

(2011) 04 GUJ CK 0086

In the Gujarat High Court

Case No : Special Civil Application No. 15760 of 2010

Netrang Vibhag Milk Producers Cooperative Society Ltd.

APPELLANT

Vs

Chandrakant Vithalbhai Mistry

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Air India Employees Service Regulations, 2000 — Regulation 48
Constitution of India, 1950 — Article 14, 16, 226, 227
Industrial Disputes Act, 1947 — Section 2(oo), 25(F), 25(G)
Penal Code, 1860 (IPC) — Section 406, 409

Citation : (2011) 04 GUJ CK 0086

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : B.S. Patel, for the Appellant; P.H. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocates appearing on behalf of respective parties.

2. In present petition, Petitioner society has challenged award passed by Labour Court, Bharuch in Reference (LCB) No. 100 of 2000 dated 13th August, 2010, wherein, Reference made by Respondent has partly allowed with a direction to Petitioner to reinstate Respondent with continuity of service to his original post with 20% back wages of interim period.

3. In this matter, on 22nd December, 2010, this Court has issued "notice for final disposal" to Respondent and made it returnable on 12th January, 2011. The Respondent has not filed any affidavit in reply against present petition.

4. Today, learned advocate Mr. B.S. Patel appearing on behalf of Petitioner - society has raised contentions before this Court that service of Respondent was terminated by society on the ground of loss of confidence and he was working as a Secretary in society and complaint is filed by Bank of Baroda for

misappropriation which included account of Petitioner society. The Respondent workman was arrested when he was working with society on the basis of FIR filed by Bank of Baroda. He also submitted that service of Respondent was terminated while passing resolution dated 24th March, 2000 being Resolution No. 11/1, Page 65. He also submitted that at the time of terminating service of Respondent, one month's notice pay was paid to Respondent. He submitted that according to provisions of Section 2(13) of Cooperative Societies Act, post of Secretary is covered by designation as an "officer", therefore, Respondent was not a workman within a meaning of Section 2(s) of Industrial Disputes Act, 1947 (for short "ID Act"). He also submitted that against termination, Regular Civil Suit No. 7 of 2000 was filed by Respondent before Civil Court, Valia impleading Petitioner society as a party as well as other members of Executive Committee. Copy of civil suit is produced on record at page 43 to page 48. He submitted that civil suit has been unconditionally withdrawn by Respondent which is at page 48 dated 3rd November, 2003. Because of suit has been unconditionally withdrawn, subsequent proceedings for same relief filed before Labour Court, against which, principles of stopple is applicable against Respondent and therefore, reference is barred by principles of estoppel. He referred observations made by Labour Court at page 31 in respect of nature of work performed by Respondent. He also read over before this Court Item No. Q from Award, page 31 and submitted that in case when service has been terminated by employer on the ground of loss of confidence, then, it cannot consider to be a retrenchment and Section 25F of ID Act has not made applicable. Therefore, compliance of Section 25F by employer does not arise. He also raised contention that issue of loss of confidence has been proved by employer before Labour Court, even though, contrary finding has been given by Labour Court from record.

5. Learned advocate Mr. Patel submitted that according to decision of Apex Court reported in 2005 LLR 417 in case of K.C. Sharma v. Delhi Stock Exchange, wherein, it has been held that in case of loss of confidence, instead of granting relief of reinstatement, compensation is to be worked out and paid to concerned Respondent. He submitted that this decision is not considered by Labour Court from record.

6. Learned advocate Mr. Patel relied upon one decision of Apex Court in case of Air-India Corporation, Bombay Vs. V.A. Rebellow and Another, He also relied upon another decision of Apex Court in case of Chandu Lal Vs. Management of Pan American World Airways Inc., He further relief upon decision in case of Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others,

7. Learned advocate also relied upon decision in case of West Coast Paper Mills Employees Union Vs. A.B.M. Shaikh and Others, of Bombay High Court. He referred Page 36/37, wherein, a complaint filed by Branch Manager of Chasvad Branch, Bank of Baroda, wherein, in respect of current account of Petitioner society, misappropriation was found. He submitted that on the basis of aforesaid

FIR/Complaint, Page 36/37, Labour Court must have to presume ground of loss of confidence against Respondent and that does not require to prove by employer before Labour Court. He submitted that admission made by Respondent before Labour Court that civil suit was filed which was unconditionally withdrawn by him and in police case, he was arrested while working with Petitioner society in the post of Secretary. In short, his submission is that termination order which has been passed by Petitioner society on the ground of loss of confidence against Respondent is legal and valid and in such cases, question of giving opportunity or holding departmental inquiry does not arise. He submitted that nature of duties performed by Respondent is suggested managerial function and administrative capacity to control the work of society and therefore, Respondent is not a "workman" within meaning of Section 2(s) of ID Act. Therefore, he emphasised that Labour Court has committed gross error in deciding entire reference and also wrongly appreciated evidence on record and finding which has been given by Labour Court is perverse and baseless which requires interference by this Court while exercising powers under Article 227 of Constitution of India.

8. Learned advocate Mr. P.H. Pathak appearing on behalf of Respondent raised contentions before this Court that normally, this Court cannot disturb finding of fact recorded by Labour Court while exercising powers under Article 227 of Constitution of India. He submitted that page 36/37 which has been relied upon by learned advocate Mr. B.S. Patel being a FIR filed by Amrutbhai Amthabhai Patel, Branch Manager of Chasvad Branch, Bank of Baroda, wherein, name of Respondent is not disclosed and nowhere, allegations have been made against Respondent in FIR at page 34/35 as an accused. Therefore, learned advocate Mr. Pathak submitted that merely filing of FIR by Branch Manager of Chasvad Branch, Bank of Baroda regarding misappropriation in current account of Petitioner society by some person does not mean that Respondent has committed a criminal offence of misappropriation. He also submitted that FIR which has been placed on record by Petitioner, page 34, where, name of accused is Champakbhai Vasava, but, in said FIR, name of Respondent was not mentioned as an accused. Therefore, on the basis of FIR, decision which has been taken by Petitioner society of dismissal is totally non-application of mind and no evidence against present Respondent was produced by Petitioner society before Labour Court which proves ground of loss of confidence. Learned advocate Mr. Pathak submitted that there must be some material to be placed on record by employer to prove the facts that Respondent has committed particular kind of misconduct or criminal offence and on that basis, employer has lost the confidence against Respondent. He submitted that except this FIR and complaint as referred above page 34 to 39, no material is placed on record which involved present Respondent in criminal offence. Respondent was arrested by police merely in pursuance of FIR, that does not mean that Respondent is involved in criminal offence. He submitted that in criminal offence also, Respondent is not convicted by competent criminal Court. There is no slightest evidence produced

on record which suggests involvement of Respondent in criminal offence. When name of Respondent is not disclosed as an accused in FIR and even in detailed complaint, name of Respondent is not disclosed as an accused or he was involved in criminal offence, then, merely relying upon FIR and complaint filed by Branch Manager, Chasvad Branch of Bank of Baroda, resolution has been passed by Petitioner society terminating services of Respondent without giving any opportunity to him and without conducting any inquiry against present Respondent. Therefore, order of termination based on resolution dated 24th March, 2000 is contrary to principles of natural justice and for that, to hold departmental inquiry is being a condition precedent and in absence of such inquiry, termination is considered to be violation of basic principles of natural justice.

