

(1960) 09 BOM CK 0013
In the Bombay High Court
Case No : Appeal (I.C.) No. 155 of 1959

Kohli (S.I.)

APPELLANT

Vs

B.E.S.T. Undertaking

RESPONDENT

Date of Decision : 22-09-1960

Acts Referred:

Citation : (1961) 1 LLJ 95

Hon'ble Judges : P.D. Vyas, J

Bench : Single Bench

Judgement

1. This is an appeal against the order, dated 24 March, 1959 of the Judge, Second Labour Court, Bombay, in Application No. 775 of 1957.

2. The original application was filed by the appellant Sri Kohli (referred to hereinafter as the appellant or the concerned employee) against the B.E.S.T. Undertaking (referred to hereinafter as the undertaking), alleging that his services were illegally and improperly terminated by the undertaking by a memorandum, dated 31 July, 1957, issued under standing order 26(1). He challenged the legality and propriety of the order on various grounds mentioned in his application and prayed inter alia to declare that the termination of his services is void and inoperative in law and/or entirely unjustifiable in fact and that he be reinstated on his original post with back-wages. At a later stage the appellant advanced an additional plea before the labour court that the termination of his services amounts in fact and in law to punishment and the recourse by the undertaking to standing order 26(1) is only a colourable device to circumvent compliance with the provisions of the appropriate standing orders before inflicting any punishment on an employee. The undertaking opposed the application by its written statement contending inter alia that the appellant's services were not terminated for any specific act of misconduct listed in the standing orders and that he was intimated accordingly. The undertaking alleged that, in the circumstance of the case, the security officer thought it fit in the best interest of the undertaking to discharge him from service under standing order

26(1) for loss of confidence. The undertaking thus maintained that the order terminating the appellant's services is neither bad in law nor unjustifiable in fact and that the appellant's services having been properly terminated the application be dismissed. The case as put up and the contentions as raised by the undertaking found favour with the learned labour judge and he in the result dismissed the application by his order, dated 24 March, 1959. Being aggrieved by this order the concerned employee has filed the present appeal.

3. It appears that the appellant first joined the service of the undertaking as a motor cycle patrol in the traffic department on 19 June, 1950 and with effect from 1 April, 1954 he was appointed as the security inspector in the watch and ward department which post he held till his services were terminated on 31 July, 1957. During the intervening period he also acted for some time as the security officer in a leave vacancy from 26 December, 1955 to 31 March, 1956. The memorandum dated 31 July, 1957 under which his services were terminated stood thus :

Sri Surindrasingh Ishersingh Kohli, security inspector, personnel department (watch and ward section), is hereby informed that his services are terminated with immediate effect pursuant to standing order 26(1) of the transport standing orders of the undertaking for loss of confidence as it is not in the interest of the undertaking to continue his service any further.

He is further, informed that he will be paid one month's salary, including allowances admissible in lieu of notice.

He is also informed that all accumulation of leave to his credit will be paid for.

He is directed to return forthwith all and every property, the undertaking's motor cycle, pistol with cartridges, books, documents and all official papers received by him in the capacity of security inspector and acting security officer, stationery, etc., etc., of the undertaking which may be in his custody or possession."

The memorandum is signed by the security officer Sri B. D. Sharma.

4. The standing order 26(1) referred to in the memorandum provides :-

"Service with the undertaking will be terminated as follows :-

Notice, if given by the undertaking, shall be signed by the competent authority :

Provided -

(i) that the reason for such termination of employment shall be given in writing to the employee concerned except in cases where by doing so the management will render themselves liable to civil or criminal action;

(ii) that such termination of employment shall be subject, within fourteen days of the receipt of such notice, to an appeal to the general manager;

(iii) that no individual notices shall be necessary in cases of general

retrenchment, closing down, strike or lockout;

(iv) Save that in cases covered by leave regulation II, no notice shall be necessary in the case of an employee who absents himself from work without permission for a continuous period of more than one month and such an employee shall be deemed to have abandoned his employment."

