

(1957) 11 MAD CK 0026
In the Madras High Court

P Orr and Sons (Private), Ltd.	Vs	APPELLANT
Their workmen (Engineering and Foundry Workers' Union)		RESPONDENT

Date of Decision : 14-11-1957

Acts Referred:

Evidence Act, 1872 — Section 74
Industrial Disputes Act, 1947 — Section 33, 33A

Citation : (1958) 2 LLJ 152

Hon'ble Judges : V. Pattabhiramayya, J

Bench : Single Bench

Judgement

V. Pattabhiramayya, J.—This is an industrial dispute between the workers and the management of P. Orr. & Sons (Private), Ltd., Madras, and it was referred to this labour court for adjudication by G.O. Ms. No. 1469, I.L. & C., dated 23 April 1967. The point referred for adjudication as stated in the annexure to the said Government order is—

Whether the dismissal of the following three workers is justified and to what relief they are entitled:

- (1) Govindaraman,
- (2) Ganesac, and
- (3) Thirunavukarasu.

* * *

2. On these contentions the following issues were settled for enquiry:

- (1) Whether the dismissal of Govindaraman, Ganesan and Thirunavukarasu was justified?
- (2) To what relief, if any, are these workers entitled?

3. Though in their counter-statement the management had raised contentions to

the effect that they did not admit the representative character of the union, that the reference of this dispute was without jurisdiction and that this dispute cannot be entertained by this Court, these contentions were neither pressed at the time of the preliminary enquiry nor at the time of the final enquiry. It is now settled law that when a dispute is referred by the appropriate Government to an industrial tribunal or labour court the presumption is that it is an industrial dispute and that when a party contends to the contrary the burden lies on that party to establish its case. The management has not let in any evidence to prove these contentions and therefore the presumption must prevail in this case. A few months ago there was another dispute between the same parties and a consent award was passed therein. Evidently the management was satisfied at that time about the untenability of these contentions and it is probable that consequently they have not chosen to press this part of their case. Anyhow as the management has not proved its case with regard to these contentions I hold that they are without any substance.

Issue (1).-One of the most important contentions raised by Mr. V.G. Rao who appeared for the workers at the time of the arguments is that the dismissal of these three workers was illegal as they contravened the provisions of Section 33 of the Industrial Disputes Act. I shall first deal with this case. Admittedly just prior to these dismissals there were conciliation proceedings between the union and the management before the Assistant Commissioner of Labour. Admittedly those proceedings did not fructify in a settlement of the demands raised by the union and the Assistant Commissioner of Labour submitted his report to the Government. The case of the union is that the conciliation report of the Assistant Commissioner of Labour was received by the Government on 6 February 1957 and that the orders of dismissal passed by the management on 5 February 1957 are illegal. Exhibit M. 13 is a copy of the dismissal orders served upon these workman and it is dated 5 February 1957. With a view to prove their case that the conciliation report was actually received by the Government on 6 February 1957 the union evidently wrote a letter to the Government requesting them to furnish the date of receipt of the report and they obtained a reply which was marked as Ex. W. 38. This document mentions that the conciliation report of the Assistant Commissioner of Labour, Madras, dated 9 January 1957, was received by the Government on 6 February 1957. Therefore, if the contents of Ex. W. 38 are to be accepted, it shows the date of the receipt of the report by the Government. But Sri Govind Swaminathan who appeared for the management argued that no evidentiary value should be attached to the contents of this letter and that if the union wanted to establish its case it should have summoned the original conciliation report from the Government and should have also examined the official of the Government who actually received it to prove that fact. It is further argued by him that it is quite likely that the report might have been received by the Government a few days earlier and that the envelope containing the report was opened only on 6 February 1957. He further argued that the bald statement in Ex. W. 38 about the date of receipt of the report should not be

accepted without the necessary evidence to prove the truth of that statement. In this connexion he relies upon the case of the management that they received a copy of report on 5 February 1957 itself and that they presumed that the original report should have also reached the Government on the same day. He further contends that the office of the Commissioner of Labour must have despatched the original to the Government as well as the copies to the parties on the same day, that when the copy was received by the management on 5 February 1957 a strong presumption arises to the effect that similarly the Government should have also received it on the same day. He further argued that Ex. W. 38 is not a public document as defined in Section 74 of the Evidence Act and that therefore its contents cannot be relied upon without proper proof. On the other fraud the argument by Mr. V.G. Rao is that the rules of evidence as enacted in the Evidence Act do not strictly apply to proceedings before a labour court or an industrial tribunal, and that they should not be strictly adhered to. It is his argument that if this Court is satisfied about the genuineness of the document and the truth of its contents it should rely upon it and not insist upon strict proof of the fact mentioned in it. I think this contention of Mr. V.G. Rao is well founded. It has been laid down in some cases decided by the Labour Appellate Tribunal that an industrial tribunal or a labour court is not strictly a Court of law and that it is not necessary to adhere to the provisions of the Evidence Act. After all there can be no doubt about the genuineness of Ex. W. 38 and there is no motive for the Government to mention anything which is not true. Even though the management might have received conciliation report on 5 February 1957, there might have been some delay in the delivery of the report to the Government and it is likely that it was actually received by the Government only on 6 February 1957 as mentioned in Ex. W. 38. I am therefore inclined to accept the statement contained in Ex. W. 38.

