

(1960) 10 PAT CK 0013

In the Patna High Court

Case No : Misc. Judicial Case No. 721 of 1958

Harinagar Sugar Mills Ltd.

APPELLANT

Vs

Choudhary Sia Saran Sinha and Another

RESPONDENT

Date of Decision : 18-10-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2), 33(5)

Citation : AIR 1961 Patna 232 : (1961) 3 FLR 12 : (1961) 2 LLJ 511

Hon'ble Judges : V. Ramaswami, C.J.; R.K. Choudhary, J

Bench : Division Bench

Advocate : A.B.N. Sinha and Ram Narain Tiwari, for the Appellant; Govt. Advocate, Ranen Roy, Purnandu Narain and Tara Kumar Das, for the Respondent

Final Decision : Allowed

Judgement

B.K. Choudhary, J.—This is an application under Article 227 of the Constitution of India. The petitioner in this case is the Harinagar Sugar Mills Ltd., a public limited company registered under the Indian Companies Act, having its registered office at Bombay, and owning a vacuum pan sugar factory at Harinagar, where it carries on business of manufacture of sugar from crushing of sugarcane. During the crushing season, which normally starts from November and lasts till April each year, the work is carried on in three shifts, namely A, B and G.

The last shift, namely, shift C, begins from 12 midnight and continues up to 8 a.m. On the 10th of March, 1958, respondent No. 2, Shri Lalit Lal, who was a Mill Engine driver, and one Ratan Gaddi, who was a Mill Engine Oil-man, were working in the C shift. Respondent No. 2 was working on Mill Engine No. 1. The big end bearing of the engine in question got heated as oil did not reach it from the oil reservoir, with the result that it melted away at about 5 a.m., on that date causing stoppage of that engine and consequently stoppage of the crushing of sugar cane in the factory for about 13 hours, as a result of which the entire process was dislocated, and the management is alleged to have suffered heavy pecuniary loss.

According to the petitioner, the duty of Rattan Gaddi was to see that oil passed from the oil reservoir to the various parts of the engine, including the big and bearing, and the duty of respondent No. 2, being the driver of the engine in question, was to see that the engine or the parts of the same did not get heated or damaged, and, as a part of that duty, his further duty was to see from time to time that the oil passed from the oil reservoir to the big and bearing and to other parts of the engine so that nothing untoward might happen.

On the 11th of March, 1958, charge-sheets were submitted against both the workmen, namely, the engine driver and the engine oilman, and they were asked to show cause why an inquiry should not be made into the matter and proper action-be taken against them. Both the workmen submitted their explanations. So far as Rattan Gaddi is concerned, we are not concerned with his case in the present application because he admitted his mistake in his statement made before the domestic inquiry and his dismissal from service was approved by the Labour Court.

So far as respondent No. 2, the engine driver, is concerned, he denied the truth of the charge levelled against him, and submitted that the melting of the big and bearing of the engine in question was not due to any lack of care on his part. It was asserted by him that it was not a part of his duty to see that the oil passed from the oil reservoir to the big and bearing and to other parts of the engine,

On receipt of the above explanation, the management decided to hold an enquiry and fixed the 14th of March, 1958, at 9 a.m., for holding the inquiry in presence of respondent No. 2. Accordingly, the said respondent was informed of the holding of the inquiry by letter dated the 13th of March, 1958. But, in spite of having received that letter he did not turn up at the inquiry, and the management fixed 3 p.m., on the same day, namely, the 14th of March, 1958, for holding the inquiry requiring respondent No. 2 to attend the same.

It appears that respondent No. 2 again failed to appear, and the management fixed the 15th of March, 1958, for holding the inquiry. On that date, respondent No. 2 appeared, but refused to co-operate with the inquiry unless the Secretary of the Labour Union was permitted to be present and take part in the inquiry. The management refused to permit the Secretary of the Labour Union to participate in the inquiry and made an ex parte inquiry on the 15th of March, 1958 after the refusal of respondent No. 2 to take part in the same.

