
(2003) 08 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition No. 1041 of 2003

Philips India Limited

APPELLANT

Vs

Ld. Fourth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 15(2)

Citation : (2004) 1 CHN 97

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Arunabha Ghosh, Souma Majumdar, for the Appellant; Bikash Bhattacharyya, Bharati Mutsuddi and Jayanti Dharquarder for the respondent No. 2, for the Respondent

Judgement

D.P. Kundu, J.—In this writ proceeding the writ petitioner (hereinafter referred to as the Company) has challenged the Order No. 55 dated 25.3.2003 passed in Case No. VIII-215/99 by the Fourth Industrial Tribunal, West Bengal (hereinafter referred to as the Tribunal), in connection with an application preferred by the respondent No. 2 (hereinafter referred to as the workman) u/s 15(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) as substituted by West Bengal Act 33 of 1986 for Section 15 of the Principal Act.

2. Said Section 15(2)(b) of the said Act reads as follows:

"15(2). Where an industrial dispute has been referred to a labour Court or Tribunal, it shall--

a)

b) upon hearing the parties to the dispute determine(sic) within a period of 60 days from the date of reference under sub-section(1) of Section 10 or within such period as specified in the order of reference under Sub-section(1) of Section 10 the quantum of interim relief admissible, if any:

Provided that the quantum of interim relief to discharge, dismissal, retrenchment or termination of service or workman shall be equivalent to subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969."

3. Said Section 15(2)(b) of the said Act was considered by a Full Bench of this Court in (1) B.G. Sampat (Babulal Gobardhandas Sampat) v. State of West Bengal and Ors., (2) C.E.S.C. Ltd. and Anr. v. State of West Bengal and Ors. and (3) Webel Nicco Electronics Ltd. v. Mrs. Anima Roy and Ors. reported at 2000(1) CLJ 17. The Full Bench held, inter alia, as follows:

(a) The word "admissible", inter alia, means in the context of "if it is admissible" and not in the context of Section 136 of the Indian Evidence Act.

(b) The legislature has purposely used the word "determined" which means "authoritatively deciding".

(c) A statutory Tribunal exercising a judicial function, it is needless to say, can authoritatively decide only upon considering all relevant materials brought on records by the parties and upon taking into consideration the fact as to whether such relief is admissible either in law or fact.

(d) The words "if any" are also significant.

(e) If a power has been conferred upon a Court or statutory Tribunal, the same may be exercised or may not be exercised. Such exercise of power evidently would depend upon (i) the facts and circumstances of each case and (ii) the nature of dispute referred to the Tribunal for adjudication. There cannot be any doubt whatsoever that while discharging functions u/s 15(2)(b) of the said Act, the hands of Industrial Tribunal are not fettered.

(f) It has also to be borne in mind that the very fact that Section 15(2)(b) has been added after Section 15(1) which, inter alia, provides for passing of an award also goes to show that the relief granted in favour of the workman, if any, although interim in nature, is final and binding on the parties.

(g) There cannot be any doubt that once an interim relief is prayed for the Tribunal has to apply its mind as regard existence of a prima facie case.

(h) Reference by the appropriate Government itself cannot constitute a prima facie case in favour of the workman.

(i) It is obligatory on the part of the Tribunal, prima facie to consider the merit of the cases of the respective parties as also the nature of dispute upon taking into consideration the relevant materials therefore.

(j) The question as to whether in a fact situation a workman is entitled to any interim relief or not will also be a relevant consideration.

(k) However, Section 15(2)(b) speaks of an interim relief. The very fact that the words "interim relief had been used is a pointer to the fact that the same has not

been done in the same terms as that of an "interlocutory order". Relief has to be granted by way of interim measure. Such a relief when granted becomes final and, thus, the question of any refund thereof does not arise.

(l) The intention of the legislature is clear from the fact that in terms of the proviso appended to Section 15(2)(b) of the said Act, interim relief in certain categories of cases would be equivalent to the subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969 (hereinafter referred to as W.B.P.S.A. Act, 1969). The provisions of the W.B.P.S.A. Act, 1969 have been incorporated by reference with regard to the quantum of allowance only but the said provision leads to a conclusion that in a case where an interim relief is granted, no direction can be issued to refund thereof as subsistence allowance can never be directed to be refunded.

(m) The provision of the W.B.P.S.A. Act, 1969, inter alia, prohibits such grant of subsistence allowance in the event the workman was gainfully employed. For the purpose of computation of the quantum of interim relief even the said factor will be the relevant.

(n) However, there cannot be any doubt that while passing a final award u/s 15 of the said Act the Court may direct adjustment as an interim relief is in aid of the final relief which may be granted by the Court.

(o) Keeping in view the fact that an order in terms of Section 15(2)(b) of the said Act has to be passed within a period of 60 days from the date of reference itself is a pointer to the fact that it is not obligatory on the part of the parties to file written statement but the Court must have before it all the material facts either from the pleadings or from the records. If an employer does not purposely choose to file his pleadings, the workman cannot suffer therefore as the Tribunal is required to pass such an order within 60 days from the date of reference and within such shorter period, if any, mentioned in the reference.

(p) An order granting interim relief has to be passed from the date of reference and not prior thereto.

(q) The submission to the effect that Section 15(2)(b) of the said Act is unconstitutional cannot be accepted.

4. In *Ganges Printing Ink Factory Employees Industrial Co-operative Society Ltd. and Anr. v. 7th Industrial Tribunal and Ors.*, 91 CWN 480, a Division Bench of this High Court after considering Section 15(2)(b) of the said Act, in paragraph-17 of the reported decision, held, inter alia, as follows :

"The question, therefore, still remains as to what are the matters which must enter into the consideration of the Tribunal in adjudicating a claim for interim relief. In our opinion rules governing similar adjudication in a suit cannot be invoked but matters to be considered by the Tribunal should be (1) admissibility, 2) any objection as to the sustainability of the reference and (3) effect of the grant or its refusal on the employer or the workman. But for reasons given

hereinbefore, we find it difficult to reconcile the consideration of the merits and/or adjudication of the prima facie case at the stage of granting the interim relief with the scheme prescribed by the statute in Section 15(2)(b)".

5. Regarding the correctness of the Division Bench decision in Ganges "Printing Ink Factory Employees Industrial Co-operative Society Ltd. case (supra) in respect of the word "admissible" as used in Section 15(2)(b) of the said Act a reference was made to the Full Bench of this High Court and the Full Bench rendered its decision which has been reported in 2000 (1) CLJ 17 as discussed in the earlier part of this judgment.

6. Therefore, in addition to the principles laid down by that Full Bench in the decision reported in 2000(1) CLJ 17 two more points have to be taken into consideration while dealing with an application u/s 15(2)(b) of the said Act. Those two points are (1) any objection as to the sustainability of the reference and (2) effect of the grant or its refusal on the employer or the workman.

7. The Government of West Bengal, Labour Department by Order No. 3099-I.R. dated 14.12.1999 referred the following issues to the Fourth Industrial Tribunal, West Bengal, for adjudication.

ISSUE

Whether termination of service of Sri Santanu Biswas from his service by the Management of M/S. Philips India Ltd. is justified?

What relief, if any, is he entitled to?"

8. In connection with the application of the workman u/s 15(2)(b) of the said Act the Company filed petition of objection before the Tribunal, In connection with the hearing of the application u/s 15(2)(b) of the said Act, the workman himself was examined as P.W.-1 before the Tribunal. The Company examined three witnesses on its behalf. The three witnesses of the Company were (1) Shri Subir Kumar Mukherjee (O.P.W-1), (2) Shri Kalidas Saha (O.P.W.-2) and (3) Shri Alak Sundar Basu (O.P.W.-3). The entire record of disciplinary proceeding was produced by the Company before the Tribunal as exhibit.

9. By virtue of a chargesheet dated 2.5.1997 issued by Shri A. S. Basu (O.P.W.-3). Senior Manager-Production certain charges were levelled against the workman. The relevant part of the chargesheet is set out hereinbelow :--

"SUBJECT CHARGESHEET

It has been reported as hereunder :

On 29/4/97 around 3-00 p.m. you along with some others stopped your normal work and left your places of duty unauthorisedly and forcibly entered the chamber of Mr. M. V. Sahasrabudhe, General Manager, Plant Management without any prior permission while he was in the midst of an important business discussion with Mr. K. Ramachandran, Senior Vice-President and Director, Human

Resources and Corporate Operational Policies, Mr. A. Gupta, Senior General Manager, BG CTV, Mr. K.D. Saha, General Manager, Plant Management, PMF. Not only did you disrupt their normal official activities but instigated other workmen present to shout derogatory and demeaning slogans on the officials present in the room. You also continued to subject the aforementioned Senior officials to coercion, threats, intimidation and insults from around 3-00 p.m. to around 10-30 p.m. while unauthorisedly staying inside the factory beyond normal duty hours. You furthermore continued to unauthorisedly remain within the factory premises till around 1-30 a.m. on 30/4/97.

Your above acts tantamount to gross violations of the provisions of the Certified Standing Orders of the Company as laid down in Section "L" Appendix "A" Clause 2-Major Misdemeanours.

Charge I - Clause 2(2)

Participation in an illegal strike.

Charge II-Clause 2(10)

....riotous, disorderly or indecent behaviour, threatening, intimidating coercing other employees or interfering with the work of other employees.....

Charge III-Clause 2(11)

Commission of any act subversive of good behaviour or of the discipline of the factory.

Charge IV - Clause 2(12)

Gross neglect of work..... idling or wasting time during working hours.....without permission.

Charge V - Clause 2(24)

Conduct prejudicial to the interest or reputation of the Company.

Charge VI-Clause 2(29)

Instigation, incitement, abatement or furtherance of the foregoing misdemeanors.

In view of the aforementioned charges levelled against you, your(sic) are hereby directed to reply in writing within 48 hours of receipt hereof as to why disciplinary actions should not be taken against you. If you fail to offer any reply within the stipulated time it will be deemed that you have no explanation to offer in this regard and the company can proceed ex parte on the matter.

Meanwhile keeping in mind the charges that have been levelled against you which are of a very grave and serious nature it has been decided to suspend you pending enquiry into the charges levelled against you with effect from 2.00 p.m. on 3/5/97.

