the workmen without holding domestic enquiry, in violation of the Standing Orders. Since the employer proposed to justify the dismissal order by adducing evidence before the Court, a situation of deemed employer-employee relationship arose, and, thus, subsistence allowance can be paid on the analogy of Section 10A of the Industrial Employment Standing Orders Act, 1946.

36. Mr. Cama severely criticised the aforesaid approach of the Labour Court. Emphasising that the employer has a right to establish the misconduct of a workman and justify the dismissal order before the Court, Mr. Cama would urge

that the learned Judge, Labour Court, has proceeded on an erroneous premise that the said option exercised by the employer amounts to restoration of employer-employee relationship which ceased to exist upon the termination of the services of the workmen. Mr. Cama would urge that the aforesaid approach has been disapproved by this Court in the case of Mumbai Cricket Association (supra). In the said case, the learned Single Judge of this Court considered the following question :

“Whether two distinct category of employees i.e. one suspended pending departmental enquiry and other facing a de-novo enquiry in Court in a reference challenging his dismissal, can be equated, so as to permit the latter to claim subsistence allowance till conclusion of the reference under Section 10 of the Industrial Disputes Act, 1947 ?”

37. The aforesaid question arose in the backdrop of the following facts. The employee therein was dismissed from service after departmental enquiry. An industrial reference was made to the Labour Court. It was held that the enquiry was not fair and proper, and the findings of the Enquiry Officer were perverse. The Labour Court, however, granted liberty to the employer to justify the termination of the services of the employee. Thereupon, an application was made by the employee that since de-novo enquiry was to be held in Court in order to enable him to participate in the said enquiry, he be paid subsistence /survival allowance. The Labour Court directed the employer to pay subsistence allowance @ 75% of the last drawn wages till the employer proved the alleged misconduct before the Court.

38. Setting aside the aforesaid order of the Labour Court, the learned Single Judge, inter alia, held that the reliance on the provisions contained in Section 10A of the Industrial Employment Standing Orders Act, 1946, providing for payment of subsistence allowance was misplaced. The observations in paragraph 23 of the judgment in the case of Mumbai Cricket Association (supra), are material and, hence, extracted below :

“23. I am unable to appreciate as to how this provision can be of any assistance to the respondent-employee in the present case. A departmental/domestic enquiry was already held against him by the petitioner employer at which it was concluded that the charges are proved. The Enquiry Officer, after such a conclusion was recorded by him in his report, forwarded it to the employer and the employer acting on the same has dismissed the respondent from service with effect from 25th November 2002. The employee sought a reference from the Appropriate Government and that is how the matter of his dismissal is referred to the Labour Court and that is how the Court is seized of the matter. The Court cannot be equated with an employer as it is only performing a judicial function of giving an opportunity to the petitioner to adduce evidence to prove charges of misconduct before it, and that is because the law postulates such an opportunity. The law does not equate this situation with suspension by the employer pending domestic enquiry or investigation into any complaints. The Supreme Court

decision cannot be extended by analogy to such a situation as that would produce startling consequences. In all such matters merely because the Court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, it will be obliged to direct the employer to pay subsistence allowance to the employee. That would mean that the order of dismissal already passed against the employee is set aside and substituted by his suspension. That would be creating a situation wherein the order of the Court permitting de novo enquiry means an order of suspension of the employee enabling him to claim subsistence allowance. If the charges of misconduct are grave and serious and the employee is already dismissed, then, paying him any subsistence allowance or sustenance allowance which may in a given case be 75% or more of his last drawn wages, would mean that he is allowed to resume work although the employer has already dismissed him. Ultimately, if the dismissal is justified by the employer, then, an order will have to be made directing the employee to bring back the monies already paid. Apart therefrom, allowing him to resume work or in lieu thereof pay him 75% of wages would be putting a premium on his misconduct and in a given case, fraud. That will be in contravention of the object and WP2606-10 purpose sought to be achieved by industrial adjudication."

39. This Court has enunciated in clear and explicit terms that merely because the court grants the employer an opportunity to adduce evidence to prove the charges of misconduct, would not imply that the employer is obligated to pay subsistence allowance to the employee. Lest, the order of dismissal passed against the employee would stand set aside and substituted by suspension.

40. The aforesaid decision in the case of Mumbai Cricket Association (*supra*), was followed by another learned Single Judge in the case of Zilla Parishad, Jalgaon V/ s. Maya Tukaram Sonawane (*supra*).