The relevant provision so far as the present case is concerned is that the notice in question has to be signed by the competent authority and has to state the reason for termination except in cases where by doing so the management will render themselves liable to civil or criminal action. Further such termination of employment is subject to an appeal to the general manager within the prescribed period of fourteen days of the receipt of such notice. The expression "competent authority" is defined in the standing order 3(e), meaning

"the general manager, the deputy general manager or any officer duly authorized by the general manager and notified."

5. On receipt of the aforesaid memorandum, the appellant by his letter dated 12 August, 1957 addressed to the security officer asked for certain information saying that he desired to prefer an appeal to the general manager. The information asked for was twofold :

(1) Under whose authority the termination of services was brought into effect, and

(2) what were the acts of misconduct which led to the conclusion that the management lost confidence in him.

The security officer Sri B. D. Sharma by his letter dated 13 August 1957 supplied the necessary information saying :

The general manager had delegated to him the necessary power to terminate the appellant's services if he thought that such action was necessary and that the termination of the appellant's services was not for any specific acts of misconduct listed in the standing orders, in which case he would have been charged and tried as required under the standing orders.

The security officer further added in the said letter :

"However, the sum total of your acts and the omissions led the management to lose confidence in you."

A reference may be made just here to the authority which the general manager had issued on 27 July 1957 in the following terms :-

"I hereby authorize the security officer to look into the case of Sri S. I. Kohli, security inspector, personnel department (watch and ward), and take such action in the matter as may be deemed appropriate by him under the standing orders of the undertaking."

6. Against the order of the security officer Sri B. D. Sharma, the appellant, did prefer an appeal to the general manager as was open to him under the standing order 26(1) but his appeal was dismissed by an order dated 17 September, 1957. The general manager in confirming the order passed by the security officer and dismissing the appeal, observed inter alia that there was no need to mention any specific acts of commission or omission and that the confidential record of the appellant was taken into consideration by the officer who issued the order. The general manager further stated that with a view to satisfy himself that no injustice of any kind was being done to the appellant, he had again scrutinized the confidential record and looked into the various commissions and omissions which came to his notice and after such scrutiny he was perfectly satisfied that the appellant's continuance in the undertaking's service would not be in the best interest of the undertaking. The general manager also made it clear in his order that the termination of the service was not in respect of any specific act for which the appellant would be chargeable by way of misconduct. After having unsuccessfully appealed to the general manager under the standing orders, the appellant, on making the necessary approach under S. 42(4) of the Bombay Industrial Relations act, filed his application before the labour court challenging the legality and propriety of the order in question for the reasons there stated.

7. Before the labour court much attention seems to have been focussed on the legality of the order by which the appellant's services were terminated under the standing order 26(1) and the greater part of the order under appeal is devoted to the legal aspect of the case. Without much dilating on the subject, there can be no doubt that in so far as the legality of the order is concerned, the contentions raised on behalf of the appellant in this connexion are without much substance. Right from the beginning it has been made clear to the appellant that the management did not intend to proceed, nor had in fact done so, by way of any action for misconduct against him. It may be seen from the evidence on record that no case of misconduct could be alleged or was in fact alleged against the appellant under the standing orders. The acts and omissions amounting to misconduct are enumerated in the standing order 20 and it is only in respect of an action for such misconduct that the procedure of chargesheet and enquiry, etc., as laid down in standing order 23 has to be followed. In the absence of any case for misconduct, there did not arise any question of punishment as such and undoubtedly what the management has done in the present case is to terminate the services in conformity with the standing order 26(1) by way of discharge.

8. The order of termination has been made by the security officer who was duly authorized in this behalf by the general manager and it does record a reason, whatever it may be. The requisite formality for such an order of termination under the standing order 26(1) has been complied with. Much was made on behalf of the appellant before the general manager as well as before the learned labour judge of the so-called technical defect in that the order of the general manager delegating the authority was not notified according to the standing order 3(e). In the said Clause (e) or elsewhere, no specific mode or procedure

has been prescribed under the standing orders for the purpose of notification. On behalf of the appellant, however, it was urged that the communication delegating the authority should have been placed on the notice board or conveyed to the concerned employee prior to the actual termination of his services. The first place, it is a fact that the security officer was duly authorized by the general manager to take action under the standing order 26(1) read with 3(e). Besides the appellant was duly notified of this fact when he asked for the necessary information before making his appeal to the general manager. In any case there was hardly any material irregularity such as to go to the root of the matter and nullify or invalidate the order in question.

