

(2017) 03 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition Nos.63075-78 of 2010 (L-RES)

Kirloskar Ferrous Industries Ltd

APPELLANT

Vs

K. Shivaramappa

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(1)(b)

Citation : (2017) 2 LLN 215

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Ravi Hegde, Advocate, for the Petitioner; Anant P. Savadi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—The Petitioner, Kirloskar Ferrous Industries Ltd. (KFIL) has filed these Writ Petitions under Articles 226 and 227 of the Constitution of India, against Four Respondents-Workmen, Sri K. Shivaramappa and three others, aggrieved by the impugned Order passed by the learned Industrial Tribunal, Hubli on Serial Application Nos.2 to 5 of 2007 in an already pending Dispute vide KID No.2 of 2006, whereby the learned Industrial Tribunal, while keeping the aforesaid Serial Applications filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short, "the Act") read with Rule 61(2) of the Industrial Disputes (Karnataka Rules) 1957, as pending, itself suo motu raised a Preliminary issue and held against the Petitioner Management that the Domestic Enquiry against the Respondents Workmen was not fair and proper.

2. The facts leading to the filing of these Writ Petitions are as under:

"The Respondents Workmen were served with Charge sheets of habitual absenteeism on 15.6.2006, to which the Respondents Workmen filed their explanation on 29.7.2006. Not satisfied with the explanation, the petitioner Management decided to hold an Enquiry on 1.5.2006. An Advocate of Hubli,

outsider to the Management, was appointed as an Enquiry Officer. The said Enquiry was completed after the explanation to the Show Cause Notice issued by the Enquiry Officer to the Respondents Workmen. The Enquiry Officer found guilty of unauthorised absenteeism and their services were terminated vide Dismissal Order dated 1.12.2006 passed by the Disciplinary Authority. Since another Industrial Dispute vide case KID No.2 of 2006 was pending before the learned Industrial Tribunal, Hubli with regard to the Charter of Demands raised by the Workmen, the Management filed the aforesaid Serial Applications in respect of four Workmen as per the provisions of Section 33(2)(b) of the Act. The Respondents Workmen filed their objections to the said Serial Applications before the learned Industrial Tribunal, Hubli and the Tribunal passed the aforesaid impugned Interlocutory Order on 4.3.2010. Aggrieved by the same, the Petitioner-Management has filed these Writ Petitions before this Court."

3. The reasons assigned by the learned Industrial Tribunal as contained in Paras 10 and 11 of the impugned Interlocutory Order dated 4.3.2010 are quoted below for ready reference:

This Tribunal by coming to the Enquiry conducted by the Enquiry Officer, it cannot be disputed that on behalf of the Applicant Management three Witnesses were examined, they have been elaborately cross-examined, the delinquents are also examined. The entire Enquiry proceedings are at Ex.A.3. On perusal of the entire Enquiry proceedings including all other materials in the records it is nowhere seen that the Enquiry Officer has conducted the Preliminary Enquiry of delinquents and recorded their plea. The first and the foremost procedure to adopt by the Enquiry Officer is to conduct the Preliminary Enquiry and to record the plea. It is the duty of the Enquiry Officer to get confirmed by putting questions stating that whether he has received the copies of all documents, whether he has received the list of Witnesses, etc. In his cross examination, the Enquiry Officer who is AW1 deposed stating that it is true that along with Charge sheet, list of Witnesses and copies of documents are not given. It is for the Enquiry Officer to get ascertain the same and only after supply of the same, he has to proceed to conduct the Enquiry. Apart from this, it is for the Enquiry Officer to conduct the Preliminary Enquiry and to record the plea of the delinquent. In case, the plea is recorded then only it will come to know that whether the delinquent is going to plead guilty or not. In case, if he is pleaded guilty, then there is no question of recording evidence on behalf of the management as well as the evidence of delinquent. In the present case, as the Preliminary Enquiry is not conducted and plea is not recorded, it is not known whether the delinquent is going to plead guilty" or not. In the absence of the Preliminary Enquiry and not recording the plea of the delinquents, the entire other proceedings conducted is not in accordance with the procedure laid down to conduct the Domestic Enquiry. Thus, it is clear that the Enquiry Officer has not followed the proper procedure while conducting the Enquiry. Thus, this Tribunal is of the opinion stating that the Enquiry conducted by the Enquiry Officer is not fair and proper and accordingly, I answer this Preliminary Issue No. 1 in all these

cases in the negative.