But nevertheless the management gave one more opportunity to respondent No. 2 for having the inquiry held in his presence, and fixed the 17th of March, 1958 for the same. Respondent No. 2, however, insisted on his not co-operating with the inquiry unless the Secretary of the Labour Union was permitted to participate in the same. The management, having refused to permit the Secretary of the Labour Union to be present at the inquiry, came to the conclusion on the ex parte enquiry that the charge levelled against respondent No. 2 had been fully established, and an information was given to respondent No. 2 by a letter dated

the 19th of March, 1958 with regard to the same, intimating to him that his service with the Company stood determined with effect from the 11th of March, 1958, and he was required to collect his full and final account as might be due to him in law and vacate the quarters which had been allotted to him for residence by the Mill.

Thereafter, the management made an application u/s 33(2) of the Industrial Disputes Act, 1947, (hereinafter to be referred to as the Act) in the Court of the Presiding Officer, Industrial Tribunal, Bihar for approval of the action taken against respondent No. 2 inasmuch as before that Tribunal Reference No. 30 of 1957 was pending adjudication in which both the management and the workmen were concerned. The alleged mis-induct of respondent No. 2 in the present case, however, was in no way connected with the subject-matter of dispute in that case.

The application for approval was numbered as Misc. Case No. 41 of 1958. After respondent No. 2 filed his show cause petition on the 20th of April, 1958, the Presiding Officer of the Industrial Tribunal, Bihar, transferred the proceeding to the Presiding Officer, Labour Court, Muzaffarpur (respondent No. 1) for disposal. The Labour Court, however, held that respondent No. 2 was not guilty of any negligence, and the finding arrived at by the management to the contrary at the domestic inquiry was perverse.

It, therefore, held, that the dismissal of respondent No. 2 was unjustified and unreasonable. Accordingly, the prayer of the management for approval of its action taken against this respondent was rejected by the Labour Court by its order dated the 16th of July, 1958, Being thus aggrieved, the petitioner, has come up to this Court with this application, and has made a prayer for setting aside the above order of the Labour Court.

2. Before dealing with the points raised in the case, it may, perhaps, be necessary to refer to some of the provisions of the Act relating thereto Section 33 of the Act, as it stood originally in Act No. 14 of 1947, ran as follows:

"33". No employer shall during the pendency of any conciliation proceedings 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."

Under the above provision, an employer was absolutely prevented from altering the conditions of service applicable to the workmen concerned immediately before the commencement of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute to their prejudice. The employer was also prevented from discharging, dismissing or otherwise punishing any such

workmen during the pendency of such proceedings, except with express permission in writing of the Conciliation Officer, Board, or Tribunal, as" the case might be.

But, so far as the right of the employer to punish any such workmen for misconduct not connected with the dispute was concerned, it was left untouched, and the employer was entitled to exercise the common law power of dealing with his workmen in accordance with law as was open to him, and the pendency of proceedings referred to above could not in any manner fetter his above right,

3. Thereafter, Industrial Disputes (Appellate Tribunal) Act (Act 48 of 1950) was enacted, which made certain changes in the above provision. By this Act, the awards and decisions of the Industrial Tribunal were made subject to appeal in respect of particular matters, and certain amendments were also made to the Industrial Disputes Act of 1947. Section 33 of the Act, after such amendment, was as under:

"During the pendency of any conciliation proceedings or proceedings 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 workmen concerned in such dispute, save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be."

By this amendment, the liberty of the employer to deal with his workmen for any misconduct unconnected with the dispute was fettered, and the employer could not discharge or punish whether by dismissal or otherwise, any workmen concerned in such dispute, except with express permission in writing of the Conciliation Officer, Board or Tribunal, as the case might be, whether the misconduct was connected or not with the dispute in question. A new Section 33-A was also introduced in the Act by this Amending Act, which runs as follows:

"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."

Thus, by introduction of the above new section, an additional right was created in favour of workmen to make a complaint in writing to the Tribunal, if there has been any contravention of the provisions of Section 33 by the employer, and the Tribunal has been empowered to adjudicate upon such complaint as if it were a dispute referred to or pending before it.

4. Provisions similar to the amended Section 33 and the new Section 33-A of the Act were made in the Industrial Disputes (Appellate Tribunal) Act, referred to above, in Sections 22 and 23 of that Act in respect of proceedings before the Labour Appellate Tribunal. Subsequently, the Act was amended by Act 36 of 1956, and, after the above amendment, Section 33 of the Act runs as follows:

"33(1). During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding 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 workmen concerned in such dispute, save, with the express permission in writing of the authority before which the proceeding is pending.

