

(2014) 05 DEL CK 0052
In the Delhi High Court
Case No : W.P. (C) 6791/2013

Gopal		APPELLANT
	Vs	
M/s. Hindustan Times Limited		RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 309
Industrial Disputes Act, 1947 — Section 2(oo), 33C(1), 33C(I)

Citation : (2014) 211 DLT 27 : (2014) LabIC 3431 : (2014) 3 LLJ 645 : (2015) 1 LLN 380

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Ashwin Vaish, Mr. Vinod Pandey and Mr. Sanjeev Manchanda, Advocate for the Appellant; Harvinder Singh, Ms. Megha Gaur and Ms. Alka Chojar, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the award dated May 17, 2013 passed by the Labour Court in Computer I.D. No. 02402C0485502005, whereby the Labour Court has awarded a lump sum amount of Rs. 2 Lakhs to the petitioner and thereby answered the reference made by the appropriate Government on August 17, 2005. It may be necessary to state here that the initial reference was made by the appropriate Government with regard to five workers. It appears that the Labour Court has directed the workers to file separate set of claims, which they did.

2. The facts as noted from the award are that the petitioner was appointed as a "Canteen Boy" with the respondent w.e.f. April 1, 1974 vide appointment letter issued on May 30, 1974. He was confirmed on the post of "Helper". He was later promoted to the post of "Assistant Offset Machine Man" vide letter dated July 25, 2001. According to him, his services were terminated vide letter dated July 23, 2004 on the ground that he was absent without leave. It was his case that he

was terminated without any enquiry, which is in violation of principles of natural justice, hence, his termination is improper, mala fide, wrong and illegal.

3. It was the case of the respondent before the Labour Court that the services of the petitioner were terminated for a misconduct and the enquiries whenever it had considered appropriate, were held. According to the respondent, the petitioner was a habitual absentee and a warning letter was issued to him regarding his absenting from duties vide letter dated May 19, 2000. The petitioner was sent a show cause notice vide letter dated June 30, 2004 seeking reasons for his unauthorized absence to which, he sent his reply on July 14, 2004, without justifying his absence.

4. The Labour Court framed two issues, one being, "in terms of the reference" and the other being, "the relief".

5. The evidence was led by both the parties. The Labour Court even though was not sure, had come to a conclusion that the termination is in the nature of "retrenchment" as defined u/s 2(oo) of the Industrial Disputes Act, 1947 (Act, in short) and awarded a lump sum amount of Rs. 2 Lakhs to be given to the petitioner to make good of loss incurred by him by his termination from services.

6. The learned counsel appearing for the petitioner would contend that the impugned award of the Labour Court is bad in law as the Labour Court overlooked the well settled principle that no person should be condemned unheard. According to him, even assuming the case of the respondent was that the petitioner has committed a misconduct, he could not have been terminated without giving him a fair opportunity to explain by holding a proper enquiry. It is his case also, even when the respondent was given opportunity by the Labour Court to adduce evidence, the respondent could not able to prove that the petitioner has committed any misconduct. He would state that the appointment of the petitioner was made by the Hindustan Times Limited whereas the termination order was issued by the H.T. Media Limited. The learned counsel would reply upon the judgment of this Court reported as M/s. Colcom Plastic Ltd. and others Vs. Union of India and others, . in support of his contention.

7. On the other hand, the learned counsel for the respondent would argue that the respondent's action in terminating the services of the petitioner without holding the domestic enquiry is just and valid. According to him, it was the respondent's case that pursuant to the show cause notice issued to the petitioner dated June 30, 2004, the reply of the petitioner dated July 14, 2004 failed to reveal any justified reasons for his absence. The last drawn wages of the petitioner was Rs. 10,919.57/- and the dues relating to gratuity and leave encashment have been duly paid to the petitioner. He would also rely upon the previous conduct of the petitioner inasmuch as on May 19, 2000, the petitioner was served a show cause notice to explain his absence for 54 days between the period January 2000 and April 2000, out of which, on 37 days, the petitioner-workmen was on leave without pay. He was asked to show cause why disciplinary