Please note that during this period of suspension you will be entitled to Subsistence Allowance as per the West Bengal Payment of Subsistence Allowance Act, 1969."

10. By a letter dated 17.11.1998 issued by K. Saha (O.P.W.-2), Plant Manager, the enquiry report was forwarded to the workman who was directed to submit in writing should the workmen had anything to say with regard to the said enquiry report. The relevant part of the said letter is set out hereinbelow :

"Mr. A. K. Roy, the Enquiry Officer duly appointed to enquire into the charges levelled against you vide the chargesheet under reference has examined the entire evidence of the witnesses adduced in the said proceedings and also examined all the documents recorded in the said enquiry proceedings. After analysing the entire evidence on record as well as the documents already exhibited he came to the conclusion that all the charges have been proved against you and, accordingly, he has submitted his detailed report and findings to me.

A copy of the same is being enclosed for your perusal in order to afford you a reasonable opportunity to defend your case before the findings of the abovementioned report is considered by the Management.

Should you have anything to say with regard to the same, you are requested to do so in writing within 48 hours of receipt of this letter. In case no written communication is received by us within the stipulated period, it will be assumed that you have no comments on this matter and we will proceed with the disciplinary proceedings accordingly."

11. There is nothing in the said letter dated 17.11.1998 to show that the finding of the enquiry officer was accepted by the disciplinary authority rather it is evident that before the findings of the enquiry officer was considered by the management the copy of the enquiry report was forwarded to the workman to afford the workman a reasonable opportunity to defend his case. This is evident from the following lines of the said letter:

"A copy of the same is being enclosed for your perusal in order to afford you a reasonable opportunity to defend your case before the findings of the abovementioned report is considered by the Management".

12. Before the enquiry officer Shri K. Saha (O.P.W.-2) was examined as M.W.-2. The enquiry officer in his report while discussing the evidence of Shri K. Saha (M.W.-2) recorded as follows:

"Shri K. Saha is M.W-2 produced on behalf of Company. His report about the incident dated 29.4.97 is marked as Ext.P-24. While stating about the incident dated 29.4.97, Shri K. Saha deposed that while he was in a Business meeting in Plant Managers Room at around 3.00 p.m., a section of employees forcibly rushed into the chamber without permission and they were shouting derogatory and insulting slogans and were carrying placards in their hands. The slogans

were "Lal Bangla, Lal Agune Management Ke, Rama Chandran Ke Jaliye Marbo, Gali Gali Me Shor Hai Philips Management Chor Hai, Rarnchandran Kala Hath Bhenge Dao, Guriye Dao, Ei Matite Kabor Din, etc." Shri Santanu Biswas was seen inciting and instigating the co-employees. The inside atmosphere was riotous and unruly. The high level important meeting could not take place. Although Shri Sunil Ghosh and Shankar Karmakar arrived inside the room at 7.30 p.m., such indiscipline activities continued till 1.30 p.m., next morning (30.4.97), Shri Saha stated that he distinctly remembers Shri Santanu Biswas raising the slogans like "Rarnchandran Chor Hai" and he raised his fists and uttered towards M.V. Shahasrabudhe "Tumke Jalna Diye Phele Debo, Karunamoyee te Dholai Karbo, Pitai Karbo", He stated that he was very much disturbed by noise for 7Vz hrs. inside the room and had felt very insecure.

13. In his cross-examination Shri K. Saha stated that he reported about the incident dated 29.4.97 on own to Mr. A. Purkayastha, G.M.-Personnel, and since they were afraid of situation may turn violent. So they reported the matter to local Police vide letter dated 29.4.97. marked as Ext. P-30.

14. Mr. Saha denied having any motive for not signing the gate register. He said that being a frequent visitor to CEF, he normally never signed the register. He clarified that he had arrived at around 2.15 p.m. and Mr. Ramachandran had arrived around 2.30 p.m. while the people came in with placards, shouted slogans at around 3.00 p.m.. He said he had come to recognise Shantanu Biswas through Mr. M.V. Sahasrabudhe that Santanu was instigating the crowd ,"

15. Exhibit "P-24" referred to in the enquiry report is a report dated 30.4.97 of Shri K. Saha (O.P.W.-2) addressed to Mr. A Purakayastha,, G.M., Personnel, Calcutta Establishment. The relevant lines of the said exhibit- "P-24" are set out hereinbelow:

"Mr. A. Purakayastha, G.M., Personnel-Cal. Establishment.

On 29.4.97, I came to CEF, Salt Lake to participate in an important business discussion with M/s. Madhu Sahasrabudhe, Plant Manager, CEF, Mr. Alok Gupta, BG Head C.T.V.; and Mr. K. Rarnchandran, Director and Sr. V. P. Corp., H.R. & O.D. I came to the Plant Manager's room at around 2.15 p.m. M/s. Madhu & Gupta came in the premises then and Mr. Rarnchandran arrived at about. 2.30 p.m.

While we were in the midst of discussion, all on a sudden at about 3 p.m. the door of the room was flung upon and a large No. of CEF employees forcibly entered the room. Within moments, the room was crowded to its capacity (100/150 employees) and there was no vacant space left in the room. I could recognise some of them who lead others into the room. Such as M/s. K.K. Pal, Ranjit Das, Diptendu Banerjee. Most of them were known to me by appearance, and not by name. They started shouting slogans while entering and some of them carried placards with wooden poles. Immediately on entering they surrounded all four of us from three sides, the table being then put left. They

shouted derogatory slogans casting aspersions and insult on each of us and move so on to Mr. Ramchandran. It went on continuously upto about 10.30 p.m. for 7 hours. All the while they were shouting slogans at deafening voice with closed fists and making such gestures that I was afraid that any time the crowd could turn violent and I was apprehensive of physical assault. M/s. K.K.Pal, Santanu Biswas and Ranjit Das were, raising theirs fists/ every now and then and pointing finger particularly -to M/s.Madhu & Ramchandran.

They had been trying to pressurise and coerce us by sheer brute force without any rationable. The employees both gents and ladies, surrounded us around our bodies so closely that there was no room for us to stretch or even to move an inch on any side. At the same time, they were continuously shouting at the top of their voice, close to the ears with closed fists putting us under tremendous mental and physical distress and agony. It was absolutely a roudy mood and we were feeling very much insecure all the while.

M/s. Sunil Ghosh and Shankar Karmakar entered the room around 7.30 p.m. and the arguments followed. A No. of employee were talking to us simultaneously and it was an disorderly situation inside. The crowd left the room at around 10.30 p.m. but waited outside the room and in the passage till around 1.30 a.m. on 30.4.97. During this period, Mr. Ghosh and Mr. Karmakar were inside the room and we repeatedly told them that we were being held hostages for hours together.

The crowd including slogan shouting, squatting, continued till well past 1.30 a.m. on 30th April, 97.

This is for your information and necessary action please. With regards."

16. By a letter dated 4.2.1999 issued by Shri K. Saha, Plant Manager (O.P.W.-2) the workman was dismissed from the service with immediate effect. The relevant lines from the aforesaid letter dated 4.2.1999 are set out hereinbelow:

"Re: DISMISSAL FROM THE SERVICES OF THE COMPANY

This has reference to the chargesheet issued to you vide letter No. PD:SB:01 dated 02.05.97 alongwith the findings of the enquiry and your personal representation on 8.1.99 alongwith your co-worker.

I have carefully gone through the points raised by you during the personal hearing and all the allegations stated through your co-worker. After carefully considering the evidence on record, document exhibited jn the enquiry. I found that none of your allegations have been established.

After considering all relevant records and the seriousness of the offences committed by you the company has lost confidence in you. I find that there is no extenuating circumstances that warrants any punishment lesser than dismissal.

You are, therefore, hereby dismissed from the services of the company with immediate effect.

A sum equivalent to one month's wages is enclosed vide cheque No, 125053 dt 4.2.99 of Rs.6500/- (Rupees six thousand five hundred only) drawn on ANZ Grindlays Bank, N.S. Road Branch towards one month's notice pay.

The payment of your provident fund is subject to the provisions of the Employees Provident Fund and Misc. Provisions Act, 1952. All other dues, if any, due to you will be paid to you on and from 8.2.99 from the Cash Department of this unit located at the above address".

17. There is no mention in the said letter of dismissal that the enquiry report was accepted by the disciplinary authority. It is also evident from the said letter of dismissal that no discussion has been made why the points raised by the workman were not accepted or were found to be not established by the authority (O.P.W.-2) who dismissed the workman.

18. Shri K. Saha (O.P.W.-2) was examined before the Tribunal as Company's witness. The relevant part of the evidence of O.P.W.-2 in his examination-in-chief before the Tribunal is set out hereinbelow :

""..... I was present on 29th April, 1997 at Salt Lake factory. One occasion when Mr. Ramchandran, Personal Director called a meeting there I went there at about 1-30 p.m. on that date. This is the xerox copy of Vehicle Register of Philips India Ltd. dated 29.4.1997 mentioning the Vehicle No.WB 02A 2267. This document be marked Ext.I. On that date a meeting was held there at about 2-30 p.m.. At about 3 p.m. when meeting was going on for about 100 peoples rushed there and entered into the .meeting room forcibly and shouting slogans. At that time save and except me and Mr. Ramachandran and other person viz. Mr. Sahasrabudhe, Plant Manager of the factory and Mr. Alok Gupta, business group head, C.T.V. were present. At that time our meeting was postpond due to hue and cry. At that date i.e. 29.4.1997 after the incident I know. Mr. Santanu Biswas i.e. P.W. 1. Thereafter we took disciplinary action against the P.W. 1 for that incident. For about five employees were also charge sheeted and suspended for the self-same incident. Disciplinary enquiry was also held against them. I took a charge of that factory of the Philips India Ltd. situated at Salt Lake after five days of the said incident. We were confined in the place where the said meeting was going on upto 1-30 a.m. (night). On that date at about 1.30 a.m. (night) after discussion with the employees and their union they withdraw that Gharao. The enquiry officer was never been the employee of the Management. The concerned workman Santanu Biswas. P.W.1 took part in the enquiry proceeding..... I was the disciplinary authority of the Management at the relevant time I considered all the documents of the enquiry proceeding as well as enquiry report and also considered representation of the concerned workman Thereafter the concerned workman was dismissed by the Management."