11. Original Order shall be kept in SI.A. No.2 of 2007 and copies be kept SI.A.Nos.3 of 2007,4 of 2007 & 5 of 2007."

4. Learned Counsel for the Petitioner-Management, Sri Ravi Hegde, submitted before the Court that though the Respondents Workmen fully participated in the Enquiry conducted by the Enquiry Officer (an Advocate of Hubli), in full compliance of the Principles of Natural Justice and never raised any objections in their reply or objections filed before the learned Industrial Tribunal against the aforesaid Serial Applications filed by the Petitioner-Management under Section 33(2)(b) of the Act, about holding a Preliminary Enquiry within the Domestic Enquiry held against them and there is no such statutory requirement in the Standing Orders or Bye-laws of the Petitioner-Management to hold such a Preliminary Enquiry, yet the learned Industrial Tribunal suo motu framed the said preliminary issue and decided the same against the Petitioner-Management. Therefore, the impugned Order deserves to be quashed by this Court.

5. Learned Counsel for the Petitioner-Management further submitted that while the Serial Applications filed under Section 33(2)(b) of the Act only required the approval of the Industrial Tribunal, since another dispute was already pending before it vide KID No.2 of 2006 and the provisions of Section 33(2)(b) of the Act stipulate that the conditions of the service during the pendency of the case before the Industrial Tribunal could not be changed, therefore, the approval of Dismissal Orders was sought from the Industrial Tribunal and therefore, merits of the Domestic Enquiry could not have been gone into by the learned Industrial Tribunal and that too on a Preliminary Issue of requirement of holding Preliminary Enquiry on the alleged ground of list of Witnesses and copies of documents not allegedly given to the Respondents-Workmen along with the Charge sheets served upon them, which was even a factually incorrect statement, yet the learned Industrial Tribunal on these assumed facts framed its opinion and held that the Domestic Enquiry was not fair and proper and decided the said Preliminary Issue against the Petitioner-Management, even beyond the scope of the Section 33(1)(b) of the Act.

6. He also submitted that, as far as the question raised before the Tribunal by the Workmen about competency of the Manager to issue the Charge-sheet to the Workmen or an outsider, namely an Advocate of Hubli holding the Enquiry against the Respondents-Workmen are concerned, both these issues have been decided by the learned Industrial Tribunal against the Workmen only and in favour of the Petitioner-Management in Paras 8 & 9 of the impugned Order and the Workmen have not challenged the same before this Court, therefore, there was no justification whatsoever for the Industrial Tribunal to pass the impugned Order against the Petitioner Management.

7. Paras 8 & 9 of the impugned Order of the Tribunal dated 4.3.2010 are also quoted below for ready reference:

"8. This Tribunal perused the entire oral and documentary evidence and also followed the Guidelines enunciated by their Lordships in the above referred rulings. It is the contention of the learned Counsel for the Respondent Workmen stating that Sri H.N. Somashekharappa is not the manager and is not empowered to issue Article of charge. On perusal of Ex.A9 to Ex.A19 the said H.N. Somashekharappa is the new Manager in place of Sri K.S. Janardhan. Thus, he is none other than the manager of the Applicant Management. It is true that he has issued Articles of charge by mentioning as Associates Vice President (HRM.Gen.Adm), but the relevant records shows that he was the Manager during the relevant period. Thus, he is empowered to issue Article of charge and the Article of Charge issued by him cannot be disputed for want of authorization.

9. It is an undisputed fact that Sri A.V. Singanamalli is the practicing Advocate of Hubli and he is none other than the Enquiry Officer in the present case and he is an outsider. On coming to the certified Standing Order at Ex.A5 as per Rule 23(ii) where the Enquiry is by outside agency, the wordings "outside agency" indicates that outsiders can also be appointed as an Enquiry Officer. The certified Standing Order itself permits to appoint the outsider as an Enquiry Officer and thus as per this certified Standing Order including the principles laid down in the above referred reported rulings relied on by the learned Counsel for the Applicant Management which is narrated in *Sandvik Asia Ltd. v. Maruti Mahipati Jagadale*, 2002 LLR 1138 it is not barred to appoint the outsider as an Enquiry Officer. Thus, the Appointment of Sri A.V. Singanamalli, Advocate as an Enquiry Officer is not barred."