4. Section 33 of the Industrial Disputes Act prior to its amendment by Act 36 of 1956 and which was in force at the relevant time reads as follows:

33. Conditions of service, etc., to remain unchanged during the pendency of proceedings.-During the pendency of any conciliation proceedings or proceedings before a tribunal in respect of any industrial dispute, no employer shall-

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be.

5. From this section it is clear the management could not dismiss a worker without the permission of the conciliation officer during the pendency of the conciliation proceedings. According to Section 20(2) conciliation proceedings are deemed to have come to a conclusion where no settlement is arrived at when the

report of the conciliation officer is received by the appropriate Government. Therefore till the report is received such proceedings must be deemed to be pending and the restriction on the powers of the management contained in Section 33 continues. It therefore follows that the dismissal of these three workmen on 5 February 1957 prior to receipt of the report by the Government is a violation of the provisions of Section 33 and it is therefore illegal. It was argued by Mr. Govind Swaminathan that as the dismissals took effect only from 6 February 1957, namely, the date on which the conciliation report was received by the Government, it should not be held that action of the management violated Section 33. No doubt Ex. M. 13 mentions that these workmen were dismissed from the service of the company with effect from 6 February 1957. But as the order was passed even on 5 February 1957 and as it is stated in Ex. M. 13 that the wages and dearness allowance due to the workers would be paid by the cashier on that day itself, the proper inference, which one could draw from Ex. M. 13, is that the dismissal took place on 5 February 1957 itself. Even though the dismissal took effect from 6 February 1957, this company begins its work much earlier than the working hours of the Secretariat and therefore the dismissals would have come into effect even before the Secretariat commenced its work and consequently before the receipt of this report by the Government. Therefore, there is no force in the argument that because the report was received on the (5 and the dismissal took effect from the same day, there was no contravention of Section 33. Evidently the management was extremely anxious to get rid of these workers at the earliest opportunity available to them and they have done so immediately after they received the conciliation report even without waiting to ascertain if the report had reached the Government and if what they were doing was in accordance with law. On the whole I am satisfied with the case of the workers that these dismissals took place prior to the receipt of the report by the Government and that the action of the management is not according to law. As nobody can do anything contrary to law, it goes without saying that these dismissals are illegal and unjustified. In view of this finding I think it is not very necessary to go into the merits of the dismissals and find out if the action of the management was justified. Still as some appellate or higher Court might come to a different conclusion regarding the preliminary point raised by Mr. V.G. Rao, I shall deal with the case on merits and give my findings on the question whether the act of the management was justified.

6. It has been laid down by the Labour Appellate Tribunal in certain cases that if a worker is dismissed by an employer after service of a proper chargesheet, after obtaining his explanation and holding a proper enquiry according to the principles of natural justice, the industrial tribunal should not normally interfere with the management's decision as though it is an appellate authority. It has also been held that the tribunal can go into the merits if the proper procedure had not been followed and if principles of natural justice had been violated. Admittedly in this case the management has served charge sheets regarding the two sets of charges and has obtained explanations and has also held enquiries. It is