2. During the pendency of any such proceeding in respect of an industrial dispute, the employer may in accordance with the standing orders applicable to a workman concerned in such dispute--

(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.

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 & 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."

5. Thus, Sub-section (1) of Section 33, as it now stands, deals with the bar imposed on the right of the employer to alter, to the prejudice of the workmen, the conditions of service applicable to them in regard to any matter connected with the dispute, and to discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute for any misconduct connected with the same, except with express permission in writing of the authority before which the proceeding is pending.

Sub-section (2) deals with the power of the employer in regard to any matter or misconduct not connected with the dispute. By Clause (a) of that sub-section the employer has been empowered to alter the conditions of service applicable to a workman immediately before the commencement of the proceeding in regard to such matter in accordance with the standing orders applicable to that workman. By Clause (b) of that sub-section, the employer has been further empowered to discharge or punish, by dismissal or otherwise, a particular workman for any misconduct not connected with the dispute, subject to the condition that the workman has been paid his 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 him.

Sub-sections (3) and (4) are not relevant for the present purpose. Sub-section (5) is very important, and it makes provision for an order to be passed by the authority concerned in an application made under Sub-section (2) of the Section, referred to above. The effect of the amendment in 1956, so far as the right of the employer to discharge or punish, by dismissal or otherwise, any workman for any misconduct not connected with the dispute is concerned, is that, whereas under the provisions of Section 33 before the above amendment he could discharge or give such punishment only with the express permission in writing of the authority concerned, under the amended section he has now been authorised to pass an order giving such punishment only subject to the approval

of the authority concerned; and, under Sub-section (5) of Section 33, the authority concerned has been empowered to pass any order as it deems fit.

In other words, before the amendment of 1956, the employer could not pass an order of discharge or punishment, by dismissal or otherwise, against any workman unless he had obtained permission of the authority concerned beforehand, whereas after the amendment he could do so without any previous permission of the authority concerned, but the same has to get the approval of that authority. Section 33-A was retained mostly on similar terms even after the amendment so as to enable any workman to raise an industrial dispute if there was any contravention of Section 33 by the employer.

6. Now I will deal with the contentions raised in the case in view of the law as stated above. Counsel for the petitioner has submitted that the jurisdiction of the Labour Court u/s 33 of the Act is not to sit in appeal against the finding of the employer at the domestic inquiry but is only to find out whether prima facie the employer had materials before him for coming to the conclusion to which he came and that the finding was not arrived at with a view to victimise or by way of unfair labour practice.

The contention put forward is that, if the finding of the domestic inquiry does not suffer from the motive for victimisation or unfair labour practice and there has been no violation of any principle of natural justice in arriving at the finding, the labour Court is bound to give approval to the punishment imposed by the employer as a result of his findings at the domestic inquiry, In my opinion, the contention raised is well founded and must prevail.

7. The jurisdiction of the labour Court u/s 33 of the Act and of the Labour Appellate Tribunal u/s 22 of the Industrial Disputes (Appellate Tribunal) Act has been the subject-matter of consideration by the Supreme Court in various cases, and the law on the point is now well established. In *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, their Lordships were dealing with the "scope of inquiry before the Labour Appellate Tribunal u/s 22 of the Industrial Disputes (Appellate Tribunal) Act, and, after considering certain earlier decisions of that Court and the provisions of law, their Lordships held as under:

"The Tribunal before whom an application is made under that section (Section 22 of the Industrial Disputes (Appellate Tribunal) Act) 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."

Their Lordships further pointed out that 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. This view was reiterated with their clarification by that Court in *Indian Iron and Steel Co. Ltd. v. Their Workmen*, AIR 1958 SG 130, where their Lordships pointed out:

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error in violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or Perverse."

8. In *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, , it was laid down that it is for the management to determine what constitutes, major misconduct within its standing orders sufficient to merit dismissal of a workman, but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination, and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice.

