

(1999) 02 KAR CK 0067

In the Karnataka High Court

Case No : Writ Petition No's. 8150 to 8152 of 1998

Mysore Paper Mills Officer's Association, Bhadravathi And
Others

APPELLANT

Vs

Mysore Paper Mills Limited, Bhadravathi And Others

RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19, 19 (1) (a)
Industrial Disputes Act, 1947 — Section 2 (ra), 29, 31, 33

Citation : (1999) 5 KarLJ 680

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : Sri M.C. Narasimhan and Sri Subramanya Bhat for Sri K. Subbarao, for the Appellant; Sri M.R.C. Ravi and Sri Mehaboob Ali Khan, Additional Government Advocate, for the Respondent

Judgement

1. Petitioners 2 and 3 are the officers of the respondent 1-Paper Mills Limited (A Government of Karnataka Undertaking) (hereinafter called as "Mills", for short) are before this Court seeking for issuance of a writ of certiorari to quash the memo bearing Reference No. FPA PSR 98 28, dated 17-2-1998 (Annexure-H) and memo bearing No. FPA PSR 98 29, dated 17-2-1998 (Annexure-R), issued by the 3rd respondent and further sought for a writ of mandamus directing the respondents to grant them all the consequential benefits for which they are entitled to consequent upon quashing of the impugned memos urging various legal contentions in these petitions.

2. Relevant facts in brief, which are necessary for appreciation of the rival contentions urged by the learned Counsel for the parties are stated as hereunder:

It is stated that the second petitioner is the President of the first petitioner's Officers' Association (in short, "Association"), which is a registered Trade Union under the provisions of the Indian Trade Unions Act, 1926. As far as the petitioner No. 3 is concerned, he was a former Joint Secretary of the Association.

There are about 300 officers working in the Mills out of 3,000 permanent employees. The said Officers' Association came into existence about a decade back with a view to protect the interests of its members and get better service conditions from the Management of the Mills. It is stated in these petitions that the petitioner's association submitted the general charter of demands for the better service conditions such as revision of pay-scales, revision of dearness allowance, revision of house rent allowance etc. It is alleged that the Management of the Mills refused to consider the demands and they approached the Conciliation Officer with regard to the said charter of demands. The Officers' Association moved this Court for issue of an appropriate direction to the Conciliation Officer with regard to the industrial dispute in connection with the above referred charter of demands. The said petition was allowed and consequently the reference was made to the Additional Industrial Tribunal, Bangalore, in ID 66 of 1998 for adjudication of the dispute between the parties. In the said dispute there was an out of Court settlement on the basis of a joint-memorandum of settlement filed by the parties and the same was accepted as an award by the Tribunal. It is alleged that the Management of the Mills did not take steps to implement the terms and conditions of the award. In that regard the Officers' Association approached the State Government requesting it to prosecute the Management of the Mills for the alleged statutory offences committed by it for the alleged contravention of the terms and conditions of the award which is punishable u/s 29 read with Section 31 of the Industrial Disputes Act, 1947 (in short, "I.D. Act"). The said representation of the Association is still pending consideration by the Government. It is alleged against the Mills that its Management has resorted to certain unfair Labour practices as defined u/s 2(ra) of the I.D. Act. Again further it is referred to in these writ petitions with regard to the proceedings initiated u/s 33 of the Industrial Disputes Act to declare some of the office bearers of the Association as "Protected Workmen" as provided under the provisions of the I.D. Act. In respect of those proceedings the W.P. No. 31660 of 1994 was filed but subsequently the same was withdrawn.

3. It is also further alleged in these petitions that the second and third petitioners have been demoted from Grade VI to Grade V for the reasons that they have been wearing black badges and that they have committed an act of misconduct under the Officers Service Rules. It is further contended that almost all the officers of the Mills were wearing black badges while they were on duty as a protest against the action of the alleged harassment and victimisation of Mr. H. Gopinath and Mr. Naseer Kukkady. In that regard second and third petitioners have received a memo dated 20-1-1998 wherein it is stated that the Management of the Mills had observed that they were wearing black badges while they were on duty and it was considered by the Management as an act unbecoming of senior officers of the Company. It was expected from them to implement the Management decisions in a department/section under his control. The action of the second and third petitioners in protesting against Management decisions of the Mills according to them it would erode the overall discipline in

the Mills, that is why they were called upon in writing as to why promotion given to them from 1-7-1987 should not be withdrawn, as their action is a clear case of misconduct under Clause 27.2 of the MPM Officers' Service Rules ("Officers' Service Rules", for short). For which they have submitted their detailed reply statements on 30-1-1998 to the memos which were served on the second and third petitioners, replies were submitted by them. Rule 27.2 of the Officers' Service Rules reads thus:

"27.2 Commission of any act subversive of discipline or good behaviour".