9. The legality of the order however does not conclude the matter and the order in dispute has to further stand the test of propriety which was in issue under the application filed before the labour court. It may be a simple termination of service according to standing orders but there must be a bona fide exercise of the power for a true and adequate reason irrespective of the form in which the order is made or of the language there used. Before proceeding with the position under the Bombay Industrial Relations Act and the points raised for consideration by the learned labour judge in this connexion, a reference may be made to the recent case of Assam Oil Company Vs. Its Workmen, . In the said case before the Supreme Court their lordships have held :

"The jurisdiction of the industrial tribunal to direct reinstatement of a discharged or dismissed employee is no longer in doubt. That being the nature and extent of the jurisdiction of the industrial tribunal, it is too late not to contend that the contractual power of the employer to discharge his employee under the terms of contract of service could not be questioned in any case ... If the contract gives the employer the power to terminate the services of his employee after a month's notice or subject to some other condition, it would be open to him to take recourse to the said term or condition and terminate the services of his employee, but when the validity of such termination is challenged in industrial adjudication, it would be competent to the industrial tribunal to enquire whether the impugned discharge has been effected in the bona fide exercise of the power conferred by the contract. If the charge has been ordered by the employer in bona fide exercise of his power, then the industrial tribunal may not interfere with it; but the words used in the order of discharge and the from which it may have taken are not conclusive in the matter and the industrial tribunal would be entitled to go behind the words and the form and decide whether the discharge is a discharge simpliciter or not ... The exercise of the power in the question too be valid must always be bona fide. If the bona fide of the said exercise of the power are successfully challenged, then the industrial tribunal would be entitle to interfere with the order in question. It is in this context that the industrial tribunal must consider whether the discharge is mala fide or whether it amounts to victimization or an unfair labour practice, or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power conferred by the contract ... In this

connexion it is important to remember that just as the employer's right to exercise his option in terms of the contract has to be recognized, so is the employee's right to expect security of tenure to be taken into account. Hence it could not be contended that whenever the employer purports to terminate the services of his employee by virtue of the power conferred on him by the terms of the contract, industrial tribunals cannot question its validity, propriety or legality."

10. Their lordships in the said case of the Assam Oil Company (supra) have approved the decision of the Labour Appellate Tribunal in the case of Buckingham and Carnatic Mills, Ltd. 1951 II L.L.J. 314. Thereafter, carefully examining the whole position, the Labour Appellate Tribunal found that the common law right of an employer to discharge or dismiss an employee or what is popularly known in some countries as the "right to hire and fire" has been subjected to statutory restrictions. The tribunal has then enumerated certain fundamental principles, namely :-

- (1) that an industrial worker must be placed in such a position that the security of his service may not depend upon the caprice or arbitrary will of the employer,
- (2) that industrial peace should be maintained, and
- (3) that industry should be efficiently managed.

In that case the standing orders provided for three modes in which the service of an employee could be terminated :

- (1) automatic termination for absence without leave for a stated period or for overstating leave without satisfactory explanation,
- (2) discharge on notice or in lieu thereof payment of wages for a certain period without assigning any reason, and
- (3) dismissal for misconduct,

and it was held that in all these types the requirement of bona fides is essential and the termination of service in colourable exercise of the power or as a result of victimization or unfair labour practice or of caprice, should be prevented ... and that arbitrary conduct or unnecessary harshness on the part of the employer, judged by the normal standard of a reasonable man, may be cogent evidence of victimization or unfair labour practice. Thus even in a case where under the standing order it is permissible to terminate the services with one month's notice or payment in lieu thereof without assigning any reason, it is not open to an employer to exercise the power in any arbitrary or capricious manner and bona fides as well as the justifiability of his action may be gone into.

