
(1996) 03 BOM CK 0036

In the Bombay High Court

Case No : O.O.C.J. Writ Petition No. 2473 of 1994 With Writ Petition No. 1500 of 1995 With Notice of Motion No. 208 of 1995 in Writ Petition No. 2473 of 1994

Oriental Containers Ltd. Bombay

APPELLANT

Vs

Engineering Workers Association and Others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 11A, 12(5), 17B

Citation : (1996) 3 BomCR 488 : (1996) 2 LLJ 454

Hon'ble Judges : G.R. Majithia, J;Devkant Trivedi, J

Bench : Division Bench

Judgement

Majithia, J.—M/s. Oriental Containers Ltd. and Engineering Workers Association, aggrieved against the Award of 11th Labour Court at Bombay in Reference (IDA) No. 711 of 1981 dated June 30, 1994 have moved this Court through Writ Petition No. 2473 of 1994 and Writ Petition No. 1500 of 1995, respectively.

2. To begin with, the factual matrix. M/s. Oriental Container Ltd. (hereinafter "the management"), after domestic enquiry, dismissed 37 workmen by order of dismissal/discharge dated July 30/31, 1980. Engineering Workers Association (hereinafter "the Association") raised a demand for reinstatement of the 37 workmen before the Assistant Commissioner of Labour. The Deputy Commissioner of Labour (Conciliation), Bombay, referred the dispute between the management and the 37 workmen employed under them, u/s 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short "the Act"), with the following Schedule to the Labour Court :-

"The following 37 workmen should be reinstated with full back wages and continuity of service with effect from 30th and 31st July, 1980".

1. Mohan Govind Menon,
2. Harishchandra R. Ghag,

3. Manohar A. Patil,
4. Shivaji G. Patil,
5. Sadanand P. Adatrao,
6. Shantaram S. Kadam,
7. K. Krishnadas,
8. Anand G. Ahire,
9. Pandurang M. Lokhande,
10. Suresh S. Saigaonkar,
11. Janardhan R. Kapse,
12. Atmaram N. Tapre,
13. Ganpat S. Gamre,
14. Sayed Ahammed Sayed Hussein,
15. Suresh Ambekar,
16. Mohan B. Jadhav,
17. Ganpat M. Shrivardhankar,
18. Abdul Wahid,
19. Laxman P. Rane,
20. Sanjay S. Sawant,
21. Manmath L. Kotian,
22. Jany P. Kamble,
23. K. Thankappan,
24. Kishan N. Navalae,
25. Sophan S. Bhise,
26. Damu K. Sonawane,
27. Sidharth Kamble,
28. Ramchandra P. Kadam,
29. Sadashiv S. Goankar,
30. Bhima S. Keshar,
31. Gopinath R. Ghag,
32. T.V. Mani,

33. Fakir Mohammed,
34. Laxman K. Mehra,
35. V. Raveendran,
36. Ramlakhan Kalu,
37. David Tharankan.

The Labour Court issued notices to the management and the Association for and on behalf of the abovementioned workmen. Statement of Claim on behalf of the 37 workmen was filed by Mr. Babu Thomas, Treasurer of the Association. The Labour Court rendered Part I Award on August 23, 1985. It came to the conclusion that the domestic enquiry conduct by the management was fair and proper. The Labour Court passed Part II Award on August 22, 1986 holding that the order of dismissal passed against the workmen was in accordance with law and that the findings of the Enquiry Officer were not perverse.

The Association challenged these Awards in this Court in Writ Petition No. 182 of 1990. The writ petition was disposed of by an order dated August 4, 1993. The learned single judge held that the Part I Award was valid. However, he set aside the Part II Award and remitted the case to the Labour Court for fresh decision with the following directions :-

"It is made clear that Part I Award is declared to be valid and the Labour Court will decide only in the light of the principles laid down hereinabove, the questions raised with regard to justifiability of the Order of dismissal, victimisation, discrimination and the proportionality of the punishment and the Labour Court is directed to decide the matter on the basis of the evidence already on record u/s 11-A of the Industrial Disputes Act, within a period of 3 months from today".

Pursuant to these directions, the Labour Court placed the 37 workmen in four different categories. The categorisation appears to have been made with reference to the charges shown as proved before the Enquiry Officer and before the Labour Court. This categorisation is as under :-

The Labour Court directed reinstatement of the workmen mentioned in Schedules "A" and "B" with continuity in service and with full back wages with effect from their respective date of dismissal, i.e., July 30/31, 1980 till the date of reinstatement. The workmen mentioned in Schedule "C" were allowed to be reinstated in service with continuity in service with 75% backwages only with effect from their respective date of dismissal, i.e., July 30/31, 1980 till the date of reinstatement in service. The workmen mentioned in Schedule "D" were held not entitled to any relief.

3. The management has challenged the Award in so far as it relates to the workmen mentioned in Schedules "A", "B" and "C" whereas the Association has challenged the Award in so far as it relates to the workmen mentioned in schedule "D" who have been denied the relief of reinstatement in service and the

consequential benefits. Writ petition No. 2473 of 1994 failed by the management came up for motion hearing before the learned single judge as per the Original Side Rules of this High Court applicable then, on December 19, 1994 and the following order was passed :-

"Rule. A

Ad-interim relief in terms of prayer (b) till 30.1.1995 subject to the legal rights of the parties concerned.

Liberty to apply for extension of ad-interim relief".

On January 30, 1995, the Writ Petition was adjourned to February 1, 1995 and on that day of following order was passed :-

"Interim relief to be continued till the final hearing of the main Petition, however the Petitioner shall pay the salary to the Respondent workmen u/s 17(B) of the I.D. Act, and the Respondent workmen have to make declaration as regards they are not gainfully employed any where".