It is stated in these writ petitions by the petitioners that their action was peaceful and it was by way of peaceful protest which is permissible in law under the Constitution of India. Therefore, they contended that their action do not amount to misconduct as alleged in the impugned memos. The first petitioner's Association submitted a representation dated 2-3-1998 to the second respondent to withdraw the orders of demotion issued to the second and third petitioners. It is further stated that similar memos and notices were issued to 115 officers calling upon them, that they should desist from wearing black badges and threatened them that the disciplinary action would be taken against them if they do not stop wearing of black badges. It is further alleged that the action of the respondents against the second and third petitioners amount to an act of victimisation and unfair labour practices as defined u/s 2(ra) read with V Schedule of the I.D. Act and also an infringement of the fundamental rights guaranteed to them under Articles 14, 16, 19 and 21 of the Constitution of India and violation of the statutory rights conferred upon them under the Officers Service Rules. In support of the said legal contentions the learned Counsel Sri M.C. Narasimhan has placed strong reliance upon the judgments of the Apex Court in Kameshwar Prasad and Others v State of Bihar and Another, O.K. Ghosh and Another v E.X. Joseph, B. Manmohan and Others v State of Mysore and Others, B.R. Singh and Others v Union of India and Others 1998 SCC 946 : 1967 II LLJ 15, Shardaprasad Onkarprasad Tiwari and Others v Central Railway (Divisional Superintendent, Nagpur).

4. The respondents have filed a detailed counter-statement traversing all petition averments and grounds urged in these petitions, denying various allegations made against Management of the Mills with regard to the alleged unfair labour practices and their action with regard to transfer of the officers of the Mills referred to above is not an act of victimisation, is a finding of fact given by this Court in the previous writ petitions filed by them and further there is either violation of the fundamental rights or the statutory rights as contended by the petitioners. Further, they sought to justify their action of passing demotion orders against the second and third petitioners for their serious acts of misconduct under the Officers' Service Rules. Therefore, this Court need not exercise its extraordinary discretionary power under Article 226 of the Constitution of India to interfere with the impugned orders. The second and third petitioners were wearing of the black badges to protest against the action of the

Management of the Mills. The allegations of the petitioners that the decision of the Mills, calling upon the petitioners-Officers to disassociate themselves from the Association and they shall not carry on with their legitimate Trade Union activities and further to see that their demands would not be pursued, are all denied by the Management of the Mills as incorrect as the same are devoid of merit.

5. It is vehemently contended by the learned Counsel Mr. M.R.C. Ravi on behalf of respondents that the action against the concerned officers in these petitions came in the way of the decisions of the Management and further if no action would not have been taken against them for their alleged acts subversive of discipline or good behaviour, the discipline in the Mills would have seriously eroded as they are the officers in their department and sections and it would be impossible for the management of the Mills to implement its decisions through its Officers and employees. Therefore, the instructions were given to them to withdraw from their Trade Union activities and further called upon them to desist themselves from wearing black badges, failing which disciplinary action would be taken against them. It is further contended that the action of the Management of the Mills is a bona fide exercise of power in the larger interest of the Mills, therefore their action is neither arbitrary nor unreasonable as alleged while passing the impugned orders against the petitioners-Officers in these petitions.

6. Learned Counsel for the respondents has placed strong reliance on the judgment of the Apex Court reported in the case of M.H. Devendrappa v Karnataka State Small Industries Development Corporation and Full Bench decision of this Court in Mysore Paper Mills Limited, Bhadravathi v Mysore Paper Mills Officers' Association and Another and Mysore Paper Mills Officers' Association and Others v State of Karnataka and Others.

7. This Court after hearing the rival contentions urged by the learned Counsel on behalf of the parties, has formulated the following points for its consideration:

(1) Whether the impugned orders passed by the Management of the Mills against the second and third petitioners are in accordance with the Officers Service Rules?

(2) Whether the allegations made in the impugned notices would tantamount to act of misconduct on which ground the impugned orders are passed?

(3) Whether the impugned orders are passed with a bona fide exercise of power by the respondents?

(4) To what reliefs the second and third petitioners are entitled in law?

8. To answer above said points framed on the basis of the pleadings and legal contentions urged this Court has perused the pleadings, documents produced by both parties and considered the contentions urged by the learned Counsel for the parties and pass the following order by assigning its reasons on the points formulated by it.