9. Learned advocate Mr. Pathak also submitted that one letter from Mr. Parmar, Police Sub Inspector, LCB, Bharuch addressed to Branch Manager in respect of FIR No. 143 of 1999 for offences u/s 406 and 409 of Indian Penal Code, Respondent was arrested, but, nowhere, his involvement is found from record and said facts have not been considered at all by society before passing order of termination against Respondent. Therefore, loss of confidence is considered to be stigma and in such circumstances, principles of natural justice must have to be followed by them, but, that has not been followed and no departmental inquiry was conducted by Petitioner against Respondent. Not only that but loss of confidence is not proved by Petitioner society before Labour Court by leading proper evidence from complainant Mr. Amrutbhai A. Patel, Branch Manager, Chasvad Branch, Bank of Baroda. He submitted that before Labour Court, Branch Manager and one Shri Amrutbhai has not been examined to prove allegations made against Respondent and no involvement in criminal offence has been proved by Petitioner society before Labour Court in respect of criminal offence, for which, Respondent was arrested by PSI. Therefore, he submitted that Labour Court has rightly examined matter and rightly considered it that looking to nature of duties performed by Respondent and admitted by witness of Petitioner society, he has been held to be a "workman" within a meaning of Section 2(s) of ID Act. He relied upon decision of this Court in case of Rameshbhai D. Patel v. United Catalyst India Ltd. reported in 2006 (3) GCD 2514 (Guj).

10. Learned advocate Mr. Pathak submitted that termination of Respondent either may be simple termination or that termination was based on stigma. The allegations of loss of confidence made against Respondent is considered to be a stigma, then, inquiry is a condition precedent which was not held, therefore, on that ground, order of termination has been rightly set aside by Labour Court. If it is considered to be a simple termination, then, it amounts to a retrenchment u/s 2(oo) of ID Act and then, Section 25F of ID Act must have to be followed which is admittedly not followed. Therefore also, a simple termination amounts to a retrenchment, then, termination order is ab initio void. So, on both grounds, Labour Court has rightly examined matter and both grounds have been perfectly appreciated on the basis of record and such finding has been given which cannot

consider to be a baseless and perverse. Therefore, interference is not required by this Court under Article 227 of Constitution of India.

11. I have considered submissions made by both learned advocates appearing on behalf of respective parties. I have perused award passed by Labour Court, Bharuch and also perused relevant record which has been produced by Petitioner society before this Court. Petitioner society has raised preliminary objections that Respondent was not a "workman" within a meaning of Section 2(s) of ID Act by giving separate application to decide preliminary issue on 22nd July, 2005, which application has been decided by Labour Court on 8th August, 2008 that this preliminary issue will be considered along with adjudication of reference on merits. That order has not been challenged by Petitioner society before higher forum. I have also considered evidence of Respondent Ex.26 and cross-examination and also considered evidence of witness - Dolatsinh Vashi Ex.46 of Petitioner society and cross-examination made by advocate of Respondent. I have also considered statement of claim filed by Respondent and also written statement filed by Petitioner society. I have considered fact that one civil suit has been filed by Respondent which was subsequently withdrew unconditionally vide Ex.75, therefore, it means that civil Court has not decided civil suit on merits, therefore, principles of estoppel is not made applicable in facts of present case. Merely, Respondent has filed civil suit for obtaining interim relief/stay against termination, that does not mean that such suit cannot be withdrawn unconditionally by Respondent and then to challenge termination order under provisions of ID Act. The Petitioner society has not challenged order of reference which has been made by Assistant Commissioner of Labour to Labour Court, Bharuch on 9th May, 2000, therefore, now, Petitioner society is not permitted to contend that order of reference is bad. No such contention was raised by Petitioner society before Labour Court that because of civil suit has been withdrawn unconditionally, reference proceedings is bad and it is barred by principles of estoppel. This contention is not raised by Petitioner society in written statement, even, that point was not argued by learned advocate of Petitioner society before Labour Court. This contention is raised first time by before this Court by Petitioner society, therefore, naturally, Labour Court has no occasion to decide such contention which was not raised before Labour Court, Bharuch by Petitioner society. The contention is whether Respondent is "workman" or not ? For that, Labour Court has rightly appreciated oral evidence of Respondent and admission made by witness of Petitioner society that nature of duties which has been performed by Respondent is mainly of account work, clerical work and he was not working as a supervisory or managerial capacity and supervisory or managerial function is not carried out by him. According to cross-examination of witness of Petitioner society, nature of work which was performed by Respondent to maintain account, banking affairs, to call meeting on the basis of order passed by Manager and to write minutes of meeting and also to have reconciliation with bank and other allied work which is required to be performed by Respondent. These all work have been suggested that

Respondent is not having any power to appoint any person, even he has no power to terminate services of any employee and no power to punish any employee and even no power to sanction leave of any employee. For that, no documentary evidence was produced on record and proved it by Petitioner society before Labour Court.

12. Initially, Respondent was appointed in post of Clerk in year of 1981. Thereafter, he was promoted as an Accountant and thereafter, he was further promoted in post of Secretary. The Secretary has to work under supervision and control of Manager and whatever directions may be issued by Manager to Secretary, that has to be carried out by Respondent and no independent work is to be performed by Respondent and he was not having any power to take independent decision which binds Petitioner society. For that, Labour Court has rightly relied upon decision of Apex Court in case of Anand Regional Coop. Oil Seeds Growers Union Limited v. Shaileshkumar Harshadbhai Shah reported in 2006 LLR 1052, wherein, Apex Court has held in para 15 that "Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs." Further, in para 17, Apex Court has held that "A person indisputably carries on supervisory work if he has power to control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence. This suggests the managerial and administrative function to be carried out by employee. Therefore, evidence of Respondent - Ex.26 and evidence of Dolatsinh Vashi, witness of Petitioner society - Ex.46 has been rightly appreciated by Labour Court and on the basis of aforesaid evidence, Labour Court, after considering definition of "workman" u/s 2(s) of ID Act, come to such conclusion while considering decision of Apex Court in case of Ved Prakash Gupta v. Delton Cable India (P) Ltd. reported in 1984 (1) LLJ 546 and another decision of Apex Court in case of Arkal Govind Raj Rao v. Ciba Geigy of India Limited, Bombay reported in 1986 (52) FLR 487, wherein, it is held in paragraph 16 that "The test that one must employ in such a case is what was the primary basic or dominant nature of duties for which the person whose status is under inquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth." Thereafter, Labour Court has also considered decision of Allahabad High Court which has been relied upon by Petitioner society in case of Nirbhay Mehrotra v. State of U.P. and Ors. reported in 2006 LLR 1236, and distinguished aforesaid decision on the facts and then, come to conclusion that nature of duties which has been performed has rightly appreciated from evidence of Respondent and evidence of witness of Petitioner society and considering documents which are on record that Respondent is covered by definition of Section 2(s) of ID Act. Accordingly, contentions raised by learned advocate Mr. B.S. Patel cannot be accepted.