4. The Association took out Notice of Motion No. 208 of 1995 in Writ Petition No. 2473 of 1994. The 27 workmen who were ordered to be reinstated in service by the Award dated June 30, 1994 filed affidavits in support of their claim for wages u/s 17(B) of I.D. Act. Mr. Balkishan Toshniwal, working as Chief Executive and Secretary in the management-company filed affidavit opposing the Notice of Motion. Para 3 of the affidavit reads thus :-

"3. I have read the 27 affidavits filed by the 27 concerned workmen and submit at the outset it is ex-facie clear that these are all proforma or pre-prepared documents. They are totally uniform in their content. They do not indicate how these workmen lived since the date of their termination. I submit that since the Respondent workmen are now applying for wages u/s 17-B the onus is cast upon them to establish and prove that they have managed to survive and/or at least that they are surviving today without any known source of income. Indeed, I submit that the Court is entitled to take judicial notice of the fact that nobody can survive for several years or even month to month without working. I therefore submit that the present affidavits give absolutely no particulars in this behalf and are per se vague. The deponent to these affidavits have therefore not satisfied the minimum onus case upon them by Section 17-B of the Act. Without prejudice to the above, the copies of the affidavits served on us are not signed. This is significant, inter-alia because as will be demonstrated herein under almost all of them are working elsewhere and some of them are in fact, on our information, out of Bombay. It is therefore absolutely necessary for the Petitioner to see the signatures on the said affidavit prior to making further detailed submissions. Without prejudice to the above, I submit that many, if not all the concerned Respondents have already superannuated. The Petitioner is looking through the old records in this behalf and craves leave to advert to this issue subsequently. Without prejudice to the above, I further say that the Petitioner

Company understands that except about four workmen out of 27 workmen mentioned above all the workmen have engaged in some or other occupation. The Petitioner Company is in the process of gathering details in this regard".

Along with the affidavit, a photostat copy of the report submitted by Mr. P.L. Patil, Ex. Assistant Commissioner of Police and Private Investigator, in respect of 10 workmen was annexed. The photostat copy of the letter addressed by Mr. P.L. Patil to the management, dated January 5, 1995 reads thus :-

"Kind Attn : Mr. S.D. Ajgaonkar.

Subject : Your Ex. Employees.

Dear Sirs,

This is in continuation of letter under No. OC/1(1) 84 dated 16th November, 1994 on the subject noted above.

2. Further to my earlier report dated 16.11.1994, I have today submitted another report in respect of six more your ex-employees. I am therefore enclosing herewith my Bill for out of pocket expenses amounting to rupees 6,000/- (rupees Six thousand only) at the rate of Rs. 1,000/- per employee.

3. You are therefore requested to kindly pass the Bill and arrange to make payment of the out of pocket expenses amounting to Rs. 6000/- (rupees Six thousand only), by cash at your earliest.

4. Thanking you,

Yours faithfully, Sd/- (P.D. PATIL) Private Investigator".

This letter indicates that the Private Investigator was claiming a sum of Rs. 1,000/- for each workmen to carry out discreet and confidential investigation to find out whether those workmen were gainfully employed. The report indicates that one workman was working as a Poojari in a temple; one as a Mathadi worker; one as a helper; one as a sub-contractor; and one as a Watchman (security guard). The affiant has placed the report on record. He does not say that the report given by the Private Investigator was correct to his knowledge. This Notice of Motion came up before us for hearing and on January 16, 1996 we directed that the Notice of Motion along with the abovementioned Writ petitions be set down for final hearing and disposal on January 17, 1996. It is in these writ petitions and the Notice of Motion have been placed before us for disposal.

5. The Association in its Writ petition reiterated the submissions made by it in the Statement of Claim filed before the Labour Court pursuant to the notice issued by it after receipt of the reference from the Deputy Labour Commissioner. The Association says that it is a Trade Union Registered under the Trade Unions Act; that it represents the employees employed by the management of the last several years; that in April 1979 it gave a call for peaceful strike since the management had dismissed from service, three active union workers and had

refused to give permanent status to 200 casual workmen who were employed by the Company continuously for more than 4 years; that the management did not respond to the demand; that the workmen resorted to peaceful strike as communicated to the management earlier; that the peaceful strike continued for 37 days and was called-off on the intervention of the Labour Minister on the basis of the Agreement dated May 16, 1979; that the workmen resumed work with effect from May 18, 1979; that the management encouraged a handful of employees/workmen to join its sponsored union i.e., Bharatiya Kamgar Sena (BKS); that the management, to achieve their object, invited some outsiders, namely one Ganpat Kadam and Babiya along with their associated; that the said Ganpat Kadam, Babiya and others were the associates of underworld gang called "Golden Gang"; that these outsiders, with the connivance of the management, stated compelling the members of the Association to join BKS and they also used force; that Mr. V.R. Menon, Personnel Manager of the management and other officers actively participated and supported the campaign of those men; that the associates of the Golden Gang assaulted the members of the association inside and outside the factory with the full knowledge, consent and connivance of the management; that the association brought the acts of the associates of the Golden Gang to the notice of the management through correspondence; that the management charge-sheeted and suspended 54 workmen who were members of the Association; that these workmen were issued common cyclostyled charge-sheets which were in identical terms; that the charge-sheets contained allegations, namely :-

"(i) Drunkenness, riotous, disorderly and indecent behaviour on the premises of the factory.

(ii) Causing wilful damage/damages due to irresponsible action to the property of the establishment.

(iii) Being in the establishment after authorised hours of work without permission.

(iv) Refusal to accept charge-sheet tendered on 25.5.1979.

(v) Committing theft or dishonesty in connection with the Company's property".

that the management instituted domestic enquiry against these charge-sheeted employees; that during the pendency of the enquiry, 15 charge-sheeted employees out of 54 charge-sheeted employees resigned from the membership of the Association and joined BKS; that the apology of the 15 employees was accepted and they were reinstated in service; that the domestic enquiry proceeded against the remaining 39 employees; that during the pendency of the enquiry, one workman Shri Umesh L. Kotian resigned from the service of the management and another workman, namely Sambhaji More, became a member of the BKS and he was reinstated in service and he appeared as a witness for the management in the domestic enquiry conducted against the 37 workmen; and that the domestic enquiry was conducted in violation of the principles of natural justice and the standing orders.

The statement of fact made by the Association in its Writ Petition were not controverted by the management which is arrayed as respondent No. 2 in the Writ Petition (Writ Petition No. 1500 of 1995.)