19. The relevant part of the evidence of O.P.W.-2 in his cross-examination is set out hereinbelow :

"..... I was examined before the enquiry officer and cross-examined by the Union of the concerned workman. Save and except my evidence before the enquiry officer I have no personal knowledge about other evidences and documents on record. But I have gone through the record and documents. I have also considered the materials on record of the enquiry proceeding as I was the disciplinary authority of that proceeding on behalf of the Management.I know that the concerned workman was not office-bearer of PICO Workers Union. There is no mention in the chargesheet the name of the persons who were instigated by the concerned workman. So far as I know the report given to the concerned workman alongwith chargesheet. There is no mention in the chargesheet that copy of report was supplied to the concerned workman alongwith the chargesheet.I know Mr. Santanu Biswas who was also an employee of the Company in my department. In the month of April, 1997 Santanu Biswas used to work in the said company at Salt Lake factory under my department in CTV Assembly II. On 29th April, 1997 in that factory an incident took place that H.R. Director of the said Company Mr. Ramachandran came there for a meeting. At about 3.30 p. m. my Assistant Mr. Abhijit Chowdhury came and reported to me that group of workmen has left their work place and have gone for deputation and Gharao in our Plant Manager's room. Mr. Santanu Biswas has called employees in that shop floor to join that Gbarao and deputation and heled mass of employees towards Plant Manager's Office. Thereafter, I came out from my department and found that the production of the factory is stopped and much sections of employees were absent. Till 10 O'Clock at night those employees did not come back to their work place. That Gharao and deputation to the Plant Manager was continuing and I left factory at about 1 a.m. (night). Then I found Mr. Santanu Biswas and other employees present in the factory. Thereafter I reported the whole incident to our Sr. Manager Personnel. Mr. Supriya Sen. Thereafter a chargesheet was issued against Mr. Santanu Biswas. The chargesheet has already been marked as exhibited document. Thereafter, a domestic enquiry was held by the Management against Mr. Santanu Biswas. I wag examined in that enquiry proceeding on behalf of the Management and I was also cross-examined by Mr.. Sankar Karmakar, President if the Union on behalf of the workman..... Mr. Abhijit Chowdhury reported to me in respect of the incident in writing addressed to Sr. Manager Personnel and copy to me. I also submitted that report before the Enquiry Officer. I did not send both the reports to the concerned workman alongwith chargesheet. I have not seen that all the workers were led by Mr. Santanu Biswas for Gharaoing and deputation to the Plant Manager".

20. In enquiry report the Enquiry Officer did not make any recommendation regarding punishment to be inflicted upon the workman. Admittedly, in the present case the disciplinary authority was not the enquiry officer, who enquired into the charges levelled against the workman. It is now well settled that when the disciplinary authority is not himself the Enquiry Officer then the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open

to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one of the same proceeding. It is open to a disciplinary authority to hold the enquiry himself. It is equally upon to him to appoint an enquiry officer to conduct the enquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. In this connection reference may be made to State Bank of India v. S. S. Koshal . The relevant lines from paragraph 6 of the aforesaid reported decision read as follows:

"It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced".

21. It is also well settled that when the disciplinary authority proposes to disagree with the conclusions reached by the Enquiry Officer then the disciplinary authority should record the reasons for his difference and such reasons should be communicated to the delinquent employee for the purpose of giving him an opportunity to state his case regarding reasons recorded by the disciplinary authority. In this connection reference may be made to Ram Kishan Vs. Union of India and others, . In paragraph-10 of the reported decision in Ram Kishan case (Supra) Supreme Court laid down the law as follows:

"The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show-cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show-cause notice, in case of disagreement with the findings of the Enquiry Officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the Enquiry Officer for the reasons given in the inquiry report or he may offer additional reasons in support of the findings by the Enquiry Officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the Enquiry Officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the Enquiry Officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure that defect. But on the facts in

this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show-cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show-cause notice is vitiated by an error of law, on the facts in this case."

22. In the letter of dismissal dated 4.2.1999 there is no mention that the disciplinary authority was of the opinion that the charges against the workman were proved or that the disciplinary authority accepted the findings of the Enquiry Officer. The ground of dismissal from service was loss of confidence by the company which is evident from that following lines contained in the said letter of dismissal.

"After considering all relevant records and the seriousness of the offences committed by you the Company has lost confidence in you I find that there is no extenuating circumstances that warrants any punishment lesser than dismissal".

23. On the point of "loss of confidence" by the management there are many decisions of our Supreme Court. It is not necessary to refer to all those decisions. Suffice it to refer to some of such decisions.

In the *The Workmen of Sudder Office, Cinnamara Vs. Management of Sudder Office and Another*, a Head Godown Clerk allowed there used pulleys to be taken out of the respondent Company's godown in an unauthorised manner. After preliminary enquiry he was served with a chargesheet and his explanation was obtained. Thereafter, an enquiry was made only relating to circumstances under which materials were removed. No enquiry was conducted in the sense it is normally understood when disciplinary proceedings are intended to be taken against a workman for misconduct. He was also not placed under suspension during that period of enquiry. An order was then passed terminating his services as the management had lost confidence in him. He was paid all amounts which he would have been entitled to in case of termination simpliciter, viz., one month's full pay and allowances in lieu of notice, all other due allowances and Provident Fund contribution made by him as well as by the employer and interests. The Labour Court held that the impugned order was not a discharge simpliciter but a camouflage amounting to dismissal. However, the Labour Court did not accept the plea that the Management was prompted by mala fides, victimisation and unfair labour practice when the order of termination was passed. The High Court on the other hand held that the order in fact amounted to termination simpliciter. Concurring with the High Court's view, the Supreme Court held that if a workman is charged for misconduct and a domestic enquiry is held, by the management, the enquiry must be bona fide and it should have been held without violating the principles of natural justice and after giving a reasonable opportunity to the workman to defend himself, that is, it must be a proper inquiry without any mala fides or victimisation or unfair labour practice. It

was held by the Supreme Court that in order to find out whether the order of termination is one of the termination simpliciter under the provisions of contract or of Standing Orders, the Tribunal has ample jurisdiction to go into all the circumstances which led to the termination simpliciter. The form of the order of termination is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. The Supreme Court held that it is, therefore, open to the Tribunal to go behind the form of the order and look at the substance. If the Tribunal comes to the conclusion that though in form the order amounts to termination simpliciter but in reality cloaks a dismissal for misconduct, it will be open to it to set aside the order as a colourable exercise of power by the management. Paragraphs 28 and 29 of the reported decision in Sadler Office case (Supra) are set out hereinbelow :

"28. It was the stand taken by the Management that it has lost confidence in the workman and that action was taken under Clause 9 of the Standing Orders by terminating the services simpliciter. That was challenged by the Union that the order has been so worded as to camouflage the real intention of the management, namely, to dismiss the employee for misconduct. The Labour Court, no doubt, held that the action must have been taken under Clause 10(a) (2) of the Standing Orders for misconduct which resulted in the passing of the order under the cloak of Clause 9 of the Standing Orders, and that Clause 9 has been invoked only as a camouflage. If this finding of the Labour Court was supported by the Union and the workman before the High Court, and accepted by the High Court, the position would have been entirely different. On the other hand, before the High Court, the counsel for the workman quite clearly conceded that he is not placing reliance on the finding of the Labour Court that Clause 9 has been invoked only as a camouflage.

29. Added to this there is the other crucial circumstance, namely, the Labour Court not having accepted the plea of the Union that the Management was prompted by mala fides, victimisation and unfair labour practice, when it passed the order of termination. Therefore, before the High Court all the other surrounding circumstances, namely, camouflage, victimisation, unfair labour practice and mala fides had to be eschewed from consideration. Then the question was a very simple one whether the order is one of dismissal for misconduct or one by way of termination of the services simpliciter on the basis of the contractual obligation contained in Clause 9 of the Standing Orders. The High Court having due regard to the various circumstances, referred to by us earlier, has come to the conclusion that the order is not one by way of dismissal but only an order of termination simpliciter on the ground that the Management had lost confidence and trust in the workman. No doubt the Standing Order does not say that the services of a workman can be terminated when the employer loses its trust and confidence, but absence of such a provision in our opinion, is inconsequential. There is no controversy that the workman Bhola Nath Thakur was the Head Clerk at the relevant time in the Company's Engineering godown

and he was responsible for the maintenance of stores belonging to the Company in the value of about six lacs of rupees. This has been accepted by the Union itself and if that is so, the workman was holding a very responsible post where integrity and honesty are quite essential, The Management could have, no doubt, taken disciplinary action against the workman concerned, according to law. But it has not done so in this case. On the other hand, when the circumstances showed that the Company can no longer place its trust and confidence in the workman, the Management terminated his services by making available to him all amounts that he will be entitled to in case of termination simpliciter under Clause 9 of the Standing Orders. The entire basis of the Labour Court's award for holding that the order is one of dismissal is its view that the Management has invoked Clause 9 to camouflage its action. When that approach has been given up on behalf of the workman before the High Court, the reasoning of the Labour Court falls to the ground and the High Court has acted within its jurisdiction under Article 226 when it set aside the order of the Labour Court especially when there has been no finding of victimisation, unfair labour practice or mala fides recorded against the . Management. To conclude, we are satisfied that the High Court was justified in setting aside the order of the Labour Court."

