

(1980) 08 MAD CK 0024
In the Madras High Court
Case No : Writ Petition No. 4470/77

Somarajan and Others

APPELLANT

Vs

Management of A.R.C. Engineering Works, Ambattur and
Another

RESPONDENT

Date of Decision : 18-08-1980

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Industrial Disputes Act, 1947 — Section 10, 12A, 13(2), 13A, 15
Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947 — Rule 17(4), 17(5)

Citation : (1981) 2 LLJ 25

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Judgement

1. This write petition has been filed by the Secretary. Ambattur Industrial Estate and Engineering Employees Union, Madras-50 on behalf of 17

workers belonging to the first respondent-management, Arc Engineering Works, Ambattur Industrial Estate, Madras-58 to quash to award passed

by the Second Additional Labour Court, Madras on 13-12-1974 in I.D. No. 120 of 1973. The facts of the case may be briefly stated as follows :

On and from 22-2-1972 the entire workmen of the first respondent-management went on strike to press certain demands which accounting to

them were legitimate. Thereafter the management charge-sheeted the said 17 workmen for certain acts of misconduct indulged by them during the

period of the strike. The management held a domestic enquiry. The enquiry officer found that the 17 workmen were guilty of the charge levelled

against them. The management accepted the report of the enquiry officer and dismissed all the workmen from service by the order dated 26 July,

1972. At the instance of the petitioners, the Government of Tamil Nadu referred

the question of their non-employment for adjudication by the Labour Court, Madras under S. 10 of the Industrial Disputes Act. The Second Additional Labour Court, Madras took the matter on file as I.D. No. 120 of 1973. The Labour Court passed an award on 13-12-74. The Labour Court found that a proper domestic enquiry was held and that the enquiry officer rightly found that the workmen were guilty of acts of violence and riotous and disorderly behavior. In this view, the Labour Court finally held that the dismissal of the 17 workmen by the management was justified and that they were not entitled to any relief. Hence this writ petition.

2. Mr. Fenn Walter, the learned counsel for the petitioner raised two contentions :
(1) There are no certified standing orders for the management.

The management is governed by the Industrial Employment (Standing Orders) Act, 1946. Under S. 12A of the said Act, in cases where there are no certified standing orders applicable to an industrial establishment the prescribed model standing orders shall be deemed to be adopted and

applicable. Section 15 of the said Act confers power on the appropriate Government to make rules for the purposes of the Act. Sub-section 2(b)

to S. 15 state that such rule may set out model The Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947 have been framed by the

State Government in accordance with S. 15 of the said Act. Rule 4 of the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947

states that the Model Standing Orders for the purpose of the Act applicable to the workmen in industrial establishments and the working journalists

in news paper shall be those set out in Schedules 1 and 2 to the Rules respectively. Rule 17(4) (c) of the Model Standing Orders provides that if

on the conclusion of the enquiry the workman has been found guilty of the charge framed against him, it is necessary to give the workmen a

reasonable opportunity of making representation on the penalty proposed. Mr. Fenn Walter, argued that in this particular instance, no second

show-cause notice as contemplated under Rule 17(4) (c) of the Model Standing Orders was served on the the workmen to show-cause why they

should not be dismissed from service. Hence, the domestic enquiry itself was vitiated. Therefore, the finding of the Labour Court that there was a

regular domestic enquiry was liable to be set aside. (2) Rule 17(5) of the Model

Standing Orders provides that in awarding the punishment the employer shall take into account, the gravity of the misconduct, the previous record of the workman and any other extenuating or aggravating circumstances that may exist. In this particular case, the management in awarding the punishment of dismissal did not take into account the previous record of the workmen as enjoyed by rule 17(5) of the Model Standing Orders. On this ground also, in the submission of Mr. Fenn Walter, the domestic enquiry must have been held to be vitiated. The Labour Court, argued the learned counsel must have found that there was no valid domestic enquiry and must have called upon the management to let in evidence and prove the misconduct to let in evidence and prove the misconduct before the Labour Court independently of the findings of the domestic enquiry.