41. The analogy sought to be drawn by the learned Judge, Labour Court by resorting to the provisions contained in Section 10A of the Industrial Employment Standing Orders Act, 1946 does not seem to be well-founded. In a given case, the Court may be persuaded to grant appropriate interim relief where the question of dismissal and reinstatement is referred under Section 10 of the ID Act, 1947. However, it is a completely different matter to import the principle of deemed restoration of employer-employee relationship. With the order of dismissal, that jural relationship gets snapped. The principle which governs the payment of subsistence allowance, statutory or otherwise, while an employee is placed under suspension cannot apply with equal force to a situation where the services of the employee are terminated preceded by enquiry or otherwise. The exercise of the option by the employer to justify the misconduct and the resultant termination before the Labour Court does not lead to restoration of status quo ante, as the same can only be post adjudication where the court/tribunal sets aside the order of dismissal.

42. Mr. Kulkarni would, however, urge that the order of payment of wages during the pendency of the Reference before the Court is required to be considered

through the prism of ability to defend the proceedings before the Court, while the employee stands terminated and is without wages. It was urged that once the employer seeks permission to lead evidence before the Court to justify the misconduct, the employer is under obligation to pay the wages to the employee so that the latter can sustain during the pendency of such proceedings.

43. A strong reliance was placed by Mr. Kulkarni on the decision of the Supreme Court in the case of *Fakirbhai Fulabhai Solanki V/s. Presiding Officer and Anr.* (supra). I have perused the decision in the said case. Evidently, the said decision was rendered in a completely different fact situation. In the said case, the Appellant was a protected workman, as defined in the explanation to sub-Section (3) of Section 33 of the ID Act, 1947. A disciplinary proceeding was instituted and the Appellant was found guilty of misconduct. The employer decided to dismiss the Appellant. Therefore, an application was made to the Tribunal for permission as envisaged by sub-Section (3) of Section 33 of the ID Act, 1947. The Appellant was, however, suspended from service pending disposal of the application before the Tribunal. The Tribunal granted permission to the management to dismiss the Appellant after about six years.

44. In the aforesaid factual backdrop, the Supreme Court was confronted with the question of effect of non-payment of any subsistence allowance on the decision of the Tribunal under Section 33(3) of the ID Act, 1947. In that context, it was held that it follows from the provisions of Section 33(3) of the Act that the workman does not cease to be a workman until the Tribunal grants permission to dismiss the workman and the management dismisses the workman pursuant to such permission. An order of suspension by itself does not put an end to the employment. The workman continues to be an employee during the period of suspension and it is for this reason ordinarily the various standing orders in force provide for subsistence allowance.

45. The Supreme Court further observed in paragraph 10 as under :

"10. If the order passed at the conclusion of domestic enquiry is only one of suspension (even though the management has decided to dismiss him) where the workman has a chance of being reinstated with back wages on the permission being refused under Section 33(3) of the Act, it cannot be said that the workman is not entitled to any monetary relief at all. In such a case the right of the workman to receive some reasonable amount which may be fixed either by the standing orders or in the absence of any standing order by the authority before which the application is pending by way of subsistence allowance during the pendency of the application under Section 33(3) of the Act with effect from the date of suspension should be implied as a term of the contract of employment having regard to the observations made in *Khem Chand* case."

46. The aforesaid observations make it abundantly clear that they were rendered in an entirely different context. The Appellant therein was suspended, awaiting approval to the order of dismissal under Section 33(3) of the Act, 1947. In the

case at hand, the Respondents have been dismissed without holding an enquiry.

Whether the Respondents would be entitled to interim relief in the nature of payment of wages, is the matter which merits consideration. The fact that the Respondents would find it difficult to sustain themselves and defend the proceedings before the Court, may be a relevant consideration. However, the principle which governs the payment of subsistence allowance where an employee is placed under suspension, cannot be imported to a situation of the present nature. I am, therefore, persuaded to hold that the learned Judge, Labour Court was not justified in drawing support and sustenance from the provisions contained in Section 10A of the Industrial Employment Standing Orders Act, 1946 on the premise that a deemed employer-employee relationship arose.

47. The aforesaid finding, however, in itself, is not sufficient to interfere with the impugned order. It has to be considered whether the directions for deposit of 50% of the wages can be sustained independently of the source of power resorted to by the learned Judge, Labour Court.