24. In *Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others*, , Anil Kumar, a compounder was dismissed by the Management after holding an enquiry and finding him guilty of (i) having incited labourers and workers to disrupt the administration and working of the tea gardens and (ii) having indulged in trafficking in drugs and medicines entrusted to him by the Company for supply and distribution to the workers free of costs. The Industrial Tribunal held that the enquiry, if at all one was held, was unfair and the charges had not been proved by the Management and, therefore, the dismissal was set aside and the appellant was directed to be reinstated with full back wages. A learned Single Judge of the High Court confirmed the Tribunal's Award, but in appeal the Division Bench reversed the decision of the Tribunal as well as the learned Single Judge holding that the domestic enquiry held by the Management was quite fair and proper and that Tribunal had in fact dealt with the case as if it were a Court of Appeal and not only the evidence had been meticulously assessed afresh but the adequacy of the evidence had also been gone into and in doing so the Tribunal had exceeded its jurisdiction and substituted its own evaluation of the evidence for the evaluation done by the domestic Court of enquiry. The Division Bench allowed the appeal and set aside the Award. In paragraphs 3,4 and 5 of the reported decision in *Anil Kumar* case (supra) Supreme Court held as follows :

"3. Rival submissions on the question whether or not the Division Bench itself had acted as a Court of Appeal under its writ jurisdiction and had exceeded its powers in interfering with the findings of fact recorded by the Tribunal were made at great length before us by Counsel on either side and it was strenuously urged by counsel for the appellants that the Division Bench ought not to have interfered with findings of fact recorded by the Tribunal particularly on the point

that the inquiry that was held was unfair and improper and ought not to have interfered with the Award. It is unnecessary for us to go into these contentions for the reason that even proceeding on the basis that the order of dismissal is unsustainable on the ground that no proper and fair inquiry had been held against the appellant, this, in our view, is not a case where any order for reinstatement of the appellant could properly be made. Counsel for the first respondent-company has rightly contended that it is a clear case of loss of confidence in the employee on the part of the Management and compensation would be adequate relief. It cannot be disputed that the appellant Anil Kumar held the position of trust and confidence as a Compounder that in that capacity he was entrusted with drugs and medicines for being supplied and distributed to the needy and ailing"workers of the tea gardens free of cost but by abusing his position of trust he indulged in trafficking in those drugs and medicines to the detriment of the health and well being of the workers having a bearing on their efficiency and work in the Company. Counsel pointed out that apart from the instances of trafficking which were the subject-matter of the charge, the material on record shows that the appellant had admittedly indulged in similar activities on previous occasions for which he had been pardoned by the Chairman-Director of the Company. It may be stated that in his Explanation submitted to the charges served on him the appellant had clearly averred that on previous occasion workers had made complaints against him for trafficking in medicines and the Chairman-Director had forgiven him for all those offences. The clear implication is about the truth of the complaints and he had sought pardon for it. In these circumstances it would be highly improper and inexpedient of direct reinstatement.

4. In Assam Oil Company Vs. Its Workmen, , this Court has taken the view that though the normal rule in cases of wrongful dismissal of employee is to direct reinstatement there could be cases where it would not be expedient to follow this normal rule and a case of loss of confidence in the employee on the part of the Management would be one such exceptional case where reasonable compensation would be the appropriate relief. Following this decision in Ruby General Insurance Co. v. Chopra (1970)1 Lab LJ 63 this Court denied the relief of reinstatements having regard to the fact that the employee Stenographer, was holding a position of trust and confidence and was found to have retained copies of some confidential letters dictated to him without the consent of the Company and instead directed the compensation be paid to him for wrongful and punitive termination".

5. We, therefore, confirm the setting aside of that Tribunal's Award to the extent it had directed the appellant's reinstatement. The appellant as a Compounder was drawing a monthly salary of Rs. 174-60 at the time of his dismissal from service on 15-9-1965. His counsel has informed us that the total amount due to him calculated upto 31st March, 1973 comes to Rs. 36,486/-. The present grade payable to a Compounder with the Company is Rs.550/-p.m.. Having regard to those facts and the lapse of time involved till now we direct the first respondent-

company to make lump sum payment of Rs. 50,000/- to the appellant Anil Kumar as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. Payment to be made within four weeks from today. Appeal disposed of accordingly with no order as to costs."

25. In Chandu Lal Vs. Management of Pan American World Airways Inc., the workman maintained that he was in permanent employment of that respondent-company. While he was continuing in service certain baseless allegations were levelled against him and his services were terminated and he claimed reinstatement with full back wages. The respondent-company alleged that two Aluminium foot lockers with BKK (Bangkok) destination tag had been received at the Palam Airport with its flight. It was the appellant who had got the, tags changed by substituting the New Delhi tags and the two items had been delivered to one Lakshman by Williams, an employee of the respondent-company. The Management pleaded that the entire basis of its business operation was of confidence and once the customs authorities lost or doubted the same, operational hazards were apprehended as respondent's aircrafts as also pilots were liable to be detained by customs authorities now and then. Like all other employees of the respondent-company, the concerned workman was also required to behave in a manner keeping with maintenance of such confidence. The order of termination which was communicated to the workman in a letter, as far as relevant, read thus:

"Having regard to recent happenings, we regret that we have lost confidence in you and cannot retain you in service any more".

Admittedly there was no domestic enquiry and the appellant's services were terminated by relying upon provisions covered by a settlement regulating the terms of service. Supreme Court held that it was not a case of retrenchment, but it was a case of termination of service by the employer as a punishment inflicted by way of disciplinary action. In paragraphs 8 and 9 of the reported decision in Chandu Lal case (supra), Supreme Court held as follows:

"8.. It is difficult to agree with the findings of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and therefore, the and taken by the Management that termination, for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a common sense assessment of the matter is sufficient to dispose of this aspect. "Retrenchment" is defined in Section 2(00) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way

of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of terminations a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained.

9. Ordinarily, when the order of termination is quashed a declaration follows that the workman continues to be in employment and is, therefore, reinstated in service with full back wages as was held by this Court in *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, . This Court held in *Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd.* and Another, that u/s 11A of the Act advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to circumstances of the case. In *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, , this Court has held that the Labour Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In this case it has been the stand of the respondent that the management had lost confidence in the appellant and there has been some pleading about the importance of the role of confidence in the business set up of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by respondent that there has been loss of confidence, we are of the view that while the termination of service of the appellant is held to be bad, he may not be reinstated in service. On the other hand he should be adequately compensated,"

26. In *Sudder Office* case (supra) Supreme Court held termination of service of the workman on the ground of lose of confidence in the workman as termination simpliciter in view of the facts and circumstances as explained in paragraphs 28 and 29 of the reported decision in *Sudder Office* case (supra). In *Chandu Lal* case (supra) it was clearly laid down by the Supreme Court that want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up, to the expected standard of conduct which has given rise to a situation involving loss of confidence.

27. In *Sudhir Vishnu Panvalkar Vs. Bank of India*, , the appellant was a Bank Officer against whom there were allegations that he dishonestly caused loss to a Co-operative Housing Society of which he was one of the Promoters and later on became its Secretary. An employee of the Bank who was also a Treasurer of the Society, filed two criminal complaints of misappropriation on the basis of which the Magistrate framed charges against the appellant under sections 409 and 109 of 1913 Indian Penal Code. The Bank having regard to serious misconduct of the appellants, involving moral turpitude, placed him under suspension pending trial. Subsequently, in an enquiry got conducted by the Registrar of Co-operative Societies, the appellant was held liable to pay to the Society Rs. 2, 36, 000/- in addition to the amount of Rs. 2,03, 000/- for which the appellant was jointly held

liable with two other office bearers of the Society. The Bank in view of this finding, terminated appellant's services. The appellant was convicted by the Trial Court but was acquitted by the High Court. During pendency of appeal, Maharashtra State Co-operative Tribunal also upheld appellant's liability but the amount was reduced to Rs. 72,000/-. While acquitting, the High Court observed that appellant's representation for his reinstatement may be considered sympathetically by the Bank. Taking cue from the observations made by the High Court, the appellant filed three representations, but the Bank refused to reinstate him. The appellant filed a writ petition in the High Court, inter alia, praying for quashing of termination order. In this case the Supreme Court held that the termination order was a simpliciter termination but as the appellant insisted for the reasons for his termination, therefore, the Bank was constrained to inform the appellant that the termination was resorted to because of loss of confidence. The relevant lines from paragraph 5 of the reported decision in Sudhir Vishnu Panvalkar case (supra) are set out hereinbelow :

"At this stage, it needs to be stated that the termination order was a simpliciter termination. However, the appellant insisted for the reasons for his termination and, therefore, the Bank was constrained to inform the appellant that the termination was resorted to because of loss of confidence. It also needs to be emphasised that the appellant was a Grade III Officer in the Bank who was required to deal with the customers and, therefore, if the Bank thought it fit to terminate the services of the appellant on the ground of loss of confidence such an action could not be said to be unwise or mala fide action."

Paragraph 7 of the reported decision in Sudhir Vishnu Panvalkar case (supra) reads as follows :

"The only ground that survives for our consideration is as to whether the Bank was justified in terminating the services of the appellant on the ground of loss of confidence and in the facts and circumstances of the case, whether any such inquiry was necessitated. From the material placed on record before us it is quite clear the appellant was involved in misappropriation of the Society's funds. The proceedings initiated u/s 88 of the Act went up to the Maharashtra Co-operative Tribunal and after contest by the parties, the Tribunal held the appellant guilty of certain charges involving moral turpitude relating to misappropriation of the Society's funds. Mr. Singhvi, however, urged that some of these documents were not the subject-matter of proceedings before the High Court and, therefore, they cannot be relied upon by the Bank in this appeal. He also urged that these documents/papers are from the proceedings before the Registrar and that the Bank had not produced the entire correspondence before this Court for its appreciation and proper decision. Ordinarily, this plea could have been sustained but no statable reasons could be given on behalf of the appellant nor could the correctness thereof be challenged. All these documents were filed by the Bank along with its counter-affidavit of which the copy and the documents were furnished to the appellant long time back. Although, the rejoinder was filed by

the appellant but he could not dispute the correctness of all these documents. It is in these circumstances, we are of the view that these documents could be relied upon by the Bank to justify the order of termination on the ground of loss of confidence. On perusal of the material produced before us, we are of the opinion that the order of termination passed by the Bank does not suffer from any vice and the Division Bench of the High Court was right in upholding the termination order,"

It is to be noted that in the facts and circumstances involved in the case it was held by the Supreme Court that the documents mentioned in paragraph-7 of the reported decision could be relied upon by the Bank to justify the order of termination on the ground of loss of confidence.

28. In *Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others*, , Supreme Court laid down that for refusal of reinstatement on the ground of loss of confidence in an employee what must be pleaded and proved is that (i) the workman holds a position of trust and confidence, (ii) by abusing such position, he commits acts which results in forfeiting the same and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. It was held that loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. In *Kanhaiyalal Agrawal* case (supra) the workmen were charged that when Kanhaiyalal Agarawal was on duty on trailer weighbridge of the factory gate, in collusion with Centre-in-charge and some other workmen conspired to allow one trailer sugarcane requisition slip in the name of one Chatura for bringing sugarcane by bullock cart at Sunwai Depot on false payment slip, wrote gross weight and did help him in making payment without the arrival of sugarcane in the company for their respective benefits. Each of the workmen was dismissed after enquiry. Applications were filed by the workmen before Labour Court challenging their termination from service. The Labour Court held that for loss of confidence in the concerned workmen, those workmen cannot be reinstated. Against the orders passed by the Labour Court the workmen preferred appeals before the Industrial Court. The Industrial Court held that the employees had not committed any misappropriation of money but were negligent in performing their duties and the finding recorded by the Labour Court is in order.