necessary to examine if the procedure adopted by the management was according to the principles of natural justice. I shall first deal with the charges and the enquiry about the acts of misconduct said to have been committed on 22 September 1956 by Sri Ganesan and Sri Govindaraman. Exhibit M. 8 is a copy of the chargesheet served upon them by certificate of posting as they seem to have refused the same when tendered to them. Exhibits M. 9 and M. 10 are their explanations. Exhibit M. 10 is the proceedings of the enquiry and Ex. M. 12 is the chairman's remarks, namely, findings of the chairman. A common order of dismissal was passed against these two workmen in respect of both sets of charges and Ex. M. 13 is a copy of the dismissal order. Nothing has been suggested against the propriety of the chargesheet. But a lot of criticism has been levelled against the proceedings relating to the enquiry. Admittedly this enquiry was commenced originally by one of the directors by name Mr. Cormack and after some time he ceased to be the chairman of the committee and his place was taken up by another director called Mr. Davis who ultimately gave the findings. This enquiry is in the nature of a quasi-criminal proceeding and the proper course should have been for the same set of persons to have conducted the enquiry throughout. It was admitted by Mr. Davis that he acted as the chairman of the enquiry committee only during the final stages. Therefore, a person who was not a chairman of the committee during its entire proceedings but had only taken his place in the final stages, has given his findings. Exhibit F. 12 which is styled as chairman's remarks, are the findings of the chairman and there is nothing to show that the other persons who formed the members of the committee concurred with those findings and it is necessary that the majority of the members should have agreed with those findings. The proceedings, Ex. M. 11, begins with a statement said to have been given by Mr. T.A. Wood before the committee. There is nothing to show on what date this statement was recorded and whether it was recorded in the presence of these two accused workers. The proceedings do not mention that any opportunity was given to these workers to cross-examine Mr. Wood and that they did not avail of it. It cannot be denied that the chairman must have based his finding on this statement also as it is referred to in Ex. M. 12. It is therefore clear that the committee had used evidence whose correctness could not be questioned by the workers by cross-examination. In a proper enquiry the management should have first examined its witnesses giving an opportunity to the workers to cross-examine them and should have subsequently asked the workers to lead their evidence. But in this case soon after the statement of Mr. Wood was recorded the committee began to question these workers at great length and examined the management's witnesses only subsequently. Once again these workers were questioned and a number of answers were elicited. I think an enquiry conducted in this manner cannot be said to comply with the principles of natural justice. Under such circumstances I think it is open to this Court to go into the merits of the charges levelled against Govindaraman and Ganesan.

7. I shall now deal with the joint enquiry relating to the three workers. In the

first place no proper chargesheet was served upon these workers. Exhibit M. 2, which is described as the chargesheet, does not specifically mention the offences said to have been committed by them. The management sent along with this chargesheet a copy of the complaint given to them by two workers Ranganathan and Appavu. The original of the complaint is Ex. M. 1. When the management received Ex. M. 1 they should have held a preliminary enquiry and if they were prima facie satisfied about the truth of the contents of this complaint, they should have framed definite and specific charges and called upon these workers to give their explanations. Without doing so the management straightaway called upon these workers to give their explanations to Ex. M. 1. The course seems to suggest that these workers had to answer the charges levelled against them by Ranganathan and Appavu. further without giving reasonable time the management directed these workers to give their explanations by 3 p.m. on the same day which was a working day and also directed them to attend the enquiry on the same day at 5 p.m. Between the service of this chargesheet and the time fixed for explanation the workers had only the lunch interval of one hour, namely, between 12-30 p.m. and 1-30 p.m. to write out their explanations and submit them. When serious charges were levelled against them and they were asked to show cause why they should not be dismissed from service, the management should have given them reasonable time to submit their explanations. These two workers declined to accept the charge sheets and they were pasted on the notice board. Even though they had not submitted their explanations, the management commenced the enquiry on the same day with undue haste. Such a course I think is highly improper and is offensive to principles of natural justice. On 2 October 1956 these workers gave a letter to the management (a copy of which is Ex. W. 20) mentioning certain submissions and asking for further time till 5 October 1956 to give their detailed explanations in case the management was not satisfied with it. In spite of this letter the enquiry committee did not choose to give them an opportunity to give their detailed explanation but continued the enquiry even on 2 October 1956. Even with regard to this enquiry the management has not adopted the proper course. They should have first examined Ranganathan and Appavu and their other witnesses before calling upon the accused workers to lead their evidence. Without doing so they first asked Ranganathan and Appavu to state whether the contents of their complaint in Ex. M. 1 was true and proceeded to question one of the workers Govindaraman. Then the accountant Mr. A.V. Subramanian was examined for a short while and thereafter Govindaraman was again questioned. On 2 October 1956 Thirunavakkarasn and Ganesan were questioned. Thereafter Mr. Venkatachalam, a witness for the management, was examined. On the next adjourned date, namely, 17 October 1956, the accountant was further examined and certain other witnesses were also examined. After all the witnesses for the management were examined Appavu and Ranganathan were again examined on 15 November 1956. There is nothing to show that these workers were given an opportunity to cross-examine Appavu and Ranganathan when they were examined on 1 October 1956 and 15 November 1956. It is not likely that these

