

(2005) 10 GUJ CK 0007
In the Gujarat High Court

Case No : Special Civil Application No's. 7584, 7585 to 7588, 9106 to 9108, 19241 and 19242 of 2005

Guajrat Ambuja Cement Pvt. Ltd.

APPELLANT

Vs

U.B. Gadhe

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes (Gujarat) Rules, 1966 — Rule 10, 11, 76, 77
Industrial Disputes Act, 1947 — Section 10, 10A, 11, 11A, 12

Citation : (2006) 1 GLR 269

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : K.S. Nanavati and K.D. Gandhi, for Petitioner 1 in SCA Nos. 7584, 7585, 7586, 7587, 7588/2005, Hriday Buch, for Petitioner 1 in SCA Nos. 9106, 9107, 9108 and 19241/2005 and P.J. Kanabar, for Petitioner 1 in SCA No. 19242/2005, for the Appellant; Hriday Buch, for Respondent 1 in SCA Nos. 7584, 7585, 7586 and 7587/2005, P.J. Kanabar, for Respondent 1 in SCA No. 7588/2005 and K.S. Nanavati and K.D. Gandhi, for Respondent 1 in SCA Nos. 9106, 9107 and 9108/2005, for the Respondent

Judgement

Akil Kureshi, J.—This group of petitions involve challenge to an award dated 31-12-2004 passed by the Labour Court, Junagadh. One set of the petitions are filed by the employer challenging the said award by which the Labour Court was pleased to partially allow the reference of the concerned workmen. The workmen were directed to be reinstated in service with continuity, however, without back-wages. The concerned workmen are also aggrieved by the said award in so far as the same provides for no back-wages and only reinstatement. They have therefore, filed counter petitions which have also been clubbed together, have been heard together along with the petitions filed by the employer. Since common questions of law and facts arise in the petitions and counter petitions, they are being disposed of by this common order.

2. Short facts leading to the present group of petitions can be noted at this

stage. It is not in dispute that the petitioner-Company is involved in providing public utility services. In the year 1989-1990, there were certain disputes between the management and the employees. There was an extended strike in which large number of employees employed by the petitioner-Company participated. This disrupted the working of the Plant where the concerned workmen were employed. The petitioner-Company therefore, initiated disciplinary action against the striking employees. Against the workmen concerned in this group of petitions, charge-sheet came to be issued. Since the workmen did not participate in the departmental proceedings, same were concluded ex-parte. Eventually, eight workmen were dismissed from service by the petitioner-Company by order dated 01-03-1990. The concerned workmen therefore, raised industrial disputes challenging their dismissal orders.

1. Earlier once the references were disposed of by the Labour Court by an award dated 23-04-1999. The workmen concerned were directed to be reinstated in service with full back-wages from the date of dismissal till reinstatement. The employer challenged the award of the Labour Court by filing Special Civil Application No. 6055/1999 and allied matters. This group of petitions came to be disposed of by Learned Single Judge by judgement dated 14-05-2004. In the said decision by giving certain directions, the proceedings were remanded back to the Labour Court. These directions read as follows :

11. For the reason stated above, it is necessary to quash and set aside the impugned judgment and awards while giving the following directions :-

I. The proceedings of aforesaid Reference Cases are remanded back to the Labour Court for re-trial.

II. When the proceedings of the aforesaid cases are remanded back to the Labour Court, the petitioner will be at liberty to lead additional evidence to substantiate its action taken against the respondents.

III. The respondents will be at liberty to lead evidence contra.

IV. The material already adduced before the Labour Court including the oral evidence led on behalf of the respondents will remain as it is.

V. The Labour Court to complete the hearing and final declaration of the judgement and awards on or before 30th September, 2004.

VI. That parties to the aforesaid Reference cases will fully cooperate the Labour Court with the hearing of the cases and no adjournment will be sought without compelling reasons.

The common judgment and award passed in Reference L.C.A.) Nos. 139/1998, 146/1998, 162/1998, 145/1998 and 150/1998 dated 23rd April, 1999 are hereby ordered to be quashed and set aside. The petitions are allowed. Rule made absolute with no order as to costs.

2. After remand, the Labour Court took up the proceedings afresh, recorded the

evidence and passed the impugned awards on 31-12-2004.

3. Before recording the observations and conclusions of the Labour Court in the impugned award, it would be useful to notice the allegations made against the concerned workmen by the employer.

4. The charges against all workmen were identical. If one therefore looks at the charges levelled against Shri U.B. Gadhe who is respondent in Special Civil Application No. 7584/2005 that would serve the purpose. There were as many as twelve different charges levelled against him which read as follows :

(1) Use of impertinent language, insult to superiors, indecent behaviour, insubordination and any act which is subversive of discipline.

2. Unlawful cessation of work or going on illegal strike in contravention of the provisions of law and the standing orders and participation in a sitdown strike.

3. Inciting and/or instigating other employees to take part in an illegal strike, sitdown strike and action in furtherance of such strike launched in contravention of the provision of law.

2. Disorderly behaviour and conduct endangering the life or safety of any person within the factory premises.

2. Act of sabotage of causing damage to the work in progress or to any property of the management willfully.

2. Willful interference with the work of another workman or of a person authorised by the management to work on its premises.

2. Holding or participating in the meetings, demonstrations and shouting of slogans inside the factory premises or mines or residential colony.

2. Unauthorised absence from duty for more than eight consecutive days.

2. Committing a nuisance in the premises of the factory, breach of these standing orders.

2. Canvassing for trade union membership and collection of union funds within the premises except as permissible under law.

