

(2011) 11 MAD CK 0260

In the Madras High Court

Case No : Writ Petition (MD) No. 8078 of 2007 and W.P. No. 39291 of 2003

Management, Tamil Nadu State Transport Corporation
(Madurai) Ltd., Dindigul

APPELLANT

Vs

Commissioner of Labour, Teynampet, Chennai-6 and Another

RESPONDENT

Date of Decision : 12-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11A, 17B, 25T, 3, 3(1)

Citation : (2012) 4 LLJ 277

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.C. Herold Singh and S. Jayaraman, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Chandru

1. The petitioner in both writ petitions is the wholly owned State Transport Corporation having their office at Dindigul and represented by its Managing Director. W.P. (MD) No. 8078/2007 is filed against the order of the Joint Commissioner of Labour (Conciliation), Chennai (wrongly shown as the Commissioner of Labour, Chennai in the cause title) made in Approval Petition No. 55/2005 dated January 9, 2007. By the impugned order, the first respondent Joint Commissioner of Labour had declined to grant approval of the dismissal of the second respondent workman. That writ petition was admitted on September 28, 2007. Pending the writ petition, in an application for interim injunction, only notice was ordered at the time of admission. Subsequently, the application for interim injunction was dismissed as not maintainable. Thereafter, the second respondent workman took out an application for payment of last drawn wage in terms of the principle underlying in Section 17-B of the ID Act. This Court by an order dated February 6, 2008 gave a direction to pay last drawn monthly wages

till the disposal of the writ petition.

2. When this writ petition came up for final hearing on October 28, 2011, this Court was informed that the previous writ petition filed by the petitioner management in respect of the earlier order passed by the Commissioner of Labour declining to grant approval for the dismissal of workman in A.P. No. 3/2003, dated March 31, 2003 was pending before the Principal Bench. Both parties prayed that both matters must be heard together so that the facts may be appreciated and proper disposal can be given. Hence, this Court directed the Registry to get permission from the Hon"ble Chief Justice to transfer the earlier W.P. No. 39291/2003 pending before the Principal Bench so as to be heard along with this writ petition. The Hon"ble Chief Justice vide his order dated November 9, 2011 directed the matter to be transferred to the Madurai Bench and be heard along with the subsequent writ petition. After records were received, both the matters were posted for hearing on November 12, 2011.

3. Heard the arguments of Mr. S.C. Herold Singh, learned Counsel representing the petitioner in W.P. (MD) No. 8078/2007, Mr. S. Jayaraman, learned Counsel representing the petitioner in W.P. No. 39291/2003 and Mr. K.M. Ramesh, learned Counsel appearing for the same second respondent in both writ petitions.

4. Before proceeding with the matter, it is necessary to set out the facts leading to filing of both writ petitions. The second respondent was employed a Tradesman in the petitioner Corporation. He joined their service on November 3, 1980 as a trainee. Subsequently he got confirmed on November 1, 1982. He became the President of the Tamil Nadu State Transport Corporation Democratic Trade Union with registration No. 246/Dindigul. It is affiliated to a Central Trade Union Federation known as All India Central Council of Trade Union (AICCTU). While he was working at Kodaikanal Depot for the corporation, he was given a charge memo, dated October 27, 2001. The charges related to making false allegations against the organization without any reasonable grievance, making false and malicious statements against the Managing Director, committing misconduct which are subversive of discipline. Specific act of misconduct in terms of the certified Standing Order. The workman gave his explanation, pursuant to which a departmental enquiry was held. The thrust of the allegation was that he had issued handbills in the name of his trade union making false and malicious statements against the Managing Director which had spoiled the image of the Corporation and the Managing Director. He also gave a speech at the gate meeting on October 30, 2002. In the statement made at the gate meeting, he used abusive language against the Managing Director and made defamatory statements against the Security Officer. He called the Managing Director, Chief Administrative Officer and the Security Officer by their personal names. He also gave a statement which had appeared in the Daily Thanthi newspaper, dated November 19, 2001. In that he had accused that as there were 1000 officers in the 21 transport corporations, it had led to the sickness of the Corporation; that there was no guarantee for the passengers travelling in the bus if untrained and

non-licence holders were allowed to drive the vehicles. It will lead to accidents and the untrained drivers have damaged the vehicles which resulted in huge losses for the Corporation.