Point No. 1

(a) It is not in dispute that the first petitioner is an Association, registered under the provisions of the Indian Trade Unions Act of 1926. It is also not in dispute that the second petitioner was President of the Association and the petitioner 3 was the Joint Secretary of the said Association. It is also not in dispute that the Management of the Mills is held to be an authority under Article 12 of the Constitution of India by the Full Bench judgment of this Court in Mysore Papers Mills Limited's case, *supra*. Therefore, Parts III and IV of the Constitution of India are applicable to the officers and employees working in the Management of the Mills.

(b) It is not in dispute that the Management of the Mills has issued memos as per Annexure-III to the members of the Association including the second and third petitioners calling upon them to disassociate themselves from the Officers' Association, otherwise disciplinary action would be initiated against them, if they do not either disassociate from the Association or desist from wearing black badges. For this one of the officers replied as per Annexure-UUU. In this background the impugned notices have been issued by the Management of the Mills to the petitioners 2 and 3. It is stated in both the impugned orders that petitioners 2 and 3 have been indulging in protest measures against the Management decisions by wearing black badges while on their duty, which is considered as an act of unbecoming of senior officers of the Mills. The above act of them is an act of misconduct under Clause 27.2 of the MPM Officers' Service Rules. It is further stated that in their explanation dated 30-1-1988 that they have tried to defend their action of indiscipline as Senior Managers and their explanation was not accepted by the Management of the Mills. In the concluding paragraphs of the impugned orders it is stated by the third respondent that considering their continuous involvement in anti-Management activities which are detrimental to the interest of the Mills and has been eroding the overall discipline in the Mills, their promotions to the Gr. VI as Senior Managers have been withdrawn and reverted to Gr. V as Manager (Mech-Pulp Mills) and as Manager (Eng. Services) respectively.

(c) A reading of the impugned memos it is clear that the orders of reversion were not preceded by an enquiry as required under the Officers Service Rules and in compliance with the principles of natural justice.

(d) In the explanations submitted by the petitioners the allegation of misconduct alleged under Rule 27.2 of Officers' Service Rules has been specifically denied. No doubt, the petitioners have admitted wearing of black badges as alleged in the memo served on them, but they have further stated that the circumstances under which they wore the black badges. They have also further stated in unequivocal terms that their protest by wearing black badges is a fundamental right guaranteed under Article 19(1)(a) to (c) of the Constitution of India. In view of the law laid down by the Apex Court and this Court, the Management of the Mills was required to conduct an enquiry under the rules and in compliance

with the principles of natural justice preceding the impugned memos of reversion were passed by the Mills. The impugned memos entail serious consequences upon the concerned officers as they have been demoted to the lower grade, thereby their service conditions have been adversely affected. Therefore, this Court has to answer the first point formulated by it in the negative holding that the impugned actions are contrary to the Service Rules, and the principles of natural justice as the same were not preceded by an enquiry as required in law.

Point No. 2

(e) This point relates to the alleged misconduct on the part of the 2nd and 3rd petitioners. The misconduct alleged in the impugned memos at Annexure-H and R reads thus:

"You have been indulging in protest measures against the management decisions by wearing black badge while on duty, which is considered as an act of unbecoming of a senior officer. The above act is a misconduct under Clause 27.2 of the MPM Officers' Services Rules".

(f) From the above it is clear that wearing black badge as a mark of protest against the decisions of the management is a misconduct according to the management. The question is, whether wearing black badge in protest against something would amount to "misconduct". The straight answer to this question is "no". It is a common feature that whenever any management fails to fulfil the demands of the employees or neglects the grievances and problems of the employees or if any adverse decision is taken against them or if any of the officers cause harassment to the subordinates, the same will be protested by various means, such as conducting demonstrations by raising slogans, taking out processions, gheraoing, tools/pen down strike etc. Wearing black badge is also one of the kinds of protest that can be exhibited by expressing their feelings to the Management, which are constitutionally recognised rights to the petitioners under Article 19(1)(a) to (c) of the Constitution of India. The same cannot be considered as "misconduct" for any reason. Normally, in such circumstances the protesters merely wear black badges and will engage in their duties without causing any sabotage to the property of the establishment or unit. No harm is caused to anybody by wearing badges by the petitioners 2 and 3 to express their feelings to the decisions of the Management that were affecting their fundamental rights and statutory rights of them and members of the first petitioner's Association. Except wearing black badge in protest against something, no other untoward incident had taken place. Such being the position, wearing of black badge cannot be termed as misconduct as alleged against the second and third petitioners. Therefore, it will not be an act of subversive of discipline or good behaviour.