13. The second contention which has been raised by learned advocate Mr. B.S. Patel is that service of Respondent has been rightly terminated by Petitioner on the ground of loss of confidence and for that, no departmental inquiry is necessary and no opportunity is to be given to Respondent before passing such order of termination. It is necessary to note the reply Ex.18 filed by Petitioner society before Labour Court. In written statement Ex.18, a specific case was put up by Petitioner society against Respondent that Respondent was arrested by PSI as per letter dated 10th February, 2000 in police case during course of employment and also other misconduct which has been brought to notice of society and on that ground, Petitioner society has loss confidence upon Respondent, therefore, Respondent's service has been terminate by passing resolution No. 11/1, page 65, dated 24th March, 2000. In light of written statement, not merely involvement in criminal case or arrest by PSI Mr. Parmar has been taken into account, but, some other misconduct has also been taken into account for terminating services of Respondent by Petitioner society, that fact has been disclosed by Petitioner society in written statement Ex.18. Therefore, even for said misconduct, if service has been terminated, then also, departmental inquiry being a condition precedent which has not been held being an undisputed facts between parties.

14. Learned advocate Mr. B.S. Patel for Petitioner society has relied upon decision of Apex Court in case of Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, where, it is held that disciplinary inquiry should normally be held before passing order of termination of service grounded on stigmatic allegations, but, even if inquiry does not precede the stigmatic order, termination would not become bad if employer justifies its stand in adjudication before Labour Court or Tribunal.

15. The aforesaid decision is not supported submissions made by learned advocate Mr. Patel. From evidence on record before Labour Court, because of involvement in criminal offence and thereafter, Respondent was arrested by PSI Mr. Parmar during course of employment, that was only a letter dated 10th February, 2000 on record. Except that, there was no material at all before Petitioner society when order of termination was passed vide Resolution No. 11/1 dated 24th March, 2000, Page 65. The allegations made against Respondent have not been justified by Petitioner society while leading proper evidence and to establish involvement of Respondent in criminal offence while examining complainant - Branch Manager of Bank of Baroda, Chasvad Branch or any other persons including PSI who has arrested the Respondent. Therefore, merely examining one witness Mr. Vashi - Ex.46, who has not disclosed and established or justified the ground of loss of confidence alleged against Respondent. Therefore, if employer did not justify its stand in adjudication before Labour Court or Tribunal, then, disciplinary inquiry should be held before passing order of termination of service grounded on stigmatic allegation. This is a ratio of aforesaid decision of Apex Court which is not helpful to submissions made by learned advocate Mr. Patel. The relevant discussion is made in aforesaid case of

Apex Court in case of Kamal Kishore Lakshman (supra) in para 7 to 11, which are quoted as under:

7. Having heard learned Counsel, we are inclined to reiterate the view taken in Chandu Lal Vs. Management of Pan American World Airways Inc., that the plea of loss of confidence in the employee indeed casts a stigma. As was pointed out in Roble v. Green (1985) 2 QB 315, the employee is expected to promote the employer's interests in connection with which he has been employed and a necessary implication which must be engrafted on such a contract is that the servant undertook to serve his master with good faith and fidelity. This view has been accepted by several High Courts in India and meets with our approval. In the absence of a statutory definition of the word "stigma", we shall refer to its meaning as available in dictionaries.

8. According to Webster's New World Dictionary it is something that detracts from the character or reputation of a person, a mark, sign, etc., indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's II Ird New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another Dictionary "stigma" is a matter for moral reproach.

9. Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, this Court correctly held in Chandu Lal's case that allegation of loss of confidence amounted to a stigma. The ratio in Jagdish Mitter Vs. The Union of India (UOI), also supports this conclusion.

10. Retrenchment as defined in Section 2(oo) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held, the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In the facts of the present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence.

11. Several decisions were relied upon by Appellant's learned Counsel in support of his contention that the conclusion in Chandu Lal Vs. Management of Pan American World Airways Inc., that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than Chandu Lal's where

this aspect has been directly considered. Whether termination is grounded upon stigma would not vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier.

16. Learned advocate Mr. B.S. Patel also relied upon decision of Apex Court in case of *Air-India Corporation, Bombay Vs. V.A. Rebellow and Another*,

17. In aforesaid decision, power has been exercised for terminating service of employee under Regulation 48, *Air India Employees Service Regulation*, but, in this case, whether such power is available to society under service rules or not ? That aspect has not been disclosed by learned advocate Mr. Patel before this Court. The relevant discussion is made by Apex Court in case of *Air India Corporation, Bombay* (supra) in para 11 to 13, which are quoted as under:

11. The true legal position has been stated by this Court more than once and is by now beyond controversy. In one of the most recent decisions in *The Workmen of Sudder Office, Cinnamara v. The Management*(1) this Court approvingly referred to two of its earlier decisions actually reproducing a passage from one of them. This is what was said in *Sudder Office* case:

It is needless to point out that it has been held by this Court in *The Chartered Bank, Bombay v. The Chartered Bank Employees' Union* (2) that if the termination of service is a colourable exercise of the power vested in the management or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have jurisdiction to intervene and set aside such a termination. In order to find out whether the order of termination is one of the termination simplicities under the provisions of contract or of standing orders, the Tribunal has ample jurisdiction to go into all the circumstances which led to the termination simpliciter-. The form of the order of termination, is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, therefore, open to the Tribunal to go behind the form of the order and look at the substance. If the Tribunal comes to the conclusion that though in form the order amounts to termination simpliciter but in reality cloaks a dismissal for misconduct, it will be open to it to set aside the order as a colourable exercise of power by the management.

Principles to the same effect have also been reiterated in the later decision of this Court in *Tate Oil Mill Co. Ltd. v. Workmen and Anr.* (3) where the Court observed as follows:

The true legal position about the Industrial Court's justification and authority in

dealing with cases of this kind is no longer in doubt. It is true that in several cases, contract of employment or provisions in standing orders authorise an industrial employer to terminate the service of his employees after giving notice for one month or paying salary for one month in lieu of notice, and normally, an employer may, in a proper case, be entitled to exercise the said power. But where an order of discharge passed by an employer gives rise to an industrial dispute, the form of the order by which the employee's services are terminated would not be decisive; industrial adjudication would be entitled to examine the substance of the matter and decide whether the termination is in face discharge simpliciter or it amounts to dismissal which has put on the cloak of discharge simpliciter. If the Industrial Court is satisfied that the order of discharge is punitive, that it is malafide, or that it amounts to victimisation or unfair labour practice, it is competent to the Industrial Court to set aside the order and, in a proper case, direct the reinstatement of the employee."

12. Shri Menon on behalf of the complainant, however, contended that ignoring the form and language of the impugned order and looking at the real substance of the matter it is clear as disclosed by the Appellant in the further written statement that the complainant's services were terminated because of a suspicion about his private conduct and behaviour with Air Hostesses whose names were considered not proper to be disclosed. This, said the counsel, makes out an allegation of misconduct which induced the Appellant to terminate the complainant's services and the case, therefore, clearly falls within the mischief of Section 33. The impugned order, he added, is a colourable exercise of the power under Regulation 48, the real object of the Appellant being essentially to punish the complainant for misconduct.

