

(1957) 10 MAD CK 0011
In the Madras High Court

Gordon Woodroffe and Company (Private) Limited	APPELLANT
Vs	
S. Venugopal and Another	RESPONDENT

Date of Decision : 14-10-1957

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(1), 33(2)

Citation : AIR 1958 Mad 433 : (1958) ILR (Mad) 374 : (1958) 71 LW 88 :
(1958) 1 MLJ 164

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—The principal, if not the only point raised in these two writ petitions which seek the issue of writs of certiorari to quash two orders of the Industrial Tribunal, Madras, is as to the proper construction of Section 33 of the Industrial Disputes Act (XIV of 1947) as enacted by the Amending Central Act XXXVI of 1956.

2. Messrs. Gordon Woodroffe & Company are the petitioners in these two writ petitions. There was an industrial dispute between the petitioners, management, and their workmen regarding the quantum of bonus for the year ended 30th June, 1956. The dispute was referred for adjudication to the Industrial Tribunals, Madras, by the State Government by their Order, dated 17th April, 1957. The Tribunal decided this dispute by its order, dated 19th July, 1957, but the decision of the Tribunal on this dispute is not relevant to the present proceedings but the petition is concerned with certain events which transpired during the pendency of this industrial dispute. During the period 17th April, 1957 and 19th July, 1957, the management charged two of its employees, who are the contesting respondents in these two writ petitions, with misconduct, unconnected with the pending dispute. The concerned workmen were served with charge-sheets. Their explanations were obtained and an enquiry was conducted. The management passed orders on the basis that the misconduct charged against the employees was established. On 27th April, 1957, the respondent in W.P. No. 596 of 1957

was dismissed, while the respondent in W.P. No. 597 of 1957 was discharged from service by an order, dated 3rd May, 1957. The management also tendered one month's salary in lieu of notice to each of these two workmen. The management thereafter filed on 9th May, 1957, two petitions before the Industrial Tribunal, Madras, pursuant to Section 33(2) of the Industrial Disputes Act, 1947, as amended, seeking "the approval" of the Tribunal to the action taken by them, namely, to punish their employees in the manner mentioned above. The Tribunal passed orders granting a qualified approval of the action of the management, and directing punishments different from those inflicted by the management and it is the legality of these orders that is challenged in these two petitions.

3. I shall first take up for consideration W.P. No. 596 of 1957--the workman in question was a Shorthand-Typist. The charges against him were that he had on 25th April, 1957, contrary to the instructions given to him, refused to copy a weight list and (2) that he had on 25th April, 1957, contrary to the instructions given to him refused to type a bill of lading given to him. These items of misconduct charged against the employee were the subject-matter of an enquiry by the management and as stated before they were held established. On this finding the management ordered the dismissal of this employee "subject to the approval of the Tribunal" as required by Section 33(2) of the Act. It is this approval that was sought by the management in their petition to the Tribunal numbered as Petition No. 4 of 1957. The facts alleged against the workman were investigated by the Industrial Tribunal and Mr. Ramaswami Gounder, a learned Judge of this Court, who constituted the Tribunal, recorded:

I am constrained to hold that the work of a Shorthand-Typist to which post Venugopal (respondent in W.P. No. 596 of 1957) was appointed was not confined to mere stenographic work but comprised also copy-typing work. It follows that when he refused to type the weight list and the bill of lading on the 25th and 26th of April, 1957, respectively he was guilty of disobedience. The management was, therefore, justified in taking action against him which they did and which I am bound to approve.

The Tribunal then went on to consider whether the punishment of dismissal imposed by the management was not excessive. After overruling the contention raised on behalf of the management based on certain decisions of the Supreme Court as regards the jurisdiction of the Tribunal to embark on this enquiry the Tribunal held that the decisions of the Supreme Court were rendered on the Act as it stood before it was amended in 1956 and that on the terms of the amending section, he had jurisdiction to pass such orders as appeared to him to be appropriate and that in the circumstances of the case he would not permit the order of dismissal to stand but would reduce it "to leave on loss of pay for the period from the date of the dismissal to the date of the order of the Tribunal."