2. Making a false, vicious or malicious statement in public against management/factory or officer.

2. Instigation, incitement, abetment or furtherance of any of the above acts.

1. The inquiry officer upon conclusion of the departmental inquiry submitted his report in which he came to the following conclusions :

i. Regarding charge article-1, it was concluded that the employee is guilty of charge of using impertinent language, insult to superiors, indecent behaviour and thus, acted in a manner which is subversive of discipline and in combination with

others. There is no evidence to show insubordination and hence, it is not proved. It was therefore, concluded that the employee is not found guilty of showing insubordination. With respect to all the concerned employees, the inquiry officer came to similar conclusions. In the nutshell, he concluded that the charge is partially proved.

ii. Regarding charge article-2 also he held that charge that the accused has resorted to unlawful cessation of work and going on illegal strike in contravention of the provisions of law and the standing orders and participation in a sit-down strike is proved. He thus, concluded that charge article-2 stands proved.

iii. The inquiry officer found that charge article-3 is not proved against the employee.

iv. Regarding charge article-4, it was concluded that employee is guilty of charge levelled against him.

v. Regarding charge article-5, it was concluded that the charge is not proved.

vi. Regarding charge article-6, it was concluded that the charge is not proved.

vii. Regarding charge article-7, it was held to have been proved.

viii. Regarding charge article-8, same was held to have been proved.

ix. Regarding charge article-9, same was held to have been proved.

x. With respect to charge article-10, it was observed that in absence of any other supporting evidence, the employee is given the benefit of doubt and the charge is held not proved.

xi. With respect to charge article-11, the employee was held guilty of the charge levelled against him.

xii. With respect to charge article-12, however, was held not proved.

6. The Labour Court noted that the employees had passed separate pursis by which legality of the departmental inquiries were admitted. It was noted that the notices were issued to the employees regarding different stages of departmental inquiries. The charge-sheets were sent to the employees by registered A.D. post. They however, refused to accept the same. Thereafter, also the notices were issued informing the employees about the different stages of the inquiries. All such notices were refused to be accepted by the employees. The witnesses were examined by the management in absence of the participation by the employees. The notices were sent by the registered A.D. post and also exhibited on the notice board. The employees, however, did not remain present before the inquiry officer and the inquiries were conducted ex-parte. On the basis of these materials, the Labour Court concluded that the inquiries were conducted in consonance with the principles of natural justice and the workmen concerned had remained absent continuously without proper justification. It was noted that though some of the employees had refused the notices sent by the employer,

they had sent their explanation to the charge-sheets. On the basis of the emerging facts, the Labour Court found that the departmental inquiries conducted against the employees were proper and legal.

7. Having thus concluded the issue regarding the legality of the departmental inquiries, the Labour Court proceeded to examine the legality of the dismissal orders passed by the employer. For the said purpose, the Labour Court examined the conclusions arrived at by the inquiry officer as upheld by the Disciplinary Authority in the above mentioned departmental inquiries. The Labour Court noted that the charges against the employees included those of grave misconduct such as collecting union fees in the premises of the employer, to carry on slogan shouting and of abusing the officers of the employer, of preventing other workers from resuming duties, of stopping the vehicles of the employer and other-wise misbehaving with the officers. It was observed that the main charge against the employees was of going on strike. It was concluded that there was evidence in the form of deposition of witnesses which established the charge of the workmen concerned having abused the officers, of having prevented other workers from resuming duties, of having threatened the family members of the workers and having stopped the vehicles of the employer. It was however, observed that there was no evidence to establish that the union fee was being collected forcibly. It was also observed that when the employer-company had summoned police help, the complaint should have been filed before the police regarding such activities which was not done. It was observed that it is possible that out of excitement there may have been slogan shouting, however, the details of vehicles which were stopped have not been given, the evidence of the concerned driver of the vehicle has not been recorded and details of the workmen to whom threats were given by going to their houses is also not been supplied. On the basis of these observations, Labour Court found that some of the charges were not proved.

8. With respect to the question of strike, however, it was observed that the employer was providing public utility service and a notice of strike of fourteen days was necessary which requirement was not followed. It was observed that the strike was not justified. It was also observed that as an employee discharging duty in a public utility service, it was not proper to proceed on strike without proper notice. It was observed that strike was opposed to the provisions of Section 22 of the Industrial Disputes Act. It was therefore, concluded that the concerned workmen had proceeded on strike which stands established. It was observed that naturally such a strike would adversely affect the working of the employer-Company. It was thus, concluded that though the said charge is proved, the remaining charges such as giving threat to the workers, of slogan shouting, of abusing the officers, etc. are not proved for want of sufficient evidence. In the same breath, however, it was observed that naturally during the strike there may have been some slogan shouting which is bound to happen when the strike prolonged for such a long time. Even if the employees misbehaved with some officers, it can be described as an act of excitement on account of the strike. It was therefore, observed that it is necessary to examine

whether the order of dismissal can be justified only on the ground that the workmen participated in the strike.

9. In this regard, it was observed that it is un-disputable that the concerned workmen had participated in strike. The question which was required to be decided according to the Labour Court was whether the order of dismissal can be justified only on account of the workmen concerned having participated in and having taken leadership during such a strike. It was observed that as per document exh.88 which is a letter dated 09-07-1990 written by the Asst. Labour Commissioner to the Vice-President of the Company, on 03-06-1990, it was agreed that the case of these workmen will be reviewed by the employer sympathetically. It was agreed that such a review will be conducted within a period of one month. It was observed that the workmen were to be taken back in services and, thereafter, procedure was required to be followed. It was observed that the employer has not considered their case sympathetically. It was also observed that the management had to reinstate the workmen and, thereafter, undertake the said exercise which was also not done. It was therefore, observed that the action of dismissing the workmen from service taken by the employer is an excessive punishment for the proved misconduct.

10. The Labour Court further observed that the factum of strike has been established. The strike lasted for four to five months. The employer-Company must have suffered loss on account of strike. The Labour Court therefore, felt that denying back-wages for a period of 14 to 15 years for which the employees have remained out of employment would be sufficient punishment for the misconduct proved against them. In the conclusion, therefore, Labour Court provided that the workmen should be reinstated in service with continuity but without back-wages.

11. It is this award of the Labour Court which has given rise to two sets of petitions. The employer has challenged the directions for reinstatement with continuity whereas the workmen have challenge the direction for withholding 100% back-wages.