5. The enquiry was started on January 8, 2002 and concluded by the report of the enquiry officer dated March 2, 2002. On the basis of the same, the second respondent was given a notice asking to show cause as to why he should not be dismissed from service for the proved charges. The second respondent moved the Principal Bench of this Court with W.P. No. 10567/2002 challenging the show cause notice. He had also obtained an interim stay of show cause notice. The said writ petition was finally disposed of by an order dated July 23, 2002. The show cause notice issued by the petitioner corporation was held to be invalid as it was issued after agreeing with the findings of the enquiry officer and only on the question of penalty, he was asked to give explanation. The Supreme Court in *ECIL v. B. Karunakar* AIR 1994 SC 1074 : (1993) 4 SCC 727 : 1994-I-LLJ-162 (SC) has held that a notice must be given before agreeing with the findings of the enquiry officer.

6. After disposal of the said writ petition, the corporation had issued a fresh notice calling for explanation of the second respondent workman. The second respondent had protested against the finding rendered by the Enquiry Officer and stated that he was being victimized for being an office bearer of a Central Trade Union. He was discharging his duties as an office bearer of the union. The correspondence that the union had with the Government related to the industrial dispute between the second respondent's trade union and the corporation. Only an appeal was made to the Hon'ble Minister. There was no law under which an union which did not participate in the secret ballot for getting elected to hold bilateral talks. They were entitled to raise issues concerning the workmen under their hold. In the enquiry held, he had examined one K. Baskaran, a another Tradesman working at the Periakulam depot as his witness. He had mentioned about the statement made by the Managing Director when they went for a meeting. The Branch Manager of Kodaikanal office abused the second respondent and made another worker to give a complaint against him which is pending enquiry before the police. Hence the action initiated was nothing but an act of "unfair labour practice" prohibited u/s 25-T of the Industrial Disputes Act. The newspapers report mentioned cannot be used to charge sheet the second respondent. It related to general grievances of the workman. The management did not examine anybody who has any remote connection with the charge memo. But calling the evidence let in by the second respondent as an unrelated witness is a clear case of perverse finding. The further finding that the second respondent did not bring the political leaders whose names were mentioned by him to disprove his defence case is also a perverse finding.

7. Notwithstanding the same, the second respondent was dismissed by an order dated December 31, 2002. Since there was conciliation proceedings pending on the general chapter of demands before the Commissioner of Labour, the first

respondent herein, an approval petition was filed by the petitioner corporation u/s 33(2)(b) of the I.D. Act seeking approval of dismissal of the second respondent. The said petition was taken on file as A.P. No. 3/2003 and notice was ordered to the second respondent. The second respondent has filed a detailed counter statement dated January 14, 2003 together with supporting documents. The petitioner corporation made an interim application requesting the Commissioner of Labour to decide the validity of domestic enquiry and in case it is vitiated to give them an opportunity to lead evidence. The first respondent after hearing both sides found that the charges against the second respondent workman, the statement and letter written by him were marked, but no oral evidence was recorded by the management, whereas the second respondent examined as a witness on his side. Notwithstanding the same, the Enquiry Officer had recorded that the charges have been proved. He also held that since no evidence was made to establish the allegations made in the newspapers was attributable to the second respondent, those statements were contrary to truth. It is a case of no evidence and prima facie the charges were not proved. There was no material document to establish the statements attributed by the second respondent are either deliberate or false or malicious. Hence he found that the ingredients of the Standing Orders 16(12) and 16(31) were not proved. In that view of the matter, he declined to grant approval vide order dated March 31, 2003. It is as against the said order, the management filed the writ petition before the principal bench in W.P. No. 39291/2003.