3. There is no dispute that more than 100 workmen are employed under the first respondent-management and that the Tamil Nadu Industrial

Employment (Standing Orders) Act, 1946 would apply to the first respondent-management. It is also admitted that there are no certified standing

orders applicable to the management. In view of these admitted facts S. 12A of the Tamil Nadu Industrial Employment (Standing Orders) Act

would be attracted. section 12A reads as follows :

Notwithstanding anything contained in Ss. 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial

establishment and ending with the date on which the standing orders as finally certified under this act come into operation under S. 7 in that

establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of S. 9, sub-s. (2) of

S. 13 and S. 13A shall apply to such model standing orders as they apply to the standing orders so certified.

Thus by the operations of S. 12A of the Act, the Model Standing Orders would be attracted to the establishment under the management. Rule

17(4) (c) of the Model Standing Orders reads as follows :

If on the conclusion of the enquiry, or as the case may be, of the original proceedings, the workman has been found guilty of the charges framed

against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed

that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly (proviso omitted)"".

It is, therefore, clear that under S. 17(4)(c) of the Model Standing Orders the management is enjoined, in a case where on the conclusion of a domestic enquiry a workman has been found guilty of the charges framed against him. To issue another show cause notice calling upon him why the proposed punishment should not be imposed on him. In other words, the final order of punishment whether it is dismissal or suspension or fine or stoppage of annual increment or reduction in rank could only be passed after giving the workman concerned another reasonable opportunity of making a representation on the penalty proposed against him and after considering the explanation, if any, that might be submitted by the workman in response to the second show-cause notice.

4. It is now settled law that the certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much if not more as private contracts embodying similar terms and conditions. Where parties agree upon the terms and conditions of service and they are included in certified standing orders, doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant terms itself. This has been so held in *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, . In *workmen in The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, the Supreme Court held that the Standing Orders certified under the Industrial Employment Standing Orders Act, 1946 became part of the statutory terms and conditions of service between industrial employer and employees and they will govern the relationship between the parties. In *Borosil Glass Works Limited Vs. M.G. Chitale and Richard M. D'souza*, , a Bench of the Bombay High Court has held, following the decision of the Supreme Court in *Workmen in Buckingham and Carnatic Mills, Madras v. Buckingham and Carnatic Mills, Madras*, v. *Buckingham and Contratic Mills Madras*, (supra) that the same opinion would hold good in respect of Model standing orders where there are no standing orders certified under the Industrial Employment Standing orders Act. It is, therefore, clear that Rule

17(4) (c) of the Model Standing Orders would govern the parties and the mandatory provisions of the said standing order will have to be complied with on the basis that it formed one of the statutory terms and conditions of the contract of service between the parties.

5. In this case, admittedly, second show-cause notice was not issued by the management on the basis of the enquiry report calling upon the workmen to show cause why the punishment of dismissal should not be levied against them. Hence, Mr. Fenn Walter advanced the contention that omission to give such second show cause notice an enjoined by Rule 17(4) (c) of the Model Standing Orders amounts to a failure to give a reasonable opportunity to the workmen to make a representation to the management that the findings arrived at the domestic enquiry were not proper or even if the findings of the domestic enquiry were correct, the proved misconduct would not merit the punishment of dismissal. This amounts to a violation of the principles of natural justice.

6. The connection of Mr. M. R. Narayana swami, for the management may be summarised as follows. The failure to give a second show cause notice as required by Rule 17 (4) (c) of the Model Standing Orders was not fatal to the order of dismissal passed by the management A domestic enquiry commences with the issue of the charge sheet and comes to an end with the submission of the report of the enquiry officer. The stage for the consideration of the appropriate punishment to be imposed on the workman, if found guilty, would occur only after the receipt of the enquiry report. It was only at that second stage would the necessity to issue a second show-cause notice arise. If for any reasons, the second show-cause notice as enjoined by the Model Standing Orders was not given such omission would not vitiate either the findings of guild entered in the domestic enquiry or the validity of the domestic enquiry of the enquiry itself. In other words, there was a dichotomy between the domestic enquiry commencing from the stage of the issue of charge-sheet and the submission of the report on the one hand and the imposition of the punishment on the other. In such circumstances the breach of the Model Standing Orders by the failure to issue a second show-cause notice must be considered to be only a technical breach. In support of his contention, the learned counsel cited the decisions in Pradyat Kumar Bose Vs. The Hon''ble The

Chief Justice of Calcutta High Court, ; Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, ; The Workmen Employed in B and C

Mills, Madras Vs. The Management of B and C Mills, Madras, and Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, . The learned

counsel also argued that inasmuch as the very standing order itself states that a second show-cause notice must be issued after the conclusion of

the enquiry it would be clear that the framers of the standing orders themselves were clear that the stage of domestic enquiry was something

different from the stage of the second-show cause notice.