3. Appearing for the employer in group of petitions namely, Special Civil Application Nos. 7584/2004 to 7588/2005, the learned Senior advocate Shri K.S. Nanavati submitted that the Labour Court erred in interfering with the order passed by the employer. It was contended that the charges of serious misconduct were proved against employees. It was pointed out that the Labour Court also did not hold that the workmen were not guilty of any of the charges. In that view of the matter, it was not possible for the Labour Court to interfere with the action taken by the employer.

1. It was contended that several serious charges were levelled against the employees. Many of these charges were held to have been proved by the inquiry officer which was accepted by the Disciplinary Authority. Such charges included those of serious misconduct such as slogan shouting, resorting to illegal strike, to

use abusive language against superior officers, to prevent and threaten other workers from resuming duties and to stop the vehicles of the officials of the employer. It was contended that for such a serious misconduct if the employer awarded a certain punishment, the Labour Court ought not have interfered with the same, in exercise of power u/s 11-A of the Industrial Disputes Act. It was further contended that the Labour Court erred in interfering with some of the factual findings arrived at by the inquiry officer during the course of inquiry. It was submitted that findings were recorded on the basis of material on record. The Labour Court did not have the power or authority to upset such findings unless they were wholly perverse in a sense that there were no evidence on record to permit the employer to hold such charges as proved. It was contended that the Labour Court also believed that the strike was illegal and the employees concerned had participated in the strike. The strike had admittedly gone on for four to five months. When the Company is a public utility service provider, any act of strike would cripple essential supplies and such precipitation of strike cannot be tolerated. It was contended that once the Labour Court found that there was illegal strike and when it was found that the workmen concerned had participated actively in such illegal strike, the Labour Court ought not have interfered with the quantum of punishment. It was contended that the Labour Court erred in misinterpreting the compromise entered into between the management and Union. It was argued that the case of the eight workers who were found to have fomented the strike and played a leading role, were to be treated differently from the rest of the workmen who had only followed the lead provided by the leading members. He pointed out that the concerned workmen were office bearers of the Union who had instigated other workers to go on strike, had played active and leading role and had also committed other misconducts for which after a detailed departmental inquiry, they were dismissed from services. It was contended that the employer-Company would have suffered losses on account of such prolonged illegal strike. The workmen who were found to have indulged in such strike and led from front could not have been treated with leniency. It was therefore, submitted that their cases could not have been linked with the cases of other workers.

2. It was contended that there was no indication that such workmen will be first reinstated in service and, thereafter, their cases will be considered sympathetically. It was contended that in any case, the employer had reviewed the cases but found itself unable to recall the dismissal orders. Such exercise even if found to be defective would not render the dismissal orders illegal or unlawful.

3. Reliance was placed on the decision of Hon''ble Supreme Court in the case of Mill Manager, Model Mills Nagpur Ltd. Vs. Dharam Das, Etc., , wherein the Hon''ble Supreme Court upheld the action of the employer in dismissing the nine workmen who had gone on illegal strike. In the above mentioned decision, the Hon''ble Supreme Court made following observations :

12. In our opinion, the entire approach to the principal questions arising in the case by the State Industrial Court was quite wrong and contrary to the provisions of the Act. The State Industrial Court erred in law in setting aside the orders of dismissal passed by the appellant against those respondents who were not employed to work a Calender machine when on its own findings, they had gone on strike as also in the case of the respondents who were deputed to work a Calender machine because their act amounted to an illegal strike. Under the provision of the Standing Orders of the Model Mills Ltd., all the respondents were guilty of misconduct. The appellant had acted within his jurisdiction under the Standing Orders, in dismissing them. There was no justification for the respondents to go on an illegal strike.

13. In the result, we are of the opinion, that all the nine respondents, having gone on an illegal strike, were rightly dismissed by the appellant. The appeals are accordingly allowed and the orders of the State Industrial Court are set aside and that of the Assistant Labour Commissioner are restored. There will, however, be no order for costs.

4. The decision of the Hon"ble Supreme Court in the case of India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen, was relied upon, wherein the Hon"ble Supreme Court observed in para.19 that the law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. It was further observed that this distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike is liable to be dealt with departmentally. It was further observed that tendency to condone what has been declared to be illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. It was further observed that there may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating the workmen to join such a strike, or have taken recourse to violence.

5. Reliance was also placed on the decision of the Hon"ble Supreme Court in the case of Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh, in support of the contention that Court or Tribunal should not interfere with the finding arrived at by the employer in a domestic inquiry which finding is supported by the evidence and one which could have been reached by a reasonable man.

6. Reliance was also placed on the decision of the Hon"ble Supreme Court in the case of Oriental Textile Finishing Mills, Amritsar v. Labour Court, Jullundur and Ors. reported in 1971(3) Scc. In the said decision in para.12, the Hon"ble Supreme Court has negated the contention raised on behalf of the workmen that even where the strike is illegal, in order to justify the dismissal or the order

terminating the services of the workmen on the ground of misconduct, the management must prove that they were guilty of some overt acts such as intimidation, incitement or violence and that in every case the proof of such overt-acts are a necessary pre-requisite. It was further observed that in this case there is a persistent and obdurate refusal by the workmen to join duty notwithstanding the fact that the management has done everything possible to persuade them and given them opportunities to come back to work but they have without any sufficient cause refused to do so, which in view of the Hon''ble Supreme Court would constitute misconduct and justify the termination of their services.

7. Reliance was also placed on the decision of the Hon''ble Supreme Court in the case of U.P. State Bridge Corporation Ltd. and Ors. v. U.P. Rajya Setu Nigam Karamchari Sangh reported in (2004) SCC 268, wherein it was observed in para. 21 that the submission that a person on illegal strike does not abandon his job is erroneous. An illegal strike cannot by definition be authorised absence.

8. Reliance was also placed on the decision of the Hon''ble Supreme Court in the case of Obettee Pvt. Ltd. v. Mohd. Shafiq Khan reported in AIR 2005 SCW 4752 to point out that the case of those employees who have gone on strike but later on apologise for the same were treated differently by the Hon''ble Supreme Court from the case of those employees who tried to justify their participation in the strike.