action should not be taken against him. In response to the said show cause notice, the petitioner, without any supporting documents, replied vide his letter dated May 20, 2000, stating that his son was suffering from some kind of fits and therefore, his treatment was going on in G.B. Pant Hospital. According to the learned counsel, the petitioner had assured that he would not give cause of complaint in future. He would further state that even though, the reply to the show cause notice was not found satisfactory, yet, in view of the assurance given by the petitioner to improve his attendance record in future, a lenient view was taken. The petitioner was also warned that failing to abide by his assurance would entail appropriate disciplinary action. However, the petitioner did not keep his assurance and on May 25, 2001, he was served with another show cause notice for remaining absent for 125 days in the period between January 2000 till December, 2000, out of which, 98 days, the petitioner was on leave without pay. Further, during the period January 2001 to April 30, 2001, the petitioner absented from his duties without information of 46 days, out of which, 21 days were without pay. He would also state that on October 24, 2001, the petitioner was served with a show cause notice as his leave record revealed that he was absent from duty without any information, which was replied by him on October 29, 2001, again, without any supporting documents, vaguely stating that he was busy in attending his son who was suffering from illness leading to his hospitalization. He again assured that he would not remain absent. However, it is noted that he did not improve and again, on October 30, 2003, a further charge sheet/show cause notice was issued to him for remaining absent without leave for 106 days, out of which, 88 days were without permission/information. The show cause notice was replied to by the petitioner on November 03, 2003 without supporting documents and taking the same plea that he was busy in attending his son, who was suffering from epilepsy. Again, a lenient view was taken whereby, he was informed by the respondent vide letter dated November 07, 2003 that his conduct would be watched and if no improvement is noted, then, further action would be taken without reference to him. Since, no significant improvement was seen, as such, show cause notice dated June 30, 2004 was issued which was replied by him vide letter dated July 09, 2004 and also vide his letter dated July 14, 2004, wherein, he, without any supporting documents, mentioned about the illness of his son and an attempt to commit suicide by his another son as a reason for his absenteeism. According to him, it was in this background that in reply to the show cause notice, the petitioner could not able to justify his absence, the respondent deem it fit to issue order dated July 23, 2004, whereby, the petitioner was dismissed from service w.e.f. August 01, 2004. The learned counsel for the respondent relied upon the following judgments of the Supreme Court in support of his contention:

1. Ghaio Mall and Sons Vs. The State of Delhi and Others, .
2. The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, .

3. Municipal Committee Tauru Vs. Harpal Singh and Another, .
4. State of Haryana and Another Vs. Rattan Singh, .
5. Union of India (UOI) Vs. T.R. Varma,
6. Delhi Transport Corporation Vs. Sardar Singh, .
7. R. Thiruvirkolam Vs. Presiding Officer and another, .
8. Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, .
9. The Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Management of the Bangalore, Woollen, Cotton and Silk Mills Co. Ltd., .

8. Having considered the submissions made by the learned counsel for the parties, insofar as the issue whether H.T. Media Limited is competent to terminate the petitioner is concerned, suffice to state, on a perusal of the pleadings, it is noted that no such ground was taken before the Labour Court. It appears, in the absence of any averment, the Labour Court had also not framed an issue in this regard and had no occasion to deal with the same. The substantive question which falls for consideration of this Court is whether the petitioner's services could be terminated without holding a proper enquiry as the same being a misconduct within the provisions of Certified Standing Orders. I note that the Labour Court had noted that no enquiry was held against the petitioner. The parties were asked to lead their respective evidence. During the cross examination of the petitioner, the respondent put a photocopy of the document Mark "A", which is a letter dated May 19, 2000 and contain a warning to the petitioner regarding his excessive absence from duties. He was shown absent for 54 days, out of which, 37 were days without pay within a period from January 2000 to April 2000. Thereafter, the petitioner was shown letter dated May 20, 2000, which was a reply sent by the petitioner in response to the letter dated May 19, 2000 of the respondent (Mark A). The reply dated May 20, 2000 was marked as Mark B. Similar documents from Mark "C" to Mark "G" were shown to the petitioner, wherein, the respondent had shown its displeasure against the absenting conduct of the petitioner. With regard to the aforesaid documents, the respondent during his cross examination, has deposed as under:

I cannot say whether I was given charge sheet dated 19.05.2000. Copy of the same is Mark A (Objected to by the Id. counsel for the workman on the mode of presentation). I cannot say whether it is correct that I had taken 54 days off from work during the period January, 2000 to April, 2000. I cannot say whether the photocopy of the reply dated 20.05.2000 Mark B (Objected to by Id. counsel for the workman) was given by me to the Management. I cannot say whether it is in my handwriting or the signatures are mine.

I cannot say whether it is correct that I was warned to not take many leaves in the future vide Management's letter dated 25.05.2000 Mark C (Objected to by the Id. counsel for the workman). I do not remember whether Mark E (Objected

to by the Id. counsel for the workman) regarding remaining absent for 125 days during the year 2000 and 46 days between January, 2001 to 30th April, 2001. I do not remember whether Mark E (Objected to by the Id. counsel for the workman) is my reply to the second show cause notice dated 25.05.2001. I cannot say whether this letter is in my handwriting.