8. That writ petition was admitted on January 19, 2004. Pending the writ petition, this Court declined to grant any interim order to stay the operation of the impugned order. Thereafter, the workman had filed an application for payment of monthly salary at Rs. 8,107/- in terms of Section 17-B of the I.D. Act pending disposal of the writ petition. In that petition, by an order dated April 16, 2004 this Court gave a direction to pay monthly salary. Claiming that the order was passed by this Court without representation by the management, the management filed W.P.M.P. No. 15263/2004 to set aside the grant of interim relief. That miscellaneous petition was once again dismissed on November 10, 2004 reiterating that the management should pay salary as directed already. As against the interim order declining to grant stay order, the management had preferred a writ appeal being W.A. No. 3726/2004. But when that writ appeal came up before the division bench on October 27, 2004, they withdrew the writ appeal. After dismissal of the writ appeal and after paying the monthly wages for a few months, the petitioner management had restored the service of the second respondent pending disposal of the writ petition. As against the grant of monthly wage, the corporation preferred another writ appeal in W.A. No. 2141/2005. That was also dismissed by the Division Bench.

9. He was restored to service on February 1, 2005. The management immediately issued a notice dated March 11, 2005 to the workman asking him to show cause as to why the findings of the enquiry officer's report dated November 30, 2002 should not be accepted. That enquiry emanated from a

charge memo, dated November 29, 2001 which was pending even at the time when the workman was dismissed. An explanation was called for and an enquiry was conducted. The findings were recorded by the Enquiry Officer on November 30, 2002. It was at that stage, the workman was once again sought to be dismissed in respect of the proceedings dated December 31, 2002.

10. It is curious that the management after tiring out the workman by various proceedings including taking up cases even against the interim orders upto the division bench twice and with a view to avoid restoring the service of the workman. Only with a view to revive old issues, a charge sheet was given on similar lines. The workman gave his explanation on March 18, 2005. Subsequently, a second show cause notice was given on March 22, 2005 in which the past records of the workman was also set out. In that charge memo, the charge against the workman was, that he had made allegations against one Kumararaja, the Branch Mechanic and the Managing Director of the Corporation as well as the Branch Manager of Kodaikanal depot. It was claimed that a representation was sent to the Hon'ble Chief Minister by the second respondent's trade union on July 10, 2001. The same was forwarded to the transport department and remarks were called for from the petitioner corporation by the transport department on November 9, 2001. When the trade union wrote a letter to the Chief Minister which was forwarded to the Ministry concerned and when the ministry makes an enquiry, the charge sheet got laid against the workman. The petitioner corporation has not stated as to what is the reply sent by them to the Government.

11. At this stage, the allegation made by Mr. K.M. Ramesh, learned Counsel appearing for the workman that the copy was not actually forwarded to the corporation. The close relative of the Managing Director was working in the Secretariat. She went to the concerned department and got the copy forwarded only with a view to charge sheet the workman so as to forestall any enquiry/ action to be taken by the State Government. The counsel for the Corporation without any instruction was unable to deny the said allegation. It is suffice that subsequent to the show cause notice and an explanation to the second show cause notice on April 8, 2005 was obtained from the workman, he was dismissed by an order dated May 31, 2005. As at that time since a conciliation was pending before the Joint Commissioner of Labour (Conciliation), Chennai, an approval petition seeking approval for second dismissal of the workman was filed u/s 33(2) (b) of the I.D. Act even while the first writ petition was still pending. That approval petition was numbered as A.P. No. 55/2005. Notice was sent to the second respondent workman. He had also filed a detailed counter statement. The first respondent Joint Commissioner of Labour, after hearing both parties and perusing the history of the case and the documents filed by the workmen, found that there was no case made out for grant of approval. He found that the action of the management was nothing but an act of victimization. He recorded a finding that in order to reinstate the workman in the earlier round, the management had made an offer to drop the charges if he gives up his claim for

backwages. Even while the earlier approval petition had not reached its finality, dismissing the workman again would also amount to victimization. On the merits of the enquiry also, he found that there was no proof in the enquiry that the workman had made statements in his capacity as an employee and that the findings recorded were perverse. It would amount to an unfair labour practice. For invoking the Standing Orders, the statements made must be deliberate. As against the refusal to accord approval, the second writ petition came to be filed. That writ petition was admitted on September 28, 2007 as noted already.