11. Now under the amended Industrial Disputes Act, 1947 (Central), in the Sch. II appended thereto, the item 1 "the propriety or legality of an order passed by an employer under the standing orders" has been included in the matters within the jurisdiction of labour courts constituted under S. 7 of the Act. The case before us is governed by the Bombay Industrial Relations Act, 1946, which since

it came into force confers the necessary jurisdiction on the labour courts and under S. 78 a labour court is empowered to decide disputes regarding the propriety or legality of an order passed by the employer acting or purporting to act under the standing orders. Sri Daru for the appellant referred to the judgment dated 31 July, 1956 of the Division Bench of the Bombay High Court consisting of their lordships Chagla, C.J., and Tendolkar, J, in Special Civil Application No. 877 of 1956. In that case the petitioner challenged the order of discharge against him under S. 78 of the Bombay Industrial Relations Act. The relevant standing order provided that the employment of the permanent employee may be terminated by one month's notice or one month's pay in lieu of notice unless provided otherwise in the specified manner and there was an obligation upon employer to record the reasons for the termination of the service in writing and also to communicate them to the employee at his request unless such communication may lay the employer open to civil or criminal proceedings. Their lordships while holding that an order of discharge is not a punishment inflicted upon the employee observed :

"The employer terminates the services of his employee pays him a month's wages, and the only obligation cast upon him by the standing order is that he must record his reasons for discharging his employee. Undoubtedly under the industrial law there is no absolute liberty given to the employer to put an end to this contract of employment between him and his employee, because in the first place he has got to record reasons for terminating the services of the employee and the industrial Court have been given the power to consider the legality and the propriety of the order passed by the employer. The industrial court may consider whether the reason given for terminating the services is a proper reason and it may also consider whether the reason in fact has been established."

12. In the present case thus we have next to decide the propriety of the discharge order in question in order to see whether the appellants' services have been terminated for a reason which has not only been duly recorded but is a true and sufficient reason to justify the action taken. It appears that certain contentions were raised before the learned labour judge in this connexion and the same as referred to in his order are :

that the purported reasons given for the termination of the appellant's services were not at all reasons within the meaning of the term "reason" in the standing order 26; that the reason given was vague for want of particulars as it referred only to the sum total of the alleged acts of the omissions of the appellant; that there was no jurisdiction whatsoever for the termination of the appellant's services as the record of his service was very satisfactory; and that the memorandum purporting to terminate the appellant's services had been served on him mala fide and with ulterior motive.

13. On an examination of the facts of the case, we find that there is much force in the said contentions advanced on behalf of the appellant. The reason advanced for the termination of his services in the memorandum dated 31 July,

1957 under the standing order 26(1) is :

"For loss of confidence as it is not in the interest of the undertaking to continue his services any further."

The reason given is apparently vague in the absence of any further particulars. When the appellant inquired of the security officer as to what were his acts of misconduct which led to the conclusion that the management had lost confidence in him, the security officer replied in writing that the termination of the appellant's services was not for any specific acts of misconduct listed in the standing orders but it was the sum total of his acts and omissions which led the management to lose confidence in him. Here again the reply makes no definite answer to the inquiry made and the reason is tried to be explained in a similar vague manner, without stating what those acts and omissions were. When the matter went in appeal under the standing orders before the general manager of the undertaking, he in his order stated that having examined the acts of omission and commission he was satisfied that in the circumstances of the case the best course of action open to the undertaking was to terminate the appellant's contract of employment. The general manager too in his order has not specified what these acts of omission and commission were and avoiding the amplification thereof he merely observed that the confidential record of the appellant was taken into consideration by the officer who issued the order of termination and that to satisfy himself he had again scrutinized the confidential record and looked into the various omissions and commissions which came to his notice and that after such scrutiny he was perfectly satisfied that the appellant's continuance in the undertaking's service would not be in its best interests. The general manager has further observed that the facts and circumstances involved in the acts of omission and commission committed by the appellant are of such a delicate nature that in his opinion it was desirable that details thereof should not be disclosed since the management may make itself liable to possible civil and/or criminal action. Thus the first time the confidential record of the appellant was specifically referred to as constituting a reason for the termination of his services but the particulars thereof were tried to be withheld on the alleged ground that the management might otherwise render itself liable to possible civil and/or criminal action. No such story was advanced at the earlier stage when the appellant enquired about the real reason from the security officer who actually made the order and it was never the case before that the security officer decided to terminate the appellant's services on the strength of the confidential record of the appellant or that the reason could not be disclosed as was permissible under the standing order 26(1) because thereby the management would render itself liable to civil or criminal action.