I cannot say whether charge sheet dated 24.10.2001 Mark F (Objected to by the Id. counsel for the workman) was issued to me in respect to my continuous absence from duties as mentioned in Mark F. I cannot say whether I had ever submitted reply to the charge sheet Mark F by means of Mark G (Objected to by the Id. counsel for the workman). It is wrong to suggest that I had given the reply in my own handwriting with my signatures.

I cannot say whether I was issued charge sheet dated 30.10.2003 with respect to 106 leaves in the year 2003, the details of which are mentioned in the charge sheet Mark H (Objected to by the Id. counsel for the workman). The letter Mark I (Objected to by the Id. counsel for the workman) is not the reply to the charge sheet Mark H by the Management.

I do not remember whether I had given Mark I to the Management. It is not in my handwriting. It is wrong to suggest that Mark I is in my handwriting and was given to the Management.

It is wrong to suggest that I was issued any warning letter dated 07.11.2003 giving me final warning against my habitual absenteeism on the basis of my specific assurance to improve my attendance. Photocopy of the said letter is Mark J (Objected to by the Id. counsel for the workman). It is wrong to suggest that I continued to remain unauthorisedly absent from duties despite warning issued to me in November, 2003. I was not given any fifth show cause notice dated 30.06.2004. It is wrong to suggest that I was given show cause notice dated 30.06.2004. Photocopy of the same is Mark K (Objected to by the Id. counsel for the workman).

It is correct that I had replied notice dated 30.06.2004 vide my reply dated 09.07.2004. Photocopy of the same is Mark L (Objected to by the Id. counsel for the workman). It is wrong to suggest that I gave a detailed reply to the management vide my letter dated 14.07.2004. Photocopy of the same is Mark M (Objected to by the Id. counsel for the workman). It is wrong to suggest that as I was a habitual absentee, I was issued 5 show cause notices during the period 2000 to 2004. It is wrong to suggest that despite having taken a lenient view, over a period of five years. I did not make any improvement in my leave record. It is correct that I was terminated from the services vide letter dated 23.07.2004. Vol. Thereafter after receiving my reply dated 03.08.2004 of the dismissal letter dated 23.07.2004 I was allowed to come on duties and accordingly I continued my join in the year 2004 in the month of August. It is wrong to suggest that I am deposing falsely in this regard.

9. Suffice to state that the petitioner has shown his ignorance about the issuance

of the aforesaid documents except that the petitioner has accepted his termination has been effected vide letter dated July 23, 2004. On the other hand, the respondent had examined one Mr. Avik Basu, as its witness. He relied upon 16 documents exhibited as Ex. MW1/1 to MW1/16. Out of the 16 documents, only 3 documents were different from the documents already put to the petitioner in cross examination. The evidence of the respondent was declared as inadmissible in law. The Labour Court relied upon the evidence as adduced by the petitioner. The petitioner placed the following documents on record:

(1) Ex. WW1/1, Appointment Letter, (2) Ex. WW1/2, Confirmation Letter as "Helper" (3) Letter dated July 23, 2004, by which his services were dismissed (Mark C). This letter refers to show-cause notice dated June 30, 2004 and reply dated July 14, 2004. It is also noted that these documents even though put to the petitioner, but, were denied by him. In para 44 of the impugned award, the Labour Court observed as under:

In fact this workman stood in the witness box posing a complete denial mode during his cross-examination. The documents, handwritten and type written were put to him and he simply kept on either denying their acquaintance or plainly stating that he did not remember about those documents. This included even those letters which were in his own handwriting e.g. letter dated 20.05.2000 (Mark "B"), letter dated 09.02..(complete date is not written) (Mark "E"), letter Mark "G" and letter dated 03.11.2003 (Mark "I") and letter dated 14.07.2004 (Mark "M"). Strange enough that he had admitted an another hand written letter dated 09.07.2004 (Mark "L"). This letter Mark "L" is similar in appearance for authorship as were the letters denied by him as aforesaid.