6. The management in its Writ Petition (Writ Petition No. 2473 of 1994) is trying to justify the order of dismissal passed by it and it pointed out the evidence justifying the action and submitted that the Labour Court on the material on record in the domestic enquiry, could not order reinstatement in service of the 29 charge-sheeted workmen. In substance, the management has justified its action by referring to the evidence led by it in the domestic enquiry. The Association is arrayed as respondent No. 1 in this Writ Petition No. 2473 of 1994. The Association also did not file any affidavit-in-reply.

7. Before we deal with the submissions of the learned counsel for the parties, it will be relevant to reproduce the following admissions made by the Enquiry Officer in his statement before the Labour Court during the trial of the reference :-

(a) "It is correct that I had conducted the enquiries against 54 workmen of opp. company on 18.6.1979".

(b) "the charges against all these workmen were indetical".

(c) "I held that enquiry in three groups with the consent of the representative of the workmen. I now see page-1 of Ex. C-19. I admit that the objection taken by the representative of the workmen was recorded. In Vol. No. 1, there is no record of the consent. In now see Ex. C-20 and C-21. There is nothing to show that the representative of the workmen had given the consent for conducting the enquiry in three groups".

(d) "I now see page-280 of Ex. C-19. It is true that there is no record to support my findings in para-1, marked "A". The oral consent was given by the representative of the workmen. There was no difficulty in recording the enquiry. There is no special reason for not recording the fact of giving oral consent in the enquiry proceedings".

(e) "It is correct that first I have decided to hold the enquiry of the workmen in five groups and then I decided in three groups by assembling the names as the management had withdrawn the charge-sheets against 16 workmen".

(f) "For recording the evidence of the management, I had recorded the evidence in three groups separately".

(g) "There was no witness as the eye witness of the incident in all the three groups".

(h) "The opposite party had admitted the documents. I have not recorded that fact in the record of the proceedings. I had relied on those documents in the findings".

(i) "The charge-sheets of the 16 workmen were withdrawn as they had asked for pardon. It has come on record that those 16 persons had become the members of the union sponsored by the management".

(j) "I did not give any findings on the point of discrimination. I do not insist on the company to produce the apology letter since it was not relevant".

(k) "I had relied on the oral evidence of Shri Sambhaji. I had relied on the photographs produced by the Co.'s representative in respect of the damaged machinery".

(l) "I could not make out the damage of the machinery from those photographs".

(m) "It is true that Sambhaji More was charge-sheeted workman and after withdraw of his charge-sheeted, he was examined by the company. I did not consider the fact. I again say that I have considered the fact revealed in Ques. No. 60 and 65 and 66 and 61, at Page 101 of Ex. C-19. Except the portion marked "C" and "D" at pages 283 and 288 respectively, there is no other finding in respect of evidence of Sambhaji More".

(n) "It is true that the workmen had led the evidence before me regarding their past clean record, and that was not challenged by the Manager. I did not consider it. I do not know whether the charge-sheeted workers were the members of Association of Engg. Workers Union (INTUC Union)".

(o) "I did not record the evidence of 17 witnesses in all the groups separately".

(p) "I have not considered the fact that there were Police Inspector and S.R.P. from 26.5 to 30.5.1979 at the gate of company".

(q) "It is not true to say that the fact some of the charge-sheeted workmen were arrested, weighed with me while giving the conclusion. I did not consider the fact that there were many workmen on 29th May, 1979 and only those which were indicated by the Time Officer were arrested".

(r) "I did not consider the fact that in the night of 25th May, 1979 there was police round in the factory premises".

(s) "I did not give any opportunity to the workmen to lead evidence by reopening the enquiry or holding it de novo in response to the letter at page 745".

(t) "It is true that I did not give any weightage to the fact that the charge-sheeted workmen were taking leading part in the strike which commenced in the month of April, 1979 for the first time".

The evidence of the Enquiry Officer corroborates the statement made by the Association in its writ petition and also in the statement of claim submitted before the Labour Court. The Association's stand is that the charge-sheets against the 54 employees were in identical terms. No specific part was attributed to each of these charge-sheeted employees. Out of the 54 employees, 16 employees, after they became members of the union (BKS) sponsored by the

management, were given pardon and reinstated in service. Sambhaji More who was also charge-sheeted like the other 53 employees was also given pardon, like the other 16 employees who were given pardon, after he became a member of BKS. Giving pardon to the charge-sheeted employees after they joined the union sponsored by the management is not accidental but it must be a condition for reinstating them in service after accepting their apology. From the admissions made by the Enquiry Officer, it can safely be inferred that the management did not want to accept the demand made by the Association for and on behalf of the casual workmen who were its members for their permanent status and in order to mitigate the bargaining power of the Association, the management sponsored a rival trade union - BKS. The allegation made by the Association in its Writ Petition, which remains uncontroverted, that the associates of the underworld gang called the "Golden Gang" were forcing the members of the Association to join BKS can be treated as true, more particularly when the allegation is not controverted by the management. Indisputably, every allegation of fact made in the Writ Petition by a writ petitioner has to be controverted by the opposite party and if not controverted specifically, an inference is deducible that it was admitted to be correct. Since the statement of fact made in the Writ Petition which were not introduced for the first time, were controverted, those facts have to be taken as correct.

8. Now will deal with the submissions made by the learned counsel for the parties. Miss N.D. Buch, learned counsel for the Association, ably and succinctly puts the case of the Association thus :-

The learned Judge while disposing of Writ Petition No. 182 of 1990 on August 4, 1993 had specifically directed the Labour Court to examine whether the order of dismissal suffers from the vice of victimisation and discrimination and whether the punishment is proportionate to the charges levelled and proved against the charge-sheeted employees. She submits that the charge against all the 54 workmen were in identical terms. Out of those, 15 employees tendered apology during the domestic enquiry and were reinstated in service. Sambhaji More was also reinstated in service and thereafter he appeared as a witness for the management to prove the charges levelled against the other workmen. She therefore submits that since the charges against all these workmen were in identical terms and the management, for reasons not available on record, thought it fit to withdraw the charges against 16 employees and reinstated them in service, no distinguishing feature has been pointed out between those employees and the ones mentioned in Schedule "D" who have been meted out the punishment of dismissal from service. If the charges were so grave, the management would not have accepted the 16 employees' alleged apology and reinstated them in service. The Labour Court apparently did not appreciate that out of the 54 employees against whom the charges were in identical terms, some were taken in service after their tendering apology and the others were meted out the extreme punishment of dismissal from service. She submits that discrimination in the matter of punishment is writ large.