(g) Normally, such protests of the petitioners and other officers by wearing black badges will be made by all the employees en masse. If the same is construed as misconduct, it amounts to blatantly violating the fundamental and statutory

rights of the officers and the employees of the company and it also amounts to unfair labour practice. The managements cannot and should not expect from its officers and employees no protest can be made by them against any of their actions that would affect the fundamental and statutory rights. Whenever something appears to the officers and employees with regard to either the decision or action of the management would affect their rights normally there would be protests against such unreasonable and unjustifiable decisions of the management, such action of the officers resorting to any constitutional methods referred to above shall not constitute misconduct, much less the alleged misconduct against the petitioners 2 and 3. Exhibiting protest against such wrong or arbitrary, unreasonable and unjustifiable decisions of the management should not be considered as "misconduct". Reliance was placed by Mr. M.C. Narasimhan, learned Counsel for the petitioners on the judgment in case of Kameshwar Prasad, *supra*, for the proposition that right to demonstrate by the Government employees is a part of Article 19(1)(a) and (b) of the Constitution of India. The relevant paragraphs of the judgments of the said case are extracted as hereunder:

"12. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Article 33. That Article selects two of the services under the State, members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them - from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19(1)(e) and (g).

13. The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Websters it is defined as "a public exhibition by a party, sect or society..... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of

one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Article 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances.

17. We find ourselves unable to uphold this submission on behalf of the State. In the first place, we are not here concerned with any rule for ensuring discipline among the police force which is the arm of the law primarily charged with the maintenance of public order. The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rules were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration - be the same however innocent and however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.

20. We would therefore allow the appeal in part and grant the appellants a declaration Rule 4-A in the form in which it now stands prohibiting "any form of demonstration" is violative of the appellants' rights under Article 19(1)(a) and (b) and should therefore be struck down. It is only necessary to add that the rule, insofar as it prohibits a strike, cannot be struck down since there is no fundamental right to resort to a strike. As the appellants have succeeded only in part, there will be no order as to costs in the appeal".

(h) The law laid down in the said case has been subsequently followed by the Apex Court in another case in *O.K. Ghosh, supra*:

"(11) It is not disputed that the fundamental rights guaranteed by Article 19 can be claimed by Government servants. Article 33 which confers power on the Parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens including Government servants, are entitled to

claim the rights guaranteed by Article 19. Thus, the validity of the impugned rule has to be judged on the basis that the respondent and his co-employees are entitled to form Associations or unions. It is clear that Rule 4-B imposes a restriction on this right. It virtually compels a Government servant to withdraw his membership of the service Association of Government servants as soon as recognition accorded to the said Association is withdrawn or if, after the Association is formed, no recognition is accorded to it within six months. In other words, the right to form an Association is conditioned by the existence of the recognition of the said Association by the Government. If the Association obtains the recognition and continues to enjoy it, Government servants can become members of the said Association; if the Association does not secure recognition from the Government, or recognition granted to it is withdrawn, Government servants must cease to be the members of the said Association. That is the plain effect of the impugned rule. Can this restriction be said to be in the interests of public order and can it be said to be a reasonable restriction? In our opinion, the only answer to these questions would be in the negative. It is difficult to see any direct or proximate or reasonable connection between the recognition by the Government of the Association and the discipline amongst, and the efficiency of, the members of the said Association. Similarly, it is difficult to see any connection between recognition and public order".

(i) Both these decisions have been considered by Division Bench of this Court in case of B. Manmohan, *supra*. In para 24, it is held as under:

"(24) The contention that a Government servant is not entitled to the constitutional guarantee given to the citizens of this Country under Article 19(1) (a) cannot be accepted in view of the decisions of the Supreme Court in Kameshwar Prasad and Others Vs. The State of Bihar and Another, and O.K. Ghosh and Another Vs. E.X. Joseph, . In those cases, the Supreme Court held that the Constitution of India does not exclude Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons are specifically named; Article 33 of the Constitution having selected the Services, members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restriction or abrogation might take place, other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants though the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedom in relation to Article 19(1)(e) and (g)".

(j) The law laid down in the said cases with all fours applicable to the facts of these cases. Hence, the submission of the learned Counsel for the petitioners is well founded and the same must be accepted. If the misconduct alleged against the second and third petitioners is viewed from this angle, it is clear that the

management have invented a ground to victimise them for having worn the black badges in protest against the arbitrary and unconstitutional decision taken against the officers. My answer to the point is that wearing of black badge as a mark of protest by the second and third petitioners do not amount to misconduct. Accordingly, the issue 2 is answered in favour of the petitioners and against the management.