accused workers would have allowed the statements of Ranganathan and Appavu to go unchallenged without cross-examining them. If really the committee has asked these accused workers to cross-examine these two persons and if they failed to do so, I am sure the committee would have recorded that they did not want to cross-examine them. On the record as it stands I am inclined to hold that these three workers were not given any opportunity to cross-examine the two most important witnesses of the management. Further the records relating to both the proceedings do not go to show that the accused workers were asked if they had any witnesses to examine on their behalf. I think principles of natural justice require that the accused workers should be definitely asked if they had any defence witnesses and they should be examined if they produced them. Such a proper course was not observed in this case. My remarks with regard to My. Davis taking the place of Mr. Carmack as chairman of the committee and those relating to his giving the findings without the concurrence of the other members of the committee equally apply to this enquiry relating to the three workers also, Though in the course of the enquiries a number of questions were put to these accused workers, none of them was asked to state what he had to say in respect of the charges. Therefore, the workers were not given any opportunity to explain their case. Having gone through the entire proceedings of the two enquiries very carefully, I am not at all satisfied that they were properly conducted. It therefore follows that this Court is entitled to go into the merits of the dismissals of these three workers and come to its own conclusion.

8. I shall now deal with the charges jointly levelled against Govindaraman and Ganesan. Exhibit M. 8 is the chargesheet mentioning three charges. The first charge is that these two workers left their work-spot without the permission of their foremen at about 10 a.m. on 22 September 1956 thus violating 01. 3 of the standing orders of the company. The management has not let in any evidence with regard to this charge. The concerned foremen have not been examined to prove that these two workers Govindaraman and Ganesan left their work-spots without their permission. On the other hand one of these two workers Sri Govindaraman as W.W. 5 deposed that he took the clerk's and maistry's permission to see Mr. Venkatachalam and to enquire about the pass-out. Even in the enquiry conducted by the management, the concerned foremen have not been examined to prove the truth of this charge. On the evidence placed before me, I have no alternative but to find that the management has not proved its case with regard to this charge.

9. The second charge against these two workers reads as follows:

While speaking to the labour officer of the company, you lost your reasoning capacity, shouted against him and used abusive words in the main office in the presence of other staff, and the chief accountant and that in spite of the chief accountant's counsel as well as the managing director's explanation for refusal of grant of pass-outs, you continued to be abusive even in the workshop office and acted in a way not expected of by apprentices and junior unskilled workmen

before the officers and the managing director of the company.

It is clear that this chargesheet relates to the incidents before the labour officer and the managing director Mr. Wood. Before dealing with this charge I shall state a few facts. Admittedly conciliation proceedings were posted for enquiry before the Assistant Commissioner of Labour on 22 September 1956. The management applied for an adjournment of those proceedings and they were informed on the previous day by a telephone message that the proceedings would be adjourned. On 21 September 1966 the general secretary of the union met the labour officer and he was told that the management had asked for an adjournment, that as the Assistant Commissioner of Labour was not in town the adjournment could not be given and that the representatives of the union should attend the proceedings as there was no certainty about the adjournment. Even on 21 September 1956 the union appears to have written to the management to permit these two workers to attend the conciliation proceedings. But these workers were not informed by the management about the adjournment. So both these workers sent their request for permission to go out and such permission is usually sought for on a prescribed form called pass-out. When this pass-out was received by the labour officer of the company Mr. R.G. Venkatachalam, he appears to have returned them telling the bearer who brought it that the proceedings had been adjourned. He did not endorse on those pass-outs a statement to that effect. Evidently these two workers were not informed about the adjournment and so they went and saw Mr. Venkatachalam to enquire about the pass-out. Their behaviour at their interview with Mr. Venkatachalam is the subject-matter of the first portion of this charge. As to what happened when these two workers came and saw him, Mr. Venkatachalam as M. W. 4 has given the following evidence in his chief-examination:

After returning the application for pass-out I was talking with the accountant in his office. At that time Ganesan and Govindaraman approached me and asked me to sign the pass-out. It is usual for the workers to prepare the pass-out and get it for signature. I told them that conciliation had been postponed and that pass-out would not be given. When I said so these two workers stated that it was a trick played by me and that they already knew something about it. They talked in a disrespectful way and the accountant tried to pacify them but they continued their abusive language against me saying " you being an educated man should not try to do such things."