The workmen and also the Management preferred writ petitions. The learned Single Judge of the High Court did not interfere with the order made by the Industrial Court after noticing that the conclusion reached by the Industrial Court on examination of the case on the question of loss of confidence that it was not such a case and for the negligence committed by the workmen in question, held that the punishment of denial of back wages would meet the ends of justice and, therefore, upheld the order made by the Industrial Court. Against the order of

the learned Single Judge writ appeals were preferred both by the Management and by the workmen. The writ appeals were, however, dismissed on the basis that they were not maintainable inasmuch as the same arose out of proceedings under Article 227 of the Constitution which is revisional in nature. Before Supreme Court the order made by the Division Bench of the High Court was challenged. While reversing the finding of the Labour Court the Industrial Court, *inter alia*, held :

"This is definite that procedure, which was shown by the witnesses, is of employer, was not followed word by word by the employee. This is also not misconduct in itself but it is definitely serious negligence. In my opinion for the acts like negligence it is not proper to deprive the employee from the relief of reinstatement. After the termination of services of employee, about more than 10 years" time has lapsed. If employee is deprived of the back salary of returning allowance of this period even then in view of the circumstances of the case it will be sufficient punishment."

Paragraphs 9 and 10 from the reported decision in *Kanhaiyalal Agarwala* case (*supra*) are set out hereinbelow:

"9. Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same: and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

10. Tested on these principles on the charges against the workmen concerned on the proved facts whether there was any loss of confidence so far as the workmen were concerned, the inferences have been appropriately drawn."

29. It is evident from the decisions of Supreme Court referred to hereinabove that in each case concerned workman was holding a position of trust and confidence and by abusing such position he committed acts which resulted in forfeiting the confidence and to continue him in service was embarrassing and inconvenient to the employer and was detrimental to the discipline and security of the establishment.

30. From the discussions made and decisions referred to hereinabove it is abundantly clear that loss of confidence can arise only when the workman is

holding a position of trust and confidence and by abusing such position he commits acts which results in forfeiting the same and these conditions should be followed by another reason i.e. to continue him service should be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. This Court is of this view that presence of all those three aspects are requisite conditions precedent even when terminating the services of a workman either as a termination simpliciter or as a penal measure and absence of any one of these conditions shall not entitle the Management to terminate the services of a workman either as termination simpliciter or as penal measure on the ground of loss of confidence.

The relevant provisions regarding dismissal of a workman as contained in the Standing Orders of the Company regulating conditions of service in the factory of the Company are set out hereinbelow :

"A workman may be dismissed with immediate effect or without any compensation in lieu of notice if he is found to be guilty of a major misdemeanor.

In the instant case the workman was paid Rs.6,500/- towards one month's notice pay. The relevant lines from the letter of dismissal are set out hereinbelow;

"A sum equivalent to one month's wages is enclosed vide cheque no. 125053 dt. 4.2.99 of Rs. 6, 500/- (Rupees six thousand five hundred) only drawn on ANZ Grindlays Bank, N..S. Road Branch towards one month's notice pay.

The payment of your Provident Fund is subject to the provisions of the Employees Provident Fund and Misc. Provisions Act, 1952. All other dues, if any, due to you will be paid to you on and from 8.2.99 from the Cash Department of this unit located at the above address".

The workman claimed to have returned the cheque sent to him by the Company along with the dismissal order.

From the records it is evident that (i) Shri K. Saha (O.P.W.-2) in his evidence before the Tribunal claimed to be the disciplinary authority, (ii) Shri K.Saha (O.P.W. -2) issued the letter of dismissal dismissing the workman from the services of the Company on the ground of loss of confidence, (iii) there is nothing either in the letter forwarding the enquiry report or in the letter of dismissal that Shri KSaha (O.P.W.-2) or the Management of the Company accepted the findings of the Enquiry Officer in respect of the charges levelled against the workman, (iv) there is nothing either in the letter forwarding the enquiry report or in the letter of dismissal that Shri K. Saha (O.P.W.-2) or the Management of the Company arrived at a decision that charges levelled against the workman have been proved, (v) Shri K. Saha (O.P.W.-2) was examined as witness for the Company before that Enquiry Officer to prove the charges levelled against the workman (vi) Shri K. Saha (O.P.W.-2) submitted report dated 30.04.1997 (Exhibit-P-24 before the Enquiry Officer) containing allegations against the workman which are similar to the charges levelled against the workman and

subject-matter of the enquiry. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. In this connection reference may be made to a decision of Supreme Court in Arjun Chaubey Vs. Union of India (UOI) and Others, . The relevant lines from paragraph-5 of the reported decision in Arjun Chaubey case (supra) are set out hereinbelow:

"The letter dated May 22, 1982 which contains accusations of gross misconduct against the appellant enumerates 12 charges out of which charge Nos. 2 to 7 and 11 referred to the appellant's misconduct in relation to respondent No.3. It is obvious that if an inquiry were to be held into the charges framed against the appellant, the principal witness for the department would have been respondent No. 3 himself as the main accuser and the target of appellant's misconduct. It is surprising in the context that the explanation dated June 9, 1982 which was furnished by the appellant to the letter of accusation, dated May 22, 1982 was considered on its merits by respondent No. 3 himself. Thereby, the accuser became the Judge.....

The order of dismissal dated June 15, 1982 which was issued by respondent No. 3 recites that he was fully satisfied that it was not reasonably practicable to hold an inquiry into the appellant's conduct as provided by the Rules, and that he had come to the conclusion that the appellant was not fit to be retained in service and had, therefore, to be dismissed. Evidently, respondent No. 3 assessed the weight of his own accusations against the appellant and passed a judgment which is one of the easiest to pass, namely, that he himself was a truthful person and the appellant a liar. In doing this, respondent No. 3 violated a fundamental principal of natural justice..... No person can be a Judge in his own cause and no witness can certify that his own testimony is true. And one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondent No.3, was speaking the truth was decided by the respondent No. 3 himself,

In paragraph-6 of the reported decision in Arjun Chaubey case (supra) Supreme Court observed as follows:

"In The State of Uttar Pradesh Vs. Mohammad Nooh, , S. R. Das, C.J., observed, while speaking for the majority that the roles of a Judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the Judge can hold the scales of justice even. We may borrow the language of Das, C. J., and record a finding on the facts of the case before us that the illegality touching the proceedings which ended in the dismissal of the appellant is so patent and loudly obtrusive that it leaves an indelible stamp of Infirmary" on the decision of respondent No. 3".

Some relevant lines from paragraph 7 of the reported decision of Supreme Court in *State of U.P. v. Mahammad Nooh* (AIR 1958 SC 86) are set out hereinbelow :

"The salient facts being thus admitted there can be no escape from the conclusion that Shri B.N. Bhalla should not have presided over the trial any longer. The point in issue was whether Shariful Hassan was in friendly relationship with the respondent. Mohammad Khalil had in his evidence at the trial denied having made any statement to this effect. Shri B.N. Bhalla gave evidence that Mohammad Khalid had in his presence admitted this friendship of Shariflul Hasan with the respondent. Which of the two witnesses. Mohammad Khalil and Shri B.N. Bhalla was to be believed was the duty of the person presiding over the trial to determine, Shri B.N. Bhalla was obviously most ill suited to undertaking that task. Having pitted his evidence against that of Mohammad Khalil. Shri B.N. Bhalla vacated the Judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person. Indeed Shri B.N. Bhalla himself realised it and accordingly had his own evidence recorded on both the occasions by other high officers. It is futile to expect that he could, in the circumstances, hold the scale even. It is suggested that there might have been other evidence establishing the friendship between Shariful Hasan and the respondent and that the evidence of Shri B.N. Bhalla might not have been relied on or might not have been the deciding factor. There is nothing on the record before us to support this suggestion. But assuming that Shri B.N. Bhalla did not rely on his own evidence in presence to that of Mohammad Khalil--a fact which is hard to believe, especially in the face of his own affidavit above--the act of Shri B.N, Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the respondent. If it shocks our notions of judicial propriety and fair play, as indeed it...does it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of that proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding."

31. In the present writ proceeding also there is nothing to show that the enquiry report was accepted by the disciplinary authority or by the management of the company. There is also nothing to show that either the disciplinary authority or the management of the company arrived at a decision that the charges levelled against the workman were proved. In a case where the disciplinary authority himself is not the enquiry officer then if the disciplinary authority wants to punish the workman on if the basis of the enquiry, it is obligatory on part of the disciplinary authority to record that he has accepted the findings of the enquiry officer. Such recording of acceptance of the enquiry report should be communicated to the workman. In absence of any recording accepting the enquiry report if the disciplinary authority imposes any punishment including

dismissing a workman from the service then such imposition of punishment cannot be treated as based on enquiry report.

32. Shri Bikash Ranjan Bhattacharyya, the learned Senior Advocate appearing for the workman has drawn the attention of the Court to paragraph-23 of the written statement filed by the workman before the Tribunal. Said paragraph-23 reads as follows:

"That it is submitted the finding of the Enquiry Officer, submitted on 23.9.98 is not only unreasonable but perverse also. The Third Enquiry Officer cannot make his finding on the evidences, recorded by the Second Enquiry Officer and as such the whole enquiry finding is liable to be vitiated in the eye of law.

Without considering the representation of the concerned workman dt. 10.12.98 in true manner the management proposed to impose the punishment of dismissal and by letter dt. 15.12.98 the company offered the concerned workman to make his submission in personal hearing before Mr. K. Saha, Plant Manager of the Company. In fact such personal hearing was nothing but an empty formality because before whom such arrangement was made Mr. K. Saha, Plant Manager is the same officer who not only made a complain against the delinquent workman but also adduced evidence on behalf of the company in the enquiry".