9. Large number of decisions of the Hon''ble Supreme Court were cited to contend that in exercise of power u/s 11-A of the Industrial Disputes Act, the Labour Court cannot interfere with the quantum of the punishment imposed by the employer unless the punishment is shockingly disproportionate to the proved charges. However, pointed reference was made to the decision of the Hon''ble Supreme Court in the case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , wherein after considering several previous decisions, this aspect of the matter was highlighted by the Hon''ble Supreme Court. The learned Senior advocate Shri K.S. Nanavati did not find it necessary to take recourse to several other decisions wherein the Hon''ble Supreme Court has reiterated this legal principle. From the decision of Mahindra and Mahindra Ltd. v. N.B. Narawade (Supra), he pointed out the observations made by the Hon''ble Supreme Court in para.20 of the said decision which are as follows :

20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgment of this Court referred to here-in-above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb

the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power u/s 11-A of the Act and reduce the punishment. As notice here-in-above at least in two of the cases cited before us i.e. Orissa Cement Ltd and New Shorrock Mills this Court held: punishment of dismissal for using of abusive language cannot be held to be disproportionate. In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workmen is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to here-in-above.

4. On the other hand learned advocate Shri Hriday Buch appearing for the workmen in Special Civil Application Nos. 9106/2005, 9107/2005, 9108/2005 and Special Civil Application Nos. 19241/2005 and in the counter petitions filed by such workmen against the employer submitted that the award of the Labour Court in so far as same strikes down the dismissal orders is perfectly just and legal. He contended that no interference is called for in this regard.

1. It was contended that the compromise entered into between the union and the employer requires that workmen should be first reinstated in service and, thereafter, their cases be reviewed sympathetically. It was submitted that employer failed to fulfill both these conditions. It was urged that none of workmen were reinstated in service. Their cases though were stated to have been reviewed sympathetically, there was nothing on record to suggest that any sympathy was shown. It was also contended that the workmen concerned were singled out for harsh and discriminatory treatment. It was urged that all other workers were reinstated in service by the employer whereas without any distinction these eight workers were treated differently.

2. It was further contended that the Labour Court committed no error in holding that some of the more serious charges against the workmen were not proved. It was submitted that the findings arrived at by the Labour Court were the findings of fact and this Court in exercise of powers under Article 226 and 227 of the Constitution of India would not interfere with such findings. It was urged that the Labour Court committed no jurisdictional error in coming to such findings.

3. The next contention of the learned advocate for the workmen Shri Buch was that the employer took the steps of dismissing the workmen while the conciliation proceedings were pending before the conciliation officer. It was contended that the Conciliation officer was seized of the matter regarding the so called illegal strike and proceedings were held from time to time between the management and the workers-union. It was during such period that dismissal orders came to be passed. The employer had neither taken permission from the

Conciliation Officer nor applied for approval of such dismissals and the dismissal orders were therefore, opposed to the provisions of Section 33 of the Industrial Disputes Act. It was therefore, contended that in any case the dismissal orders cannot be sustained. It was urged that Labour Court therefore, ought to have granted back-wages also and not only reinstatement and continuity.

4. The decision of Hon''ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, was relied upon to contend that when the conciliation proceedings are pending, any action of the employer dismissing the workmen from service would be ab-initio void and non-est. In support of this contention reliance was also placed on the decisions of the Hon''ble Supreme Court reported in Punjab National Bank Ltd. Vs. Employees of The Bank, and M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad,

5. The decision of the Hon''ble Supreme Court reported in The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor Industries Co. Ltd. Bangalore, were cited to canvas the contention regarding the victimisation and unfair labour practice allegedly adopted by the employer.

1. Reliance was placed on the decision of the Hon''ble Supreme Court reported in Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, to urge that the scope of jurisdiction of this Court under Article 227 of the Constitution of India is extremely narrow and this Court would not interfere in the findings of fact arrived at by the Labour Court.

5. The learned advocate Shri P.J. Kanabar appearing for the petitioners in Special Civil Application No. 19242/2005 in addition to adopting the arguments made by the learned advocate Shri Buch, further contended that the Labour Court had considered all the aspects of the matter after which it came to the conclusion that some of the charges against the workmen were wrongly held to have been proved. The Labour Court found that there was no evidence to drive home these charges. He submitted that these are findings of fact arrived at by the Labour Court on the basis of available material on record. This Court, therefore, in exercise of power under Article 227 of the Constitution of India would not interfere with such factual findings. He further contended that the Labour Court having found that dismissal orders were illegal, further necessary direction for payment of back-wages ought to have passed.

6. After considering the rival submissions, having perused the award passed by the Labour Court and the material produced on record, I find that it would be convenient to deal with this group of petitions in two compartments. Firstly, one may consider the question of the nature of order passed by the Labour Court on the basis of available material on record. In the second part, I would like to deal with the contention of the workmen that proceedings were pending before the conciliation officer involving the question of the on going strike when the employer passed the dismissal orders and that therefore, such dismissal orders were illegal in absence of any approval or permission from the Competent

Authority. It may be noted that such contention was not specifically taken before the Labour Court. I have however, heard the learned advocates appearing for both the sides at considerable length on this aspect of the matter which will be elaborated in the later portion of the judgement. Suffice it to say that in the first part when I am deciding the legality of the order passed by the Labour Court, this aspect of the matter will be kept out of consideration.