4. The learned Advocate-General who appeared for the petitioner submitted that the amendments to Section 33 introduced by the Act of 1956 did not make any

basic alteration in the powers of the Tribunal and that the decisions of the Supreme Court still governed the powers and jurisdiction of Industrial Tribunals dealing with applications u/s 33.

5. Before referring to the decisions of the Supreme Court adverted to earlier it is necessary to set out the various changes which the relevant provisions of the Industrial Disputes Act have undergone from time to time. I shall start with" Act XIV of 1947 which introduced compulsory arbitration in this country for the first time. After making provision for referring industrial disputes inter alia to Industrial Tribunals by an order of the appropriate Government, the enactment made provision for the maintenance of the status quo, during the pendency of these proceedings. u/s 23(b) strikes and lock-outs were prohibited during the pendency of proceedings before Tribunals and for two months after the conclusion of such proceeding and provided penalties by Section 26 for illegal strikes and lock-outs. Further Section 33 enacted:

No employer shall during the pendency of any conciliation or proceedings before a Tribunal in respect of any industrial 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 nor save with the express permission in writing of the Conciliation Officer, Board or Tribunal as the case may be, shall he during the pendency of such proceedings, discharge, dismiss or otherwise punish any such workmen except for misconduct not connected with the dispute.

6. The expression "pendency of the proceedings before a Tribunal " was so to speak defined by Section 20(3) of the Act in these terms:

proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication and such proceedings shall be deemed to have concluded when the award is published by the appropriate Government u/s 17 or where an award has been laid before the Legislative Assembly under the proviso to Sub-section (2) of Section 15, when the resolution of the Legislative Assembly therein is passed ". Any employer who contravened the provisions of Section 33 was subjected u/s 31, to punishment " with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

7. Section 33 underwent several modifications whose effect is the main point for consideration in these petitions, but before I pass on to consider them I shall analyse the basic features of the section as enacted in 1947. The provision was intended to preserve the status quo during the pendency of proceedings inter alia before Tribunals and for that duration: (1) the employer was absolutely prevented from queering the pitch by any prejudicial alteration in the conditions of service of his employees; (2) in regard to misconduct of employees connected with the dispute the express permission in writing of the Tribunal had to be obtained before the employer could discharge, dismiss or otherwise punish the

workman, the "permission" being thus, needed for every type of punishment ; (3) where the misconduct was not connected with the dispute, the Common Law power of the employer was left untouched and he could deal with his workmen in the manner open to him under the law without being fettered in any manner by the pendency of the dispute.

8. The next stage in the legislation was when the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), was enacted. Under the Original Act of 1947 the awards of the Tribunals were final and were, when published by the appropriate Government, binding upon the parties and could not be called in question in any manner : vide Section 15(4) of the Act. The Industrial Disputes Act (XLVIII of 1950) made an inroad into this state of affairs by creating a Labour Appellate Tribunal which was vested with jurisdiction to hear appeals from the awards, and decisions of the Industrial Tribunals in respect of particular matters. The Act also introduced amendments to the Industrial Disputes Act of 1947. It amended Section 33 to read thus:

Section 33: Conditions of service, etc., to remain unchanged during the pendency of proceedings.--During the pendency of...before a Tribunal in respect of any industrial dispute, no employer shall---

(a) 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) discharge or punish whether by dismissal or otherwise any workman concerned in such dispute,

save with the express permission in writing of the Conciliation Officer, Board or Tribunal as the case may be.

This Amending Act also introduced a new Section 33-A reading:

Section 33-A: Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceedings.--Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention may make a complaint in writing in the prescribed manner to such Tribunal and on receipt of such complaint that Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly.

Provisions on the same lines as Sections 33 and 33-A were enacted in respect of proceedings before the Labour Appellate Tribunal newly constituted, by Sections 22 and 23 of Act XLVIII of 1950 whose terms were exactly identical with the amended Section 33 and the new Section 33-A of the Industrial Disputes Act.