7. In Pradyat Kumar Bose Vs. The Hon''ble The Chief Justice of Calcutta High Court, , it was held that where charges were made against a

member of the staff of the High court, the Chief Justice was competent to delegate to another Judge the enquiry into the charges. The Supreme

court overruled the contention that the Chief Justice could not delegate to another Judge the conduct of the enquiry. IN this context, head note B to

the decision reads as follows : ""It is true that the no judicial Tribunal can delegate its functions unless it is enabled to do so expressly or by

necessary implication. But the exercise of the power to appoint or dismiss an officer is exercise not of judicial power but of an administrative

power. It is nonetheless so, be reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede

the exercise thereof. It is well recognised that a statutory functionary exercising such a power cannot be said to have deleted his functions merely

be deputing a responsible and competent official to enquiry and report. That is the ordinary mode of exercise of any administrative power. What

cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power. A functionary who

has to decide an administrative matter, such as the dismissal of a member of the staff, can obtain the material on which he is to act in such manner

as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial

material. Where, therefore, charges are made against a member of the staff of the High Court, the Chief Justice is competent to delegate to another

Judge the inquiry into the charges"". I am unable to understand how this decision gives support to the contention of the learned counsel for the

management. This decision goes only to the extent of saying that it will be open to a punishing authority to obtain the material on which he has to

act in such a manner by delegating the function of holding a fact finding enquiry to another authority. The Supreme Court was careful enough to

point out in this case that what can be delegated is only the power to enquiry and report. The Supreme Court made it clear specifically that what

cannot be delegated - except where law specifically so provides - is the ultimate responsibility for the exercise of such power.

8. The other cases cited by the learned counsel also do not in any support the proposition advanced by him.

9. It is settled law that so far as the workman is concerned the disciplinary proceedings commencing from the issue of charge-sheet and ending

with the ultimate order of punishment is one continuous process and cannot be divided into two independent stages as was sought to be made out

by Mr. Narayanaswami. The enquiry that is directed to be held by the punishing authority is a fact finding enquiry intended for the purpose of

collecting the relevant materials in respect of the charges leveled against the workman. In that enquiry the enquiring authority is expected to give

every opportunity to the workman to rebut the evidence that may be let in by the management to prove the alleged misconduct. Thereafter, the

inquiring authority submits the report to the punishing authority. The findings of the enquiry officer are not final. The enquiry report along with the

evidence recorded at the enquiry constitute only the material on the basis of which the punishing authority has to ultimately act.

10. At that state in the case of a management where a standing order similar to Rule 17(4) (c) is in vogue it is incumbent upon the authority to give

the workman a reasonable opportunity to show cause against the proposed punishment. The notice must contain the reasons on the basis of which

the management decided to levy the proposed punishment. It will then be open to the workman to show to the management that he is innocent and

that the conclusion of guilt arrived at by the enquiry officer does not flow from the evidence recorded at the enquiry or even if the misconduct

provide the proposed punishment is exercise. In cases, such as the present case, where the management is obligated to take into account the past

record of the workman and other extenuating and aggravating circumstances in the matter of punishment it will be open to the workman to show

that his past record has been so exemplary that he should be treated lightly on that occasion. There may be cases, where the proved misconduct may not be so grave but the past record of the workman may be so bad that the management might decide to levy the maximum punishment of dismissal by taking into account the past record of the workman. Even, in such cases, if the imperative condition to issue a second show-cause notice is not complied with, the workman may not be able to show either the past record should not have been taken into account or that the past record was not so bad as to merit the maximum punishment of dismissal taken along with the proved misconduct. In such circumstances, the ultimate order of punishment whether it be an order of suspension, discharge or dismissal can only be meted out after the explanation of the workman is obtained in response to a second show-cause notice. Thus, it will be seen that from the commencement of the issue of the charge-sheet upto the passing of the ultimate order of punishment it is one continuing process. If an opportunity is not given to the workman to show cause against the proposed punishment it will definitely amount to depriving the delinquent workman of a reasonable opportunity to defend himself by stating that the findings of the enquiry officer could not be sustained or at any rate the proposed punishment is excessive, besides constituting a breach of the mandatory provision of the standing orders. This will be a negation of the principles of natural justice.