12. Before dealing with the second writ petition, it is necessary to deal with the first writ petition. In the first writ petition, as noted by the Commissioner of Labour (R-1), no oral evidence was let in by the petitioner corporation to substantiate its charges. Even otherwise, it is not clear as to how the management can take an action on the complaint sent to the Chief Minister, for which only an explanation was called for by the Ministry concerned. A perusal of the said letter only shows that it was addressed to the Hon'ble Chief Minister in a letter head containing the names of the State President S. Kumarasamy, the General Secretary Mr. N.K. Natarajan and the State Deputy President Mr. Radhakrishnan. It was signed by the second respondent as the President of the Unit. Copies were also marked to the Transport Minister and the Transport Secretary. No copy was marked to the petitioner corporation. Therefore, the charge sheet stating that the said complaint sent to the Government was forwarded to the Corporation vide endorsement dated November 9, 2001 by itself cannot give a cause of action for taking any action. The petitioner corporation had not filed the covering letter sent by the State Government. Even otherwise, if at all, the State Government would have only called for remarks from the Corporation. The reply sent by the corporation to the State Government was also not filed. If the allegations made had constituted any defamatory statements, then the persons who were allegedly defamed should have been examined in the enquiry to prove that the allegations were false and that they had suffered reputation because of the false allegations. Except marking a copy of the letter, no evidence was let in by the management to substantiate their charges. The Labour Commissioner was right in refusing to grant approval. Hence there is no case made out to interfere with W.P. No. 39291/2003 and it is liable to be dismissed.

13. Insofar as the second writ petition is concerned, it must be noted that the workman was reinstated pending disposal of the writ petition in which the validity of the order in previous approval application was still pending. The petitioner corporation for the second time had dismissed the workman in respect of the allegation which was already available to the management leading to an enquiry. The petitioner corporation should have sought for permission from the Court to pass an appropriate order and should not have kept the second round of ammunition to be used against the workman on a contingency basis. It clearly shows the lack of bona fide on the part of the petitioner management. As against two interim orders in the first writ petition, they had filed writ appeals. After

paying few months salary, they had restored him to duty. If the allegations made against the workman were so serious, the question of restoring him to duty pending final decision in the writ petition will not arise as according to the management, they had lost confidence reposed on the workman.

14. In the background of these facts, the allegations made by the workman that the management had tried to bargain with him to give up backwages as a condition precedent for the withdrawal of the writ petition finds an elaborate discussion in the impugned order of the Joint Commissioner of Labour in the second writ petition. Be that as it may, in the second writ petition, the joint Commissioner of Labour had clearly stated that the allegations were not proved and that the management cannot make use of a complaint letter sent to the Government, dated July 10, 2001 after split it into two portions and conduct enquiries at their own convenience. In essence, if the allegations arose out of the same letter sent by the trade union, then they ought not to have conducted two separate enquiries. They should have taken a decision at the time when he was dismissed for the first portion of the letter relating to the Managing Director and stored the dismissal of workman in respect of the second allegation found in the same letter by conducting another enquiry, though the enquiry report was also available with the management at the time when they dismissed the workman. Nothing prevented the management from waiting for his explanation in the second enquiry and based their decision on a consolidated findings, rather than using the second charge memo as a ground for dismissing the workman all over again.

15. The other allegations contained in the letter related to several events. The splitting up the charge memo into two different parts, conducting two separate enquiries, dismissing the worker for the first set of allegations and thereafter, after waiting for the outcome for more than five years is really unfortunate. In the second enquiry, unlike the first enquiry, they brought a witness who is a mechanic from Kodaikanal depot, against whom the trade union had made a complaint and used it as the basis for finding the workman guilty. In the second enquiry, the workman had examined one Amalanathan, a retired driver and also examined himself. He was fully cross-examined by the management.