9. This might probably be a convenient stage where the precise changes effected

by the amendment to Section 33 and the introduction of Section 33-A brought about in the position as it was u/s 33 of the Act of 1947 might be pointed out.

(1) The absolute ban on employers prejudicially altering conditions of service of the workmen concerned in the industrial dispute was modified by making this possible with the express permission in writing of the Tribunal before which the dispute was pending.

(2) The right of the employer to punish his workmen for his misconduct unconnected with the dispute which was untouched by Section 33, as it originally stood, was modified and this also was made subject to the obtaining of the permission in writing of the Industrial Tribunal. In other words the variation in the power of the employer to punish for misconduct based upon, whether the misconduct was connected or was unconnected with the dispute was done away with ;

10. The expression " other punishments " in Section 33 of the Act of 1947 might conceivably have been construed as ejusdem generis with the words " discharge or dismiss ". This was clarified and the new Section 33 which used the words "to discharge or punish whether by dismissal or otherwise" thus including every punishment, both those which, amounted to dismissal or fell short of it.

11. Before proceeding to detail the changes introduced by the Amending Act XXXVI of 1956 I shall refer to the decisions of the Supreme Court which have construed either Section 22 and 23 of the Labour Appellate Tribunal Act or Sections 33 and 33-A of the Industrial Disputes Act, (between which two there was no material differences), in relation to the scope and jurisdiction of the Tribunals to whom applications might be made for the permission referred to in the provisions.

12. It is not necessary to advert to authorities of date earlier than 1955-- The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , on the construction of Sections 22 and 23 of the Labour Appellate Tribunal Act or corresponding Sections 33 and 33-A of the Industrial Disputes Act, 1947. The employer company who was the appellant before the Supreme Court became obliged to retrench its workmen by reason of inability to provide full work for their workmen. There were some disputes between the appellant and its workmen pending before the Labour Appellate Tribunal and in consequence the appellant company applied to the Tribunal for permission to retrench u/s 22 of the 1950 Act. The workmen objected to the grant of permission on several grounds including a charge that the employers were moved by mala fide reasons in effecting the retrenchment. The Labour Appellate Tribunal whose decision was brought before the Supreme Court in appeal by way of special leave, had after negating the contention of the workmen that the discharge was mala fide stated as to scope of their power:

We are the authority to whom an application has to be made for permission to retrench and -when such application is made, we must of necessity exercise our

judgment and discretion and satisfy ourselves that when the company retrenches it does justice by its employees.

On this view they granted permission to effect the retrenchment but subject to the condition that each workman was paid at the rate of half of his basic wages and dearness allowance for the whole period from the date of lay off up to the date of the retrenchment. The legality of this order was challenged before the Supreme Court. The appeal was allowed and the decision of the Labour Appellate Tribunal set aside. Das, J. (as he then was), analysed the provisions of Sections 22 and 23 newly introduced and stated that four things were to be noted, namely, (1) that the ordinary and primary jurisdiction of the Appellate Tribunal was appellate ; (ii) that Section 22 of this Act conferred on the Appellate Tribunal a special jurisdiction which was in the nature of an original jurisdiction, (iii) that Section 23 also vested in the Tribunal an additional jurisdiction " to decide the complaint as if it were an appeal pending before it " and (iv) that Section 23 conferred on the workmen an additional remedy which they did not have under the 1947 Act. After deferring to the new Section 33 His Lordship stated:

It will be noticed that this section has made several changes. Thus under this section provision is made for obtaining permission as a condition precedent, both for altering the conditions of service and for discharging or punishing the workmen and no exception is made for a case of misconduct unconnected with a pending dispute.

and after noticing the terms of Section 33-A His Lordship said:

It may be pointed out that the new Sections 33 and 33-A thus inserted into the 1947 Act conferred distinct benefits on the workmen and give some additional jurisdiction and power to the authorities mentioned therein. Section 33-A enjoins the Tribunal to decide the complaint as if it were a dispute referred to or pending before it and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the award. It is quite clear that the provisions of these two new Sections 33 and 33-A of the 1947 Act correspond to and are in pan material with the provisions of Sections 22 and 23 of the 1950 Act and are more or less in similar terms.