11. In this connection, it will be useful to refer to the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, . I am conscious of the fact that that decision has been rendered with reference to Art. 311 of the constitution of India. Article 311(2) of the Constitution prior to its amendment provided that no Government servant shall be dismissed or removed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The Punjab High Court from the decision of which the appeal came to the Supreme Court was of the view that the proceedings against the appellant-Government servant consisted of two parts (a) an enquiry (which involved a decision of the question whether the allegations made against the servant were true or not) and (b) taking action (i.e., in case the allegations were found to be true, whether the servant should be punished or not and if so in what manner). According to the High Court

the first point involved a decision on the evidence and might be described as judicial, while the latter was purely an administrative decision, and that

in so far as this was concerned there was no reason why the State Government was incompetent to charge its decision "if it thought administratively

advisable to do so". Dealing with the view taken by the High Court, Supreme Court observed as follows : "We cannot accept the view taken by

the High Court regarding the nature of what is called the second part of the proceedings. Departmental proceedings taken against a Government

servant are not divisible in the sense in which the High Court understands them to be.

There is just one continuous proceedings though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the

charges alleged against the Government Servant are establishment or not and the second is reached only if it is found that they are so established.

The stage deals with the action to be taken against the Government servant concerned. The High Court accepts that the first stage is a judicial

proceedings and indeed it must be because charges have to be given an opportunity of being heard. Even so far as the second stage is concerned

Art. 311(2) of the Constitution requires a notice to be given to the persons concerned as also an opportunity of being heard. Therefore, this stage

of the proceedings is no less judicial than the early one. Consequently, any action decided to be taken against a Government servant found guilty of

misconduct is a judicial order and as such it cannot be varied at the will of the authority who is empowered to impose the punishment". I am citing

this decision only to show that departmental enquiry cannot be divided into two and it is one continuous proceedings from the issue of charge-sheet

to the stage of the passing of the order of punishment, though there may be two stages in it. The same principle applies to a disciplinary proceeding

held by a management against a workman, and the whole proceeding is one composite proceeding, though there may be two stages in it viz., the

state of enquiry held for the purpose of collecting the materials on the basis of the charges leveled against the workman along with the evidence

recorded at the enquiry and the levy of the punishment.

12. In *State of Assam and Another Vs. Bimal Kumar Pandit*, . The necessity or otherwise to issue a second show-cause notice to a delinquent

public servant as enjoined by Art. 311(2) of the Constitution of India was considered. Gajendragadkar J., (as he then was) observed thus :

It is now well-settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities

before disciplinary action is finally taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and constantly

with the requirements of natural justice. At this enquiry, the public officer concerned would be entitled to test the evidence adduced against him by

cross-examination where necessary and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have an

opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report, the dismissing authority has to consider the

report and decide whether it agrees with the conclusions of the report, the dismissing authority has to consider the report and decide whether it

agrees with the conclusion of the report or not. If the findings in the report are against the public officer and the dismissing authority agrees with the

said finding, a stage is reached for giving another opportunity to the public officer to show why disciplinary action should not be taken against him.

In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public

officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both

these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice, the Public Officer

is entitled to show-cause not only against the action proposed to be taken against him, but also against the validity or the correctness of the findings

recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public

officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if

he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for. This position is not in

dispute".

13. In *State of Mysore Vs. K. Manche Gowda, , Subha Rao, J., as he then was*, observed as follows :

An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the enquiry officer is only recommendatory in scrutinizes it and imposed punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry.

The learned Judge was dealing with a case under Art. 311 of the Constitution of India. Dealing with the importance of a second show-cause notice

as enjoined by Art. 311(2) of the Constitution the learned Judge observed thus :

Under Art. 311(2) of the Constitution, as interpreted by this court, a Government servant must have reasonable opportunity not only to prove that

he is not guilty of the charges leveled against him, but also to establish that the punishment proposed to be imposed is either not called for or

excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the

grounds on which it is proposed to take such action. If the grounds are not given in the notice, it would be well high impossible for him to predicate

what is operating on the mind of the authority concerned in proposing a particular punishment, he would not be in a position to explain why he does

not deserve any punishment at all or that the punishment proposed is excessive.