14. Even taking the aforesaid case as put up by the general manager in his order dated 17 September, 1957 on an appeal to him under the standing orders, we are unable to find which was the confidential record scrutinized by the general manager and what were its contents so as the disclosure thereof would render

the management liable to civil and/or criminal action. The confidential reports it seems are being made every year in the form (Ex. 34) and such confidential reports for the years 1954, 1955 and 1956 are contained in the sealed packet (Ex. 54). The reports being confidential, I may merely say that they contain nothing against the appellant. The remarks were made are amply borne out from the staff service record of the appellant (Ex. 48) which indicates that practically all throughout his service record was quite good and he was considered fit for confirmation as well as promotion. He was first appointed in the post of motor cycle patrol on B-7 grade with starting salary of Rs. 150 per month plus dearness allowance according to the Millowners' scale with effect from 9 June, 1950. He was to be on probation for period of six months and on the satisfactory completion of the probationary period he was to be confirmed. Later on, owing to the abolition of the motor cycle patrol posts, his services were terminated as from 31 March, 1953 but he was again taken up as C-5 clerk in the ticket and cash department. Thereafter he was transferred to traffic department in the same grade from 1 October, 1953 and latter on promoted to the post of security inspector with effect from 1 April, 1954 in grade B 7/6. The order dated 9 April, 1954 then made states;

"The acting G.M. (acting general manager) has been pleased to approve of the promotion of Sri S. I. Kohli who is at present in grade C-5 on the traffic establishment to the post of security inspector in B-7/B-6 in the security department on a starting salary of Rs. 225 per month with effect from 1 April, 1954. As his work has been found satisfactory, acting G.M. (acting general manager) has been pleased to confirm him in the post from the date of his promotion."

It is true that when the appellant was first serving as motor cycle patrol he was suspended for a period of five days under an order dated 10 May, 1952 but the order does not mention any reason for suspension and besides, subsequent thereto the appellant was considered for re-appointment and promotion referred to above. After his appointment as security inspector, the appellant continued to hold that post till his services were terminated except that for some time he acted as security officer in a leave vacancy under an order dated 23 December, 1955. The said order made by the personnel officer runs thus :

"Sri S. M. Nadkarni, security officer, has been granted leave for a period of 97 days with effect from 26 December, 1955 to 31 March, 1956. During the period Sri Nadkarni is away on leave, the general manager has been pleased to approve of the appointment of Sri S. I. Kohli, security inspector, to act as security officer on a salary of Rs. 340 in B-3 per month plus allowances attached to the post."

Until the last note made in the service record that the appellant's services were terminated with immediate effect under the standing order 26(1) for loss of confidence, we do not find anything against the appellant in that record during the period he held the post of security inspector as well as the post of the acting security officer in a leave vacancy, which would go to justify loss of confidence in

him or to make his farther continuance in the undertaking's services undesirable.

15. It was only in the course of the hearing before the labour court that an attempt was made to introduce altogether irrelevant evidence with a view to justify the action taken against the appellant. In order to establish the propriety of the order in question the burden initially lay on the management to lead the necessary evidence but because the appellant started examining certain witnesses on his behalf including himself to show that his record was good, some new papers were brought forth and allowed by the labour court to go in. It is on the strength of this new evidence that the labour court has consider the order made against the appellant as proper. This new evidence could hardly go to constitute reason for the termination of the appellant's services, unless it has been established that the security officer had before his mind any such evidence in coming to the conclusion recorded in his order. In fact the security officer Sri Sharma himself who made the order has not chosen to step in the witness box and the general manager in his order on appeal under the standing orders has relied for this purpose solely on the appellant's confidential record.