16. The refusal to grant approval by the 5 first respondent Joint Commissioner is fully justified on all counts. He found that the charges were not proved and there was no basis for initiating action on the basis of the charge memo. When the earlier case was pending, only by the interim arrangement, he was restored to service. Even without seeking permission from this Court, they dismissed the workman for the second time and shows vindictiveness on the part of the management. Apart from that, there is yet another factor. The certified Standing Order (under clause 21) provides for a grievance redressal machinery in case of unfair labour treatment of any workman in service. Even if the complaint given by the workman invoking the said clause was found out to be false, that by itself cannot give a cause of action for taking action against the workman. Otherwise,

such a complaint redressal mechanism will become a farce.

17. The learned Counsel for the workman relied upon a judgment of the Supreme Court in *Eastern Electric & Trading Co. v. Baldev Lal* AIR 1975 SC 1892 : (1975) 4 SCC 684 : LNIND 1975 SC 266 : 1975-II-LLJ-367. While dealing with the appeal filed against the order of the Industrial Tribunal, New Delhi u/s 33(2)(b), the Supreme Court dealt with the scope of the approval granting authorities. In paragraph 5, it had quoted with approval the earlier judgment of the Supreme Court in *Hind Construction & Engineering Co. Ltd. v. Their Workmen* AIR 1965 SC 917 : LNIND 1964 SC 313 : 1965-I-LLJ-462 (SC) and it may be usefully extracted below:

5. In *Hind Construction & Engg. Co. Ltd. v. Workmen* (supra) this Court observed:

It is now settled law that the Tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the Tribunal as it is ordinarily before a Court of appeal. The Tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the Tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimisation of employee or employees or unfair labour practice. The Tribunal may in a strong case interfere with the basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the Tribunal should not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimisation or unfair labour practice.

18. He also relied upon a judgment of the Supreme Court in *Lalla Ram v. Management of D.C.M. Chemical Works Ltd* and Another AIR 1978 SC 1004: (1978) 3 SCC 1 : LNIND 1978 SC 56 : 1978-I-LLJ-507 (SC), wherein the Supreme Court dealt with the scope of Section 33(2)(b) and had observed in paragraph 12 as follows:

12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings u/s 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based

on legal evidence adduced before the domestic Tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court.....

19. He also referred to a decision of the Supreme Court in *Workmen of Williamson Magor and Co. Ltd. v. Williamson Magor & Co. Ltd. and Another* AIR 1982 SC 78 : (1982) 1 SCC 117 : LNIND 1981 SC 452 : 1982-I-LLJ-33 (SC) to decide the question as to the correct meaning of the term victimization in industrial law. In paragraph 14, the Supreme Court had observed as follows:

14. We would therefore accept the interpretation of the word "victimisation" in the normal meaning of being the victim of unfair and arbitrary action, and hold that there was victimisation of the superseded workmen.

20. Lastly, he relied upon a judgment of the Supreme Court in *Colour-Chem Ltd. v. A.L. Alaspurkar and Others* AIR 1998 SC 948 : (1998) 3 SCC 192 : LNIND 1998 SC 152 : 1998-I-LLJ-694 (SC) and referred to the following passage found in paragraph 13, which reads as follows:

13. The term "victimisation" is not defined by the present Act. Sub-section (18) of Section 3 of the Act which is the definition Section lays down that:

Words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to any industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act.

Bombay Act is the Bombay Industrial Relations Act, 1946 and the Central Act is the Industrial Disputes Act, 1947 as laid down by definition Sections 3(1) and 3(2) of the Act. The term "victimisation" is defined neither by the Central Act nor by the Bombay Act. Therefore, the term "victimisation" has to be given general dictionary meaning. In Concise Oxford Dictionary, 7th Edn., the term "victimisation" is defined at p. 1197 as follows:

make a victim; cheat; make suffer by dismissal or other exceptional treatments.

Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term "victimisation" is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances amount to unfair labour practices on account of factual victimisation. Once that happens Clause (a) of Item 1 of Schedule IV of the Act would get attracted, even apart from the very same act being covered by unfair labour practices envisaged by Clauses (b), (c), (d) and (e) of the very same Item 1 of

Schedule IV. But it cannot be said that Clause (a) of Item 1 which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the decision of this Court in *Hind Construction & Engineering Co. Ltd. v. Their Workmen* (supra). It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour practice is covered by the present Act by enactment of Clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision. On the same lines is a latter decision of this Court in the case of *Bharat Iron Works v. Bhagubhai Balubhai Patel* wherein a Bench of three learned Judges speaking through Goswami, J. laid down the parameters of the term "victimisation" as understood in labour laws and as contemplated by industrial jurisprudence. It has been observed that ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own. If actual fault or guilt meriting punishment is established, such action will be rid of the taint of victimisation. The aforesaid observations obviously refer to factual victimisation. But then follows further elucidation of the term "victimisation" to the following effect: (SCR Headnote)

Victimisation may partake of various types, as for example, pressurising an employee to leave the union or union activities, treating an employee in a discriminatory manner or inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

The aforesaid observations in this decision fall in line with the observations in the earlier decision of this Court in *Hind Construction & Engineering Co. Ltd. v. Their Workmen* (supra). Consequently it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. On the facts of the present case there is a clear finding reached by the Labour Court and as confirmed by the Industrial Court that the charges levelled against the respondent-delinquents which were held proved even though reflecting major misconducts, were not such in the light of their past service record as would merit imposition of punishment of dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquents. Imposition of such a shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimisation apart from not being

factual victimisation as on the latter aspect the Labour Court has held against the respondent-workmen and that finding has also remained well sustained on record. Thus it must be held that the management even though not guilty of factual victimisation was guilty of legal victimisation in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in *Hind Construction & Engineering Co. Ltd. v. Their Workmen* (supra) and *Bharat Iron Works v. Bhagubhai Balubhai Patel* (supra).

By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill a fly with a sledgehammer. Consequently it must be held that the appellant was guilty of unfair labour practice. Such an act was squarely covered by Clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation.

21. In both the impugned orders, the Commissioner of Labour and Joint Commissioner of Labour respectively found that they were cases of no legal evidence. Thus, they have refused to grant approval. In the second writ petition, a further reason for victimization had also been recorded. This Court do not find any infirmity or illegality in the orders passed by the authorities. These two writ petitions admittedly arose out of the orders passed by the authorities empowered to grant approval u/s 33(2)(b) of the I.D. Act. The non grant of approval will automatically result in the order of dismissal non est in law and the workman is entitled for all benefits as if there was no order of dismissal.

22. This is not the case where punishment imposed by the employer for proved charges was interfered with by the labour Court by exercise of its power u/s 11-A of the I.D. Act. In those cases, there may be of possibility of the Court examining the resultant order was valid in exercise of the power under Article 226 of the Constitution. In cases where the power u/s 11A was exercised and as to what relief was to be given in cases of illegal terminations came to be considered by the Supreme Court vide its judgment in *J.K. Synthetics Ltd. v. K.P. Agrawal* (2007) 2 SCC 433 : LNIND 2007 SC 102 : 2007-II-LLJ-128 (SC). In paragraph 20, the Supreme Court held as follows:

20. But there are two exceptions. The first is where the Court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

23. A Constitution Bench of the Supreme Court while dealing with the refusal to grant approval in an application filed u/s 33(2)(b) by the employer vide its judgment in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma* AIR 2002 SC 643 : (2002) 2 SCC 244 : LNIND 2002 SC 44 : 2002-I-LLJ-834

(SC) in paragraph 14 had observed as follows:

14....If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement....

In the light of the above, both the writ petitions will stand dismissed. However, there will be no order as to costs.