48. It is necessary to briefly revert to the facts of the case. Indisputably, no disciplinary enquiry preceded dismissal of the Respondents, nay it is a bold stand of the employer that in view of the nature of the misconduct, as reflected in the chargesheet, it was not practicable and necessary to hold disciplinary enquiry. As noted above, the employer had proceeded with disciplinary proceedings upto the stage of serving of the chargesheet and the reply thereto. It would suffice to note that in the dismissal order itself, the employer professed to reserve its right to prove the misconduct levelled against the Respondents by adducing necessary documentary and other evidence before the appropriate forum, in the event the employee chose to challenge the action of the employer.

49. The thrust of the submission of Mr. Cama was that the learned Judge, Labour Court, was unduly swayed by the fact that no disciplinary enquiry was held against the workmen. It was urged, with a degree of vehemence, that it is well settled that there is no distinction as such between the defective enquiry or no enquiry in the matter of right of the employer to justify its action before the Court/Tribunal. Therefore, the impugned order suffers from the manifest error in law, as it proceeds on the premise that the dismissal of the applicants was infirm as it was in violation of the Standing Orders.

50. Mr. Cama invited the attention of the Court to the decision of this Court in the case of M/s. Abbott Healthcare Pvt. Ltd. and Ors. V/s. Maharudra Chikane and Anr. WP No.191 of 2023 dt. 5 June 2023 wherein this Court after referring to a Division Bench Judgment in the case of United Ink and Varnish Co. Ltd. V/s. Chandrashekhar Kuvre and Ors. 2006 SCC Online Bom 1431 had observed that it is trite that in the event of termination of an employee without holding a disciplinary proceedings, the employer is entitled to justify the termination by adducing evidence.

51. Mr. Kulkarni would submit that the fact that the employer chose not to hold disciplinary enquiry cannot, by any stretch of imagination, be construed in favour of the employer. It was urged that ordinarily it is incumbent upon the employer to hold a disciplinary enquiry where the termination of the employee is stigmatic. The right of the employer to justify the termination before the Court/Tribunal is not a statutory right, but recognized by the Courts to avoid multiplicity of the proceedings and bring finality to the litigation. The employer who proceeds to dismiss the employee in a brazen manner cannot be permitted to reap benefit of arbitrary action, by contending that he has a right to justify the dismissal before the Industrial adjudicator.

52. To buttress these submissions, Mr. Kulkarni placed reliance on the Constitution Bench judgment of the Supreme Court in the case of Karnataka State Road Transport Corporation V/s. Lakshmiddevamma (Smt.) and Anr. 2001 II CLR 640 and the judgment in the case of the Workmen of M/s. Firestone Tyre (Supra).

53. In the case of Karnataka State Road Transport Corporation (supra), the Constitution Bench expounded that the right of management to lead evidence before the Labour Court or Industrial Tribunal in justification of its decision under consideration by such Tribunal or Court is not a statutory right. That is actually a procedure laid down by the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman.

54. In the case of the Workmen of M/s. Firestone Tyre (Supra), while culling out the principles which emerged before the introduction of Section 11-A in the Industrial Disputes Act, 1947, the Supreme Court in Paragraph 33 enunciated that before imposing a punishment, the employer is expected to conduct proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality. 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, has 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. It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

55. The question which wrenches to the fore is, can the employer who proceeds to straightaway dismiss the workman without holding any disciplinary enquiry be placed at a higher pedestal than the employer who holds proper disciplinary enquiry ?

56. If considered in the light of the object of the legislations governing the field

of promoting industrial peace and obviating industrial strife, ordinarily, the employer who proposes to initiate disciplinary action must hold disciplinary enquiry and provide an opportunity to the workman to defend the charges of misconduct in conformity with the Standing Orders and the principles of natural justice. The fact that it is reckoned that the employer has a right to justify the misconduct before the Court/Tribunal, even where no disciplinary enquiry is held, does not necessarily imply that the law generally favours the employer resorting to the dismissal of the workman without holding proper disciplinary enquiry.