It was further held that, when the management does have facts from which it can conclude misconduct, its judgment cannot be questioned, provided the above mentioned principles are not violated. It was further pointed out in that case that Section 33 does not confer any jurisdiction on the Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute, and, in deciding whether permission should or should not be given, the Industrial Tribunal is not to act as a reviewing Tribunal against the decision-of the management but to see that, before it lifts the ban against the discharge or punishment of the workmen, the employer makes out a prima-facie case.

A similar view has been taken in subsequent cases of the Supreme Court in *Management of Balipara Tea Estate Vs. Its workmen*, , *The Punjab National Bank Ltd. Vs. Its Workmen*, and *The Management of the Bangalore Woollen Cotton and Silk Mills Co. Ltd. Vs. B. Dasappa, M. T. represented by the Binny Mills Labour*

Association, .

9. The result of the above decisions, when summarised, comes to this. An employer has the common law right to deal with the misconduct of his employee and punish him within the limits of law. He is entitled to hold a domestic inquiry and to come to a conclusion regarding the misconduct of his employee and punish him therefor. But when there is an industrial dispute in which both the employer and the employee are concerned, the above right of the employer is not unlimited and is fettered to some extent.

If the misconduct is connected with the dispute, the employer can discharge or punish, by dismissal or otherwise, only with the express permission in writing of the authority concerned but if the same is unconnected with the dispute, the employer is empowered to discharge or punish, by dismissal or otherwise, subject, however, to the approval of the authority concerned. That authority, however, does not sit in appeal over the decision of the employer arrived at at the domestic inquiry, and it has only to see whether that decision was arrived at on materials on which any reasonable man could come to that conclusion and that the finding was not arrived at for victimisation or after resorting to unfair labour practice, or in arriving at that finding there had been violation of the principles of natural justice.

It has no jurisdiction to determine whether the conclusion arrived at at the domestic inquiry is wrong or the punishment is severe. If it comes to the conclusion that there was a bona fide inquiry and its result has not in any way been affected by facts mentioned above, the authority concerned is bound to give permission, and, if the employee feels aggrieved, he has the liberty to raise an industrial dispute.

10. The decisions, referred to above however are based on the provisions of the Act as they stood before the amendment in 1956. It has, therefore, been contended by counsel for the workman that they are not applicable to cases governed by the provisions of the Act as they now stand after the said amendment. It is contended that, so far as misconduct unconnected with the dispute is concerned, a special provision has been made by introducing Sub-section (5) to Section 33 for an order to be passed by the authority concerned on an application made by, the employer under Sub-section (2) of that section for approval of the action taken by him, and the power so given to the authority concerned is very wide inasmuch as it has been empowered to pass an order as it deems fit.

The argument is that under Sub-section (5) of Section 33 the authority concerned has very wide powers to pass any order as may appear to it to be fit in regard to the approval or otherwise of the action taken by the employer by way of punishment for any misconduct not connected with the dispute, and, that being the position, the decisions of the Supreme Court, referred to above, could not be applicable inasmuch as under the law on which those decisions are based

the authority concerned had not such a power.

11. In my opinion, however, there is no substance in the above argument. It is apparent that the object of the amendment of Section 33 of the Act in this regard is to enlarge the power of the employer to some extent and not to cut it down. Under the law before the amendment the employer could not pass an order of discharge or punishment, by dismissal or otherwise, even for misconduct not connected with the dispute, except with express permission in writing of the authority concerned.

In other words, the employer had to wait till the permission was given in passing any order of punishment for misconduct unconnected with the dispute. After the amendment, however, he has no longer to wait for any such permission, and he is entitled to pass such order in regard to such misconduct without having obtained any permission from the authority concerned. He has, after passing the order of punishment, only to make an application to the authority concerned for approval of the action taken. It is, therefore, clear that the amendment brought about in 1958 sought to enlarge the power of the employer and not to cut it down.

12. So far cases coming under Sub-section (1) or Sub-section (3) of Section 33 of the Act are concerned, the provisions relating to the passing of an order of discharge or punishment, by dismissal or otherwise, in regard to misconduct concerned with the dispute are exactly the same as they stood before the amendment in 1956, and the principles of law enunciated by the Supreme Court in the decisions referred to above are undisputedly applicable to such cases even after the amendment. Thus, under the Act, as it stands now after the amendment in 1956, the jurisdiction of the authority concerned is only to give permission or to refuse to give the same on a consideration of the matters laid down in those cases.