7. As noted earlier there is hardly any dispute that there was prolonged strike in the establishment of the petitioner-Company. There is also no dispute about the fact that workmen concerned in this group of petitions and three other workmen who were office bearers of the Union had actively participated in the strike. For their participation in strike and other misconducts, charge-sheets were issued against such workmen. Though some of them replied to the charge-sheet, all of them chose to remain ex-parte in the departmental inquiries conducted against them by the employer. The Labour Court on the basis of available evidence, came to the conclusion that at all stages, notices were issued to the workmen to which they never responded. On the basis of sufficient material on record, the Labour Court found that the employer was justified in proceeding against the workmen ex-parte. Even other-wise, the workmen had passed a pursis before the Labour Court giving up the challenge to the legality of the departmental inquiries. It thus stood established before the Labour Court that through a validly held departmental inquiry, the employer had taken certain steps against the workmen

1. As noted earlier, though there were as many as 12 charges levelled against the workmen, inquiry officer himself did not find sufficient evidence to drive home some of these charges. The Disciplinary Authority agreed with the views of the inquiry officer and upheld his conclusions. Thus, at the stage of departmental inquiry, some of the charges against the respondents were held to have been proved. The charges which were held to have been proved included those of use of impertinent language, insult of superiors and indecent behaviour, of unlawful cessation of work and going on illegal strike in contravention of the provisions of law and the standing orders, of disorderly behaviour and conduct endangering the life or safety of other person within the factory premises, of unauthorised absence from duty for more than eight consecutive days, of committing nuisance in the premises of the factory and breach of standing orders by making a false and malicious statement in public against the management. The employer had examined several witnesses in support of these charges and had also produced as many as 21 documents. Without elaborate discussion, Labour Court found that these charges are not borne out from record. It may however, be noted that the Labour Court did conclude that the strike was illegal and that the workmen concerned had participated in such illegal strike. However, with respect to the rest of the charges, the Labour Court in general terms found that the employer had failed to establish these charges.

2. The parameters of interference with the findings arrived at during the course of domestic inquiry by the Courts and Tribunals examining the legality of the

punishment orders passed by the employer are well laid down in number of decision of the Hon''ble Supreme Court. In the Division Bench decision of this Court in the case of *Nirmala J. Jhala v. State of Gujarat* reported in *Nirmala J. Jhala Vs. State of Gujarat*, the Bench culled out the principles in the following manner :

49. From the above decisions, following legal principles can be culled out :

i. A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

ii. The High Court cannot sit in appeal over the decision of the domestic Tribunal. Therefore, where there are some relevant materials, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution of India to review the materials and to arrive at an independent finding on the materials.

iii. If the inquiry is properly held, the question of adequacy or reliability of evidence cannot be gone into by the High Court. High Court cannot interfere with the penalty if the conclusion of the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

iv. In case of disciplinary inquiry, technical rules of evidence have no application

v. The only consideration that Court has in its judicial review is to consider whether the conclusion is based on evidence and supports the findings or whether the conclusion is based on no evidence. To put it differently, the High Court can interfere if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonably prudent person would have ever reached.

7.3 The above observations were made with regard to the scope of jurisdiction of the High Court under Article 226 of the Constitution of India, same would however, apply also to the powers of the Labour Court or Industrial Tribunal while examining the conclusions arrived at by the employer during the course of departmental inquiry.

7.4. The Labour Court in-fact recorded that the evidence of the witnesses do support the case of the employer that the concerned workmen had abused the officers of the Company, had prevented other workers from resuming duties, had given threats to the family members of the workers and had stopped the vehicles of the Company entering into the premises. The Labour Court however, observed that in cross examination the witnesses could not give the evidence of the workmen having collected the Union subscription forcibly. The Labour Court observed that when police protection was available and security staff was also present, the workmen could have been prevented from behaving in a vulgar manner or stopping the vehicle. On the basis of the observations that no police complaints were filed against such workers, this aspect of the matter was not

believed by the Labour Court. The Labour Court however, did concede that it is possible that on account of excitement of the strike, there may have been slogan shouting however, allegations of vulgar behaviour cannot be believed. The Labour Court observed that the employer failed to establish that there was forcible collection of Union subscription and of preventing the vehicles from entering the premises and of threatening the officers.

7.5 I do not find that Labour Court considered the evidence on record to come to the above conclusions. The power of the Labour Court to interfere with the findings arrived at by the employer are extremely narrow. If there is some evidence on record to permit the employee to draw such conclusions, it is not for the Labour Court to decide the sufficiency of such evidence and unless the conclusions are based on no evidence and, therefore, perverse, Labour Court could not have interfered with the same.

7.6 There is however, yet another aspect of the matter. Even with toned down charges, the Labour Court found that the persons concerned were involved in going on illegal strike. As noted, strike lasted for four to five months. The Labour Court also observed that there must have been substantial loss to the employer on account of such illegal strike. The Labour Court in-fact accepted that there may have been slogan shouting due to heat of the moment and excitement of the strike. The fact that the concerned workmen had taken leading active part in the strike is not seriously in dispute. In that view of the matter, the Labour Court erred in coming to the conclusion that most of the charges against the workmen are not proved.

7.7 The Labour Court also proceeded to consider the question of quantum of punishment on the basis that the charge of going on illegal strike was proved against the workmen. The Labour Court ultimately found that for the proved misconduct, punishment of withholding of the back-wages for a period of 14 to 15 years would be sufficient punishment. The Labour Court found that order of dismissal cannot be sustained.

8. By now it is well settled that the Courts and Tribunals can interfere with the choice of punishment imposed by the employer only if it is found that punishment is disproportionate to the proved charges and so excessive and harsh as to shock the conscience of the Court. This aspect of the matter has been considered by the Hon"ble Supreme Court in number of decisions. This view was adopted by the Hon"ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, This aspect was thereafter, reiterated and repeated in series of decisions and it would not be necessary to refer to all the decisions. Suffice to say that I find considerable force in the contentions raised on behalf of the employer that the scope of the Labour Court in interfering with the quantum of punishment was extremely narrow. Reference in this regard can also be made to the decision of the Hon"ble Supreme Court in the case of Mahindra and Mahindra Ltd. v. N.B. Narawade (Supra).

1. When the Labour Court found that the workmen had proceeded on illegal strike and that they were leading participants in such a strike, the Labour Court ought not to have interfered with the quantum of punishment especially when it was established that the employer is a Public Utility Service and that the strike prolonged for a period of four to five months. Even in absence of any further proof of involvement of the workmen for other misconduct of unruly behaviour, abusing superiors officers, preventing officers from entering the premises, preventing coworkers from resuming duties and threatening the family members of the workmen and collecting union subscription illegally, it is doubtful whether the Labour Court could have reduced the punishment and substituted the order of dismissal by lesser punishment. As noted earlier, the Hon''ble Supreme Court had upheld the action of the employer in dismissing the employee who were found to have gone on illegal strike in the decision of *Mill Manager, Model Mills Nagpur Ltd. v. Dharam Das, Etc.*(Supra).