16. On behalf of the appellant, he and two other witnesses Sri Nadkarni and Sri Fernandes have been examined. Sri Nadkarni was the security officer on deputation from the Police Department and happened to be the immediate superior of the appellant from about April 1955 to April 1957. It was during the absence on leave of this Sri Nadkarni that the appellant for some time officiated as acting security officer. Sri Fernandes was the personnel officer and as such the head of the department in which the appellant served. Thus these officer were the real persons to speak about the record of the appellant and both of them have testified to the satisfactory character of his service record describing him as quite competent and efficient in the discharge of his duties. Sri Fernandes deposes that he had may opportunities as the head of the department to know the appellant's official work and official conduct and he found the same quite satisfactory and that he had no occasion to mark or form the view that the undertaking had lost confidence in the appellant or that it was against the interest of the undertaking to continue the appellant in service. It may be noted here that as the head of the department, the personnel officer. Sri Fernandes, was the proper person to make the order for terminating the appellant's services but somehow or other the general manager delegated the authority not to him but to the security officer Sri Sharma.

17. It was during the cross-examination of the aforesaid two witnesses examined on behalf of the appellant that certain papers were produced with a view to contradict them and later made use of as evidence against the appellant in spite of the objection raised by Sri Phadke appearing on behalf of the appellant. Not only this, but Sri Fernandes in his cross-examination has been subjected to a number of question as if he himself was the accused person and he has been charged with avoiding certain inquiries in order to favour the appellant. Sri Fernandes in his deposition has explained why he thought it necessary to take

any action on the reports against the appellant and if really the management desired to take any action in the matter, the inquiry could have been entrusted to any other officer. These are the reports not fully inquired into nor finally considered for the action, if any, against the appellant and it looks on the face of it far-fetched to connect the same with the order terminating the appellant's services. The learned labour judge has considered at length the alleged instances coming out from the cross-examination of the appellant's witnesses in Paras. 14 to 16 at pp. 30 to 47 of his typed order together with certain papers there referred to and has gone to the length of observing that Sri Fernandes was wrong or rather partial in not making inquiries into the reports against the appellant. Sri Fernandes' conduct however was not in question before the labour court and if Sri Fernandes honestly believed after hearing the appellant that no further inquiry was needed, the matter came to an end so far as he was concerned. Notwithstanding that, if the management thought that the reports contained serious charges necessitating inquiry, then the inquiry could have been entrusted to any other officer. But no such reports as stated above could be used against the appellant unless finally inquired into and found to be true and much less so, unless it was established that these were the acts and omissions which the management had in mind when the order in dispute was made. Really speaking, if after a preliminary inquiry into these reports, if any prima facie case was made out against the appellant, the management could take action as open under the standing orders but it is really surprising and out of place that any such evidence could be used as an afterthought at the time of the hearing to justify the disputed order which has not been made on any such basis. It is difficult to agree with the reasoning adopted by the learned labour judge in Para. 17 of his order that in spite of a specific reference in the order of the general manager that what he scrutinized was the confidential record of the appellant, the new matters could be brought in at the stage of the hearing before the labour court to afford ground for terminating the appellant's services.