His Lordship then proceeded to discuss the meaning, scope and effect of these sections. The learned Judge came to the conclusion that under the terms of Section 33-A and Section 23 of the 1950 Act the authority referred to in these sections would have jurisdiction to do complete justice between the parties relating to the matters in dispute and would have power to give such relief as the nature of the case might require and not merely to adjudicate upon whether the employer had not been guilty of contravention of Section 33 (Section 22 of 1950 Act). His Lordship then proceeded to consider the submission of the counsel for the workers that the scope of Section 33 of the 1947 Act and of Section 22 of the 1950 Act was precisely the same as that of Section 33-A and Section 23. After setting out the arguments of counsel His Lordship stated:

The object of Section 22 of 1950 Act like that of Section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of these proceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate already strained relation between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and Section 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein ; the purpose of these two sections being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these sections is to accord or withhold permission. And so it has been held we think rightly--by the Labour Appellate Tribunal in Carlsbad Mineral Water Mfg. Co., Ltd. v. Their Workmen (1953) I.L.J. 85., which was a case u/s 33 of the 1947 Act. Even a cursory perusal of Section 33 of the 1947 Act will make it clear that the purpose of that section was not to confer any general power of adjudication of disputes....Further if the purpose of the section was to invest all the authorities named therein with power to decide industrial disputes one would have expected some provision enabling them to make and submit an award to which the provisions of the Act would apply such as is provided in Section 33-A of the 1947 Act or Section 23 of the 1950 Act. There is no machinery provided in Section 33 of the 1947 Act or Section 23 of the 1950 Act for enforcing the decision of the authority named in those sections. This also indicates that those sections only impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission, that is to lift or maintain the ban....Imposition of conditions is wholly collateral to this purpose and the authority cannot impose any condition....In our judgment the Labour Appellate Tribunal was in error in holding that it had jurisdiction to impose conditions as a pre-requisite for granting permission to the company to retrench its workmen.

13. This matter received further consideration at the hands of the Supreme Court in Lakshmi Devi Sugar Mills v. Ram Sarup (1957) S.C.J. 46 (S.C.). Bhagwati, J., who delivered the judgment of the Court referring to the scope of the enquiry before the Labour Appellate Tribunal u/s 22 said:

Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice

of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to, should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimisation. It cannot impose any conditions on the employer before such permission is granted ; nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate Tribunal the workman would be entitled to have all the circumstances of the case scrutinised by the Tribunal and would be entitled to get the appropriate relief at the hands of the tribunal--The tribunal before whom such an application for permission is made u/s 22 of the Act would not be entitled to sit in judgment on the action of the, employer if it once came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was bona fide or was actuated by the motive of victimisation. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had bona fide come to the conclusion that the "-workman was guilty of misconduct with which he had been charged a prima facie case would be made out by the employer and the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case the dealing out of such punishment by the employer to the workman after such permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal u/s 22. of the Act would be either to grant the permission or to refuse it.

14. His Lordship then proceeded to say that there was a fair enquiry into the misconduct of the workman by the management and that the latter's action was bona fide and that the Labour Appellate Tribunal ought to have held that a prima facie case for the dismissal of the workman had been made out by the appellant and ought to have granted the appellant the permission to dismiss the workman.

15. The result of these decisions might thus be summarised:

Where an employer applies for permission to punish his workman be it u/s 22 or Section 33, the Tribunal is concerned with two matters:

(i) Is the act of the employer bona fide or is it intended to victimise the workmen for their act in raising the dispute or in continuing it ? If this was answered against the employer the permission would be refused.

(ii) Was there prima facie misconduct on the part of the workmen justifying the employer in inflicting the punishment ? If the answer was in the affirmative the quantum of punishment was left to the employer.