It is the evidence of W. W. 5, one of the dismissed workers, that when Mr. Venkatachalam refused to give them pass-outs they requested him to permit at least one of them to go and verify about the adjournment of the proceedings, that they also requested him to permit one of them to speak to the conciliation officer on the phone, that both their requests were refused and that they were asked to go to their workspots. Evidently such requests must have been made by these workers under the impression that the statement of Mr. Venkatachalam about the adjournment of the proceedings was not true. While they were under

such an impression it is not quite unnatural for workers of this type to lose a little of their self-control. It is therefore probable that they might have spoken a little loudly and complained about the conduct of Mr. Venkatachalam who is also said to have thrown away the pass-out. They probably thought that Mr. Venkatachalam was misleading them and preventing them from attending the conciliation proceedings which they were evidently very anxious to attend. It is not obligatory on their part to believe implicitly the words of the officer. Evidently Mr. Venkatachalam had construed their loud talk as disrespectful. Though he states that they used abusive language, their statement that "he being an educated man should not try to do such things," does not seem to be very offensive and they must have said so due to their extreme anxiety and disappointment in not getting the pass-outs, It is too much to expect the workers to be calm, composed and unruffled under such circumstances. I am unable to find that their conduct amounts to wilful insubordination or disobedience. Nor do I think that it was of such a disrespectful nature as to merit the extreme punishment of dismissal.

10. The second portion of this charge relating to the conduct of these workers is practically covered by the third charge and it can be dealt with it. I shall therefore deal with the third charge which runs thus:

That on refusal of pass-outs by the managing director on reasonable grounds you shouted that you do not trust the management's words and if pass-outs are refused, you will stop work. Then the managing director warned that if you do not go to your workspot and carry out your work, you will be marked absent. However you not only chose to disobey the orders of the managing director but also instigated your co-workers in A section, D section and E section to stop work, which they did at 10-25 a.m.

The evidence of Mr. Venkatachalam with regard to this charge is that when he found these workers were not amenable to his control he went and reported the matter to Mr. Wood, the managing director, that Mr. Wood came to E section office and sent for these workmen and explained to them that conciliation proceedings had been postponed and that they had no necessity to go. It is also his evidence that they did not believe the management's version and insisted on a pass-out and exchanged words with Mr. Wood. He further deposed that thereupon Mr. Wood ordered them to go to their workspots and carry on their jobs and told them that pass-outs would not be granted. It is first contended that the conduct of these workers in disbelieving the version of the management regarding the adjournment of the conciliation proceedings was improper. I am unable to find any substance in this contention. Admittedly in the conciliation proceedings the management and the workers had different interests to serve and they were opposed to each other. There is nothing wrong in one party disbelieving the statement of the opposite party. Though Mr. Venkatachalam stated that these workers exchanged words with Mr. Wood, he had not mentioned the entire conversation that took place at that time. Even granting for

purposes of argument that they argued their case before Mr. Wood in a somewhat vehement manner, it cannot be said that their conduct was improper and insubordinate. If Mr. Venkatachalam had given clear and cogent evidence about any unbecoming or unparliamentary words used by these workers, one could find in favour of the management. In the absence of such evidence it is difficult to find that their conduct amounted to a quarrel with Mr. Wood. Though the charge states that these workers threatened to stop their work if pass-outs were refused, no such evidence has been given by Mr. Venkatachalam, The charge further mentions that though the managing director warned these workers saying that if they did not go to their work-spots and carry out their work, they would be marked absent, these workers chose not only to disobey his orders but also instigated their co-workmen in A, D and E sections to stop work and that they did so at 10-25 a.m. With regard to this portion of the charge Mr. Venkatachalam, who is the only witness who spoke about these incidents, has not given any evidence about the warning given by the managing director. But it is an admitted fact that these workers stopped work soon after their interview with Mr. Wood. In the absence of evidence proving the warning, it is difficult to hold that the stoppage of work was a wilful disobedient act flouting the warning of the managing director. The case of the workers is that the stoppage of work was due to the provocation caused by the managing director referring to their union in the course of their conversation as "bloody union." There is some evidence on the side of the workers to the effect that Mr. Wood described the union as bloody union and that consequently there was stoppage of work by some of the workers in certain sections. When the workers had joined a union and were trying to assert their rights, if a responsible officer of the management like the managing director uses such a contemptuous expression, it is quite natural for the workers to get provoked and express their displeasure by resorting to one of the weapons in their hands, namely, striking work. Therefore, if these workers had stopped work, it was due to the provocative words used by the managing director and not on account of wilful disobedience of his orders to resume work. Though this charge mentions that these two workers instigated their co-workmen in A, D and Sections to stop work there is absolutely no evidence to prove this part of the charge. Mr, Venkatachalam frankly admitted that he did not actually see Govindaraman and Ganesan inciting the other workers to strike. Not one of the workers who was said to have been incited has been examined to prove this allegation. On the other hand, the workers have let in some evidence to prove their case that the strike was a spontaneous one and that it took place due to the management's conduct in refusing the pass-outs and on account of the provocative words of Mr. Wood. Therefore, on the evidence before me I am inclined to hold that the management has not made out its case even with regard to this charge.