8. On the other hand, the learned Counsel for the Respondents-Workmen, Sri Anant P. Savadi, vehemently submitted that the requirement of holding the Preliminary Enquiry was there and the learned Industrial Tribunal could always go into the question of fair and proper Domestic Enquiry", and therefore there is nothing wrong in the learned Industrial Tribunal passing the impugned Order and holding that the Domestic Enquiry in question was not fair and proper. He however, fairly submitted that no such objections was raised in writing before the learned Industrial Tribunal in the objections filed before it by the Workmen. However, relying upon the Judgments cited below, he urged that, the said Objections could have been even raised orally and the question of prejudice caused to the Workmen cannot be gone into in such cases.

9. The reliance was placed by him on the following Judgments:

"(i) *M/s. Kirloskar Electric Co. Ltd. v. Sri S. P. Satyanarayan & Another*. W.P No.19764 of 2010, decided on 17.8.2005.

(ii) *Cooper Engineering Limited v. P.P. Mundhe*, AIR 1975 SC 1900."

10. On the contrary, Sri Ravi Hegde, learned Counsel for the Petitioner Management relied upon the following Judgments in respect of his contention and in the opinion of this Court, these Judgments squarely apply to the facts of the present case and therefore, clinch the issue in favour of the Petitioner-

Management.

11. In the case of *Lord Krishna Sugar Mills v. Its Workmen*, AIR 1961 SC 86, the Hon"ble Supreme Court explained the scope of provisions of Section 33 of Chapter VII of the Act, authoritatively in the following manner:

"6. Section 33 occurs in Chapter VII of the Act which contains Miscellaneous provisions. The object of Section 33 clearly is to allow continuance of Industrial proceedings pending before any Authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other Industrial Dispute; that is why the plan object of the Section is to maintain status quo as far as is reasonably possible during the pendency of the said proceedings. Prior to its amendment by Act 36 of 1956, Section 33 applied generally to all cases where alteration in the condition of service was intended to be made by the Employer, or an Order of Discharge or Dismissal was proposed to be passed against an Employee without making a distinction as to whether the said alteration or the said Order of Discharge or Dismissal was in any manner connected with the dispute pending before the Industrial Authority. In other words, the effect of the unamended Section was that pending an Industrial Dispute the Employer could make no alteration in the condition of service to the prejudice of Workmen and could pass no Order of Discharge or Dismissal against any of his Employees even though the proposed alteration or the intended action had no connection whatever with the dispute pending between him and his Employees. This led to a general Complaint by the Employers that several Applications had to be made for obtaining the permission of the specified Authorities in regard to matters which were not connected with the Industrial Dispute pending adjudication; and in many cases where alterations in conditions of service were urgently required to be made or immediate action against an offending Workman was essential in the interest of discipline, the Employers were powerless to do the needful and had to submit to the delay involved in the process of making an Application for permission in that behalf and obtaining the consent of the Tribunal. That is why, by the amendment made Section 33 in 1956 the Legislature has made a broad division between action proposed to be taken by the Employer in regard to any matter connected with the dispute on the one hand, and actual proposed to be taken in regard to a matter not connected with the dispute pending before authority on the other.

10. It would be noticed that even during the pendency of an Industrial Dispute the Employer's right is now recognised to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant Standing Orders. In regard to such alteration, no Application is required to be made and no approval required to be obtained. When an Employer, however, wants to) dismiss or discharge a Workman for alleged misconduct not connected with the dispute he can do so in accordance with the Standing Orders but a ban is imposed on the exercise of this power by the Proviso. The Proviso requires that no such Workman shall be discharged or dismissed unless two conditions are

satisfied; the first is that the Employee concerned should have been paid wages for one month, and the second is that an Application should have been made by the Employer to the Appropriate Authority for approval of the action taken by the Employer. It is plain that whereas in cases falling under Section 33(1), no action can be taken by the Employer unless he has obtained previously the express permission of the Appropriate Authority in writing, in cases falling under sub-section (2) the Employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission indicates that the ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 33(1). The jurisdiction to give or withhold permission is *prima facie* wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 33(2), the Industrial Authority will be entitled to enquire whether the proposed action is in accordance with the Standing Orders, whether the Employee concerned has been paid wages for one month, and whether an Application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under Section 33(2)(a), no such approval is required and the right of the Employer remains unaffected by any ban. Therefore, putting it negatively the jurisdiction of the appropriate Industrial Authority in holding an Enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1), and in exercising its powers under Section 33(2) the Appropriate Authority must bear in mind the departure deliberately made by the Legislature in separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the Authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the Authority to pass such Order in relation to the Application made before it under the Proviso to Section 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional Order.