In other words, the principle laid down in those cases, as summarised above, is on all fours applicable to such cases even after the amendment in 1956. In my opinion, the same principle should apply to cases coming u/s 33(2) of the Act. The jurisdiction of the authority concerned under Sub-section (5) of Section 33 to give approval or not is, therefore, similar to the jurisdiction of that authority with regard to cases coming under Sub-sections (1) and (3) of Section 33 of the Act in regard to giving or refusing to give permission,

13. The interpretation sought to be put on Section 33(5) of the Act by counsel for the workman, if accepted, would result, in my opinion, in absurdity. The reason is that, whereas in cases of misconduct connected with the dispute, the authority concerned has got a limited power with regard to Sts giving permission or refusing to give permission to the employer to take the proposed action against the workman, its jurisdiction to deal with a case of misconduct not connected with the dispute is wider and unlimited on such interpretation.

In my opinion, the Legislature could not be expected to intend to give a wider

power to the authority concerned in regard to the order of discharge or punishment, by dismissal or otherwise passed by the employer for misconduct having no connection at all with the dispute when its power to deal with such matters in regard to misconduct connected with the dispute is limited to the extent stated above.

It will be absurd to contemplate that, by amendment of the section, the power of the employer with regard to misconduct not connected with the dispute has been curtailed so as to make it even lesser than the power which he has in regard to misconduct connected with the dispute. It cannot be conceived for a moment that the workman has been put in a more advantageous position with regard to his misconduct unconnected with the dispute as compared to that which he occupies in regard to misconduct connected with the dispute.

In my opinion, therefore, the Act, as it now stands after the amendment in 1950, has not introduced any change in law with regard to the jurisdiction of the authority concerned in the matter of giving or refusing to give approval to the action taken by the employer u/s 33(2) of the Act, and it is the same whether the misconduct for which the action is taken by the employer is connected or unconnected with the dispute.

14. Counsel for the workman has also contended that, after the introduction of Sub-section (5) to Section 33 of the Act, it may, perhaps be no longer open to the workman to raise any industrial dispute, since, on the wording of the sub-section itself a larger power has been given to the authority concerned to pass any order in regard to the matter in question. But the fallacy of the argument is apparent, because, even after the amendment, Section 33-A of the Act is practically on terms similar to those which it had before the amendment, under which the workman was held entitled to raise such dispute if he was dissatisfied with the order of the authority concerned passed u/s 33 of the Act.

15. The view taken by me with respect to the interpretation of Sub-section (5) of Section 33 of the Act gains full support from a decision of the Madras High Court in *Gordon Woodroffe and Company (Private) Limited Vs. S. Venugopal and Another*, in which it was held 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 in the decision referred to above and 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; and, therefore, where once the Tribunal negated mala fides on the part of the employer or any intention to victimize the worker for his participation in the industrial dispute, the Tribunal is 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 Act. This statement of the law was reiterated in a subsequent decision of that Court in *Sridharan Motor Service, Attur v. Industrial Tribunal, Madras*, (1959) 1 Lab LJ 380.

16. Keeping in view the above principles of law, it has now to be seen how far the order of the Labour Court can be maintained. The Labour Court has come to a finding that the finding arrived at by the management at the domestic inquiry that the engine driver Lalit Lal (Respondent No. 2) was guilty of gross negligence must be regarded as perverse, and the main reason for coming to that conclusion is that it was not a part of the duty of the engine driver to see to the passing of oil from the oil reservoir to the big and bearing.

In coming to that conclusion, an adverse inference has been drawn against the petitioner for non-production of the chart showing the allocation of duties. It appears that Sri M. A. Adhyaru, an Assistant Engineer of the Mill, stated before the Labour Court that there was a chart in the management showing allocation of duties to each employee of the management. At no stage of the inquiry this document was called for, nor was any question put to the witnesses examined on behalf of the petitioner as to why the document was not produced. That document not having been called for, I do not think the Labour Court was legally entitled to draw an inference against the petitioner on account of its non-production.