33. Shri Bhattacharyya, the learned Senior Advocate argued that Shri K. Saha (O.P.W.-2) the disciplinary authority was biased against the workman. Shri Partha Sengupta, the learned Advocate for the company vehemently opposed this submission of Shri Bhattacharyya on two counts--(1) at no stage before his dismissal from the services of the company the workman raised any objection against hearing made by Shri K. Saha (O.P.W.-2) pursuant to his letter dated 17.11.98 and thus the workman waived his right to objection and (2) the order under challenge before this Court has to be judged on the basis of reasonings contained therein and not on the basis of the pleas put forward by the person seeking to sustain the order in its counter affidavit or oral arguments before the Court. Shri Sengupta referred to and relied upon a decision of Supreme Court in Union of India (UOI) and Another Vs. G.T.C. Industries Limited., Bombay, . The relevant lines from paragraph-13 of the reported decision read as follows:

"It is well settled that a quasi-judicial order has to be judged on the basis of reasoning contained therein and not on the basis of pleas put forward by the person seeking to sustain the order in its counter-affidavit or oral arguments before the Court".

34. The Industrial Tribunal under the said Act is a statutory Tribunal. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Supreme Court in paragraph-8 of the reported decision held, inter alia, as follows :

"Public orders publicly made, in exercise of a statutory authority cannot be

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively and reference to the language used in the order itself.

35. It is true that in the order of the Tribunal under challenge there is no discussion or finding regarding bias. Under the circumstances, this Court is of the view that in the present writ proceeding question of bias cannot be gone into.

36. The question whether the workman waived his right to objection can be decided only by the Tribunal. However, Supreme Court in *Manak Lal Vs. Dr. Prem Chand*, held that waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection,

37. Shri Sengupta, learned Advocate for the company, argued the following points :

1) The Tribunal even though rightly held that the concerned workman has to prove prima facie case to get interim relief, it came to the conclusion perversely that there exists a prima facie case on two counts viz., a) none of the witnesses on behalf of the Management stated the ingredients of the charge and b) there was no eye-witness to that occurrence.

2) The Tribunal erred in law, which is apparent from the face of the record, by holding that the Company has failed to produce any sufficient, cogent, reliable and documentary evidence before the Tribunal in support of the charges.

3) The Tribunal failed to take note of the fact that if the Tribunal were to proceed on the basis of the evidence of the workman then the case of victimisation is to be ruled out and no reason is there why the workman will be picked up for dismissal.

38. The scope of judicial review which may be made by a High Court under Article 226 of the Constitution is now well settled. In *Chief Constable of the North Wales Police v. Evans* 1982) 1 WLR 1155 , Lord Hailsham of St. Marylebone L.C., (H.L.) stated as follows :

"The function of the Court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law..... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the Court".

In the same case Lord Brightman said as follows;

"Judicial review, as the words imply, is not an appeal from a decision, but a

review of the manner in which the decision was made".

39. Our Supreme Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, , referred to and relied upon the above quoted observations of Lord Hailsham of St. Marylebone and Lord Brightman.

In paragraph-49 of the reported decision in *Shri Sitaram Sugar Co. Ltd. case* (supra) Supreme Court observed as follows:

"Where a question of law is at issue, the Court may determine the Tightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the Court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the Court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the Court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law : See *Rochester Tel. Corporation v. United States*, (1938) 307 US 125: 83 L Ed. 1147. See also *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* 1948(2) KB 223".

40. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , a Bench of five Judges of Supreme Court in paragraph 24 of the reported decision held that it is clear from an examination of that authorities of the Supreme Court as also of the Court in England that one of that grounds on which the jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record and not every error either of law or fact which can be corrected by a superior Court, in exercise of its statutory powers as a Court of appeal or revision. In paragraph-26 of the reported decision the Hon"ble Judges considered what is the legal import of the expression "error of law apparent on the face of the record". The Hon"ble Judges themselves raised the question "Is it every error of law that can attract the supervisory jurisdiction of the High Court, to quash the order impugned?" The Hon"ble Judges answered the question as follows :

"This Court, as observed above, has settled the law in this respect by laying down that in order to attract such jurisdiction, it is essential that the error should be something more than a mere error of law; that it must be one which is manifest on the face of the record. In this respect, the law in India and the law in England are, therefore, the same. It is also clear on an examination of all the authorities of this Court and of those in England, referred to above, as also those

considered in the several judgments of this Court, that the common-law writ, now called order of certiorari, which was also adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only, to determine, on an examination of the record, whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though such law, will not be sufficient to attract this extraordinary jurisdiction".

The relevant lines from paragraph-27 of the reported decision are set out hereinbelow :

"The principle underlying the jurisdiction to issue a writ or order of certiorari, is no more in doubt, but the real difficulty arises, as it often does, in applying the principle to the particular facts of a given case. In the judgments and orders impugned in these appeals, the High Court has exercised its supervisory jurisdiction in respect of errors which cannot be said to be errors of law apparent on the face of the, record. If at all they are errors, they are errors in appreciation of documentary evidence or affidavits errors in drawing inferences or omission to draw inferences.. In other words, those are errors which a Court sitting as a Court of appeal only, could have examined and, if necessary corrected".

41. In Nagendra Nath Bora case (supra) it was held that the jurisdiction under Article 226 of the Constitution is limited to seeing that the judicial or quasi-judicial, tribunals or administrative bodies exercising quasi-judicial powers did not exercise their powers in excess of their statutory jurisdiction, but correctly administered the law within the ambit of the statute creating them or entrusting those functions to them. In paragraph-25 of the reported decision in Nagendra Nath Bora case (supra) Supreme Court held as follows :

"So far as we know, it has never been contended before this Court that an error of fact, even though apparent on the face of the record, could be a ground for interference by the Court exercising its writ jurisdiction. No ruling was brought to our notice in support of the proposition that the Court exercising its powers under Article 226 of the Constitution, could quash an order of an inferior Tribunal, on the ground of a mistake of fact apparent on the face of the record."

42. It is also well settled that the High Court in exercise of its power of judicial review under Article 226 of the Constitution can interfere with an order passed by the inferior Tribunal where the finding of fact is based on no evidence at all or perverse.

43. In The Provincial Transport Service Vs. State Industrial Court, , a Bench of two Judges of Supreme Court in paragraph-9 of the reported decision observed "It has often been pointed out by eminent Judges that when it appears to an Appellate Court that no person properly instructed in law and acting judicially could have reached the particular decision the Court may proceed on that assumption that misconception of law has been responsible for the wrong

decision".

44. A Division Bench of this High Court in Parry's (Calcutta) Employee's Union Vs. Parry and Co. Ltd. and Others, , held that perverse finding is not only against the weight of evidence but is altogether against the evidence itself. It was held that a finding cannot be said to be perverse merely because it is possible to take a different view on the evidence. In this connection paragraph-58 of the reported decision in Parry's (Cal.), Employees' Union case (supra) is set out hereinbelow :

"It has been argued before us that the findings of the Tribunal are perverse and are the result of bias. But merely because the Tribunal has drawn certain adverse inferences or conclusions from the evidence on record it does not necessarily lead to the conclusion that the Tribunal was partial or biased or that the findings are preverse. The Tribunal has given reasons in great detail and it may be that in certain matters the line of reasoning is not vary cogent or logical or the Tribunal may have made observations and offered criticism which the Tribunal might not properly, have made. But that is far from saying that the findings are arbitrary or perverse or are actuated by bias. A perverse finding is not only against the weight of evidence but is altogether against the evidence itself. A wrong finding is not necessarily a perverse finding. A finding cannot be said to be perverse merely because if impossible to take a different view on the evidence. The Tribunal has found upon consideration of the evidence in this case that the retrenchment was not bona fide and it was actuated by parochial considerations and the Tribunal has given reasons for coming to the conclusion. It maybe that this finding is a wrong one but it cannot be said that it is a finding which is based on no evidence or is a perverse finding".

45. Parry & Co. Ltd. preferred an appeal before the Supreme Court against the judgment and order reported at Parry's (Calcutta) Employee's Union Vs. Parry and Co. Ltd. and Others, . The Supreme Court in Parry and Co. Ltd. Vs. P.C. Pal and Others, of the reported decision held as follows :

"The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In. T.C. Basappa Vs. T. Nagappa and Another, , it was observed that a writ of certiorari is generally granted when a Court has acted without or in excess of its jurisdiction. It is available in those cases where a Tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, , this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence.

Likewise, in State of Andhra Pradesh Vs. Sree Rama Rao, , this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified. The question for our determination, therefore, is whether the learned Single Judge was within the aforesaid well recognized limits when he set aside the award. Before, however, we examine that aspect of the case we may first consider the scope of the Tribunal's jurisdiction in cases of retrenchment arising u/s 25-F of the Act."

46. Supreme Court in Shama Prashant Raje Vs. Ganpatrao and Others, of the reported decision observed, inter alia, as follows:

"..... Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the name, on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal....."

47. In view of the decisions in Ganges Printing Ink Factory Employees Industrial Co-operative Society Ltd. case (supra) and B. G, Sampat case (supra), a Tribunal while considering an application u/s 15(2)(b) of the said Act should consider (1) any objection as to the sustainability of the reference, (2) effect of the grant or its refusal on the employer or the workman, (3) existence of a prima facie case in favour of the workman, (4) whether in a fact situation a workman is entitled to any relief or not. For the purpose of computation of the quantum of interim relief the factor whether the workman is gainfully employed or not should also be, considered by the Tribunal as a relevant factor.

48. A Bench of three Judges of Supreme Court in Martin Burn Ltd. Vs. R.N. Banerjee, of reported decision explained what is meant by the term "prima facie". In paragraph-27 is set out hereinbelow:

"The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt

but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has however, not to substitute its own judgment for that judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. See *Buckingham & Carnatic Co. Ltd. v. Workers of the Company* (1952) Lab AC 490 (F)".

49. In *The Punjab National Bank Ltd. Vs. Its Workmen*, , while the Supreme Court was considering the question of granting requisite permission u/s 33 of the said Act held that whether a prima facie case has been made or not the Tribunal has to consider (1) whether the employer has held a proper enquiry into the allegedly misconduct of the workman and (2) whether the dismissal of the workman amounts to victimisation or unfair labour practice.