9. I am unable to accept the contention of the learned advocate for the employees that before the conciliation officer employer had agreed to reinstate the workmen concerned as also the contention that having agreed to take a sympathetic review of the situation, the employer failed to do so and that therefore, the order is rendered illegal.

10. In the agreement following terms were provided :

1. The case of eight disputed workmen will be reviewed sympathetically within a period of one month.

2. The workmen will give undertaking as decided.

3. The management has proposed the principle of No work no pay as against which the demand has been raised by the union which will be decided jointly by Shri Sureshbhai and Managing Director.

4. If the Company finds that the workman has committed any misconduct or has done something wrong after taking him in service it will be open for the management to take steps in accordance with law.

11. The understanding between the employers and employees as manifested in the said document was sufficiently clear. The case of the eight disputed workmen was to be treated separately. The condition No. 4 would apply to all the workmen other than these eight workmen. For the rest of the employees, it was provided that they will be taken in service and only after which if the management finds that some misconduct has been committed, steps were to be taken. For the eight persons, there was a different provision made in condition No. 1 wherein it was stated that their cases will be considered sympathetically within a period of one month. The understanding therefore, did not provide that such workmen will be first reinstated in services and only thereafter, there will be a review against them. Quite apart from clear language of the understanding such a condition as sought to be interpreted by the learned advocates for the workmen would render

the condition unworkable. If the workmen concerned are to be reinstated in service, there is thereafter, no question of reviewing the dismissal orders. The condition No. 1 and 4 therefore, were separate and not overlapping. I therefore, do not find any breach of condition as suggested. With respect to the question of not considering their cases sympathetically also, it may be noted that the management did set up a case that a review was undertaken and that their cases were considered sympathetically, however, it was found that it is not possible to recall the dismissal orders. Any such condition of the understanding would not decide the legality of the order of dismissals passed. When the Labour Court was therefore, deciding the legality of the dismissal orders, the same had to be judged on the touchstone of the material available on record. I also do not find that there was any discrimination or unfair labour practice adopted by the employer whereby they singled out these persons for a harsher treatment than the rest of the workmen. In a recent decision of the Hon'ble Supreme Court in the case of Obettee Pvt. Ltd. v. Mohd. Shafiq Khan AIR 2005 SCW 4752 observed that case of those workmen who had gone on strike but later on apologised would stand on different footing from those who tried to justify their participation and the employer treating two sets of workmen separately cannot be said to have committed any unfair labour practice.

12. In the conclusion, I find that the Labour Court committed error in interfering with the orders of dismissal passed by the employer.

13. This brings me to the second aspect of the matter regarding the question of pendency of the proceedings before the conciliation officer when the dismissal orders were passed. As noted above earlier this contention was never taken before the Labour Court. No evidence was led and no submissions made in this regard. This being a mixed question of law and facts, therefore, this Court would have ordinarily refused to permit the petitioners to raise such a contention for the first time in a writ petition. However, in the interest of justice to satisfy the conscience of the Court and to ascertain whether there are admitted materials on record which can establish that the conciliation proceedings were pending before the conciliation officer which would have necessitated the employer to take approval or permission from the conciliation officer in terms of provisions of section 33 of the Industrial Disputes Act before or at the time of dismissing the workmen from service. In the petitions filed by the workmen also I could not find any clinching undisputable evidence which would enable this Court to permit the workmen to raise such a contention for the first time in a writ petition. Not having raised the same before the Labour Court also, I therefore, called for record and proceedings of the case which would also include the proceedings before the conciliation officer to ascertain this aspect of the matter.

14. From the material on record it can be seen that the workmen were dismissed by order passed on 01-03-1990. It is not in dispute that the conciliation officer had never issued formal notices of conciliation. It was however, urged by the learned advocate Shri Buch that on and around 01-02-1990, the conciliation

officer had knowledge about the simmering discontent in the Company and of an ongoing strike. He pointed out that there is material on record to establish that the conciliation officer did hold meetings of rival groups and also tried to bring about the settlement. He pointed out that in-fact it was pursuant to such attempts made by the conciliation officer that eventually, a settlement was reached between the employer and the agitating workmen. The learned advocate Shri Buch pointed out a communication dated 19-07-1990 which is a letter from the office of the Labour Commissioner in which it is stated that the workers were on strike on 29-1-1990 and the Labour Commissioner had intervened on 01-01-1990 and held discussions between the parties. On 08-05-1990 discussion had also taken place with the then Industries Minister however, the disputes were not resolved. Later on due to continuous efforts, on 03-06-1990 there was a settlement between the parties in the meeting held at Kodinar. From the above material it is urged that it can be seen that conciliation proceedings were pending before the conciliation officer right from 01-02-1990 till 03-06-1990. It is therefore, contended that orders of dismissal passed on 01-03-1990 could not have been validly passed without following the requirement of the provisions of Section 33 of the Industrial Disputes Act.

15. The learned advocate Shri Buch pointed out that this aspect was also admitted by the witness of the employer in his deposition wherein he has stated that Asst. Labour Commissioner, Amreli has fixed conciliation on 02-02-1990 which was in response to our notice dated 29-01-1990. He admitted that he attended such meetings.

16. On the other hand learned advocate Shri K.S. Nanavati submitted that commencement and conclusion of the conciliation proceedings have to be understood as provided in the provisions of Industrial Disputes Act. He submitted that the conciliation proceedings had not commenced so as to require the employer to follow the provision of Section 33 of the Industrial Disputes Act before dismissing the workmen from service. He contended that unless and until the conciliation proceeding could be said to have commenced formally, it was not necessary for the employer to follow the requirement of Section 33 of the Industrial Disputes Act. He submitted that any informal meeting held by the conciliation officer would not amount to commencement of conciliation proceeding. In this regard, reliance was placed by him on the decision of Assam High Court in the case of the Manager, Panitola Tea Estate belonging to Jokai Assam Tea Co. Ltd. v. The Conciliation Officer, (Labour Inspector), Tinsukia and Anr. reported in 1966 Gau138 wherein the Division Bench of the Assam High Court held that for Section 20 of the Industrial Disputes Act, commencement of the conciliation proceedings in each case would be the date when the notice is served on the parties by the conciliation officer.