16. If the punishment which the employer inflicted was unduly harsh or was not justified by the facts and circumstances of the case, an industrial dispute could arise which might be subject to adjudication on reference by the appropriate Government u/s 10 to the Tribunal. In view of the later decisions of the Supreme Court a dispute raised between an individual workman and his employer, would not per se amount to an industrial dispute but might fall into the category if the other workmen made it an issue between the workmen as a body and their employer. Vide *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, .

17. The Industrial Tribunal, Madras, in its orders now impugned in these proceedings has understood the law in the same manner as set out above but it has held that the amending Act of 1956 has brought about a fundamental change and that under the amended sections the Tribunal is clothed with powers to decide an industrial dispute and impose conditions subject to which permission or approval could be granted.

18. I shall now proceed to set out the section as amended by the Act XXXVI of 1956--The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, which repealed the Industrial Disputes Act, 1950, and introduced by its Section 21, a new Section 33 which is in these terms:

Section 33(1).--Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings :-During the pendency of any conciliation proceeding before a Conciliation Officer or a board or of any proceedings before 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 the 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 proceeding or

(b) for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise, any workman 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,

(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, that workman:

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

(3) Notwithstanding anything contained in Sub-section (2) no employer shall, during the pendency of any such proceeding in respect of an industrial dispute take any action against any protected workman concerned in such dispute:

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings ; or

(b) by discharging or punishing whether by dismissal or otherwise such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this Sub-section a " protected workman " in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment the number of workmen to be recognised as protected workmen for the purposes of Sub-section (3) shall be one per cent, of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a Conciliation Officer, Board, Labour Court Tribunal or National Tribunal under the proviso to Sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit.

The question which I have now to consider is as to the nature and the effect of the changes, if any, introduced by the Amending Act of 1956.

19. I shall now briefly summarise the changes which have taken place from 1947

up-to-date. The two main heads under which the action of the employer is calculated to disturb a proper adjudication of the industrial dispute have been,

(i) prejudicial alteration in the conditions of service of workmen and (ii) punishments of workmen concerned in the dispute during its pendency. Under the Act as enacted in 1947, Section 33 laid an absolute embargo on the employers prejudicially altering the conditions of service of their workmen. In regard to punishments of the workmen for misconduct the 1947 Act drew a distinction between misconduct connected with the dispute and that unconnected with the dispute. In regard to the former the management had to obtain express permission in writing of the tribunal or authority before which the dispute was pending while in regard to the latter, namely, where misconduct was unconnected with the dispute the plenary power of the employer to proceed to exercise his Common Law powers was left unaffected. These underwent modification by the Amending Act of 1950 which effected alteration in both the above heads. The complete ban imposed by the 1947 Act on prejudicial alterations of the conditions of service of the workman was modified by making alterations possible with the permission in writing of the Tribunal, etc. In regard to the other head the distinction drawn between misconduct connected and misconduct unconnected with the dispute was dropped and the permission of the Tribunal had to be obtained before any workman was punished by the employer during the pendency of the dispute. The changes effected by the 1956 Act indicate something like a mixture of the positions as they stood in 1947 and in 1950. A broad line of distinction was drawn between matters connected with the dispute and unconnected with the dispute, pending before the Tribunal. Prejudicial alteration of service was placed on the same footing as disciplinary action against the workmen for their misconduct. The result of this combination is to be found in Sub-sections (1) and (2) of Section 33 as now amended. Section 33(1) is concerned with the state of affairs where prejudicial alterations of conditions of service or misconduct of workmen are connected with the dispute. In both these cases the previous permission in writing of the Tribunal has to be obtained before the employer takes action. Where these are unrelated to the subject-matter of the dispute before the Tribunal they are dealt with in Sub-section (2). Here the employer is given freedom of action but subject to his action meeting with the approval of the Tribunal. Sub-section (3) is concerned with protected workmen, a category introduced for the first time in Indian Labour Legislations but this has little relevance in the present context and might therefore be omitted out of consideration, beyond noting that in their case also the previous permission in writing of the Tribunal has to be obtained before action is taken by the employer. Lastly we have Sub-section (5) which uses the expression "as it deems fit" to describe the order which the Tribunal could pass and the introduction of this phrase in the 1955 Act, is one of the reasons assigned by the learned Judge who constituted the Tribunal for holding that the amendment has made a basic departure from the content of Section 33 as it stood in the Act of 1950.