If any authority is needed to support this proposition, a reference may be made to the case of AIR 1980 SC 191. In that case certain field-books, which had never been called for at any stage of the inquiry either by the management itself or before the Tribunal, were produced. The Tribunal, however, drew an inference against the management from the non-production of the field-books. Their Lordships of the Supreme Court held that the Tribunal was not justified in drawing any such adverse inference.

17. Even on merits, the Labour Court did not consider certain important materials available" on the record while considering whether the engine driver was guilty of negligence or not. The report of the occurrence given by Sri S. P. Singh, Shift-in-charge-Engineer, which is annexure K to the application, states that, in his view, it was due to the gross negligence of the driver and the oil-man that oil stopped passing to the bearing. The statement of Sri A. Roosmeyer, Chief Engineer, which is annexure K(1) to the application is that the engine driver is responsible for his engine, and he should have instructed the oil-man, to look more frequently after the bearing.

According to the statement of this Engineer, the crank-pin as well as the bearing crank were very hot even eight hours after the engine had been stopped, and, in his opinion, the crank-pin must have been running hot for a considerable long time, at least two or three hours. The statement of Sri Adhayaru, Assistant Engineer, which is annexure K(2) to the petition, is also to the same effect.

He stated that he touched the crank and the main bearing, which were extremely hot, and he could not put his hand for a second. In his opinion, there must have been an interval of about two to three hours for the crank to have become hot between the stopping of the oil and melting away of the bearing. These

statements do indicate that something was going wrong with the engine for about two to three hours before the actual melting away of the bearing, and the engine driver, being responsible for his engine, may have been negligent in not detecting the defect so as to avoid the incident.

All these statements were relevant for consideration by the Labour Court while dealing with the question whether the engine driver was guilty of negligence or not. Unfortunately, the Labour Court had not referred to any of these statements and its conclusion is, therefore, vitiated due to non-consideration of relevant materials available on the record.

18. The Labour Court has also come to a finding that the action of the management in dismissing the engine driver was mala fide, unfair and by way of victimisation. The main ground on which this conclusion is based is that the management unjustifiably disallowed the prayer of the engine driver for holding the inquiry in presence of the Secretary of the Union of which he was a member as he was an illiterate man. It may be noted here that the standing orders of the management did not contain any specific provision for representation of an employee by the office-bearer of the Union concerned.

But the Labour Court, however, took the view that the rules of natural justice demanded that the prayer of the workman should have been allowed. It appears from these facts already stated that when the engine driver was required to attend the domestic inquiry, he insisted on his being represented at the inquiry by the Secretary of the Union; but the management did not allow the inquiry to be held in presence of the Secretary of the Union, and as a result of that, the workman absented himself from the inquiry.

The Labour Court has held that, in these circumstances, the inquiry held in the absence of the workman cannot be regarded as proper and fair. I am unable to agree with the conclusion reached at by the Labour Court in this regard. As pointed out by the Supreme Court in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, a workman against whom an enquiry is being held by the employer in connection with acts of misconduct committed by the workman has no right to be represented at such enquiry by a representative of a trade union of workmen of which he is a member, though, an employer, in his discretion, can and may allow his workman to avail himself of such assistance. It cannot, therefore, be contended that an enquiry conducted by the employer was contrary to natural justice merely because the workman concerned was not allowed to be represented by a member of his union,

19. It is contended on behalf of the workman, as has also been held by the Labour Court, that the domestic inquiry was held by the management in the absence of the workman, and, therefore, it could not be regarded as proper and fair. The record of the case shows that due opportunity was given to the workman to take part in the inquiry, but he deliberately absented himself from the same. By letter dated the 13th of March, 1958 (annexure C), the

management informed the engine driver Lalit Lal that an inquiry would be made on the 14th of March, 1958 at 9 a.m., and he was required to be present with his evidence.

He, however, did not attend the inquiry, and then, on the 14th of March, 1958, another letter (annexure D) was sent to him informing him that the inquiry would be held in the afternoon of that date and requiring, him to be present there with his evidence. It appears that the workman orally represented to the management to permit him to be represented by the Secretary of the Union, which was refused, and a fresh opportunity was given to him to have the inquiry held on the 15th of March, 1958.