1. Reliance was also on the decision of the Orissa High Court in the case of Pratap Chandra Mohanty v. Union of India and another reported in AIR 1972 Ori 610 wherein the Division Bench of the Orissa High Court held that mere

exploring of possibility of a settlement by asking the parties for joint deliberations does not per se commence the conciliation proceeding. These are only preliminary to such proceeding.

17. To decide the above question of pendency of conciliation proceedings, it would be necessary to take note of some of the statutory provisions contained in the Industrial Disputes Act and rules made thereunder.

1. Section 2(d) of the Industrial Disputes Act defines term Conciliation Officer to mean a conciliation officer appointed under the Act.

2. Section 2(e) of the Industrial Disputes Act defines the term conciliation proceedings. Section 2(e) reads as follows :

(e) conciliation proceeding means any proceeding held by a conciliation officer or Board under this Act;

3. Section 11 of the Industrial Disputes Act lays down the procedure and power of conciliation officers, Boards, Courts and Tribunals.

4. Section 12 of the Industrial Disputes Act provides for duties of conciliation officers.

Sub-section (1) of section 12 of the Industrial Disputes Act provides that where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall, hold conciliation proceeding in the prescribed manner. Sub-section (1) of section 12 reads as follows :

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall, hold conciliation proceeding in the prescribed manner.

Sub-section (2) of Section 12 of the Industrial Disputes Act requires the conciliation officer to attempt to bring about fair and amicable settlement of disputes between the parties.

Sub-section (3) of section 12 of the Industrial Disputes Act provides that if a settlement of the dispute or any of the matters in dispute is arrived at in the course of conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government.

Sub-section (4) of Section 12 of the Industrial Disputes Act provides that if no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which the settlement could not be arrived at.

Sub-section (5) of Section 12 of the Industrial Disputes Act empowers the

appropriate Government upon consideration of the failure report to make a reference to a board, Labour Court, Tribunal or National Tribunal and further requires the Government to record reasons and communicate to the parties the same if the Government does not make a reference.

Sub-section (6) of Section 12 of the Industrial Disputes Act provides for time limit within which the conciliation proceedings to be concluded.

5. Sub-section (1) of Section 18 of the Industrial Disputes Act provides that a settlement arrived at by the agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement whereas Sub-section (3) of Section 18 provides that a settlement arrived at in the course of conciliation proceedings under the Act, shall be binding not only on all parties to the industrial dispute but to all other parties summoned to appear in the proceedings, the employer, his successor and assigns in respect of the establishment to which the dispute relates and all persons who were employed in the establishment to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part thereof

6. Section 20 of the Industrial Disputes Act provides for commencement and conclusion of the conciliation proceedings. Section 20 read as follows :

20. Commencement and conclusion of proceedings-(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out u/s 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case maybe.

2. A conciliation proceeding shall be deemed to have concluded -

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published u/s 17, as the case may be; or

c. when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] u/s 10 during the pendency of conciliation proceedings.

2. Proceedings [before an arbitrator u/s 10A or before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the [reference of the dispute for arbitration or adjudication, as the case may be] and such proceedings shall be deemed to have concluded [on the date on which the award becomes enforceable u/s 17A]

7. Section 22 of the Industrial Disputes Act provides for prohibition of strikes and lock-outs in public utility service.

8. Sub-section (1) of Section 22 provides that no person employed in a public

utility service shall go on strike, in breach of contract -

(a) without giving to the employer notice of strike as provided within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings

9. Sub-section (2) of Section 22 provides that no employer carrying on any public utility service shall lock-out any of his workmen under similar circumstances as mentioned above.

10. Section 33 of the Industrial Disputes Act read as follows :

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

(a) in regard to any matter connected with 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 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],-

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

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

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

(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.

(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, [an arbitrator, a] 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, [within a period of three months from the date of receipt of such application] such order in relation thereto as it deems fit:]

[Provided that where any such authority considers it necessary or expedient so to do, it may for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]

18. From the above recording of statutory provisions, it can be seen that conciliation proceedings means any proceeding held by the conciliation officer or board under the Industrial Disputes Act, as defined u/s 2(e) of the said Act.

1. As noted, Sub-section (1) of Section 12 provides that where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall, hold conciliation proceedings in the prescribed manner. It can thus be seen that in Sub-section (1) of Section 12 of the Industrial Disputes Act, there is legislative mandate for the conciliation officer to hold the conciliation proceedings in the prescribed manner where the dispute relates to the public utility service

and notice u/s 22 has been given. In all other cases namely where the dispute relates to any establishment other than public utility service or where though the dispute relates to a public utility service, but a notice u/s 22 of the said Act has not been given, the conciliation officer has a discretion to hold conciliation proceedings where industrial dispute exists or is apprehended.

2. At this stage, it may be noted that admittedly no notice of strike u/s 22 of the Industrial Disputes Act was given. One may recall that Section 22(1) of the Industrial Disputes Act talks of notice of strike to be given by the persons employed in a public utility service before going on such a strike. In that view of the matter, it was within the discretionary power of the conciliation officer to hold the conciliation proceeding or not.

3. In this regard one may also notice the Industrial Disputes (Gujarat) Rules, 1966(hereinafter referred to as the said Rules). Rule 10 of the said Rules deals with the conciliation proceedings in public utility service where a notice of strike or lock-out is given. Rule 11 of the said Rules deals with conciliation proceedings in other cases.