11. It is also the contention of Mr. V.G. Rao that the management was not justified in instituting proceedings or taking action against these workers for stoppage of work after having excused the conduct of all the workers including

these two persons for staging the strike on that day. In this connexion he relies upon Ex. M. 27, a notice put up by the management on the notice board warning these workers for resorting to the strike on 22 September 1956. The names of the workers who struck work are also mentioned in this notice and the list mentions the names of these two workers also. It is argued that after having warned these workers and after impliedly stating that no action would be taken against them the management was not justified in including this matter in the charge. In this connexion Mr. V.G. Rao relies upon a decision of the Labour Appellate Tribunal, Kohinoor Saw Mills Company and Narayanan 1955 I.L.J. 685. It has been held in this case that when a workman was warned and suspended for inefficiency and insubordination, his subsequent dismissal for the same charges cannot be held to be valid and proper. I think this principle applies with equal force to the facts of the present case and I am inclined to hold that the management was not justified in taking action against these workers for stoppage of work after having warned them. As a result of the foregoing discussion I find that the management has not established any of the separate charges relating to Govindaraman and Ganesan, namely, those mentioned in the chargesheet, Ex. M.S.

12. I shall now deal with the act of misconduct for which all the three workers were dismissed by the management. As I have already stated the management has not framed proper charges against these workers and Ex. M. 2 which purports to be the charge-sheet does not set out fully the acts of misconduct said to have been committed by them. Of course along with Ex. M. 2 these three workers were given copies of the complaint given by Ranganathan and Appavu, namely, Ex. M. 1, and it was suggested that they committed the misdeeds mentioned therein. With regard to this matter the case of the management is that on the evening of 28 September 1956 when Ranganathan and Appavu were each taking home a reversible levelling instrument for effecting repairs at home these three workers waylaid them as soon as they came out of the gate of the factory, that they first attempted to snatch and throw down the instrument in the hands of Ranganathan, that when that attempt failed Ganesan snatched the instrument from the hands of Appavu and threw it on the road causing damage to it. It is the management's contention that these workers acted in a concerted manner after deliberately planning the mischief which they committed and that their conduct amounted to acts subversive of discipline which are punishable with dismissal under the standing orders of the company. The workers give a different version of this incident and it is their case that they tried to dissuade Ranganathan and Appavu from taking instruments to their houses for repairs as such a practice would deprive the workers of their legitimate overtime charges and as they were demanding at that time the abolition of the contract system prevailing in the company. It is further stated by them that what they did was only peaceful picketing, that Appavu himself placed the instrument on the ground with some force and violence and that the instrument must have consequently got damaged. It is therefore contended by them that they are not in any way

responsible for the damage caused to the instrument entrusted to Appavu. It is therefore necessary to examine the evidence let in by both sides and to give a finding as to which of the versions is true and probable. M, W. 2 is Appavu and his evidence is that when he and Ranganathan came outside the gate with an instrument in each of their hands, Govindaraman, Tirunavukkarasu and Ganesan came and obstructed them and stated." Why are you taking those instruments home for repairs? You should not take them." He further deposed that he and Ranganathan. told these three workers that they had no right to question them and that they should go and ask the management about it. He further stated that thereafter they attempted to proceed about three feet distance, that. these three workmen first pulled out the instrument in the hands of Ranganathan and that when it was falling he acted quickly and caught hold of it. He further states that thereafter these three workmen came to him, that Thirunavukkarasu pushed him and that Ganesan pulled out the instrument from his hands and threw it on the road. Thus it is his definite evidence that the instrument was snatched from his hands and was thrown down by Ganesan. No doubt in his cross-examination he admitted that there was no enmity or misunderstanding between these three accused workmen and himself. But from this fact alone it cannot be held that the incident is not true and that these workers would not have indulged in such acts. Appavu and Ranganathan, on the one hand, and these three workmen on the other, belong to rival unions and it is therefore probable that these accused workers must have had some motive in acting in this manner. No doubt M.W. 2 admitted in his cross-examination that there was no exchange of blows and this admission contradicts the averment in Ex. M. 1 saying " Ganesan dealt blows on Appavu." Evidently Ranganathan and Appavu must have mentioned so in Ex. M. 1 with a view to exaggerate the gravity of the offence but from this fact alone it cannot be held that his present evidence is false. He no doubt prevaricated and asserted later on that Ganesan gave him a blow. He must have said so to justify his statement in Ex. M, 1. It is his definite evidence in cross-examination that Ganesan threw the instrument at a distance of 10 feet and that due to his action the spirit bubble got broken, that the screws got bent and that a rock and a pinion also got bent. Though M.W. 2 has not given consistent evidence on certain minor points I am on the whole inclined to believe his version. M. W. 3 is Ranganathan and he corroborates the evidence of Appavu regarding all material particulars. He definitely states that these three workers pushed him, that the instrument in his hands slipped and when it was about to fall he caught hold of it and prevented the fall. It is also stated by him that Thirunavukkarasu obstructed Appavu and that Ganesan pulled out the instrument from Appavu's hands and threw it down. According to the evidence of this witness, the complaint Ex. M. 1 was given by them voluntarily but according to Appavu it was given after the management asked them to do so when they orally complained about the conduct of these workers. This I think is a minor contradiction and this by itself cannot belie the truth of their evidence. The case of these workmen that Appavu himself threw his instrument down was not suggested either to M. W. 2 or M. W. 3. M. W. 4 is Mr. R.G. Venkatachalam, the labour officer of the company, who