16. In view of the limited nature and extent of the Enquiry permissible under Section 33(2)(b) all that the Authority can do in dealing with an Employer's Application is to consider whether a *prima facie* case for according approval is made out by him or not. If before dismissing an Employee the Employer has held a proper Domestic Enquiry and has proceeded to pass the impugned Order as a result of the said Enquiry, all that the Authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the Proviso are satisfied or not. Do the Standing Orders justify the Order of Dismissal ? Has an Enquiry been held as provided by the Standing Order ? Have the wages for the month been paid as required by the Proviso ? and has an Application been made as prescribed by the Proviso ? This last question does not fall to be decided in the present Appeal because it is common ground that the Application has been properly made. Standing Order 21 specifies acts of omission which would be treated as

misconduct, and it is clear that under Section 21(s) threatening or intimidating any operative or Employee within the factory premises is misconduct for which dismissal is prescribed as punishment. This position also is not in dispute. There is also no dispute that proper Charge-sheets were given to the Employees in question, an Enquiry" was properly held, and opportunity was given to the Employees to lead their evidence and to cross-examine the evidence adduced against them; in other words, the Enquiry is found by the Tribunal to have been regular and proper. As a result of the Enquiry, the Officer who held the Enquiry" came to the conclusion that the charges as framed had been proved against the Workmen concerned, and so Orders of Dismissal were passed against them. In such a case it is difficult to understand how the Tribunal fell justified in refusing to accord approval to the action taken by the Appellant.

17. It has been urged before us by the Appellant that in holding the present Enquiry the Tribunal has assumed powers of an Appellate Court which is entitled to go into all questions of fact; this criticism seems to us to be fully justified. One has merely to read the Order to be satisfied that the Tribunal has exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the Enquiry were justified on the merits. It did not hold that the Enquiry was defective or the requirements of Natural Justice had not been satisfied in any manner. On the other hand it has expressly proceeded to consider questions of fact and has given reasons some of which would be inappropriate and irrelevant if not fantastic even if the Tribunal was dealing with the relevant questions as an Appellate Court. "The script in which the Statements have been recorded" observes the Tribunal, is not clear & fully decipherable". How this can be any reason in upsetting the finding of the Enquiry it is impossible to understand. The Tribunal has also observed that the evidence adduced was not adequate and that it had not been properly discussed. According to the Tribunal the Charge-sheets should have been more specific and clear and the evidence should have been more satisfactory. Then the Tribunal has proceeded to examine the evidence, referred to some discrepancies in the Statements made by witnesses and has come to the conclusion that the Domestic Enquiry should not have recorded the conclusion that the charges have been proved against the Workmen in question. In our opinion, in making these comments against the findings of the Enquiry the Tribunal clearly lost sight of the limitations statutorily placed upon its power and Authority in holding the Enquiry under Section 33(2)(b). It is well-known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an Appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as under Section 33(2)(b). It is conceivable that even in holding an Enquiry under Section 33(2)(b) if the Authority is satisfied that the finding recorded at the Domestic Enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the Employer or not; but it is essential to bear in mind the difference

between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence. Having carefully considered the reasons given by the Tribunal in its award under Appeal, we have no hesitation in holding that the Appellant is fully justified in contending that the Tribunal has assumed jurisdiction not vested in it by law, and consequently its refusal to accord approval to the action taken by the Appellant is patently erroneous in law."

12. In a later decision, in the case of *Cholan Roadways Ltd. v. G. Thiruganasamabandam*, AIR 2005 SC 570, the Hon'ble Supreme Court again reiterated the aforesaid principles and proceeded to approve a Dismissal of the Workmen by not even remanding back the case to the Industrial Tribunal with the following observations at Paras 16 & 17 of the Judgment, which are quoted below:

"16. This decision also has no application to the facts of the present case. In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is well-settled that a Quasi-Judicial Authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the Principles of *res ipsa loquitur*, which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a Domestic Enquiry, which is preponderance of probability" and applied the standard of proof required for a Criminal trial. A case for Judicial Review was, thus, clearly made out. Errors of fact can also be a subject-matter of Judicial Review. Reference in this connection may also be made to an interesting Article by Paul P. Craig Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 Public Law Page 788. The impugned Judgment cannot be sustained and, thus, must be set aside.