18. On behalf of the undertaking two witnesses Sri Ghogle and Sri Paranjpe have been examined. Sri Ghogle is the person who in hot haste was immediately appointed in the vacancy of the appellant as a security inspector on 3 August, 1957. We do not know whether it was with a view to accommodate this Sri Ghogle that the appellant's services were terminated with any ulterior motive. But the evidence of Sri Ghogle is hardly useful for making out any case against the appellant to justify the termination of his services. The witness Paranjpe is working as the office superintendent of the undertaking and he joined service first as traffic supervisor in August 1954. According to him the personnel officer is his immediate superior and the service records and confidential records are supposed to be in his charge. During the course of the examination of this witness, Sri Gavankar for the undertaking wanted to bring out that all the confidential records were kept by the personnel officer Sri Fernandes, and that Sri Fernandes had deliberately misplaced certain confidential records pertaining to the appellant. In fact the witness himself could not give the exact reason why

the personnel officer did not allow the confidential records to remain with him and in fact it is clear from the Paras. 6 and 7 of his deposition that he kept only the service record of some persons working under him and that the confidential records were kept in a steel cabinet in the personnel officer's room adjacent to his room. This witness has the audacity to make certain mischievous suggestions against the personnel officer and it is surprising how his evidence has appealed to the learned labour judge when on his own admission there is no love lost between him and the personnel officer with whom he is not on good relations. Beyond a vague insinuation made by this witness it was never the case of the management before that there was some confidential record against the appellant but it was misplaced or missing.

19. The manner in which the evidence has been recorded before the labour court is not quite in order and the undertaking should not have been permitted to adduce or rely on any fresh evidence, which with no stretch of imagination could go to constitute the reason to terminate the appellant's services. We find that at every stage the management has been shifting ground in its stand with respect to the appellant. The order of termination itself vaguely alleges "loss of confidence and not in the interest of the undertaking to further continue the appellant's service." At an early stage without giving any particulars, the sum total of the acts and omissions on the part of the appellant were alleged on inquiry by him to justify the so-called loss of confidence in him. It was never the management's case then that these acts of commission and omission if disclosed would lay open the management to any civil or criminal action and no such privilege as open under the standing order 26(1) was claimed. In fact the order itself records a reason though in vague terms and there is nothing in it saying that the reason is not recorded or disclosed as in doing so the management will render itself liable to civil or criminal action. Only for the first time the general manager in his order on appeal under the standing orders referred to this privilege for the so-called non-disclosure of the reason but even in his order what he relied upon were the acts of omission and commission as coming to his notice on scrutinizing the appellant's confidential record. The aforesaid confidential record as well as the staff service record however go entirely in favour of the appellant. It was only when the dispute was taken to the labour court that an attempt was here made to introduce some fresh evidence and even to indirectly suggest through the evidence of the witness Sri Paranjpe as if there was some confidential record against the appellant but somehow or other it was missing or misplaced. No one however has ventured to state in terms that any confidential record which the general manager scrutinized has since been missing or misplaced. The evidence of Sri Paranjpe is neither to the point nor deserves any weight or credence. Sri Fernandes has explained the true position in his deposition and the story of the missing or misplaced record appears to be a myth invented by way of an afterthought. Even otherwise the story as alleged does not go beyond making a vague insinuation without in the least establishing that the confidential record on which the order is based has since been missing or

misplaced.

20. In my opinion the management has made a futile attempt to justify the order which gathers no justification from the relevant evidence on record on which it was based and it was hardly open to the management to advance a new case or to introduce any new evidence as has been done before and permitted by the labour court. The only irresistible conclusion that we can come to on an examination of all the relevant material and the evidence on record is that the management has terminated the appellant's services in a highly improper manner and the reason advanced is neither true nor adequate on facts. It might be that just be accommodate Sri Ghogle or for any other reason best known to the management, the appellant's services were wrongly terminated. In any case it was for the management to establish a true and sufficient reason for terminating the appellant's services and if they have failed to do so the order in question is manifestly unsustainable as proper or as having been made bona fide. There can hardly be any direct evidence on ulterior motive and it has to be judged from the circumstances of the case.

21. In the result I hold that though the order terminating the appellant's services is legal in the sense that all the formalities of the relevant standing order have been complied with, it is not just and proper on facts and as such it cannot be upheld. The appeal is thus allowed, the order of the labour court is set aside and the undertaking is directed to reinstate the appellant on his original post with back-wages right from the date of discharge up to the date of his reinstatement. The undertaking shall further pay Rs. 200 to the appellant by way of costs in the labour court and in the appeal.