13. No doubt, the position of the industrial workman is different from that of a Government servant because an industrial employer cannot "hire and fire" his Workmen on the basis of an unfettered right under the contract of employment, that right now being subject to industrial adjudication: and there is also on the other hand no provision of the Constitution like Arts.310 and 311 requiring consideration in the case of industrial workmen. We are here only concerned with the question whether the impugned action of termination of the complainant's services is for misconduct as contemplated by Section 33(II)(b) or Section 33(2) (b). While considering this question it is open to the complainant to urge that reliance on Regulation 48 is not bona fide, it being a colourable exercise of the right conferred by that regulation. He has in fact raised this argument and it is this aspect which concerns us in this case. Let us now scrutinize the present record for examining the position from this aspect.

18. Learned advocate Mr. Patel also relied upon decision of Bombay High Court in case of West Coast Paper Mills Employees Union, Bombay v. A.B.M. Shaikh and Ors. reported in 2000 III-LLJ 374. This decision is not having any assistance in support of submissions made by learned advocate Mr. Patel. He relied upon para 21 to 23 and 25 of said judgment which are quoted as under:

21. Petitioner relied on the decision reported in the case of L. Michael and Another Vs. Johnson Pumps Ltd., in respect of his contention that even in respect of discharge, enquiry is a must if stigma is attached. Noting the fact that loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations, the learned Judges admit that there could be circumstance to justify the genuine exercise of the power of simple termination. They also admit that the disciplinary enquiry cannot be fair in the matter involving responsible post being misused or a sensitive or strategic position being abused. In short as set out in paragraph 22, the action must rest on tangible basis and the power has to be exercised by the employer objectively in good faith which means honestly with due care and prudence.

22. The decision definitely lays down that if the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be decided judicially.

23. Petitioners also relied on a decision reported in 1992 (1) CLR 474 in the case of Theatre Employees Union and Ors. v. S.V. Kotnis and others. It is a decision of the learned single Judge of this Court where only evidence relied on was so-called admission of guilt. That too of as many as 12 employees within the span of more than one and half month after the alleged incident. The exercise of the employer's privilege of terminating the employees on the ground of loss of confidence was struck down by the Court. It involved the termination of 12 employees of a theatre.

Though there were unsold tickets, auditorium was found full. Actions were taken against as many as 12 employees and the only material was alleged admission. It took almost one and half month for the employer to get this statement.

25. Petitioners heavily relied on the decision reported in 1985 (II) CLR 21 in the case of Chandu Lal v. The Management of Pan American World Airways Inc., in support of the proposition that even in case of loss of confidence enquiry is a must. Explaining what is loss of confidence when it is found that the alleged action of the employee amounts to dereliction on his part, the action is stigmatized and therefore the enquiry is a must. In the instant case the employer had found the workman one Chandu Lal along with co-employee to be indulging in the activity of smuggling.

19. Learned advocate Mr. Patel further relied upon decision of Apex Court in case of Chandu Lal Vs. Management of Pan American World Airways Inc., He relied upon relevant discussion made in para 8, which is quoted as under:

8. It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee

has failed to behave up to the expected standard of conduct which has given rise to it situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the management that termination for loss of confidence does not amount to a stigma has to be repelled. In our, opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. "Retrenchment" is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the Appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained.

20. Learned advocate Mr. P.H. Pathak appearing on behalf of Respondent is relied upon decision in support of his submissions in case of Rameshbhai D. Patel v. United Catalyst India Ltd. reported in 2006 (3) GCD 2514 (Guj), where, this Court has examined in detail said issue. This Court has considered almost decisions which have been relied upon by learned advocate Mr. B.S. Patel hereinabove on both grounds; (i) Whether concerned Respondent is a "workman" or not ? and (ii) when service is terminated on the basis of loss of confidence then whether it amounts to a stigma or not and being a condition precedent, departmental inquiry is required to be initiated or not ? This has been discussed by this Court in detail in para 21, 22, 25 to 30 and 35, upon which, learned advocate Mr. Pathak is relying.

Therefore, same are quoted as under:

21. As regards the contention raised by the learned Advocate Mr. K.M. Patel about loss of confidence, such assertion against the workman amounts to stigma/allegation by the management. Plea of loss of confidence was raised in written statement in one sentence and one sentence in deposition. However, on what basis, the Management has lost the confidence from the employee, that has not been clarified by the management. No evidence in that regard was led by the management to prove serious allegation against the workman after raising plea of loss of confidence. It is necessary to note that in show cause notice dated 2nd September, 1983, though specific allegations were made by the management against workman, in that show cause notice also, plea of loss of confidence is not incorporated by the management. Contention of loss of confidence was raised by the management against workman before the labour court without making any allegation in that regard in the show cause notice. Allegation of loss of confidence has been considered to be stigma and, therefore, same is required to be proved by holding inquiry against workman in accordance with the principles of natural justice as per the decision of the Apex Court in Chandu Lal Vs. Management of Pan American World Airways Inc., Therefore, after considering the arguments/

submissions made by the learned Advocate Mr. Patel on both the counts, I am of the opinion that the plea of loss of confidence is requiring holding of departmental inquiry. Show cause notice dated 2nd September, 1983 also would require holding of departmental inquiry and yet, undisputedly no departmental inquiry was initiated against the workman by the management. Services of workman were terminated by oral order dated 23.9.1983. Therefore, mere contention about loss of confidence is not enough but same is required to be proved by producing cogent and convincing evidence in that regard since it amounts to stigma against workman and the management has failed to do so after raising of such contention against the workman. One more aspect is also required to be noted that the management has taken stand before the labour court knowing fully well that the departmental inquiry was not initiated against the workman, then, why the management has not sought permission from the labour court to prove misconduct by leading proper evidence against workman before the labour court. No such permission was sought by the management before the labour court. In view of that, contention raised by the management about the loss of confidence cannot be accepted and same is therefore not accepted.

22. Conduct of the Management is also required to be noted for which this Court has gathered impression from record which shows that the intention of the management was to terminate services of workman immediately and not to wait for inquiry and that is how the management has acted hurriedly without waiting for inquiry on the basis of letter of apology and then request of workman for taking him in service is turned down by terminating his services orally. Apparently, this is something done by the management with the workman with an ulterior oblique motive after receiving letter of apology from the workman. I fail to understand the strategy which has been adopted/generated by the management. It was clear trap/game of Management against workman. Issuance of show cause notice and receiving reply from the workman, then, where is question arises to ask for apology from workman except to having intention not to hold inquiry against workman. So, questions can raise pursuant to letter of apology tendered by the workman. There is no question which would require tendering of letter of apology but evidence of workman was correct and same is believable that he met at Bombay two occasions the main owner of the company namely Lalajee Sheth and thereafter met the Manager A. Prakash who suggested him to tender letter of apology to resolve the matter. For that, the workman agreed and accordingly he tendered letter of apology but second part of the promise which was orally given was not acted upon by the management and that resulted into termination of service of workman. That is how the incident has occurred with the workman by the management. Management has avoided to hold departmental inquiry and that is how this strategy has been adopted because the workman has not admitted the charges leveled against him in the show cause notice.