10. The Labour Court was of the view that the petitioner had in the past faced the allegation of unauthorized absence and observed that the burden to prove his termination as illegal was on the petitioner. The Labour Court concluded that the termination of the services of the petitioner might have been in the nature of retrenchment u/s 2(oo) of the Act. Such a conclusion of the Labour Court is not correct. The very definition of the word "retrenchment" which was reproduced by the Labour Court would reveal that any termination by the employer of the service of a workman for any reason, but not as a punishment inflicted by way of a disciplinary action. In the present case, surely, the action of the respondent would constitute a punishment, even though not inflicted by disciplinary action, but was for a misconduct. The question which the Labour Court could have posed itself was, whether the show cause notice issued to the petitioner on June 30, 2004 would constitute a sufficient compliance of principles of natural justice. I note that the same would not be in compliance of principle of natural justice as the perusal of the letter dated July 23, 2004 would reveal that the show cause notice dated June 30, 2004 was issued, calling upon the petitioner to reply as to why the order of dismissal should not be invoked and he be dismissed from the services of the company. Meaningfully read, the show cause notice was seeking a response on the punishment to be imposed on the petitioner rather than seeking

reasons for his absence. Through the show cause notice, the respondent had prejudged the issue and decided to dismiss the petitioner, which is not called for. The law in this respect is very well settled. The Supreme Court in the case of D.K. Yadav Vs. J.M.A. Industries Ltd., wherein, the Supreme Court while dealing in a case arising from the award of the Labour Court which upheld the termination of the petitioner namely D.K. Yadav against whom the allegations were that he absented from duties continuously for more than 8 days without leave or prior information or intimation. The case of the petitioner that despite his reporting to duty, he was not permitted to join the duty. Reliance was placed by the management in the said case on Clause 13(2)(iv) of the Standing Orders, which inter alia contemplated, if a workman remains absent without sanctioned leave or beyond the period of leave originally granted, he shall loose his lien on his appointment. The Supreme Court, while holding that the termination is bad as the management did not conduct a domestic enquiry, has held as under:

9. It is a fundamental rule of law that no decision must be taken which will effect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill and Anr. v. The Chief Election Commissioner and Ors. [1978] 2 SCR 272 the Constitution Bench held that "civil consequences" covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the State or country-they include-rights capable of being enforced or redressed in a civil action-In State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, this court held that even an administrative, order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case. The evidence in support thereof supplied and must be given fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In The State of West Bengal Vs. Anwar Ali Sarkar, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be

heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and the administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the right of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.* this court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution or the statutory provisions or the rules, regulations or

instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair, and reasonable procedure is an essential inbuilt of natural justice. Articles 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

14. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted" complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress and Ors.* (supra) the Constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.

15. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Articles 14. When so read the impugned action is violative of the principles of natural justice.

16. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action; Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12,

1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs.

11. This is one such case where neither a show cause notice calling upon the petitioner to explain the reasons for alleged unauthorized absence was even given to him. In fact, as stated above, the issue was prejudged, entailing the dismissal of the petitioner. To that extent, the conclusion of the Labour Court is not tenable. I also note, the Labour Court has held the termination of the petitioner as unfortunate and justifiable. Such an observation has been made by the Labour Court looking at the past conduct of the petitioner. It is a settled law, even the past conduct need to be proved against the employee if the same is sought to be relied upon. From every perspective, the dismissal of the petitioner is bad and illegal. It appears, the Labour Court was swayed by the fact, that, the absence of the petitioner was unauthorized without justifiable reasons, mere technicality of not holding an enquiry, should not be a reason, to grant reinstatement to the petitioner, the Labour Court chose the path of granting petitioner a lump sum amount of Rs. 2 lakhs as a compensation. Whether this conclusion of the Labour Court would be justified in the facts of this case. I note, the termination relates back to the year 2004. The reason given by the petitioner for being absent is primarily the illness of his son, who appears to suffer from epilepsy. I also note, the petitioner had never supported his stand regarding son's illness by producing any evidence. Without any evidence, the ground for remaining absent on son's illness, was rightly not accepted by the respondent. I also note that the petitioner, during his cross examination has deposed that he continuously lived in Madhya Pradesh and has been coming to Delhi to attend his case. Given the misconduct which could not be proved because of a technical lapse on the part of the management witness, the interest of justice would demand, to put quietus to the matter, appropriate compensation be granted to the petitioner for a wrongful termination/dismissal and at the same time, relieve the respondent of the obligation of reinstating the petitioner in service. The lump sum amount granted by the Labour Court appears to be less, noting the fact that the petitioner had worked for 30 years with the respondent and had some service left, the amount as granted by the Labour Court is enhanced to Rs. 4 lakhs (Rupees Four Lakhs only), which would be in the nature of a final settlement with regard to all the claims of the petitioner like back wages, future wages, terminal benefits like gratuity etc.

12. Insofar as the judgments relied upon by the learned counsel for the parties, I refer to the same for what they decide as the judgments are not applicable insofar as the facts of this case are concerned.