50. A Bench of three Judges of Supreme Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, , held that mere form of an enquiry would not satisfy the requirements of industrial law. In paragraph-4 of the reported decision in *Sur Enamel and Stamping Works Ltd. case* (supra) it was, inter alia held as follows :

"An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined--ordinarily in the presence of the employee--in respect of the charges, (in) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report".

51. A Bench of five Judges of Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, of the reported decision, held that the principles of natural justice also apply where any Tribunal, authority or body of men not coming within the definition of "State" under Article 12, is charged with the duty of deciding a matter. It was held that in such a case, the principles of natural justice require that it must decide such matter fairly and impartially. In paragraph-96 of the reported decision it was further laid down that the process of a fair hearing did not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. In paragraph-96 of the reported decision of *Union of India v. Tulsiram Patel case* (supra) Supreme Court laid down that the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should (1) be informed of the

allegations and charges against him, (2) be given an opportunity and submitting his explanation thereto, (3) have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, (4) be allowed to inspect the documents which are relied upon for the purpose of being used against him, (5) be allowed to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine, (6) be allowed to lead his own evidence, both oral and documentary, in his defence. The relevant lines from paragraph-96 of the reported decision are set out hereinbelow :

"The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry".

52. While deciding a *prima facie* case the Tribunal should also consider another rule of principles of natural justice namely, *nemo iudex in re sua* which means no man should be a judge in his own cause. This rule is the rule against bias. Under this rule a judge is disqualified from determining any case in which he may be, or may fairly be suspected to be biased. "Where there has been previous involvement in the case by a person who should be unbiased then the appearance of bias may be created or the decision may be predetermined. The Kent police authority erred, when proceeding to retire a chief inspector compulsorily on the ground of mental health, by informing him that they would refer to the doctor who had examined him the previous year and reported adversely. The Court of Appeal held that the doctor had a duty to act fairly and head the rules of natural justice; and he could not do so if he had committed himself to an opinion on the case in advance of the inquiry. The rule against bias can apply at any stage of a statutory proceeding, e.g. to the making of a report as a preliminary step before the making of a final order. This is bias by predetermination". (Administrative Law, 8th Edition by H.W.R. Wade & C.F. Forsyth, page 450). Fundamental importance is that justice should not only be done but should manifestly and undoubtedly be seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the Courts of justice. Roles of a Judge and a witness cannot be

played by one and the same person and it is futile to expect, when those roles are combined, that the Judge can hold the scales of justice even [Arjun Chaubey (supra); State of U.P. v. Md. Nooh (supra).]

53. After the decision of Full Bench in B. G. Sampat case (supra) existence of a prima facie case in favour of the workman is a requisite condition precedent for granting relief u/s 15(2)(b) of the said Act. It is not possible to lay down any strait jacket formula applicable to all cases for determination of a prima facie case by a Tribunal while considering an application u/s 15(2)(b) of the said Act. Each case has to be determined on its own merit. One additional or different fact can make a world of difference between the conclusion in two cases even when the same principles are applied in each case to similar facts (The Regional Manager and Another Vs. Pawan Kumar Dubey,). However, in a case where the workman has been dismissed from the services, to find out whether there is any prima facie case for the purpose of granting relief u/s 15(2)(b) of the said Act it is necessary for the Tribunal to consider the following points--(1) Whether an enquiry has been properly held against the workman in accordance with the principles laid down by Supreme Court in Sur Enamel and Stamping Works Ltd. case (supra) and Union of India v. Tulsiram Patel (supra) as discussed hereinabove, (2) whether the chargesheet has been issued by the appropriate authority, (3) whether the domestic enquiry has been held and punishment has been imposed by violating the principle of nemo judex in re sua as discussed hereinabove, (4) whether the report and the findings of the enquiry officer has been, in writing, accepted partly or fully by the disciplinary authority and the same has been communicated to the workman, (5) whether the report and the findings of the enquiry officer has been served upon the workman, (6) whether the report and the findings of the enquiry officer is perverse, (7) whether there is any provision in the service rules about second show cause notice and if there is such provision whether the same has been complied with, (8) whether punishment imposed upon the workman is shockingly disproportionate, (9) whether the termination or dismissal of the workman amounts to victimisation or unfair labour practice, (10) whether all the three requisite conditions precedent are present in a case of termination or dismissal on ground of loss of confidence. For the purpose of computation of quantum of interim relief the factor whether the workman is gainfully employed or not should also be considered by the Tribunal as relevant factor but this is not a relevant factor for the purpose of determining whether there is a prima facie case in favour of the workman. In National Textile Corporation v. State of Rajasthan (1989) Lab IC 1722, a Division Bench of Rajasthan High Court, in paragraph-25 of the reported decision, held as follows:

"It is only after recording a finding on the basis of the abovementioned principles the interim relief could be granted by the Tribunal. In Management Bihar State Electricity Board. (1971)1 Lab LJ 389: (1971) 1 Lab IC 388), a Division Bench of the Patna High Court observed that merely the workman was unemployed and was undergoing great hardship cannot be a ground for grant of interim relief".

54. The relevant parts of order No. 55 dated 25.03.2003 which is under challenge in the present writ proceeding are set out hereinbelow :

"1) On careful consideration of chargesheet vide Ext.3 there are so many clause charged against the concerned workman but the major allegation against the concerned workman as stated by the company in his written objection as well as in the evidence that the concerned workman instigated the other employees and stopped the work of the concerned company on 29.4.97 at 3 p.m. and left the places of duty unauthorisedly and forcibly entered the chamber of Mr. M.V. Saharsabudhe, General Manager, Plant Management without any prior permission while he was in the midst of an important business discussion with others. He also threats, intimidation and insults from around 3 p.m. to 10.30 p.m. while unauthorisedly staying inside the factory beyond normal duty hours.

2) There is no mention in the chargesheet the names of the persons who were instigated by the concerned workman. There is no mention in the chargesheet the copy of the report was supplied to the concerned workman along with the chargesheet.

3) On careful consideration of evidence and exhibited documents on record it appears that none of the witness on behalf of the management stated that the concerned workman instigating the other employees of the factory and stopped the normal work of the Company and took active part for gharaoing the officials of the Company and forcibly entered into the room of the Personnel Director of the Company and shouting slogans.

4) I have very carefully gone through the exhibited documents on record specially the enquiry proceedings as well as the report of the enquiry officer it appears to me there is no eye-witness to the occurrence that the concerned workman took active role for instigation of the other employees of the factory on the relevant date and time and forcibly entered into the office of the chamber of General Manager, Plant Manager. In spite of that the enquiry officer found guilty of the concerned workman on the basis of allegations stated above. I think prima facie that the findings of the enquiry officer also violated the principles of natural justice and the same does not inspire my confidence.

5) I have already stated earlier that the Management of the company has failed to produce any sufficient, cogent, reliable and documentary evidences before the Tribunal that the concerned workman instigate the other employees and stopped the normal function of the factory and forcibly entered into the chamber of the Management Officials and Gharao and postponed their important meeting.

6) On careful consideration of evidence on record it appears that the concerned workman categorically stated that he is not re-employed elsewhere as such has no sufficient means to maintain himself and his family since after dismissal from his service. I think that this workman puts in hardships in the present days. The balance of convenience and inconvenience is also in favour of the workman. If the interim relief order is not passed in favour of the petitioner he should suffer

very much. The petitioner workman stated in his evidence that his monthly salary was Rs.6,500/- at the time of his termination of his service. The Management did not produce any document or corroborate evidence to assail the case of the petitioner on that score. Under the above circumstances, I am inclined to hold that the concerned workman Shri Santanu Biswas is entitled to get interim relief as prayed for".

55. Mr. Sengupta, learned Advocate for the company has drawn the attention of the Court to pages 48, 75, 76,95,103 and 126 of the supplementary affidavit affirmed on 19th May, 2003 by Shri Jayanta Chatterjee constituted attorney of the company. The relevant part at page 48 of the supplementary affidavit to which Court's attention was drawn reads as follows:

"Q. What was the role of Santanu Biswas in this demonstration:

A. He was(illegible) forefront, he was (illegible) slogans(illegible) remarks.

Q. Do you recall some of the slogans?

A. Management chor hai, videocon se paise khaya Hai, Karunamoyee Te Dulai Kobe Pitai Hobe. Ramchandran Chor Hai Sahasrubudhe Chor Hai. Hat Banga.... (illegible) lal agune Jaliye Debo Puria Debo, Philips Theka Tariya Debo,..... (illegible)"

56. The relevant part at page 75 of the supplementary affidavit to which the attention of the Court was drawn is not legible.

57. The relevant part at page 76 of the supplementary affidavit to which the attention of the Court was drawn reads as follows :

"Q. Did the chargesheeted workman remain(illegible) with the crowd right from the (illegible) and what was his role?

A. I noticed him within 15 to 20 (illegible) of the crowd..... (illegible) he instigated others with threatening slogans like " Ramchandran Chor Hai Hai Hai" He raised his fists to Mr. M.V. Sahasrubudhe and said Tomake Jangalo Diye Pheli Debo" Karunamoyee Te Dhulai Karabo, Piteya Karabo, Calcutta Theka Tadia Chaddabo" He (illegible) the dusk every now and then (illegible) for hours together".

Q. Is there anything more which you would like to add with regard to your feeling at this time?

A, I was held up for 10 and half hrs.(illegible) crowd was inside for 7 and half hrs i.e. till 10.30 p.m.. They(illegible) and slogans shouting and high noise (illegible)"

58. The relevant part at page 95 of the supplementary affidavit to which Court's attention was drawn reads as follows :

"Q. Whom Shri Santanu Biswas was instigating on 29.4.1997? A. The crowd".

59. The relevant part at page 103 of the supplementary affidavit to which the attention of the Court was drawn reads as follows :

"Q. Can you narrate the incident of 29.4.97 for which Shri Santanu Biswas has been charge sheeted and suspended?

A. On 29.4.97 at around 3 p.m. Mr. Santanu Biswas spoke loudly and also excited the workmen who were working in Assembly-II production(illegible) on this day to go to Plant Manager Office in order to make a deputation in front of K. Ramachandran. After this the workmen left this places and went to Plant Manager Office. They did not return back during the working hours".

60. The relevant part of the page 126 of the supplementary affidavit to which the attention of the Court was drawn reads as follows :

"Q. Do you recall the incident of 29.4.97 which led to chargesheet and suspension of Shri Santanu Biswas?