25. Thus, definition of workman u/s 2(s) of the ID Act, 1947 covers any person

in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person who is subject to Air Force Act, 1950 or Army Act, 1950 or Navy Act, 1957 or who is employed in police service or who is employed mainly in a managerial or administrative capacity or draws wages exceeding one thousand six hundred rupees per menses as specified in Clause (i) to (iv) of Section 2(s). Looking to the aforesaid definition of workman, if an employee is employed in supervisory capacity and not drawing wages exceeding Rs. 1600.00 per menses, then, he is covered by the definition of workman. Admittedly, at the time of termination of services of the workman, he was drawing wages of Rs. 1325.00 per month which is not exceeding Rs. 1600.00 per mensem. Therefore, it is the say of the management that the Respondent workman is having some supervisory nature of work to be performed, to direct the subordinate staff or to take work from assisting workmen or to work as shift incharge and having control as well as supervision of subordinate workers. So, merely because a workman is having some supervisory duties though not having power to employ or discharge any subordinate staff but not having salary exceeding Rs. 1600.00, then, such employee is not excluded from the definition of workman u/s 2(s) of the ID Act, 1947. It is not the case of the management that the workman was having power to take independent decision in respect of the business and policy of company, including the powers to make appointment and/or to terminate or retrench any subordinate staff. There is no power invested in the workman to make appointment/terminate service. There is also no power invested in the workman to impose punishment or initiate any departmental inquiry against any employee. Workman is also not invested with any power to sanction or refuse leave of any staff subordinate to him. These are the requirements which are to be considered while appreciating as to whether any particular employee would fall within the definition of workman u/s 2(s) of the ID Act or not and whether such employee would be excluded from the definition of workman or not. Therefore, looking to the definition of workman in light of the facts of the case before hand, it is clear that the post of chemist is technical post receiving salary not exceeding Rs. 1600.00 per mensem and also incidentally performing some supervisory work, they cannot be considered to be managerial or administrative capacity. There is no iota of evidence produced by the management before the labour court which would justify that the workman was mainly employed in managerial or administrative capacity. Learned Advocate Mr. Patel raised contention before this Court that this definition came into effect by Act 46 of 1982, Section 2(2) w.e.f. 21.8.1984 and before that services of workman were terminated at that time, only Rs. 1000.00 salary was there. Therefore, according to him, at the time of termination of services of workman, he was receiving salary exceeding Rs.

1000.00 and, therefore, otherwise also, it was out side the scope of Section 2(s) of the Act. Submission of Mr. Patel is not correct because in Gujarat, Amendment has come into effect from 1st August, 1981 and by Gujarat Amendment, salary was increased from Rs. 1000.00 to Rs. 1600.00 which aspect has been taken into account by the Division Bench of this Court in Vallabhai Kalyanbhai Sutariya Vs. Divisional Controller, Gujarat State Road Transport Corpn., Division Bench of this Curt has taken note of this amendment and has come to the conclusion that the salary of Rs. 1000.00 has been revised at Rs. 1600.00 with effect from 1.8.1981. Therefore, in view of the Industrial Disputes (Gujarat Amendment) Act,1981, limit of wages in Section 2(2)(iv) of Rs. 1000.00 has been raised to Rs. 1600.00 by Amending Act of 1981. Therefore, in view of this, Respondent workman was receiving salary of Rs. 1325.00, not exceeding Rs. 1600.00 and considering the decision in case of *Burmah Shell Oil Storage and Distributing CO. of India Ltd. (in CA No. 1477 of 1970)*; the *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, and also the other decisions referred to hereinafter, the post of Chemist is purely a technical post which would require analysis of raw material which is required to be applied and while doing that work with the assistance of those who are helping the workman, chemist may have some limited power or incidental power to direct to do or not to do some thing and that cannot be considered to be mainly work of managerial or administrative capacity or managerial in nature. *Burmah Shell Oil Storage and Distributing CO. of India Ltd. (in CA No. 1477 of 1970)*; the *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, the Apex Court has observed, in para. 24, as under:

5. Chemists:

24. On the question of the duties carried nut by a Chemist, the Association examined three witnesses. One of them is M. D. Daniel who had once worked as a Chemist and is now Foreman (Chemicals). The other two are A. N. Dalal and P. N. Maroha who are both working as Chemists. They have given their qualifications and the nature of work done by them. There are, no doubt, Assistants who assist the Chemists in the laboratory where their work is carried on ; but all the Chemists do their own work which is of technical nature. The Chemists have to personally test the various products received, and also test the products as they are altered in the installations at various stages. All the tests are carried out by the Chemists personally and there are only a few Assistants who do mere routine work in order to assist the Chemist. The Chemists, no doubt, ensure that the workmen assisting them do their work properly; but that small amount of supervision is only incidental to their own technical work of testing and giving the results of tests to the Company.

Even the Company"s witness Harish Bhargava admitted that the Chemists do a large part of the work themselves, though he added that the Chemists do guide and direct the Analysts and Laboratory Attendant so as to ensure that the work

In the laboratory is performed efficiently and properly. Even his evidence does not show that this guidance and direction to the laboratory attendant and analysts is the principal or substantial work for which a Chemist is employed. In fact, that work is ancillary to the main work which is done by the Chemists themselves. The decision of the Tribunal, consequently, in respect of the Chemists, holding them to be employed on technical work and not in supervisory capacity, must be upheld. They have rightly been held to be workmen.

26. In case of Vallabhai Kalyanbhai Sutariya Vs. Divisional Controller, Gujarat State Road Transport Corpn., the Division Bench of this Court observed as under in para .2 and 3:

2. The only reason given by the Labour Court for rejecting the Reference on the ground that the Petitioner herein was not a workman was that his salary was in excess of Rs. 1000/- on the date of the reference. It appears that the Labour Court has lost sight of the Industrial Disputes (Gujarat Amendment) Act, 1981 ("the Amending Act" for brief). By this Amending Act, the limit of Rs. 1000/- specified in Section 2(s)(iv) of the Act has come into force with effect from 1st August, 1981. It is not in dispute that the date of the Reference in the instant case is 11th May, 1982. The date of dismissal is 10th August, 1981 by which time the Amending Act was brought into force. In that view of the matter, the Petitioner herein could not have been held to be outside the purview of the workman as defined in Section 2(s) of the Act.

3. This point has been answered in favour of the Petitioner by the Division Bench ruling of this Court in the case of R.G. Makwana Vs. Gujarat State Road Transport Corporation and Another, In that case the concerned employee was dismissed from service prior to the date of coming into force of the Amending Act. The Reference was made after coming into force thereof. This Court held that what was required to be seen was the concerned employee's salary on the date of the Reference. This Division Bench ruling of this Court in the case of R.G. Makwana (supra) is on all fours applicable in the present case."

27. In case of S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, the Apex Court has observed in para 9 as under:

9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman u/s 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman u/s 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the

complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, *In All India Reserve Bank Employees Association Vs. Reserve Bank of India*, it has been held by this Court that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly, contended by both the learned Counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the concerned employee and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of "workman" as defined in Section 2(s) of the Industrial Disputes Act.

28. In case of *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, the Apex Court has observed in para 12 and 13 as under:

12. A perusal of the evidence of WW-1 and MW-1 regarding the nature of the duties performed by the Appellant shows that the substantial part of the work of the Appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch-towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory. It must be noted that MW-1 has admitted in his evidence that there is nothing in writing to show what duties are to be carried out by the Appellant.