14. The decision is Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen, , is authority to show that the principles laid down by the Supreme

Court in connection with the necessity to issue a second show-cause notice under Art. 311(2) of the Constitution of India, apply with equal force

to cases where the standing order of an industrial establishment provides for the issue of a second notice to the workman who has been found

guilty of misconduct alleged against him to show cause why the proposed punishment should not be inflicted. In that case, the management of

Lakshmiratan cotton Mills issued charge-sheets against 53 workmen charging them with various acts of misconduct. All the workmen submitted a

common explanation. A Labour Officer at the instance of the management held a domestic enquiry and submitted his report to the management.

The management agreed with the finding recorded by the Labour Officer in his report. On 21st October, 1972 the management issued notice to

the 53 workmen calling upon them to show cause by 10 A.M. on 23rd October,

1972 as to why they should not be dismissed from service. These notices along dismissed from service. These notices along dismissed fro service. These notices along with the relevant reports of the domestic enquiry were pasted on the notice board of the enquiry were pasted on the notice board of the management of the same day, viz., 21st October, 1972. None of the 53 workmen submitted an explanation showing cause against the proposed punishment of dismissal and the management thereupon passed orders on 23rd October, 1972 dismissing the 53 workmen from service. Thereafter, 31st workmen were reinstated on the intervention of the Chief Minister. One workman settled his dispute with the management. The Government referred the non-employment of 21 workmen for adjudication to the Industrial Tribunal. The Industrial Tribunal held that the action of the management in terminating the services of the 21 workmen was improper and illegal and directed that the 21 workmen should be reinstated with effect from the date of their suspension and from the date of dismissal till the date of their resuming duty. The management took the matter in appeal to the Supreme Court. One of the contentions raised before Supreme Court on behalf of the workmen was that the enquiry conducted by the the management was not in accordance with the principles of natural justice and was in violation of the standing orders. Clause (c) of the Standing Order 26 applicable to the case provided that where it is proposed to inflict the punishment of dismissal for any misconduct, the punishment of dismissal for any misconduct, the workmen should given notice in writing to show cause within a specified period why the proposed punishment should not be awarded and along with such notice he should be given a copy of findings of enquiring officer on the charge or charges. Admittedly, the management did not issue any notice to the 21 workmen on receipt of the report of the Labour Officer why the punishment of dismissal should not be levied on them. The show-cause notice had only been pasted on the notice board and the Supreme Court factually found that the same could hardly be regarded as a reasonable opportunity to the said 21 workmen to show cause against the proposed punishment of dismissal. The Supreme Court gave the factual finding that there was a violation of the requirements of clause (c) of Standing Order 26. While dealing with the effect of the failure to give a second

show-cause notice as contemplated by Standing Order 26(c) Bhagwathi, J., speaking for the Court observed as follows :

Clause (c) of Standing Order 26 provides that where it is proposed to inflict the punishment of dismissal for any misconduct, the workman shall be

given notice in writing to show cause within a specified period why the proposed punishment may not be awarded and along with such notice he

shall be given a copy of the finding or charges. This clause clearly contemplates a notice to be given to the workman for the purpose of enabling

him to show cause within a specified period as to why the proposed punishment of dismissal should not be inflicted on him. The notice is required to

be given not as a mere idle formality; it has a meaning and purpose. It is intended to provide an opportunity to the workman to show-cause against

the proposed punishment of dismissal. The workmen may show that the findings of the enquiring officer are not justified on the evidence on record

or that even if the findings are justified, they do not warrant the extreme penalty of dismissal from service having regard to the nature or gravity of

the misconduct, the past record of the workman and any other extenuating circumstances. The notice must there to the, give a reasonable

opportunity to the workman. This is a condition precedent which must be satisfied before an order of dismissal can be validly passed by the

employer.

Then after considering the factual issue whether the pasting on the notice board would be sufficient notice within the meaning of clause (c) of

Standing Order 26, the learned Judge observed as follows :

It does not need much argument to come to the conclusion that this could hardly be regarded as affording a reasonable opportunity to those 21

workmen to show cause against the proposed punishment of dismissal. There can, therefore, be no doubt that there was not only non-compliance

with the requirements of clause (c) of Standing Order 26 but also infringement of the principles of natural justice. The orders of dismissal passed

against these 21 workmen could not in the circumstances be justified on the basis of the domestic enquiry held by the appellant.