57. In the case of the Workmen of M/s. Firestone Tyres (supra), the Supreme Court was anxious to clarify that it did not intend to lay down that there was no obligation to hold an enquiry before dismissing the workman. The observations in paragraph 53 reads as under :

"53. We have indicated the changes effected in the law by section 11 A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been holding that an employer is expected to hold a proper enquiry according to the Standing Orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Further by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or mala fide. It cannot be over emphasised that conducting of a proper and valid enquiry by an employer will conduce to harmonious and healthy relationship between him and the workman and it will serve the cause of industrial peace. Further it will also enable, an employer to persuade the Tribunal to accept the enquiry as proper and the finding also as correct." (emphasis supplied)

58. The aforesaid enunciation of law would indicate that normally an order of dismissal on the ground of misconduct ought to be preceded by an enquiry. Such an enquiry also saves the employer of the charge of arbitrary or malafide action. Conversely, if the dismissal is not preceded by domestic enquiry, the employer has to surmount the challenge of action being arbitrary and malafide.

59. On the aforesaid touchstone, reverting to the facts of the case, I have carefully perused the imputations in the chargesheet. One gets an impression that there are primarily two grounds of alleged misconduct. One, the employees were found missing from workplace and, though found physically present at the work place, did not carry out any productive work. Two, despite the consent terms and undertakings, the employees were found resorting to deliberate and willful go-slow, loitering around and missing from the work place during the working hours. The entire chargesheet, running into 12 pages, revolves around the aforesaid allegations, whereby the employees allegedly committed

misconduct under the Model Standing Orders 24 (a), (c), (h) and (l), which read as under :

"24(a) Wilful insubordination of disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior;

(c) wilful slowing down in performance of work or abetment or instigation thereof;

(h) habitual breach of any standing order or any law applicable to the establishment or any rules made thereunder;

(l) commission of any act subversive of discipline or good behavior on the premises of the establishment."

60. In the light of the aforesaid nature of the alleged misconduct, prima facie, it does not appear that the holding of the disciplinary enquiry was either impracticable or unnecessary. Secondly, the alleged misconduct is of such nature that it warrants proof of particular acts or omissions. Thirdly, the employees have not been attributed with such acts which can per se be said to be misconduct. Fourthly, in the context of the alleged misconduct, the issue of proportionality of the punishment would surely warrant adjudication. Fifthly, the prelude to the impugned action of dismissal in the form of the industrial disputes resulting in complaints under the MRTP and PULP Act, 1971, cannot be lost sight of. Sixthly, the genesis of the disputes appear to be in the formation of a new union. Lastly, in the backdrop of the nature of the dispute whether the dismissal of the Respondents-Workmen without holding disciplinary proceedings would pass judicial muster of not being arbitrary and malafide, warrants adjudication.

61. For the foregoing reasons, I am impelled to hold that the learned Judge, Labour Court committed no error in returning a finding that the dismissal of the respondents without holding a disciplinary enquiry, in the facts of the case, made out a strong prima facie case.

62. The interim relief granted by the Labour Court, in the circumstances of the case, appears to balance the equities. It is essentially a measure to secure the interest of the workmen. Where the workmen have been deprived of the wages, on account of an order of dismissal from service, the legality and validity of which, prima facie, appears to be debatable, a direction for deposit of 50% of the wages cannot be said to be inequitable.

63. Mr. Cama, was, however, justified in submitting that the further liberty granted to the employees to withdraw the said amount of wages has the propensity to cause serious prejudice to the employer. In the event the employer succeeds in justifying the dismissal, the employer would be prejudiced as, at that stage, equities would intervene. I am, therefore, impelled to modify the impugned order to the extent it permits the employees to withdraw the amounts to be deposited by the employer.

64. It would thus, be in the fitness of things to direct that the amounts to be

deposited by the employer shall abide the order which may be eventually passed by the Labour Court.

65. The upshot of the aforesaid consideration is that the Petitions deserve to be partly allowed.

66. Hence, the following order :

ORDER

(i) The Writ Petitions stand partly allowed.

(ii) The impugned orders to the extent it directs the employer to deposit 50% of the monthly gross wages from the date of dismissal till the conclusion of the Reference stands affirmed.

(iii) The liberty granted to the workmen to withdraw the amounts stands set aside.

(iv) The Respondents-workmen shall not be permitted to withdraw the said amounts.

(v) The amounts to be deposited by the employer shall be invested in an interest bearing account. That would abide the final decision of the Labour Court.

(vi) The Labour Court is also requested to make an endeavour to decide the Industrial References as expeditiously as possible.

(vii) Rule made absolute to the aforesaid extent.

(viii) No order as to costs.