Placed in such a situation the Appellant might have been doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells etc. to his subordinate watchmen, which can be got from the stores even under the signatures of watchman and filling up application forms of other workmen and countersigning them or recommending advances and loans or for promotion of his subordinates. It must also be remembered that

the evidence of both WW-1 and MW-1 shows that the Appellant could never appoint or dismiss any workman or order any enquiry against any workman. In these circumstances we hold that the substantial duty of the Appellant was only of a Security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. In the light of the evidence and the legal position referred to above we are of the opinion that the finding of the Labour Court that the Appellant is not a workman within the meaning of Section 2(s) of the Act is perverse and could not be supported. On the evidence available on record we hold that the Appellant clearly falls within the definition of a workman in Section 2(s) of the Act and that the reference of the dispute u/s 10(i)(c) of the Act is valid in law.

13. The finding of the Labour Court that the enquiry was fair and proper in the light of its own finding that the enquiry officer failed to summon the necessary witnesses and rejected the request of the Appellant for challenging the witnesses could not be stated to be correct. On the merits some witnesses were examined on the side of the management before the Labour Court and they are S.K. Bagga, MW-2, Hira Lal, MW-3, Deep Chand, MW-4 and Laxmi Chand, MW-5 an Accountant of M/s.

Gurumukh Dass MW-2 has deposed about the Appellant abusing Durg Singh who according to the Appellant was the Secretary of a Labour Union while the Appellant and others were trying to canvass membership for a rival trade union. MW-3 and 4 are stated to have corroborated the evidence of MW-2. MW-5 is the only independent witness examined on the side of the management. It is seen from the judgment of the Labour Court relating to the merits of the case that MW-5 who has deposed about the challans Exts M-7 and M-8 having been returned to the person who accompanied him from the maintenance department had not supported the management that the Appellant abused Durg Singh or any other person within the premises of the factory. It is also seen from the judgment of the Labour Court that though the Appellant had produced before the Enquiry Officer 5 sheets of papers with the signatures of about 100 workmen of the factory in support of the statement that the Appellant had not abused anyone in the factory during the course of his service and the management had produced Exts M-6, a list of 90 persons before the Enquiry Officer, he had not called any of those persons to ascertain the truth regarding the alleged abuse of Durg Singh and S.K. Bagga by the Appellant. It is also seen from the judgment of the Labour Court that the Appellant was not given a list of the management's witnesses before the commencement of the domestic enquiry. In these circumstances, we are of the opinion that the conclusion of the Labour Court that the Enquiry Officer had not acted properly in the proceedings and that he had not given full opportunity to the Appellant as required by law does not call for any interference.

The charge levelled against the Appellant is not a serious one and it is not known

how the charge even if proved would result in any much less total loss of confidence of the management in the Appellant as the management would have it in the charge. It was argued in the Labour Court that there was no previous adverse remark against the Appellant. There is nothing on record to show that any previous adverse remark against the Appellant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the Appellant even if he had in fact abused in filthy language Durg Singh and S.K.

Bagga. We are therefore of the opinion that the punishment awarded to the Appellant is shockingly disproportionate regard being had to the charge framed against him.

We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be interred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the Appellant within the premises of the factory. We therefore hold that the termination of the Appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of, service The appeal is allowed accordingly with costs quantified at Rupees 1,000/-. The writ petition is dismissed without costs."

29. In case of Shri Sudhirkumar s/o Sourindrakumar Roy v. Ferro Alloys Corporation Ltd. 1992 LAB.I.C.657, the Bombay High Court observed in para. 8, 9 and 14 as under:

8. After carefully scrutinizing the evidence it appears that the Petitioner's main function was that of the Chemist-in-Charge and whatever supervisory work he discharged that was just incidental to his job. Taking the evidence as a whole, it cannot be said that the Petitioner was mainly discharging the duties of a supervisory nature. In Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, in para 8 of the judgment, the Supreme Court has observed as under (at page SC 987; of AIR):

The definition of the expression workman hereinbefore extracted clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity. Even as a Group Leader of Group II, the evidence produced would show that primarily he continued to work and perform the same duties which have been found to be clerical but along with others in the group he also incidentally looked after the work of other members of the group who were only two in number. It is, therefore, not possible to concur with the inference drawn by the Labour Court contrary to the record that while functioning as Group Leader of Group II, even though Appellant was performing his clerical duty the incidental supervisory duties performed by him would make the Appellant a

person employed in supervisory capacity.

9. In *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, it has been observed as under:

(at page 713; of Lab IC 1971):

"On the question of the duties carried out by a Chemist, the Association examined three witnesses. One of them is M. D. Daniel who had once worked as a Chemist and is now Foreman (Chemicals). The other two are A. N. Dalal and P. N. Maroha who are both working as Chemists. They have given their qualifications and the nature of work done by them. There are, no doubt, Assistants who assist the Chemists in the laboratory where their work is carried on ; but all the Chemists do their own work which is of technical nature. The Chemists have to personally test the various products received, and also test the products as they are altered in the installations at various stages. All the tests are carried out by the Chemists personally and there are only a few Assistants who do mere routine work in order to assist the Chemist. The Chemists, no doubt, ensure that the workmen assisting them do their work properly; but that small amount of supervision is only incidental to their own technical work of testing and giving the results of tests to the Company.

Even the Company's witness Harish Bhargava admitted that the Chemists do a large part of the work themselves, though he added that the Chemists do guide and direct the Analysts and Laboratory Attendant so as to ensure that the work in the laboratory is performed efficiently and properly. Even his evidence does not show that this guidance and direction to the laboratory attendant and analysts is the principal or substantial work for which a Chemist is employed. In fact, that work is ancillary to the main work which is done by the Chemists themselves. The decision of the Tribunal, consequently, in respect of the Chemists, holding them to be employed on technical work and not in supervisory capacity, must be upheld. They have rightly been held to be workmen." The ratio of the above decision seems to be that mere giving of guidance and direction to the Laboratory Attendants and Chemists cannot be said to be principal or substantial work for which a Chemist is employed. Such work appears to be ancillary to the main work which is done by the Chemist. This is exactly the position in the present case.

14. Mr. Vaidya rightly argued that the burden was on the Respondent employer to show that the Petitioner was working in a supervisory capacity. From the evidence on record, I am of the opinion that the Respondent has miserably failed to prove that the Petitioner was working in a supervisory capacity. The Respondent has not produced any material on record to show that the Petitioner was working in a supervisory capacity. Even the evidence led on behalf of the Respondent does not show that the Petitioner was employed in a supervisory capacity. On the other hand, there is overwhelming evidence to show that he was

employed as Chemist and was essentially discharging his functions as Chemist. Whatever supervisory work he did that was ancillary to the job. His substantial and primary function remained that of a Chemist. Having regard to these facts, I hold that the Petitioner was a "workman" within the meaning of Section 2(s) of Industrial Disputes Act. In view of this, the matter is remanded back to the lower Court for decision on merit. No order as to costs."