In the case of M/s. Colcom Plastic Ltd. and others (supra), wherein the question before the bench was whether issuance of recovery certificates u/s 33C(1) vests any right of adjudication to appropriate Government. The Court has held as

under:

34. From the aforesaid discussion, we conclude that the proceedings u/s 33C(I) are in the nature of execution proceedings providing an additional mode of speedy recovery of money due to a workman from an employer under a settlement or an award or the provisions of Chapter V-A or Chapter V-B. Section 33C(I) does not vest any power of adjudication on the appropriate Government except to the limited extent of examining the facts to find out whether objections to jurisdiction of the appropriate Government have been taken by the employer simply with a view to oust the jurisdiction of the appropriate Government under the said Section and deprive the workman of money due to him. On the interpretation of Section 33C(1) of the Act and scope of power of the appropriate Government under this Section, we summarise our conclusions as follows:-

- (i) Proceedings u/s 33C(1) of the Act are in the nature of execution proceedings.
- (ii) The appropriate Government has not been invested with powers of a Labour Court or Industrial Tribunal to hold a formal enquiry.
- (iii) In case the management raises bonafide disputes on the right of a workman to claim of money due under a settlement or an award or under the provisions of Chapter V-A or V-B, the appropriate Government has no right of adjudication of such dispute/s.
- (iv) In case of bonafide dispute about the right of a workman of the money claimed as due from the management, the workman will have to raise an industrial dispute for reference being made for adjudication by the Labour Court/ Industrial Tribunal.
- (v) The appropriate Government has, however, a limited right of examining the objection of the management to the claim of the workman, only to form a prima facie opinion whether the objection of the management is perverse, frivolous or mala fide taken with a view to deprive the workman of the money due to him.
- (vi) The appropriate Government is required to afford a reasonable opportunity complying with the principles of natural justice to the management and the workman before taking a decision u/s 33C(1) and is also required to make a speaking order giving reasons so that the aggrieved party-management or workman may seek judicial review of the decision of the appropriate Government in accordance with law.

In the case of *Ghaio Mall & Sons* (supra), the Supreme Court has held that:

... when a superior court issues a rule on an application for certiorari it is incumbent on the inferior court or the quasi-judicial body, to whom the rule is addressed, to produce the entire records before the court along with its return. The whole object of a writ of certiorari is to bring up the records of the inferior

court or other quasi-judicial body for examination by the superior court so that the latter may be satisfied that the inferior court or the quasi-judicial body has not gone beyond its jurisdiction and has exercised its jurisdiction within the limits fixed by the law. Non-production of the records completely defeats the purpose for which such writs are issued, as it did in the present case before the High Court. We strongly deprecate this attempt on the part of the official respondents to by-pass the court. We are bound to observe that the facts appearing on the records before us disclose a state of affairs which does not reflect any credit on the administration of the erstwhile State of Delhi. We must, however, say, in fairness to the learned Solicitor-General, that he promptly produced the entire records before us during the hearing of this appeal.

In the case of *Workmen vs. Firestone Tire & Rubber Co* (supra), the Supreme Court has held that if no enquiry has been held, as required by the standing orders, the employer can adduce evidence directly before the Labour Court justifying its action taken against the workmen, if such an opportunity was asked for and the Labour Court would be required to consider the evidence adduced before it, to decide for itself whether the misconduct stood proved.

In the case of *Municipal Committee Tauru* (supra), the Supreme Court has held, technicalities should not be allowed to prevail, does not mean granting relief on basis totally contrary to claim made by the workman.

In the case of *Rattan Singh* (supra), the Supreme Court has held that it is well settled that the rules of the Indian Evidence Act may not apply strictly in a domestic enquiry.

In the case of *T.R. Varman* (supra), wherein the Supreme Court has held that the Evidence Act has got no application to enquiries conducted by the tribunals even though they may be judicial in character.

In the case of *Delhi Transport Corporation vs. Sardar Singh* (supra), wherein the court has held that When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

In the case of *R. Thiruvirkolam* (supra) wherein the workman was dismissed from service after domestic enquiry, the Supreme Court has held that the dismissal order will be operative from the date it being passed by the employer and not from the date of the Labour Court's award.;

In the case of *Kendriya Vidyalaya Sangathan and Anr.* (supra), the Supreme Court has held that when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that

regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

In the case of *The Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd.* (supra), the Supreme Court has held:

..... the "retrenchment" means termination of service. It seems to us that a service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen. Where therefore a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself.....

13. In view of the above discussion, the writ petition is disposed of, modifying the impugned award dated May 17, 2013 in terms of para 11 above. In the eventuality, the amount as directed is not paid within one month from today, an interest @ 9% per annum shall be paid.

14. No costs.