In support of her submission, she relies on the decision of the Supreme Court in *Sengara Singh and Others Vs. State of Punjab and Others*, . In this case the facts were as under :-

State of Punjab took disciplinary action against 1100 members of the police force for participation in police agitation. Even criminal prosecution was launched against a large number of agitators. The 1100 members of the police force were dismissed from service. Subsequently, the State Government reinstated 1000 dismissed members of the police force in their original posts and withdraw the criminal cases. The remaining 100 members of the police force who were not reinstated moved the Punjab and Haryana High Court. The Writ petition was dismissed in limine and the order of dismissal passed by the High Court was challenged in appeal before the Supreme Court. The Apex Court, after referring to the undisputed facts, observed in para 7 of the report, thus :-

"7. What then is the situation? As a sequel to police agitation, the State Government dismissed about 1,100 member of the Police Force on the allegation that they participated in the agitation. The State Government also filed criminal prosecutions against a large number of the agitators. Subsequently, the State Government reinstated 1,000 dismissed members of the Police Force in their original posts and withdraw the criminal cases against them. If the filing of the criminal cases was the distinguishing feature, which would distinguish the case of the present appellants from others, that feature had become irrelevant because the criminal cases against those who were subsequently reinstated have been withdrawn. It is not suggested that the present appellants were learned or indulged into more violent activities. We repeatedly questioned the learned counsel to specify the distinguishing features of the present appellants from those in whose cases the Committee recommended the reinstated and the State Government accepted the recommendations. There is not an iota of evidence which would distinguish the case of the present appellants from those who were the beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same".

After so observing, the Apex Court, in para 9 of the report, indicated the action to be taken in that situation as under :-

"9. What then should be done? The appellants have been accused of participating in a procession taken out by the members of the Police Force for ventilating their grievances about their service conditions. May be that still having not reached the state of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1,100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel

amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and, therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present appellants suffers from the vice of arbitrariness and Art. 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Art. 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action.

After so holding, the Apex Court quashed the order of dismissal on the ground that the treatment meted out to the appellants before it suffered from the vice of arbitrariness and the arbitrary action would tantamount to denial of equality as guaranteed in Article 14 of the Constitution. Equality has also to be seen in the matter of punishment; otherwise, the action will be arbitrary.

9. She also relied upon *Iron and Metal Traders Pvt. Ltd., Bombay Vs. M.S. Haskiel and Another etc.*, . In that case, the Industrial Tribunal ordered reinstatement of some of the workmen and those workmen who were disallowed reinstatement were awarded compensation in lieu of relief of reinstatement. The action was challenged by the management and it was submitted before the Apex Court that the Tribunal's order of reinstatement was neither legal nor judicially correct. Repelling the contention, the Apex Court observed thus :-

"We are in agreement with the finding of the Industrial Tribunal that this is a case of discrimination in dealing with the cases of these appellants workmen involved in these two appeals inasmuch as many strikers were reinstated but these respondents were singled out for drastic treatment. The Tribunal ordered reinstatement of three workers and awarded compensation to seven in lieu of relief of reinstatement. The approach of the Tribunal is fair, just and reasonable. We, therefore, see no justification for interfering with the award of the Tribunal in respect of these workmen in the dispute".

10. She further submitted that by denying the relief of reinstatement in service to the employees stated in Schedule "D", the Labour Court has permitted the management to victimise them. In support of her submission, she relied on *Workmen Vs. Williamson Magor and Co. Ltd. and Another*, . In that case, the workmen of the respondent-company were denied promotion. The management gave promotions to a large number of employees ignoring the claims of seniors. In the company, there were two grades of employees, namely, Special Grade and General Grade. The management did not fix any norm to determine how many clerks should be in each of the said grades or in each of the scales of pay; nor was there any fixed quota in the Special Grade to be filled up by promotion from the General Grade; nor was there any rules determining the number of vacancies to be filled up by promotion or upgradation. The union of the workmen had

contended that the normal rule should be promotion /upgradation by seniority. At the instance of the union of the workmen, the dispute was referred to Industrial Tribunal. The Industrial Tribunal, after examining the material on record, came to the following conclusion :-

"In the premises, I am bound to hold that I cannot justify the promotion of the said persons named in the two references and dispose of the first issue accordingly".

After so holding, the Industrial Tribunal refused relief observing thus :-

"I cannot give any relief to these workmen when their positive case is that there is no standard of norms for giving promotion".

The Apex Court, reversing the Tribunal's findings, held thus :-

"We do not think that the Tribunal should be so powerless. The Industrial Tribunals are intended to adjudicate industrial disputes between the management and the workmen, settle them and pass effective awards in such a way that industrial peace between the employers and the employees may be maintained so that there can be more production to benefit all concerned.

Before the Apex Court, one of the arguments pressed by the counsel for the management was that unless victimization was proved by the union, the management's action should not be disturbed. The Apex Court observed that the word "victimization" has to be given the normal meaning of being the victim of unfair and arbitrary action and held that in the action of the management victimisation was apparent when it superseded the workmen in the matter of promotion. The Apex Court also took note of the fact that the approach of the Tribunal and of the Court should be compassionate but in so doing they should not over-step the proved facts. The Apex Court, in para 8 of the Report observed thus :-

"8..... The word "victimisation" has not been defined in the statute. The term was considered by this Court in the case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, . This Court observed, "it (victimization) is an ordinary English word which means that a certain person has become a victim, in other words, that he has been unjustly dealt with". A submission was made on behalf of the management in that case that "victimization" had acquired a special meaning in industrial disputes and connoted a person whom became the victim of the employer's wrath by reason of his trade union activities and that the word could not relate to a person who was merely unjustly dismissed. This submission, however, was not considered by the Court. When, however, the word "victimization" can be interpreted in two different ways, the interpretation which is in favour of the Labour should be accepted as they are the poorer section of the people compared to the management.