1. Rules 10 and 11 read as follows :

10. Conciliation proceedings in public utility service when a notice of strike or lock out is given.

The conciliation officer, on receipt of a notice of a strike or lock out given under Rule 76 or Rule 77 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

11. Conciliation proceedings in other cases .

Where the conciliation officer receives any information about an existing or apprehended industrial dispute which relates to a public utility service but no notice of strike or lock out is given under rule 76 or rule 77 where the industrial dispute does not relate to a public utility service, and he considered it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

5. From the above rules, it can be seen that two separate procedures have been laid down. One for holding of conciliation proceeding in public utility service when a notice of strike or lock out is given. In such a case it is provided that on receipt of a notice of strike or lock out given under Rule 76 or 77, the conciliation officer shall forthwith arrange to interview both the employer and the workmen concerned at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question. On the other hand Rule 11 of the said Rules covers the situation of conciliation proceedings in other cases i.e. cases other than conciliation proceedings in public utility service

wherein a notice of strike or lock out is given. In such a situation it is provided under Rule 11 that where a conciliation officer receives any information about an existing or apprehended industrial dispute relating to a public utility service, but no notice of strike or lock out is given under Rule 76 or Rule 77 or where the industrial dispute does not relate to a public utility service and if the conciliation officer considered it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

6. The point of difference to be noted between the two situations is that in cases where conciliation proceedings pertain to a dispute in public utility service where a notice of strike or lock out is given, conciliation officer has to forthwith arrange to hold conciliation proceedings and endeavour to bring about a settlement of the dispute. On the other hand where though conciliation officer has received information about an existing or apprehended dispute which either relates to public utility service but with respect to which no notice of strike or lock out is given under Rule 76 or 77, or where industrial dispute does not relate to a public utility service, in such a case the conciliation officer if he considers it necessary to intervene in the dispute, he is required to give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

7. Rules 10 and 11 of the said Rules make the distinction between the two situations envisaged in Sub-section (1) of Section 12 of the Industrial Disputes Act further clear. The difference between the situation where dispute apprehended or existing is the dispute pertaining to Public Utility Service where a notice of strike or lock out has been given as against the proceedings in other cases namely where either the dispute pertains to public utility service but no notice of strike or lock out has been given or whether the dispute does not relate to public utility service, has been further highlighted.

8. When in Rule 11, the legislature talks of the requirement of the conciliation officer to give formal intimation in writing to the parties declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein has also some significance. In this regard one may advert to the provision of Section 20 of the Industrial Disputes Act which provides for commencement and conclusion of the conciliation proceedings. Sub-section (1) of Section 20 of the Industrial Disputes Act provides that the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lock out u/s 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case maybe. Here one may notice Sub-section (1) of Section 20 is a deeming provision providing for fiction that the moment notice of strike or lock out is received by the conciliation officer, conciliation proceedings shall be deemed to have commenced. These provisions would therefore, apply in a case where the dispute pertains to public utility

service and wherein notice of strike or lock out as required u/s 22 has been received by the conciliation officer. Subsection (1) of Section 20 does not provide for commencement of conciliation proceedings in other cases. Ordinarily therefore, we will have to find out from other provisions as to when can it be stated that a conciliation proceeding has commenced. To reiterate, Sub-section (1) of Section 20 provides for a deemed commencement of the conciliation proceedings in a case where notice of strike or lock out u/s 22 of the said Act has been received by the conciliation officer. In the present case, no such notice was received as noted earlier. The question is therefore, in such cases when can it be said that conciliation proceedings commenced.

9. As noted earlier Clause (e) of Section 2 of the Industrial Disputes Act defines term conciliation proceeding to mean any proceeding held by a conciliation officer or by Board under the Act. Sub-section (1) of Section 12 empowers the conciliation officer to hold conciliation proceedings under certain situations and mandates the conciliation officer holding conciliation proceedings wherein dispute relates to public utility service and notice u/s 22 of the Act has been given. For other cases, wherein the industrial disputes exist or is apprehended which either relates to public utility service, but notice u/s 22 has not been given or wherein such dispute does not relate to public utility service, the conciliation officer has a discretion whether to commence the conciliation proceedings or not.

1. Rule 11 of the said Rules in this regard provides that in such a case if the conciliation officer considers it necessary to intervene in the dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein. Commencement of conciliation proceedings in all cases not covered by Sub-section (1) of Section 20 would therefore have to be held from the date where the formal intimation in writing has been given by conciliation officer declaring his intention to commence the conciliation proceedings with effect from such date as may be specified. It can therefore, be seen that conciliation proceedings would commence when the conciliation officer gives a formal intimation in writing to the parties concerned declaring his intention to commence the conciliation proceedings with effect from such date as may be specified therein. It is only for the cases covered under Subsection (1) of Section 20 that a deeming fiction is created to provide that conciliation proceedings shall be deemed to have commenced on the date on which notice of strike or lock out u/s 22 of the Industrial Disputes Act is received. In the present case admittedly, no such notice u/s 22 was received. Again admittedly, conciliation officer never issued any formal notice under Rule 11 of the said Rules expressing his desire to commence the conciliation proceedings. In that view of the matter in my opinion conciliation proceedings had never commenced before the conciliation officer which would require the employer to follow the procedure laid down u/s 33 of the Industrial Disputes Act.

19. Thus, with the available material on record, in view of the statutory

provisions, I am unable to hold that conciliation proceedings were pending before the conciliation officer when the employer dismissed the employees from services. In that view of the matter, I am unable to accept the contention in this regard raised on behalf of the employees" learned advocate Shri Buch. He pointed out the decision of the Hon'ble Supreme Court in the case of Lokmat Newspapers Pvt. Ltd. v. Shankarprasad reported in 1999 SC 2423. In the said decision, before the Hon'ble Supreme Court however this question was not directly at issue. In-fact the thrust of the discussion in the said decision is with respect to date when the conciliation proceedings can be held to have been concluded.

20. In view of the above conclusions, the impugned award passed by the Labour Court is set aside. Special Civil Application Nos. 7584/2005, 7585/2005, 7586/2005, 7587/2005 and 7588/2005 are allowed. Rule made absolute. Special Civil Application Nos. 9106/2005, 9107/2005, 9108/2005, 19241/2005 and 19242/2005 are rejected. Rule is discharged. No order as to costs in both sets of the petitions.