30. Therefore, according to my opinion, contention raised by Mr. Patel that the Respondent was not covered by the definition of workman u/s 2(s) of the Act cannot be accepted and labour court was right in appreciating this aspect of the matter.

35. In case when the labour court comes to the conclusion that the order/action of termination of a workman is unjustified and contrary to the principles of natural justice, and it has been passed without affording an opportunity of hearing to employee concerned, then, in such circumstances, reinstatement cannot be denied to the workman. That aspect has been examined by the apex court in the Workmen of Assam Match CO. Ltd. And The Presiding Officer, Labour Court, Assam and Another, reported in 1973 II LLJ 279

5. In our opinion, the answer to the question raised by the Appellants must unhesitatingly be given in their favour. It is well-settled that where in an industrial dispute arising out of a dismissal of a workman, it is established that the impugned dismissal was unjustified, normal rule is that the dismissed workman should be reinstated. In regard to disciplinary actions which the employees are entitled to take against their employees, the position in law is no longer in doubt. The employer can hold an enquiry against his employee whenever the employer feels that the employee has committed misconduct as a result of which he should be dismissed from service. If the enquiry is properly conducted and the conclusion reached at the enquiry does not appear to be perverse the impugned order of dismissal cannot be successfully challenged before the Tribunal. On the other hand, if the enquiry is not properly conducted or the findings recorded at the said enquiry appear to be perverse in the sense that they are not justified by any evidence whatever, the Industrial Tribunal can examine the question about the alleged misconduct of the employee on evidence which may be adduced before it by the employer and decide whether the employer is entitled to dismiss the employee.

These principles have been laid down by this Court in several decisions, and both the parties have argued the present appeal before us on the basis of these principles.

6. xxx 7. We are not impressed by this argument. As we have repeatedly pointed out, if an employer is shown to have dismissed his employee without justification and the decision of the dispute resulting from such illegal dismissal takes place, it cannot be urged by the employer that by reason of passage of time, reinstatement should not be ordered. One of the objects which industrial

adjudication has to keep in mind is to assure industrial employees security of tenure. There is no doubt that security of tenure for industrial employment tends to create harmonious relations between the employer and the employee, and so this Court has consistently held that in cases of wrongful or illegal dismissal, the normal rule is that the employee who has been illegally or wrongfully dismissed should be reinstated. We are, therefore, satisfied that the contention raised by the Solicitor-General against reinstatement on the ground of passage of time cannot be accepted.

8. It is then urged that the Tribunal was justified in taking into account the fact that having regard to what has happened in the present proceedings, it should be held that the Respondent has lost confidence in Dutt and that would be a ground for refusing reinstatement to him. This argument is plainly misconceived. We do not think it would be possible to accept the contention that even if an employer is shown to have dismissed his employee wrongfully and without justification, the fact that he has adopted such a course (sic) should be taken into account while determining whether reinstatement should be ordered or not. It would, we think, be unfair to allow an employer in such a case to urge that though the charge framed against his employee was not justified, the fact that a domestic enquiry was held against him on such a charge has led to a loss of confidence in the mind of the employer, and so, the employee should not be reinstated. If this contention were to prevail, the industrial employees who are illegally or unjustifiably dismissed would never get the relief of reinstatement. Cases may conceivably arise where the plea of loss of confidence may and can be entertained but we have no doubt that the present case does not fall under that category.

9. Beside, we cannot over look the fact that on the findings of the Tribunal, the record of Dutt for 11 years in the employment of the Respondent has been without a blemish. Dutt is, therefore, entitled to claim reinstatement with the Respondent when he is shown to have served the Respondent for 11 long years, and it appears that ordinarily he is entitled to look forward to another long spell of service with the Respondent. It is remarkable that though Hussain was similarly charge sheeted by the Respondent and was ordered to be dismissed, on the findings recorded by the Tribunal, his reinstatement has been ordered. We see no distinction between the case of Hussain and that of Dutt. The fact that Dutt was a foreman in charge of the motor vehicles of the Respondent and Hussain was driver of one these vehicles cannot make any difference to the decision of the question with which we are concerned.

21. In Industrial Law, burden of prove or burden of proving a fact lies on the party ascertaining the affirmative of the issue and not on the party who denied it.

It is for the employer to prove misconduct, for which, workman was dismissed or discharged. In the first instance, workman cannot be asked to prove that he has not committed any act tantamounting to misconduct. Right of employer to adduce additional evidence in a proceedings questioning the legality of order of

terminating service must be availed of by making a proper request at the time of filing statement of claim or written statement. When workman is terminated without inquiry, onus to prove that it was not possible to conduct inquiry and that termination was justified because of misconduct committed by employee lies on management. This aspect, in detail, recently considered by Apex Court in case of *Amar Chakravarty and Ors. v. Maruti Suzuki India Ltd.*, reported in 2010 (8) Supreme 299. Relevant paragraphs 13 to 17 are quoted as under:

13. In our opinion, in light of the settled legal position on the point, the judgment of the High Court is clearly indefensible. Whilst it is true that the provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication, it is trite that its general principles do apply in proceedings before the Industrial Tribunal or the Labour Court, as the case may be. (See: *Municipal Corporation, Faridabad v. Siri Niwas*. In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not on the party who denies it. (See: *Anil Rishi v. Gurbaksh Singh*) Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.

14. In *Karnataka State Road Transport Corporation (supra)* relied upon by learned Counsel for the Appellant, a Constitution Bench of this Court affirmed the decision of this Court in *Shambu Nath Goyal v. Bank of Baroda and Ors.*, wherein the issue for consideration was as to at what stage, the management is entitled to seek permission to adduce evidence in justification of its decision to terminate the services of an employee. It was held that the right of the employer to adduce additional evidence, in a proceeding before the Labour Court u/s 10 of the Act, questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement. It was observed that:

The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management u/s 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay.

15. Similarly, in *The Workmen of M/s Firestone Tyre & Rubber Co. (supra)*, this Court observed that:

Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to

adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra." (See also: *United Bank of India v. Tamil Nadu Banks Deposit Collectors Union and Anr.*; *Engineering Laghu Udyog Employees" Union v. Judge, Labour Court and Industrial Tribunal and Anr.*⁹ emphasis supplied by us)

16. In our opinion, the decisions in *Manager, Reserve Bank of India (supra)* and *Talwara Cooperative Credit and Service Society Limited (supra)* relied upon by the learned Counsel for the Respondent have no bearing on the issue at hand in as much as the said decisions deal with the onus of proof in relation to proving 240 days of continuous service and entitlement to back wages respectively, for which the claims were made by the workmen, which is not the case here. In the present case, as stated above, the assertion to the effect that it was not practical to hold domestic enquiry to prove the misconduct of the workman was by the employer and therefore, the assertion has to be proved by the employer and not by the workman.

17. In view of the aforesaid position in law, the inevitable conclusion is that when no enquiry is conducted before the service of a workman is terminated, the onus to prove that it was not possible to conduct the enquiry and that the termination was justified because of misconduct by the employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of misconduct and that the action taken by it is proper. In the present case, the services of the Appellants-workmen having been terminated on the ground of misconduct, without holding a domestic enquiry, it would be for the management to adduce evidence to justify its action. It will be open to the Appellants-workmen to adduce evidence in rebuttal. Therefore, the order passed by the Labour Court, shifting the burden to prove issue No. 1 on the workmen is fallacious and the High Court should have quashed it.