Point No. 3

(k) The Officers Service Rules contemplates the procedure for taking disciplinary action against its officers. Rule 31 of the Rules prescribes the procedure for imposing major penalties. Under Rule 28.2.2 of the Rules demotion of an officer to a lower grade or post or to a lower stage in a time scale for a specified period is one of the major penalties enumerated in that rule. Rule 31.2 prescribes, the procedure for imposition of penalty. If the explanation received by the disciplinary authority is not satisfactory, Competent Authority may appoint any officer(s) of the Company or any person from outside wherever necessary as an Enquiry Officer/Committee to enquire into the charged misconducts against officer. Further the procedure is enumerated as to what should be done after receipt of report from the Enquiry Officer for taking further disciplinary action against the officers for the proved acts of misconduct against them.

9. The Constitutional Bench of the Supreme Court in the case of Sukhdev Singh and Others v Bhagatram Sardar Singh Raghuvanshi and Another, in which case the Apex Court has placed reliance on the law laid down in the case of Vitarelli v Seaton, at pp. 546-547, has extracted the said judgment at paragraph 122, which reads thus:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. . . . Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. . . . This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword".

10. In view of the law laid down by the Apex Court, the Service Rules have got statutory character. The Service Rules laid down definite procedure for imposing major penalty upon its officers. The same has not been complied with before passing the impugned orders. Therefore, the action of the Managements-Mills is arbitrary and unreasonable in law and therefore this Court has to record a finding that the action of the Management suffers from legal mala fides. The Management of the Mills is entrusted with the power to take disciplinary action against its officers by following the procedure prescribed under the Service Rules. Conferment of power upon the competent authority or disciplinary authority of the Mills is a trust. The same must be exercised with a bona fide intention to achieve its object for the purpose for which it is entrusted with the

authority, exercise of such power by the authority is coupled with a statutory duty enumerated under Rule 31(2) of Rules. Non-compliance of this mandatory rule, has vitiated the impugned action of the respondents. Therefore, the impugned notices are liable to be quashed.

11. In this regard the Supreme Court has laid down the law in *State of Punjab and Another v Gurdial Singh and Others*, while examining the Land Acquisition Act of 1894, considering the concept of legal mala fides and it has laid down the law. The relevant paragraph 9 of the said judgment is extracted as hereunder:

"The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and often-times overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated "I repeat. . . . that all power is a trust - that we are accountable for its exercise - that, from the people and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice laden the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the acquisition or other official act".

The law laid down in the said case with all fours is applicable to the facts of the present case. Therefore, I answer the point No. 3 in favour of the petitioners holding that the impugned orders are not passed by the respondents by bona fide exercise of power, but it suffers from legal mala fides.

12. The submission of the learned Counsel for the petitioners that the action of the respondents is mala fide and a colourable exercise of power for the reason that the action of the third respondent in passing the order of reversion in the garb of alleged misconduct under the Service Rules is to victimise them for having exercised their legitimate fundamental rights and legitimate trade union rights conferred upon them, is well founded and the same must be accepted.

13. The submission of learned Counsel Mr. M.R.C. Ravi that the action of the

respondent 3 herein was justified having regard to the fact that the concerned officers have admitted in their explanation that they were wearing black badges continuously for a period of 2 months opposing the decision of the Management. It is stated that they being the officers, it has become very difficult for the Management of the Mills to control them. The action of the officers in protesting the decision of the Management by wearing black badges questioning the decisions of the Management has eroded the overall discipline in the Company. The submissions cannot be accepted for the reasons recorded by me while answering the Point Nos. 1 and 2. Further, the reliance placed on the judgment of the Supreme Court in the case of M.H. Devendrappa, supra, wherein the Apex Court has held that the employee has no right to question the decision of the Management, and further reliance is placed on the judgment of Full Bench of this Court in the case of Mysore Paper Mills Limited, supra, is misplaced. The law laid down by the Apex Court and the Full Bench of this Court in the above referred judgments have no relevance to points at issue raised and answered in these petitions.

14. Having answered the Point Nos. 1 to 3 against the respondents-Management Mills, the Point No. 4 also must be answered in favour of the petitioners. Hence, these petitions must succeed.

15. Accordingly, I pass the following:

ORDER

16. The writ petitions are allowed. Rule issued and made absolute. Impugned memos at Annexure-H and R bearing Nos. FPA PSR 98 28 and FPA PSR 98 29 respectively dated 17-2-1998 are hereby quashed. The respondents are hereby directed to restore the second and third petitioners in their original posts of Senior Managers i.e., Grade VI and to pay all the consequential benefits inclusive of monetary benefits from the date of the notices/order till the date of their placement in their original posts.

17. Additional Government Advocate is permitted to file his memo of appearance on behalf of the fourth respondent within four weeks from today.