20. This will be a convenient stage at which to set out the reasoning on the basis of which the Tribunal held that the decisions of the Supreme Court from which I have quoted relevant passages, do not apply to the construction of Section 33(2) as it now stands. The first is that the amended Section 33(2) used the expression " approval " in contradistinction to the " express permission " in writing which occurred in Section 22 of the Labour Appellate Tribunal's Act, 1950 and Section 33 as it stood before the recent amendment as also in Section 33(1) and Section 33(3) in the Act as it now stands. It is a matter of concession that where the employer applied for permission of the Tribunal u/s 33(1) and Section 33(3) before the amendments of 1956, the jurisdiction of the Tribunal extended only to considering whether the action of the employer was bona fide, that is, not an act of victimisation or intended to or calculated to effect a " queering of the pitch " in regard to the proceedings before the Tribunal for the adjudication of the industrial dispute pending before it. Harshness or excessiveness of the punishment proposed to be inflicted by the employer might be a factor for judging his bona fides, understood in the sense above indicated, but if the Tribunal reached a finding that the action of the employer was bona fide, it retained no power to direct any variation in the punishment or to impose conditions subject to which alone the punishment should be inflicted. If this were so in a case where the matter on which permission was sought was undoubtedly connected with the dispute before the tribunal, it would indeed be a matter of some surprise that in a case where the matter was unrelated to the dispute the Tribunal's jurisdiction was more extensive, which meant that the employer's powers were in such a case more restricted.

21. In both the cases which are the subject-matter of these two petitions the Tribunal has recorded findings that the employer was not actuated by any mala fides in taking action against the workmen. The Tribunal, however, proceeded to hold that it had jurisdiction to alter the punishment inflicted by the employer on the ground that it was excessive. As already stated power was vested on two bases, firstly, that Section 33(2) used the word "approval" instead of the word "permission" used in Sub-section (1) and secondly the jurisdiction of the Tribunal was referred to as one to pass an order " as it deemed fit " in Sub-section (5). With due respect to the learned Judge who constituted the Tribunal I am unable to agree with this view.

22. The learned Advocate-General submitted that the expression " approval " has been used in Sub-section (2) merely because the employer had already taken action and that consequently the word " permission " would have been inappropriate in that context. He also urged that the words used in Sub-section (5) " as it might think fit " do not mean that it might pass any order that it liked but that the only order which it could pass would be either to approve or not to approve the action taken by the employer which it had to decide on principles similar to those applicable to the grant of permission under Sub-section (1) as construed by the Supreme Court in the decisions referred to already. In my judgment these submissions of the learned Advocate-General are well-founded.

The reasoning of the Tribunal amounts to saying that in the case covered by Sub-section (2) the jurisdiction of the Tribunal had to be exercised on the same principles as those applicable to an industrial dispute.

23. The reasoning contained in the judgments of the Supreme Court in the decisions referred to above appear to me to apply with equal force to the construction of Section 33 as it now stands. The broad distinction between the powers of a Tribunal in dealing with industrial disputes and when exercising jurisdiction to grant permission still prevails and there is in this connection no material difference between the powers of the Tribunal under the three Sub-sections of Section 33.

24. The jurisdiction of the Tribunal u/s 33(1), (2) or (3) is still not to decide an industrial dispute but to keep the ring clear by preventing either side from disturbing the equilibrium. Section 33-A still continues in the same form as before and the distinction between its provisions, where the Tribunal is enjoined to decide the complaint as if it were an industrial dispute and those in Section 33 still serves to underline and emphasise the contrast between the scope of the two Sections 33 and 33-A which underlies the reasoning of the Supreme Court in the passages extracted. In line with the above, an order u/s 33-A results in an award--which is to be dealt with as other awards--and we do not have any such provision in regard to the orders u/s 33.