22. In light of various decisions relied upon by learned advocate Mr. B.S. Patel and one decision of this Court relied upon by learned advocate Mr. P.H. Pathak and considering reasoning given by Labour Court, Bharuch and also order of termination passed by Petitioner society on the ground of loss of confidence without holding departmental inquiry and even without calling any explanation from Respondent, apparently, termination order is found to be stigmatic and clear allegations have been made against Respondent that he was also involved in other misconduct, even though, no show-cause notice has been issued prior to passing of termination order.

No departmental inquiry was held against him and just to receive an information dated 10th February, 2000 from PSI Mr. Parmar that Respondent was arrested during course of employment from society, that letter itself became a cause or ground to terminate services of Respondent. But, Petitioner society has not taken care to find out that is there any material available with Petitioner society regarding involvement of Respondent in criminal offence or not ? For that, there is no material at all placed on record before Labour Court. Even allegations

levelled against Respondent of loss of confidence is also not proved while leading proper evidence by Petitioner society. The FIR is produced on record, page 34. In that FIR, name of Respondent is not mentioned as an accused, but, name of accused is Champakbhai A. Vasava. A complaint has been filed by Shri Patel, Branch Manager and Shri Amthabhai. Even in that complaint also, name of Respondent is not disclosed as an accused and no involvement has been pointed in complaint against Respondent.

Therefore, there is no material at all placed on record by Petitioner society before Labour Court which justified stand of loss of confidence for terminating service of Respondent. So, law is settled that if service of employee terminated grounded on the basis of loss of confidence, then, holding of departmental inquiry is condition precedent as per Apex Court's decision as referred above and if departmental inquiry did not held at the time of terminating services, then, at the time of adjudication before Labour Court, Petitioner society must have to justify such termination based on loss of confidence, but, according to my opinion, Petitioner society has failed to establish allegations based on loss of confidence against Respondent before Labour Court. If termination is violated basic principles of natural justice and departmental inquiry did not held against Respondent, then, it is considered to be a simple termination, then, simple termination amounts to retrenchment u/s 2(oo) of ID Act and for that, Section 25F of ID Act must have to be satisfied being a condition precedent which has not been followed undisputedly by Petitioner society before terminating service of Respondent.

Therefore, order of termination which amounts to retrenchment is considered to be ab initio void as decided by Apex Court in case of Mohan Lal v. The Management of M/s. Bharat Electronics Ltd. reported in AIR 1981 SC 1253. Therefore, when management has exercised powers without any material or base on record and simply Respondent was arrested, that itself is not enough to terminate services of Respondent, but, there must be some material or record which is necessary to prove involvement of Respondent in criminal offence. That material was not produced which proved involvement of Respondent in criminal offence.

23. Therefore, according to my opinion, Labour Court has rightly examined matter and rightly considered evidence on record and also properly dealt with submission made by Petitioner society and Labour Court has examined issue based on facts and finding of fact recorded by Labour Court cannot consider to be a baseless and perverse or contrary to record. This Court having limited jurisdiction under Article 227 of Constitution of India. This Court cannot reappraise evidence which has been appreciated by Labour Court. This Court cannot act as an appellate authority and in such circumstances, this Court having very limited jurisdiction under Article 227 of Constitution of India.

24. The Apex Court has considered issue of interference by this Court while exercising power under Article 227 of Constitution of India in case of Harjinder

Singh v. Punjab State Warehousing Corporation reported in 2010(1) Scale 613. The relevant para 10 and 11 are quoted as under:

10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution - Syed Yakoob Vs. K.S. Radhakrishnan and Others, and Surya Dev Rai Vs. Ram Chander Rai and Others, In Syed Yakoob's case, this Court delineated the scope of the writ of certiorari in the following words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue

a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and Kaushalya Devi and Others Vs. Bachittar Singh and Others,

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

11. In Surya Dev Rai's case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by Code of CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i)

without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a longdrawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in depreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of

certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the Appellant's service falls within the ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the Appellant with compensation of Rs. 87,582/- by assuming that Appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the Appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the Appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the Appellant of what may be the only source of his own sustenance and that of his family.

25. Apex Court has also considered similar question in case of Jai Singh and Ors. v. Municipal Corporation of Delhi and Anr. With Municipal Corporation of Delhi v. Sh. Jai Singh and Ors. AIR 2010 SCW 5968. Relevant para 25 of said judgment is quoted as under:

25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India

had been discussed in the case of *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, wherein it was observed as follows:

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

In our opinion, the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the Constitution of India in the peculiar circumstances of this case. The decision to exercise jurisdiction had to be taken in accordance with the accepted norms of care, caution, circumspection. The issue herein only related to a tenancy and subletting. There was no lis relating to the ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land No:2, Block-B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of a civil suit being Suit No: 361 of 1980 in the High Court of Delhi. The High Court, therefore, ought not to have given any opinion on the question of ownership.

26. In *MA Azim v. Maharashtra State Road Transport Corporation* 2011 I CLR 283, it has been observed by Bombay High Court as under in para 11 and 12:

11. At this stage, it would be appropriate to refer to few important judgments of Hon"ble Supreme Court and this Court laying down therein the scope to entertain petition under of Article 226 and 227 of the Constitution of India. The Hon"ble Supreme Court in a case of " *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, in para No. 30 held thus:

30. the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may

extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

Yet in another case, in a case of " Surya Dev Rai Vs. Ram Chander Rai and Others, the Hon"ble Supreme in its conclusion held:

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. And in a case of Babulal S/o. Navalmal Pipada v. Dropadbai W/o. Manohar Gore and Ors. reported in 2010(5) Mh. LJ, this Court has held thus:

One cannot be oblivious of the parameters required to be observed for the purpose of exercising supervisory jurisdiction under Article 227 of the Constitution of India. Unless it is demonstrated that the impugned judgment suffers from vice of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material interference with the

finding of Courts/Tribunals is impermissible. The writ jurisdiction cannot be invoked for reappreciating of the evidence or for the purpose of rectification of minor errors committed by the Tribunals. Unless it is demonstrated that the view taken by the MRT is per se against the settled principles of law, it is difficult to interfere with the findings recorded by the Tribunals below.

12. Therefore, it is clear from the pronouncements of Supreme Court and this Court which are referred supra that the Writ Jurisdiction cannot be invoked for reappreciating the evidence or for the purpose of rectification a minor errors committed by the Tribunals. Supervisory jurisdiction under Article 227 cannot be invoked unless it is demonstrated that the impugned judgments suffers from the vice of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material evidence or is rendered on the basis of no material, interference with the findings of Courts/Tribunals is impermissible. Therefore, in light of above, it is relevant to summarized here in below the findings recorded by the Labour Court on the basis of evidence brought on record by the parties.

27. Therefore, contentions raised by learned advocate Mr. B.S. Patel appearing on behalf of Petitioner society cannot be accepted, hence, rejected in light of aforesaid reasoning given by this Court.

28. Therefore, there is no substance in present petition. Accordingly, present petition is dismissed. Notice discharged. No order as to costs.