This Court in the case of The K.C.P. Employees' Association, Madras Vs. The

Management of K.C.P. Ltd., Madras and Others, observed :

"In Industrial Law, interpreted and applied in the perspective of part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts".

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

In the instant case, the counsel submits that the workmen mentioned in Schedule "D" are victims of unfair and arbitrary action in the matter of punishment as there is not an iota of evidence on record which would distinguish the cases of these workmen and of those who were reinstated after acceptance of their alleged apology.

11. Learned counsel for the Association also drew out attention to Palghat BPL & PSP Thozhilali Union v. BPL India Ltd., and another. 1995 LLR 1019. In that case, the appellant-union before the Apex Court was exposing the cause of 3 workmen who were dismissed from service by the management. The undisputed facts were that while the workmen were on strike, the management suddenly backed out from the settlement in reconciliation proceedings. As a consequence, the workmen went on strike. On March 14, 1983, while the said 3 workmen were standing at BPL Bus Stop on Pollachi Road, National Highway Diversion, they sighted the officers passing through the way and assaulted two of them. The case of the management was that these workmen and others threw stones and one of the stones hit the officer of the company, namely Subramaniam on the head and on the upper part of the right hand causing grievous injuries. The workmen Prabhakaran hit Subramaniam with a stick. The management issued show-cause notice to the workmen. It held domestic enquiry. The Enquiry Officer submitted an ex-parte report. In consequence, the management dismissed those workmen from service.

On the petition of the appellant-union, appropriate Government made reference u/s 10 of the Industrial Dispute Act. The Labour Court set aside the order of punishment and directed reinstatement with 25% of back wages. The management challenged the order of the Labour Court in Writ Petition in the Kerala High Court. The Writ Petition was allowed and the order of the Labour Court was set aside. The order of the learned single judge was upheld in appeal by the Division Bench. The union challenged the orders of the single Judge and of the Division Bench in SLP to appeal before the Apex Court. The question raised before the Apex Court was whether the order of the Labour Court ordering reinstatement in service with the cut of 75% back wages was valid. The Apex Court in para 6 of the report observed that the Labour Court had discretion u/s 11-A of the Industrial Disputes Act to consider the quantum of misconduct and

the punishment and on the proved facts of the case, the Apex Court held that the discretion exercised by the Labour Court in passing the order should not be disturbed. Para 6 of the report reads thus :-

"6. In this case, the finding recorded by the High Court and the Labour Court is that stones were thrown and the officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at the BPL Bus Stop. The Labour Court had discretion u/s 11-A of the Industrial Disputes Act, to consider the quantum of misconduct and the punishment. In view of the surging circumstances, viz., the workmen were agitating by their collective bargain for acceptance of their demands and when the strike was on, the settlement during conciliation proceedings, though initially agreed to, was raised later on. They appear to have attacked the officers when they were going to the factory. Under these circumstances, the Labour Court was well justified in taking lenient view and in setting aside the order of dismissal and giving direction to reinstate the workmen with a cut of 75% of the back wages upto the date of the award. In our considered view, the discretion exercised by the Labour Court is proper and justified in the above facts and circumstances. The High Court had not adverted to these aspects of the matter. It merely had gone into the question whether the act complained of is a misconduct.

Learned counsel submitted that even in a case where the misconduct attributed to the workmen was that they had assaulted the officers of the company, the Labour Court had held that the imposition of punishment of dismissal from service was not warranted and had ordered reinstatement in service with 75% cut in back wages. This order was approved by the Apex Court and the Apex Court observed that the circumstances under which the injuries were inflicted could not be ignored and that the order of the Labour Court imposing cut in the back wages ought to be upheld. She says that in the instant case, on the undisputed facts, the punishment of dismissal from service imposed by the management and upheld by the Labour Court cannot be sustained, more particularly when other workmen, against whom there were identical charges, were reinstated after the charge-sheets against them were withdrawn.

12. She further submitted that the management did not consider the past record of the workmen to judge the gravity of the misconduct alleged. She submitted that the management only made a mention of the past record in the order of dismissal but did not consider the same while judging the gravity of the alleged misconduct. She submitted that mere reference to the past record while passing the order of dismissal does not amount to consideration of the same for determining the gravity of the misconduct. She submitted that the length of service and the past record have a direct correlation with the gravity of the misconduct. She submitted that the workmen have been in the employment of the management for considerable length of period and during that period they had unblemished record of service. This past record ought to have been taken

into consideration for determining the quantum of punishment; the management did not so consider the past record.

13. Mr. Cama, learned counsel appearing for the management, countering the arguments of the learned counsel for the Association, submitted that this Court cannot interfere with the quantum of punishment imposed by his client. He further submitted that the past service record of the workmen was taken into consideration while inflicting the punishment. In support of his submissions, he relied upon :-

(i) Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another, ;

(ii) Hirendra M. Basu v. Textiles Committee 1992 2 C.L.R. 102;

(iii) Bank of Baroda v. Arvindkumar Hiralal Mehta 1994 1 C.L.R. 455 and

(iv) The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others, .

(i) In Shankar Chakravarti's case, the charge of indiscipline against the appellant workmen was that he hoisted two red flags a top the branch office building of the respondent company, simultaneously shouting inflammatory slogans. A charge-sheet was served upon him and a disciplinary enquiry was ordered. On the same day, a criminal case was lodged against him and he was arrested by the police but he was discharged by the Magistrate in the criminal case. The enquiry proceedings were conducted ex parte. The Enquiry Officer held that the charges were proved and on the report of the Enquiry officer, the management terminated the service of the workman and gave one month's wages in lieu of notice. Since an industrial dispute between the workman and the company was then pending before the Industrial Tribunal, an application was made u/s 33(2) (b) of the Industrial Disputes Act seeking approval of the Industrial Tribunal for terminating the services of the workman. The Tribunal rejected the application of the management for approval of its action terminating the services of the workman. The management challenged the action of the Industrial Tribunal in Writ Petition under Articles 226 and 227 of the Constitution. The learned Single Judge dismissed the Writ Petition holding that the domestic enquiry was not conducted in accordance with the principles of natural justice and the order terminating the services made in such an enquiry is invalid and of no effect and that the Tribunal was fully justified in declining to grant approval to such an action. The order of the single Judge was challenged in Letters Patent Appeal. The Division Bench held that after the Industrial Tribunal adjudicated upon the preliminary issue whether the enquiry was in accordance with the principles of natural justice and having held against the company, it was incumbent upon the Industrial Tribunal to give an opportunity to the employer to lead evidence to prove the charges alleged against the workman and as the issue about the validity of the enquiry was not decided as a preliminary issue and as there after no opportunity was given to the employer, it would be necessary to remand the matter to the Industrial Tribunal for giving an opportunity to the employer to adduce further evidence, if so advised, and then to finally dispose of the