17. Ordinarily, we would have remitted the matter back to Industrial Tribunal for its consideration afresh but as the matter is pending for a long time and as we are satisfied having regard to the materials placed before us that the Industrial Tribunal should have granted approval of the Order of Punishment passed by the Appellant herein against the Respondents, we direct accordingly. The Respondents may, however, take recourse to such remedy as is available in law for questioning the said Order of Dismissal."

13. Learned Single Judge of this Court in the case of *The Management of M/s. Powergear Limited v. M.B. Siddaraju*, ILR 2008 Kar. 2691, has also similarly held that Section 33 of the Act does not permit the Industrial Tribunal to sit as an

Appellate Court while considering the Applications under Section 33 of the Act. The relevant extract from Para 10 of the Judgment is quoted below for ready reference:

" 10. No doubt, the Authority can go into the perversity of the findings, but the Authority in order to find out, as to whether the findings of the Enquiry Officer are perverse or not, has to consider whether there is a legal evidence to arrive at a conclusion by the Enquiry Officer or whether there is total lack of evidence to prove the charge. The scope of the Enquiry by the Authority under Section 33(3) is not to re-appreciate the evidence and come to a conclusion that the evidence is insufficient or the Witness, who are to be examined, have not been examined. This is not the scope of an Enquiry under Section 33(3) of the Act, it cannot be like a Court while considering the Application under Section 33(3) of the Act. If there is lack of legal evidence or there is total lack of evidence, in such circumstances, the Authority can hold that there is perverse finding for want of evidence, but if there is evidence and the said evidence is not sufficient, it cannot be a ground to hold that the findings are perverse. Whether the evidence is sufficient or not is a matter, which has to be adjudicated by a Tribunal in a dispute and not by exercising power under Section 33(3) of the Act. The question of victimization or Unfair Labour Practise can also be considered by the Authority, however, in this case, the Authority, re-appreciating the entire evidence has come to the conclusion that, necessary Witnesses, who ought to have been examined, have not been examined and the evidence available on record is insufficient to grant permission, in my view, this is not a scope of the Enquiry under Section 33(3) of the Act. The Apex Court in Central Bank's case (supra) has categorically observed that the scope of Enquiry under Section 33 is to find out whether a prima facie case is made out against the Workman or not and to consider whether prima facie it can go into the question as to whether there is total lack of evidence or no legal evidence particularly when the Enquiry is held as fair and proper. While exercising power, the Tribunal should have considered these aspects. Since the approach of the Tribunal in re-appreciating the evidence for the purpose of considering the Application under Section 33(3)(b) of the Act being contrary to the scope of the Enquiry under the said provision, I deem it proper to set aside the said Order and remit the matter to the Tribunal for reconsideration of the matter by taking into consideration the proposition of law laid down in the Central Bank's case (supra) and also in Delhi Cloth & General Mills Co. 's case (supra) and such other decisions, which are placed by the parties and pass appropriate Order.

Accordingly, the Writ Petition is allowed. The Order dated 12th December 2007 in Serial Application No.44 of 2003 in I.D. No. 116 of 2000 is quashed and the matter is remitted to the Industrial Tribunal for reconsideration of the matter."

14. Having heard the learned Counsel for the parties, this Court is satisfied that there is considerable force in the arguments raised by the learned Counsel for the Petitioner-Management and the present Writ Petition deserves to be allowed

for the following reasons.

15. Section 33 of the Act in Chapter VII (Miscellaneous) lays down that during the pendency of any proceedings before the Labour Court or Tribunal, the Employer cannot alter the conditions of the service of Respondents Workmen except with the specific permission of the Court or Tribunal. However, if such other proceedings are not connected with the dispute pending with such Court or Tribunal, the said action can be taken against the Respondents Workmen.

16. It would be proper to quote Section 33 of the Act hereunder:

"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 of 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 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 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, or 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 (he Employer.

(5) 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 a member of the executive or other office bearer] of a registered Trade Union connected with the establishment, is recognised as such in accordance with Rules made in this behalf.

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

(5) Where an Employer makes an Application to a Conciliation Officer, Board [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.]"

17. Admittedly, in the present case, the Dismissal Order was passed against the Respondents-Workmen on the ground of habitual absenteeism without authorised leave sanctioned by the Management and a Domestic Enquiry was held by independent person namely (an Advocate of Hubli) Mr. Ashok V. Singanamalli. The Charge-sheets were duly served to the Respondents-Workmen and their explanation was also taken. They participated in the Enquiry proceedings and not only recorded their own Statements in defence, but cross-examined the Witnesses produced by the Management. No objections were ever raised at any point of time by them about non-furnishing of the documents or List of Witnesses to them. On the contrary, the proceedings of Enquiry held by the Enquiry Officer (an Advocate of Hubli), would show that they actively participated in the Domestic Enquiry and furnished all their possible explanations

as their defence. Thus, apparently no prejudice can be said to have been caused to them at all.