25. Section 33-A constitutes a departure from the general principle that industrial disputes are brought up before Tribunals for adjudication only on reference by the appropriate Governments. In the case of complaints u/s 33-A, an exception is made to this rule and the Tribunal is directed in express terms to deal with it " as if it were an industrial dispute ". Parliament had before it the language of Section 33-A which had been construed in the manner indicated by the Supreme Court, when Section 33 was amended in 1956. Parliament, however,, did not choose to employ that language but chose to confer upon the Tribunal only the power to " approve ". This, in my opinion, is an indication that the distinction under the class of power vested in the Tribunal u/s 33-A and that u/s 33 still remains. The scheme of the Industrial Disputes Act is for industrial disputes being referred to appropriate authorities or Tribunals by appropriate Governments. Section 33(2) cannot be construed in a manner which would run counter to this basic rule except, on very strong grounds and in the absence of any express language as is to be found in Section 33-A, I am unable to hold that an inroad was, so to speak, made in Section 10(1)(c) by Section 33(2).

26. Again the Supreme Court pointed out that if an employer took action against his workman in pursuance of the permission granted to him, its propriety or harshness, in relation to the facts and circumstances attending the misconduct, might possibly be raised as an industrial dispute if the body of workmen made it an issue and it was only then and in that manner that the quantum of punishment would come up for adjudication before the Industrial Tribunal. There is no provision in the Act of 1956 rendering the approval of the Tribunal final, a

finality which could preclude the workmen thereafter complaining of undue harshness or the inappropriateness of the punishment in an industrial dispute if one such should subsequently arise. In making these observations I have in mind cases where the Tribunal accords unconditional approval to an action of the management. Even in such a case it appears to me, that on the decisions of the Supreme Court, the action of the employer could be challenged by the matter being raised in an industrial dispute provided, it arises and is referred to by the appropriate Government to a Tribunal. If the approval of the Tribunal imparted a finality to the action of the employer precluding the arising of an industrial dispute thereafter one would have expected words in the section to achieve this result. In their absence, therefore, one feels entitled to conclude that the propriety of the action of the employer might still be impugned or attacked even after the approval of the Tribunal.

27. From the passages I have extracted from the judgments of the Supreme Court particularly the passage in the judgment of Bhagwati, J., in *Lakshmi Devi Sugar Mills v. Ram Sarup* (1957) S.C.J. 46, it would be apparent that the scope of the power to grant permission is confined to saying "yes" or "no". The Tribunal, the Supreme Court has held had power merely to grant or refuse permission and not to impose conditions subject to which alone permission would be granted. It is needless to repeat the criteria laid down by the Supreme Court to be satisfied before the Tribunal could withhold permission. The expression used, "approved" in Section 33 now under consideration has, in my opinion, to be Construed similarly. The power of the Tribunal is to "approve" or "not to approve" the action of the employer and it does not extend to its adding conditions to its approval.

28. In my judgment this construction is strengthened and reinforced by reason of the provision in Sub-section (2)(a) under which prejudicial alteration in the conditions of service of the employees in respect of matters unconnected with the dispute is also made subject to the approval of the Tribunal. In that case at least the approval cannot be conditional. The Tribunal can either approve the alteration or refuse to approve. It cannot be contended that the Tribunal, in the case of Clause (a) had power to suggest a course of action which the employer was bound to follow. This, in my opinion, throws light on the scope of the power of the Tribunal under Sub-clause (b) also.

29. In the light of these considerations I have reached the conclusion that the power of the Tribunal u/s 33(2) is of the same type and nature as u/s 33(1) or Section 33(3) as interpreted by the Supreme Court, and that the different expressions "approval" used in Sub-section (2) or the words "as it deems fit" in Sub-section (5) do not affect any change in the scope of this power. When once the Tribunal negatived mala fides on the part of the employer or any intention to victimise the worker for his participation in the industrial dispute, the Tribunal is in my judgment bound to accord its approval to the action of the employer, leaving the propriety of the quantum of punishment for being agitated in other

appropriate proceedings open under the Industrial Disputes Act.