application made by the employer u/s 33(2)(b) of the Act. This order was challenged in SLP before the Apex Court. The Apex Court, negating the plea of the management held, that it was not the intentment of law that the Industrial Tribunal should advise the employer, a party much better off than the workmen, to inform it about its rights, namely the right to lead additional evidence and then given an opportunity which was never sought. After so holding, the Apex Court set aside the judgment given by the Letters Patent Bench and restored that of the Industrial Tribunal which had rejected the application of the employer for approval of its action terminating the service of the workman.

(ii) In Hirendra Basu's case, the appellant was employed as an inspector by the Textile Committee constituted under the Textile Committee's Act, 1963. In the course of his employment, he was required to inspect textile materials in accordance with the regulations framed by the Committee and to issue certificates after the inspection, if the material inspected is found to be of the prescribed standard. He was instructed to visit the premises of M/s. Usha Dye Prints and inspect 62 cases containing dyed embossed velvet fabrics. The inspection was carried out by the appellant and two other officers. A complaint was received by the vigilance Officer that the appellant had not carried out his duties but granted certificate in favour of M/s. Usha Dye Prints without any inspection. The Vigilance Officer also notice that the other two inspectors also did not carry out their duties. The Committee thereupon decided to adopt disciplinary proceedings against the three inspectors. One of the inspectors left the job and the proceedings proceeded against the appellant and another inspector. Charge-sheet was served upon the appellant. Enquiry Officer was appointed to conduct the enquiry. The Enquiry Officer held that the charges were proved. The finding if the Enquiry Officer was accepted by the disciplinary authority and the order of dismissal from employment was passed. The appellant-Inspector unsuccessfully challenged the order of dismissal in departmental appeal. The order of the appellate authority was challenged in Writ Petition in this Court. This Court held that the appeal was dismissed without giving an opportunity of hearing to the appellant. This Court accordingly directed the appellate authority to rehear the appeal. The appeal was reheard and the appeal ended in dismissal. The order of dismissal of the appeal was challenged in this Court. The Writ Petition was summarily dismissed by the learned single judge. Before the Appellate Bench, an argument was raised that the service record of the appellant was clean and, therefore, imposition of punishment of dismissal from the employment is harsh. This argument was repelled, observing thus :-

"It is not open for this Court to disturb the quantum of punishment imposed in a disciplinary proceeding as this Court cannot exercise powers as provided u/s 11-A of the Industrial Disputes Act in respect of disciplinary enquiry".

These observations indicate that this Court did not disturb the quantum of punishment inflicted by the disciplinary authority in view of the peculiar facts of the case. The subsequent observation that this Court cannot interfere with the

quantum of punishment u/s 11-A of the Act is merely an obiter dicta. The dispute did not arise in proceedings under the Industrial Disputes Act. The question raised was with regard to the interference under Article 226 of the Constitution with regard to the quantum of punishment.

(iii) In the Bank of Baroda's case, the respondent in the appeal was working as a Head Cashier of Crawford Market Branch of the appellant-Bank. On September 8, 1981, a large amount was entrusted to the respondent in the morning. At the end of the banking hours, it was found that there was a shortage of Rs. 1,00,000/-. On September 15, 1981 the Bank called upon the respondent to give an explanation for the shortage. The respondent submitted explanation saying that he had report the shortage and the work of Cashier was heavy and the respondent was working under tension. The respondent could not explain how the amount of Rs. 1,00,000/- was found short. The explanation offered by the respondent was not accepted and a regular departmental enquiry was ordered. The Enquiry Officer came to the conclusion that the charges against the respondent were duly established by the material produced on record by the Bank. On the strength of the report of the Enquiry Officer, the disciplinary authority passed an order of dismissal of the respondent from the Bank's service. The order of dismissal was unsuccessfully assailed in the departmental appeal. The appellate order was challenged in Writ Petition. The Writ Petition was heard by a single Judge of this Court. The learned single Judge examined the entire record and re-assessed the evidence, both oral and documentary, and come to the conclusion that the delinquent was neither negligent nor was guilty of misappropriation of the amount. The order of the learned single judge was challenged in Letters Patent Appeal. The Letters Patent Bench observed that the jurisdiction of the trial Judge in exercise of writ jurisdiction is limited and the jurisdiction cannot be converted as an appellate authority. The Appeal Bench, while rejecting the contention of the counsel for the delinquent that the punishment of dismissal is disproportionate to the charge levelled, observed thus :-

"We entirely disagree with the submission. In the first instance, it is not open to the writ Court to examine the propriety of punishment imposed. Secondly, on the facts and circumstances of the case, it is difficult for us to imagine what other punishment is possible".

These observations clearly indicate that the Letters Patent Bench held that the punishment of dismissal from service was only warranted on the proved facts of the case. The observation that this Court cannot examine the propriety of punishment in writ jurisdiction has to be seen in the context in which it was made and that was that the punishment of dismissal from service was found to be justified.

(iv) In Bata Shoe Co.'s case, the dispute arose in the following circumstance :-

A general meeting of the workmen of Bata Shoe Co. was held on November 10,

1953 and a no-confidence motion was passed against the executives of the workmen's union and one Shahabuddin Bari was elected as the new President of the union. On February 6, 1954, the newly elected President served a strike notice on the management. On February 18, 1954, a settlement was arrived at between the management and Fateh Narain Singh, the general secretary of the old executive committee. On February 23, 1954, the strike was launched in accordance with the notice served by the newly elected president and the strike continued for about a month and was called off on March 20, 1954. The management, after managerial enquiry, dismissed 60 workmen. Conciliation proceedings failed and the dispute was referred to the Industrial Tribunal.