18. No reference to any request or prayer has been made by the Industrial Tribunal in the impugned Order from the side of the parties. Even assuming that the learned Industrial Tribunal could go into the question of fairness of the Domestic Enquiry, this Court is little surprised as to without any objection being raised by any of the parties, what prompted the learned Industrial Tribunal to frame the said preliminary issue suo-motu on the basis of the assumed facts and decided the same against the Management. The impugned Order thus is found to be baseless and foundationless.

19. The learned Industrial Tribunal under the provisions of Section 33(1)(b) of the Act was required to either approve or not to approve the Dismissal Orders passed by the Competent Authority, while deciding the Serial Applications filed under Section 33(1)(b) of the Act. Instead of doing that, the learned Industrial Tribunal chose to pass the impugned Interlocutory Order, which is absolutely off the mark and beyond the scope of Section 33(1)(b) of the Act.

20. The Judgments relied upon by the learned Counsel for the Respondents-Workmen are of little help to the Respondents-Workmen, as no factual parity between the cases relied upon and the present case is found.

21. In HMT Ltd. (supra), the Division Bench of this Court in Para 19 held as under:

"19. The learned, Single Judge has pointed out certain irregularities in the conduct of the Enquiry. The learned Judge has also opined that the Enquiry was not conducted in accordance with the Principles of Natural Justice. It is not that this Court under Articles 226 & 227 while exercising its Extraordinary and Supervisory jurisdiction should step in and nullify each and every Disciplinary action whenever it finds an irregularity or illegality in the procedure followed by Disciplinary Authority. As quite often held and reiterated, the Principles of Natural Justice are meant to foster justice and not to thwart justice. In other words. Principles of Natural Justice are handmaids and not masters of justice. They should be applied and enforced to achieve and promote justice, but. they will never be allowed to be utilised for doing or promoting or perpetuating injustice. Simply because the Court finds one or the other irregularity in the procedure adopted by the Disciplinary Authority in the conduct of the Enquiry, only on that count, the Court cannot nullify the Disciplinary action taken by the Disciplinary Authority, unless it is satisfied that on account of such irregularity, the delinquent has suffered some substantial prejudice. Technicalities cannot be permitted to overtake the cradle of justice under any circumstance. Substantial justice and fair procedure should replace unsound, justice-damaging norms in dispensation of justice."

As already stated above, no such prejudice has been averred, much less established in the present case by the Respondents-Workmen.

22. In M/s. Kirloskar Electric Co. Ltd. (supra) in Paras 6 & 7 of the Judgments, Coordinate Bench of this Court, relying upon the decision of the Hon"ble Supreme in the case of D.P. Maheshwari v. Delhi Administration and others, AIR 1984 SC 153, held that it is well-settled law that this Court would not interfere with the Domestic Enquiry, unless exceptional case is made out.

23. In the present case, this Court finds that instead of exercising the jurisdiction under Section 33(1)(b) of the Act, even though the dismissal on the ground of Respondents-Workmen being found guilty of unauthorized absence, even though a matter not connected with the dispute pending before the learned Industrial Tribunal in case KID No.2 of 2006, but instead of applying its mind to the same, to extend the helping hand to the Respondents-Workmen, which in law was not permissible for the Industrial Tribunal to do so, the learned Industrial Tribunal passed the aforesaid impugned Order and now 10 years have passed without knowing the fate of the Serial Applications filed under Section 33(1)(b) of the Act.

24. The learned Presiding Officers of such Tribunal are expected to know the scope of the proceedings under which the Applications are moved before them and are not expected to go astray and away from the scope of the Applications and relevant Statutory provisions themselves.

25. The Writ Petitions of the Management are, therefore, allowed. The Interlocutory Order passed by the learned Industrial Tribunal, Hubli at Annexurc-H dated 4.3.2010 is set aside.

26. The learned Industrial Tribunal is directed to decide the pending Serial Applications filed by the Petitioner-Management under Section 33(1)(b) of the Act within a period of three months from today. The parties without any further Notice to them may appear before the learned Industrial Tribunal. Hubli, in the first instance on 23.3.2017. No order as to Costs.