30. I shall now refer to the facts in W.P. No. 597 of 1957. The employee (respondent) absented himself without leave from 27th March, 1957, till 19th April, 1957. He was called upon to offer his explanation for this action and when the management found that his explanation was unacceptable they framed charges against him for habitual absence without leave and after notice to him to show cause why he should not be punished held an enquiry as a result of which the management held that the misconduct of the workman justified their discharging him from service. The management, thereupon, applied to the Tribunal for approval of their action u/s 33(2)(b) of the 1956 Act. This application was numbered as Petition No. 3 of 1957 before the Tribunal and the Tribunal did not find that the action of the management was mala fide or that it amounted to an act of victimisation but from its judgment it appears that it was satisfied about the bona fides of the management but the Tribunal, however, proceeded to hold that the management could have taken a more sympathetic view of his case instead of inflicting the extreme punishment of discharging the respondent from service and it added:

I think that in the circumstances of the case it will be enough if his absence is treated as leave on loss of pay. This application is accordingly ordered and the approval prayed for is granted subject to the condition that the discharge order is commuted into leave on loss of pay for the period of absence. He will be permitted to join duty forthwith.

31. In the view which I have expressed about the scope of the power of the Tribunals u/s 33(2)(b), I am of the opinion that the condition imposed was not justified by the terms of the power conferred upon the Tribunal.

32. Mr. Mohan Kumaramangalam, learned Counsel for the workmen-respondents, urged that even assuming that the Tribunal was wrong in the construction of Sections 33(2) and 33(5) it would merely be a case of erroneous decision which would not be interfered with by this Court under Article 226 of the Constitution. In this connection, learned Counsel contended that as the Tribunal was specifically vested with jurisdiction to deal with petitions u/s 33 the fact that it passed an erroneous order, that is, assuming that the order was erroneous did not affect jurisdiction over the matter, with the consequence that unless this Court was satisfied that on the merits that order was unjust it should not interfere. I feel I cannot accede to this contention. The Industrial Tribunal is a creation of a statute which has vested it with limited jurisdiction. Where such Tribunal transgresses the limits of its jurisdiction and passes an order which it had no jurisdiction to pass I consider that the aggrieved party has a right to approach this Court to set aside that order under Article 226 of the Constitution. In my opinion, the order now impugned would, on the above classification, be either an order which the Tribunal had no jurisdiction to pass or one in regard to which it assumed jurisdiction by reason of an error apparent on the face of the record, namely, by an erroneous construction of the statute. Viewed in this light

the jurisdiction of this Court to issue the writ of certiorari would appear to be beyond question.

33. The next contention urged by the learned Counsel for the respondents in each of the two petitions was that as a learned Judge of this Court had been constituted the Industrial Tribunal it was virtually an order of a Judge of this Court, that was being canvassed and, therefore, this Court had no power to interfere with such orders under Article 226 of the Constitution. This contention, however, is concluded against the learned Counsel by a decision of a Full Bench of this Court in *In re Hayles* (1955) 1 M.L.J. 375 As the decision of the Full Bench is binding on me I did not hear any argument from counsel and indeed learned Counsel himself stated that he raised the point before me merely in order to agitate it in a place where the correctness of the Full Bench decision could be challenged. Even apart from this Full Bench decision, I might refer to a decision of the Divisional Court in *Queen v. Appeal Tribunal, The Champion Paper Fibre Co.* (1956) R.P.C. 323, where Lord Goddard, C.J., held that the High Court in England had jurisdiction to issue writ of certiorari and to call for the records of an order passed by Justice Lloyd Jacob, when that learned Judge was acting in his capacity as the Patents Appeal Tribunal. I have, therefore, no hesitation in overruling this contention regarding the jurisdiction of this Court under Article 226 of the Constitution

34. The result is that these two writ petitions are allowed, the rule is made absolute and the order of the Tribunal imposing conditions is set aside. There will be no order as to costs.