The Industrial Tribunal held that the settlement of February 18, 1954 was a bona fide settlement arrived at during the course of conciliation proceedings and was therefore binding on the workmen; and consequently the strike which began on February 23, 1954 was in breach of the terms of the settlement and was therefore illegal. The Tribunal further held that the strike was staged in haste and no reasonable opportunity was given to the management to reply to the demands made before launching the strike. The Tribunal divided the 60 workmen in 3 batches of 47, 11, 2. In the case of 47 workmen, it held that they must be assumed to have been served with the charge-sheets as they refused to accept them and that proper enquiry was held into the charges, though in their absence. In the case of 11 workmen, it was of the opinion that charge-sheets had not been served on them and therefore any enquiry held in their absence was of no avail. In the case of 2 workmen, it held that no attempt was made to serve any charge-sheet on them. It set aside the order of dismissal in respect of the 13 workmen on the ground that charge-sheets were either not served on them or were not issued. As for the 47 workmen, though it found that charge-sheets had been issued to them and they had refused to accept them and proper inquiry had been held in their case, it set aside the order of dismissal on the ground that they had not been shown to have taken part in violence and there were extenuating circumstances in their case inasmuch as they were misled to join the strike in order to oust the old office-bearers of the union so that others might be elected in their place. This order was challenged in appeal before the Apex Court. In the Apex Court it was contended that the 47 workmen had participated in illegal strike and that the Tribunal, having held that the enquiry was fair, should not have interfered with the order of dismissal. It was also contended before the Apex Court that the charge of discrimination against the management cannot be levelled. The Apex Court accepted the contentions of the management, observing thus :-

"It may be that participation in an illegal strike may not necessarily and in every case be punished with dismissal; but where inquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strike, the Tribunal should both interfere unless it finds unfair labour practice or victimization against the employee.

These observations indicate that the Industrial Tribunal should not interfere with the quantum of punishment unless there is victimization or unfair labour practice. The Apex Court upheld that findings of the Industrial Tribunal in so far as they related to 11 workmen and 2 workmen, respectively. However, in the case of 47 workmen, the Apex Court held that the Industrial Court has found that the managerial enquiry was proper and the misconduct is such as to deserve dismissal under the Standing Orders. The Apex Court set aside the order of the Industrial Court holding that once it is held that the managerial enquiry was proper and the misconduct attributed to the workmen was that they had participated in the illegal strike and as such the punishment of dismissal from the service was proper and the Tribunal ought not to have interfered with it. The Apex Court held that the Tribunal could interfere with the quantum of punishment if it finds that the employer has committed unfair labour practice or victimization against the employee. In the instant case, we have held in the earlier part of the judgment that the employer has acted arbitrarily in the matter of inflicting punishment and the arbitrariness amounts to victimization. The instant case falls within the exceptions carved out by the Apex Court for interference with the quantum of punishment. Bata Shoe Co.'s case, if correctly understood, helps the workmen.

14. Learned counsel for the management, during his arguments, fired volleys of rulings to point out that the finding of fact recorded by the Labour Court cannot be interfered with. He also referred to a judgment to point out that it was not obligation for the management to give an opportunity to the workmen to tender apology as was done the other workmen whose apologies were accepted and were reinstated in service. There can be no dispute with the abstract proposition that a finding of fact recorded by a quasi-judicial Tribunal cannot be interfered with in writ jurisdiction except where it is found that the tribunal's finding is based on a complete misconception of law or on no evidence or that no reasonable man could have come to the conclusion to which it had arrived at.

15. The other limb of the argument of the learned counsel that it was not obligatory for the management to make an offer to the employees to tender apology is irrelevant for the purpose of deciding this case, more particularly as we have found that the management has acted arbitrarily in the matter of punishment and the arbitrariness has resulted in victimization of the workmen. The Labour Court has erred in not having a clear grasp over the undisputed facts and the directions given by this Court while setting aside Part II of the Award and remitting the case to the Labour Court. This Court had specifically directed the Labour Court to examine the questions raised with regard to justifiability of the order of dismissal, victimization, discrimination and the proportionality of the punishment. These observations postulated that the Labour Court was enjoined to examine whether in the matter of punishment the management had acted arbitrarily and the arbitrariness had resulted in victimization. Indisputably, the allegation of misconduct against all the 54 workmen, including those 16 workmen who tendered apology during the course of the domestic enquiry which

was accepted and they were reinstated in service, proceeded identical terms. One of the workmen who was also proceeded on identical charge and was dismissed from service and who tendered apology, after reinstatement in service, appeared as a witness for the management to prove the charge against the other workmen. The evidence of this witness is the only substantive evidence to prove the charge. This indicates the shallowness of the accusation levelled, as the management had no other substantive evidence to substantiate the charge except to press into service the evidence of an accomplice. This Enquiry Officer in his statement admitted that the 16 workmen whose apology was accepted by the management, became members of the union sponsored by the management. This admission lends credence to the version of the Association that the management had set up a rival union and was forcing the workers to become its members so that the Association could be deprived of its bargaining power. The Association had been impressing upon the management to regularise the service of 200 casual workers who were in the company's employment for more than 4 years. Adherence to this demand by the Association may be to the disliking of the management and they wanted the union convenient to it. There is no distinguishing feature between the cases of the workmen in respect of whom the charges were dropped and were reinstated in service and the workmen mentioned in Schedule "D". The Labour Court tried to draw an illusory distinction between what was alleged and what was proved. The Labour Court did not understand what was the charge against these workmen. The charge, as observed earlier, proceeded on identical ground. We are unable to comprehend on what basis the Labour Court has thought it convenient to treat the workmen mentioned in Schedule "D" in regard to the quantum of punishment differently. Section 11-A of the Industrial Disputes Act confers the power on the Tribunal in an adjudication proceeding relating to discharge or dismissal of a workman, in cases wherever necessary, to set aside the order of discharge or dismissal. The Labour Court is empowered not only direct reinstatement of workmen on such terms and conditions, if any, it thinks fit but also to give such other relief to the workmen, including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. If the Labour Court had correctly understood the import of Section 11-A of the Act and the directions of this Court, referred to above, it would not have erred in the matter of awarding the punishment.