came to the place of this incident a few minutes after it took place. His evidence does not by itself prove the truth of the incident according to the management's version. Though he states that Appavu and Ranganathan told him that these three workers obstructed them from taking the instruments home and quarrelled with them, he did not definitely state that they told him that Ganesan snatched the instrument and threw it down. His evidence therefore is not very material.

13. The workers have examined one witness to prove their version. W.W. 2 is another worker of this company and he is said to be an eye-witness of this incident. It is his evidence that at the time of the incident he was at the teashop opposite to the gate and which was at a distance of about 10 or 15 feet, and that at that time Ganesan did not assault Appavu and did not pull but the instrument from his hands. He further denies that Ganesan or Thirunavukkarasu pushed Appavu or Ranganathan. According to him Appavu himself placed the instrument on the ground with some violence and force. One of these accused workers, Govindaraman, has also given evidence as W.W. 5. Though he has given elaborate evidence regarding the incident that took place on 22 September 1956, it is significant to note that he has not mentioned anything about this incident which took place on 28 September 1956. So the case of the workers with regard to this incident rests solely on the evidence of W.W. 2. If the workers' case is true and if Appavu was himself responsible for the damage to the instrument, I am sure they would have said so in their explanations. These three workers appear to have given at first identical explanations and a copy of the same is marked as Ex. W. 20. Admittedly though Ex. W. 20 is dated 1 October 1956 it was actually given to the management on the next day. Subsequently each of them gave another explanation in identical terms and they are marked as Exs. M. 3 to M. 5. It is important to note that though there is a general denial the workers have not stated in any of these explanations their version that Ganesan did not pull out and throw the instrument in the hands of Appavu and that Appavu himself placed it down with some force and violence and caused damage to it. This is a very strong circumstance against the case of the workers and it cannot be brushed aside. I am therefore inclined to think that the workers must have invented this version by way of defence in the criminal case which was admittedly launched against them. Further there is no reason or motive for Appavu to do so as he was responsible for the safety of the instrument and it is not likely that he would have himself damaged it. On the whole I am not satisfied with the version of the workers and I am not inclined to believe the evidence of W.W. 2. As admittedly W. W. 2 belongs to the same union it is probable that he is trying to shield these workers who are admittedly active members of the union. I therefore hold that the case of the management is true. On the evidence as to how this incident took place I am inclined to infer that it was a premeditated act, that these three workers must have pre-planned the mischief and must have acted concertedly. Therefore, though Ganesan actually threw the instrument down, all of them are bound to share the responsibility for his act.

14. It is argued by Mr. V.G. Rao that the conduct of these workers amounts to

peaceful picketing and that the workers had a right to picket in this manner when they find other workers adopting a course which was detrimental to the interests of the general body of the workers and which was against the demand put forward by them. Though the workers may have a right to resort to peaceful picketing, it is not open to them to indulge in violent acts causing damage to the property entrusted by customers for repairs. I am therefore not inclined to take a lenient view of their action.

15. At the enquiry held by the company and even at the earlier stages of the enquiry before me a contention was raised to the effect that this incident even if true cannot amount to an act subversive of discipline because it happened outside the factory premises and after the working hours of the company. A similar contention was put forward, in certain cases before the Labour Appellate Tribunal and they have held in a number of cases against such a plea. On the strength of those cases Mr. V.G. Rao fairly conceded that he did not press such a contention in this case. It is therefore unnecessary to deal with it.