On that date, the workman by a letter (annexure B) again insisted on his being represented by the Secretary of the Union and refused to take part in it if the Secretary of the Union was not permitted to represent him. Thereafter, the management, on the 15th of March, 1958, held an ex parte inquiry and came to the conclusion the the engine driver was guilty of negligence. It is therefore, perfectly clear that the workman deliberately and without any reasonable and legal ground absented himself from the inquiry, and it is no longer open to him to contend that the inquiry was not bona fide on that account. A similar situation had arisen in the case of (S) Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, , where Bhagwati, J., who delivered the judgment of the Court, observed as follows:

"Due notice of the enquiry was given to the respondents by the letter of the management addressed to them on June 2, 1952, and if the respondents did not avail themselves of the opportunity of presenting themselves and defending their action at the enquiry they had only themselves to blame for it. It was within the province of the management to hold such an enquiry after giving due notice thereof to the respondents and to come to its own conclusion as a result of such enquiry whether the respondents were guilty of the charges which had been levelled against them. If full and free opportunity was given to the respondents to present themselves at the enquiry and defend themselves it could not be said that the enquiry was anything but fair. No principles of natural justice were violated and the management was at liberty to come to its own conclusions in regard to the culpability of the respondents and also to determine what punishment should be meted out to the respondents for the misconduct and insubordination proved against them."

20. The Labour Court has observed that the inquiry was not bona fide inasmuch as no inquiry was held on the 17th of March, 1958, even though the management had fixed that date to hold the same. In my opinion, the finding of the Labour Court in this regard is based on confusion. "An-ex parte inquiry had already been held on the 15th of March, 1958 and intimation of the same had! been given to the workman by a letter of the same date (annexure F). But, at the same time, the management, taking a lenient view of the absence of the workman, gave him further opportunity to be present and to have further inquiry

on the 17th of March, 1958.

On that date also, however, the workman did not appear, and, therefore, nothing else had to be done by the management in regard to further inquiry. The conduct of the management in giving various opportunities to the workman to take part in the inquiry, even though he repeatedly absented himself from the same, cannot be anything but fair, and in no circumstance can be said to be mala fide. The Labour Court has missed this important aspect of the case in arriving at the decision to which it came regarding the bona fide of the inquiry.

21. Another ground had been taken by the Labour Court in support of its finding that the action of the management was unfair and by way of victimisation. It appears that there are two Unions of workmen of this management, one of which is Congress Chini Mills Mazdoor Sangh, which is a registered trade union, while the other, which is said to be sponsored by the management, is an unregistered one. This workman is an active member of the aforesaid Mazdoor Sangh and was elected one of its executive members on the 23rd of February, 1958.

In the written statement filed by the workman, he had taken a point that the management pressed him to isolate himself from the aforesaid Mazdoor Sangh and to join the other Union sponsored by the management. This has not been denied by the management. It appears that the relationship between the Mazdoor Sangh and the management had been quite strained in the past. The Labour Court, on the above material, observed that there could be no wonder if the management tried to wrongly implicate this workman by way of victimisation.

Assuming, but not deciding, the fact stated above to be correct, there is no material on the record for holding that the action of the management was by way of victimisation. Simply because the management asked the workman to isolate himself from the Mazdoor Sangh, one would not be legally justified to come to the conclusion, without any other material in support of the same, that the action of the management was by way of victimisation.

As already pointed out, there are enough materials in this case to show that the management was acting bona fide and Fairly. Had the management any motive for victimisation, it would not have given the workman any further opportunity to present himself at the inquiry when on the very fast occasion he absented himself without any reason. As already observed, the conduct of the management at the domestic inquiry could not but be said to be fair and bona fide.

22. It is, therefore, obvious that the Labour Court committed an error in law in refusing to give approval to the punishment imposed by the management. Its order has, therefore, to be set aside.

23. In the result, in exercise of the authority conferred on the High Court under Article 227 of the Constitution, I allow the application and set aside the order of the Labour Court in Misc. Case No. 41/17 of 1958, dated the 16th of July, 1958,

refusing to give approval to the action of the petitioner in dismissing respondent No. 2, Lalit Lal, the engine driver. The case is, therefore, remanded to the Labour Court for re-determining the question in accordance with law and in accordance with the observations made above. In the circumstances of the case, however, there will be no order as to costs.

Ramaswami, C.J.

24. I agree.