15-A. The next question that arises is whether the High Court can in its writ jurisdiction exercise similar discretion exercisable by the Tribunal u/s 11-A of the Act? This question is not *res integra*. In *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, , the question arose in the following circumstances :-

Dispute arose between the management and workmen of Gujarat Steel Tubes Ltd. The workmen intensified their demand which ultimately led to strike. The management terminated the services of a large number of workmen and recruited fresh workmen. The dispute was referred to an arbitrator nominated by

them. The arbitrator held that the action of the management was justified. The Award of the arbitrator was challenged in writ petition under Article 226. The High Court reversed the award and substantially directed reinstatement. The judgment rendered by the High Court was challenged in the Apex Court by the management. Before the Apex Court, inter alia, two questions were raised, namely :-

(i) Whether Section 11-A of the Act take in an arbitrator too?

(ii) Whether the High Court can exercise discretion exercisable by the Tribunal u/s 11-A of the Act?

These two questions were answered thus by the Apex Court :-

"We hold that Section 11-A does take in an arbitrator too, and, in this case, the arbitral reference, apart from Section 11-A, is plenary in scope.

146. In the second chapter of our sum-up, the first thing we decide is that Articles 226, however restrictive in practice, is a power wide enough, in all conscience, to be a friend in need when the summons comes in a crisis from a victim of injustice; and, more importantly, this extra-ordinary reserve power is unsheathed to grant final relief without necessary recourse to a remand. What the Tribunal may, in its discretion, do, the High Court too, under Art. 226, can, if facts compel, do.

The Apex Court, after so holding directed reinstatement of 139 workmen in service. The casual workmen were also given certain benefits.

15-B. Applying the dictum of the Apex Court, we direct that the workmen mentioned in Schedule "D" deserve to be reinstated with continuity of service and full back wages.

16. Now we take up Writ Petition No. 2473 of 1994 in which the management has challenged the order of the Labour Court in so far as it relates to the workmen mentioned in Schedules "A" and "B" and "C". The management has assailed the Award principally on the ground that the Labour Court has acted illegally in relying upon certain evidence and discarding the other to come to the conclusion that the charges against the workmen were not established. It is not suggested that the Award of the Labour Court is not based on any evidence. The Award of the Labour Court is based on evidence. Even if it has relied upon the evidence of an accomplice, it cannot be suggested that the evidence of an accomplice has to be rejected outright. The evidence of an accomplice can be accepted if it receives some independent corroboration. The Labour Court has found that the evidence of the accomplice has receive some independent corroboration. The conclusions based upon evidence cannot be interfered with and we find no justification in interfering with the same.

17. Now we deal with Notice of Motion No. 208 of 1995 in Writ Petition No. 2473 of 1994 taken out by the workmen - members of respondent No. 1 - Union. The

27 workmen who have been reinstated in service under the Award of the Labour Court have filed affidavits that they were not working in any establishment during the period from the date of their dismissal till the date of filing the affidavits in this Court. Section 17-B of the I.D. Act requires a workmen to file an affidavit before the High Court or the Supreme Court where the employer has preferred any proceedings against the Award of reinstatement of the workmen that he "had not been employed in any establishment" during the pendency of such proceedings. Once such an affidavit has been filed by the workmen, he has discharged the onus on him. By virtue of the provisions of Section 17-B, the burden of proof then shifts to the employer. It is then for the employer to satisfy the High Court or the Supreme Court that the workman, in fact, had been employed and he had been receiving adequate remuneration during such period or part thereof. If the employer succeeds in satisfying the Court in that behalf, the Court then shall order that the wages contemplated by this section shall not be payable by the employer to the workman for the period of the pendency of the proceedings before the Court or part thereof. In the instant case, the workmen have discharged the burden of proof cast upon them. The employer has not placed any material before this Court that the workmen had been receiving adequate remuneration during his period. The employer has referred to a report of some detective agency but has not filed an affidavit stating that the report has been accepted to be correct. The report of the detective agency is not per se, any evidence. Evidence has to be led in proof thereof and no evidence has been led in the instant case and no reliance can be placed upon the report of the detective agency as is sought to be contended. The employer has successfully succeeded in preventing the workmen from getting the benefit of the benevolent provisions contained in Section 17-B of the I.D. Act.

18. For the reasons stated above, Writ Petition No. 2473 of 1994 fails and is dismissed. Rule is discharged. No order as to costs.

(i) The petitioner is directed to implement the Award in so far as it was challenged in Writ Petition No. 2473 of 1994 within two weeks from today. The workmen covered under Schedules "A", "B" and "C" will be taken back in service.

(ii) The back wages as ordered by the Labour Court in other Award under challenge and upheld by this Court will be paid to the workmen in the following manner :-

The due wages into December 31, 1995 payable to each of the workmen will be deposited with the Prothonotary and Senior Master of this Court within two weeks from today who, in turn, will deposit the same in fixed deposit in any Scheduled Bank for a period of three years. During this period, the workmen can withdraw the interest. After the expiry of three years, the workmen will be entitled to withdraw the amount so deposited. The wages due to the workmen for the months of January and February 1996 will be paid to them on the date they present themselves for duty as ordered.

19. For the reasons stated above. Writ Petition No. 1500 of 1995 succeeds and is allowed. Rule is made absolute in the following terms :-

(i) The eight workmen, namely,

(1) Mohand Govind,

(2) S.S. Gaonkar,

(3) K. Krishnadasan,

(4) Shivaji A. Patil,

(5) Manohar A. Patil,

(6) Sadanand P. Adatrao,

(7) Bhima S. Keshar, and

(8) Abdul Vaahid,

referred to in Schedule "D" are ordered to be reinstated with continuity of service and full back wages.

(ii) The back wages due and payable to each of these eight workmen will be paid, deposited in Bank and disbursed in the same manner as stated in para 18 (ii) supra.

(iii) No order as to costs.

20. Notice of Motion No. 208 of 1995 has become infructuous in view of the above orders passed in the main writ petitions and it stands disposed of. No order as to costs.