16. With a view to show that the dismissals of these workers were prompted with the motive of victimization for their trade union activities, the workers have let in evidence of some prior attempt of the management to take action against them. It is stated that after March or April 1956 when a large body of the workers of this concern joined this union and put forward certain demands, the management had been attempting to find fault with these three workers for something or other and that this conduct of the management proves the mala fides of their action. No doubt there is some evidence both oral and documentary to prove the workers' case that the management was attempting to take action against these three workers even prior to these two enquiries. But no punishment was awarded probably because the management felt that the charges were not proved or were not grave. But from such evidence alone it is difficult to infer conclusively that these dismissals were motivated by a spirit of victimization for trade union activities when I find the misconduct alleged against these three workers is true. Even granting that the suggestion of the union is well founded, this is an unfortunate case in which the workers gave an opportunity to the management to achieve their object. When I find the incident as put forward by the management is true I cannot hold that the action of the management was altogether wrong whatever might have been their motive. In the result I find that the management had good reasons to dismiss these three workers.

17. On my above findings, namely, that these dismissals contravened the provisions of Section 33 of the Industrial Disputes Act and that the management had good reasons to dispense with their services, a difficult question of law arises for consideration. That question is whether under these circumstances the action of the management can be upheld as justified. Both sides have not referred to any case law on the point and have not argued it at all. I myself tried to study the point but in this attempt I have been greatly handicapped on account of lack

of text-books and digests. In the course of my attempt I came across a decision of Justice Sri N. Rajagopala Iyengar in 1954 I.L.J. 635. The facts of this case go to show that during the pendency of certain appeals before the Labour Appellate Tribunal a worker was dismissed by the management without the permission of that Tribunal as required by Section 22 of the Industrial Disputes (Appellate Tribunal) Act. Thereupon the worker filed a petition u/s 23 of the same Act and it was allowed and the management was directed to reinstate him. To quash that order the management filed a writ of certiorari before the High Court. One of the points argued before the learned Judge -was that the Tribunal was not justified in ordering the petition of the worker without going into the merits of the dismissal. Though the learned Judge found as a fact that the Tribunal had gone into the merits, he has observed as follows dealing with this argument:

Further under S. 23 of the Labour Appellate Tribunal Act, 1950, a contravention of the provisions of Section 22 justifies an interference by the Tribunal u/s 23. Section 22(6) provides that no employer shall discharge or punish whether by dismissal or otherwise any workmen concerned in that appeal save with the express permission in writing of the Appellate Tribunal. Where such permission is not obtained and the dismissal is effected during the pendency of the appeal, it is open to the Tribunal without considering any other matter to direct reinstatement of the discharged workmen, but as I have said before in the present case they have pronounced upon the merits of the procedure followed by the employer in effecting the discharge of the respondent. I do not see even on the construction contended for by the learned Counsel for the petitioner how the order of the Tribunal is vitiated by any error.

Sections 22 and 23 of the Labour Appellate Tribunal Act are similar to Sections 33 and 33A of the Industrial Disputes Act, 1947. Therefore, if this question now under consideration had arisen in a petition u/s 33A of the Industrial Disputes Act, I would have no hesitation in following this decision and in holding that these workers are entitled to reinstatement even without going into the merits of their dismissal. But now I am dealing with a regular dispute referred by the Government for adjudication. So the point which arises for consideration is whether a different principle of law should be applied in a regular dispute. I am inclined to answer this question in the negative. Merely because it arises in a dispute I see no reason to adopt a different principle. It therefore follows that it is open to this Tribunal to order reinstatement even without going into merits and even though on merits the dismissals may be proper. While so I see no justification to uphold the action of the management which is illegal even though it might have had good reasons to take such action. Nobody can be said to do a justifiable act while he violates the provisions of the statute even though the violation may not be wilful and is only technical. I therefore find that the management was not justified in violating the provisions of Section 33 by dismissing these workers even though they might have had good reasons to do so. Consequently I find this issue in favour of the workers.

Issue (2).-On my finding on issue (1) the normal relief to which the workers are entitled is reinstatement with continuity of service and payment of wages from the date of dismissal till the date of reinstatement. Though the management appears to be very much disinclined to take back these workers, they have not put forward any grounds as to why this normal relief should not be granted to them. I therefore direct the management to reinstate all these three workers with continuity of service and pay them back-wages for the period of unemployment. This is not a fit case to award any costs to the workers and I therefore make no orders as to costs. This award will come into force after thirty days of its publication in the Port St. George Gazette.