A. Shortly after the (illegible) the door was opened..... (illegible) employees (illegible) the room filling (illegible) up completely.

They started shouting slogans(illegible) which are derogatory of (illegible) Mr. K. Ramachandran. The labour was constantly riotous

..... (illegible) the people in the room were instigated in this (illegible) by a few individuals of which Shri Santanu Biswas was one. This continued till about 7.30 p.m, when Shri Sankar Karmakar and (illegible) Ghosh arrived. After a while the slogans shouting continued till about 10.30 p.m.,..... (illegible) most people left the office to sit outside (illegible) left only about 1.30 a.m. next day".

61. Mr. Bhattacharyya, the learned Advocate for the workman argued (1) No point was taken that the industrial disputes is not maintainable due to inherent lack of jurisdiction, (2) Tribunal's factual satisfaction that the matter requires thorough and detail adjudication is not questioned which itself is satisfaction of a prima facie case, (3) At the stage of prima facie satisfaction the workman is called upon to dispute the claim of the employer regarding validity of the enquiry. Shri Bhattacharyya referred to and relied upon a) paragraphs 24 and 25 of the reported decision in National Textile Corporation v. State of Rajasthan 1989 Lab I.C. 1722, (b) Paragraphs-11 and 12 of the reported decision in State of Bihar Vs. Ranen Nath and Others, and (c) paragraphs-16, 29 and 30 of the reported decision in Rajasthan State Road Transport Corporation v. Judge, Industrial Tribunal, Rajasthan 1974(2) KLJ 328, and (d) State of Punjab v. Sham Lal and Anr. (1)1992 D.M.C. 477 .

62. In National Textile Corporation case (supra) at paragraphs 24 and 25 of the reported decision a Division Bench of Rajasthan High Court (Jaipur Bench) held, inter alia, as follows :

"24. The next question is under what circumstances an interim relief may be granted. It may be stated that granting of an interim relief is purely within the discretion of the Tribunal and this discretion is to be exercised with reason and on sound judicial principles. We may adopt the same principles which govern the exercise of discretion by the Civil Court while granting temporary injunction. The principles may be stated as under:--

Firstly, that there is prima facie case, meaning thereby that there is serious question to be tried and an existence of a right;

Secondly, that the Tribunal's interference is necessary to protect the party from that species of injury which is regarded by the Courts irreparable and;

Thirdly, the balance of convenience that is the Tribunal should weigh the amount of substantial mischief that is likely to be done to the party claiming interim relief if the same is refused and compare it with that which is likely to be caused to the other side if the interim relief is granted.

25. It is only after recording a finding on the basis of the abovementioned principles the interim relief could be granted by the Tribunal. In *Management, Bihar State Electricity Board (1971)* 1 Lab LJ 389: 1971 Lab 1C 388, a Division Bench of the Patna High Court observed that merely that workman was unemployed and was undergoing great hardship cannot be a ground for grant of interim relief.

63. In *State of Bihar v. Ranen Nath (supra)* a Division Bench of Patna High Court in paragraphs 11 and 12 of the reported decision held as follows:

"11. The words "instigates" and "incites" should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement u/s 27 of the Industrial Disputes Act. The words seem to convey the meaning "to goad, or urge forward or to provoke or encourage the doing of an act". It is, sometimes, difficult to bring out the exact meaning of words which, by themselves, are so expressive and precise, and, not unoften, in trying to interpret such words, we are faced with the danger of using words, which, on closer scrutiny, may not carry the same sense.

What acts would amount to instigation or incitement will depend also upon the particular facts and each case. In some circumstances a throw of a finger or a mere turning of the eye may give rise to an inference of either incitement or instigation. In others, even strong words, expressly used, may not mean that the person using them was stimulating or suggesting to any one to do a particular act. The words "instigates" and "incites" appear to be synonymous and there must be something tangible in evidence to show that the persons responsible for such action were deliberately trying to stir up other persons to bring about a certain object.

12. Judging the facts of this case in the light of the ordinary grammatical

meaning of the words "incites" and "instigates", I cannot but hold that the prosecution has hopelessly failed to prove any act on the part of the respondents which would make them liable u/s 27 of the Industrial Disputes Act. The appeal, accordingly, fails and is, dismissed".

64. In Rajasthan State Road Transport Corporation case (supra) a Single Bench of Rajasthan High Court in paragraph-16 of the reported decision held as follows:

"According to the chargesheet the charges are (i) that Manohar Lal stopped to work without notice; (ii) that he refused to work in spite of the asking by the A.M.E. and he then disobeyed the order of his superior officer and (iii) that he instigated the other workers not to work which meant that he was on illegal strike and instigated the other employees to take part in that strike. Shri A. S. Sethi found all those six workman guilty for misconduct as defined under clauses (f), (1) and (s) of the Standing Order 34. The Works Manager agreed with the report of Shri Sethi and dismissed them from service of the Corporation with immediate effect. The Tribunal found that the charges did not stand proved on merits. According to it there was no specific charge for participating in the illegal strike and the charge for instigating others was also not clear. There was no evidence of instigation against Manohar Lal or any other workmen. He also found that the punishment meted out to these workmen was an unfair labour practice and there was a discrimination in picking up only six persons for the alleged illegal strike. In short, the finding of the learned Judge of the Industrial Tribunal is that the conclusion reached at the domestic inquiry is perverse. It is true that he did not find the domestic enquiry to be unjust and improper."

In paragraph-29 of the reported decision the Court relied upon the decision of the Patna High Court in State of Bihar v. Ranen Nath(supra). In paragraph 29 of the reported decision in Rajasthan State Road Transport Corporation case (supra) it was observed as follows:

"However, I will presently consider as to what the word "incitement" signifies. In State of Bihar Vs. Ranen Nath and Others, . Their Lordships while dealing with the appeal by the State of Bihar against an order of acquittal of the respondent u/s 27 of the Industrial Disputes Act, had an occasion to consider the meaning of the words "instigation and incitement. They give to the words their ordinary grammatical meaning. Their Lordships observed as follows :

"The words "instigates and incites" should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement u/s 27 of the Industrial Disputes Act. The words seem to convey the meaning "to goad or urge forward or to provoke or encourage the doing of an act". It is sometimes, difficult to bring out the exact meaning of words which, by themselves, are so expressive and precise and, not unoften, in trying to interpret such words, we are faced with the danger of using words, which, on closer scrutiny, may not carry the same sense".

In paragraph 30 of the reported decision in Rajasthan State Road Transport Corporation case (supra) it was observed as follows:

"In *Aditya Mills Ltd., Madanganj v. Ram Dayal* 1972 R.L.W. 478, a Bench of this Court, discussed the meaning of the word "incites" or "instigates". It was held that the ingredients of the word "instigates" or "incites" apparently are something more than mere asking a person to do a particular act. For stimulating action words must come from a person who exercises some kind of influence over his audience".

65. In *State of Punjab v. Sham Lal* (supra) the Division Bench of Punjab and Haryana High Court, inter alia, observed as follows :

"Expression "instigate" in the Concise Oxford Dictionary is defined as "urge on, incite bring about by persuasion and an Webster", it has been defined as "urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate". The word "instigate" in common parlance would mean to go, to urge forward or to provoke, incite or encourage to do an act".

66. This Court respectfully agrees with the views of the Division Bench of Patna High Court in *State of Bihar v. Ranen Nath* (supra), as recorded in paragraph-11 of the reported decision regarding the meaning of the words "instigates" and "incites" in the industrial law. This Court is of the opinion that the words "instigates" and "incites", in the industrial law signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute "instigation" or "incitement". This Court agrees with the view of the Patna High Court that these words seem to convey the meaning to goad or urge forward or to provoke or encourage the doing of an act. What acts would amount to instigation or incitement will depend upon the particular facts of each case. In some circumstances even strong words expressly used, may not mean that the person using them was stimulating or suggesting to any one to do a particular act. The words "instigates" and "incites" appear to be synonymous and there must be something tangible in evidence to show that the persons responsible for such action were deliberately trying to stir up other persons to bring about a certain object. In the instant writ proceeding, if the testimonies of the witnesses for the company are accepted even then prima facie it does not show or suggest that the workman Shri Santanu Biswas organised or was responsible for demonstration and slogan shouting. Prima facie there is nothing on record to show or suggest that the workman Shri Santanu Biswas was deliberately tried to stir up other persons to bring about a certain object. The Tribunal found that prima facie there was no ingredient of "instigation". This finding of the Tribunal is a possible finding on the evidence led.

67. The Tribunal held that careful consideration of the chargesheet would reveal that there are so many charges against the workman "but the major allegation against the concerned workman as stated by the company in his written objection as well as in the evidence that the concerned workman instigated other

employees and stop the work of the concerned company on 29.4.1997". "Instigation" and "incitement" are not the only charges levelled against the workman, there are other charges also. The Tribunal wrongly addressed itself to the charges levelled against the workman. While determining whether a prima facie case is existing in favour of the workman, the Tribunal failed to consider that in the standing orders regulating conditions of service for employees in the factory of the company there is a difference between "minor misdemeanours" and "major misdemeanours" and all charges levelled against the workman relate to "major misdemeanours" under the aforesaid Standing Orders of the Company. This Court is of the view that by not taking into consideration the other charges levelled against the workman the Tribunal committed manifest error. The Tribunal ignored the other charges levelled against the workman. This Court is of the opinion that by not taking into consideration the other charges levelled against the workman the Tribunal committed grave error. Under the circumstances the Order No. 55 dated 25.03.2003 passed by the Tribunal in Case No.VIII-215/99 is liable to be set aside.

68. In view of the discussions made hereinabove the Order No. 55 dated 25.03.2003 passed by the Fourth Industrial Tribunal in Case No. VIII-215/99 is set aside and quashed. The Tribunal is directed to consider the application u/s 15(2)(b) of the said Act filed by the workman afresh in accordance with law and dispose of the same within sixty days from the date of communication of this judgment and order after affording just, fair and reasonable opportunity of hearing to the workman and also the company. In these terms the writ petition is disposed of. Interim order, if there be any, is vacated. No order as to costs.

69. Urgent xerox certified copy, if applied for, be made available to the parties as quickly as possible.