Having thus found that the domestic enquiry held against the 21 workmen was vitiated, the learned Judge set aside the award made by Industrial

Tribunal and remanded the matter to the Industrial Tribunal with a direction to

allow the management and the workmen to lead evidence as may be relevant on the question whether the 21 workmen were guilty of the charges made against them and the orders of dismissal passed against them were justified. The remand was made on the principles laid down by the decision of the Supreme Court in *Oriental Textile Finishing Mills, Amritsar v. Labour Court, Jullundur and others*, 1971 I L.L.J.505 and *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , that even where it is found that the domestic enquiry held by the employer is, due to some omission or deficiency, not valid, the employer can nonetheless support the order of dismissal by producing satisfactory evidence and proving misconduct, when the dispute arising out of the order of dismissal is referred for industrial adjudication. Mr. Narayanaswami contended that the principles laid down in *Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen*, , do not apply to the facts of this case as the question arose therein was under the U.P. Industrial Disputes act, 1947 and the U.P. Industrial Disputes Act, 1947 did not contain a provision similar to S. 11A of the Industrial Dispute Act, 1947. This contention is based on the argument that under S. 11A of the Industrial Disputes Act the Labour Court had the power to decide the question on merits. In view of the fact that, for the reasons to follow, I am not accepting the contention of Mr. Narayanaswami that even though the management failed to issue a second show-cause notice as contemplated under Rule 17(4)(c), the Labour Court had the power to decide the issue on merits on the basis of the evidence recorded in his domestic enquiry under S. 11A of the Industrial Disputes Act as it has done in the present case, this contention has to fail.

15. In my opinion, the principles laid down in the above decision clearly apply to the facts of this case. As already seen, Rule 17(4)(c) of the Model Standing Orders clearly provides that if on the conclusion of the enquiry, the workman has been found guilty of the charges framed against him, a reasonable opportunity of showing cause against the proposed punishment and it is only after giving such a reasonable opportunity to the concerned workman that the management could pass the final order of punishment. This opportunity ensures (1) an opportunity to show that the findings of the inquiring officer are not justified on the evidence on record and (2) even if the findings are justified they did not warrant the extreme

penalty of dismissal from service. Unless a show-cause notice such a second show-cause notice is given to the workman the workman will not be

able to predicate what is working in the mind of punishing authority, and it will be impossible for him to explain that the findings entered by the

enquiry officer are not warranted by the evidence on record and that he has to be exonerated or in any event in the state of evidence on record he

has to be lightly dealt with. So far as the workman is concerned this is a very valuable right not meant to be observed only in its breach.

Consequently, no failure to comply with this imperative rule can be countenanced. A failure to give such a second show-cause notice which has

meaning and a purpose as observed by the Supreme court will amount to a deprivation of a reasonable opportunity to the workman to defend

himself and a negation of the principles of natural justice. The resultant position will be that the entire disciplinary proceeding resulting in the

dismissal of the workman will be sustained. I have, therefore, no hesitation in holding that the disciplinary proceeding held against the 17 workmen

culminating in their order of dismissal is vitiated by a failure to comply with the mandatory provision of Rule 17(4)(c) of the Model Standing Orders

and I hold further that such a failure amounts to a violation of the principles of natural justice.

16. Mr. M. R. Narayanaswami, then contended that S. 11A of the Industrial Disputes Act confers very wide powers on the Labour court. In the

light of the said powers it would be open to the Labour court to consider on the basis of the evidence recorded in the domestic enquiry whether

the workman is guilty of misconduct alleged against him and whether the punishment inflicted against him is proportionate to the proved

misconduct. In this context, the learned counsel emphasised the fact that the Labour court has considered the evidence recorded at the domestic

enquiry against each of 17 workmen and has found each one of the workmen and has found each one of the workmen guilty of riotous and

disorderly behavior. He also stressed upon the fact that the Labour Court has found that in view of severity of the proved misconduct, the

punishment or dismissal was amply merited.

17. Section 11A of the Industrial Disputes Act reads as follows :

Where an industrial dispute relating to the discharge or dismissal of a workman

has been referred to a Labour court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour court, Tribunal or National satisfied that the order of discharge or dismissal was not justified, it may, be its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this Section the Labour Court, Tribunal to National Tribunal, as the case may be, shall rely only on the materials on record and shall not taken any fresh evidence in relation to the matter.

Prior to the introduction of S. 11A the powers of Labour court were very limited. It was held as early as in 1958 in Indian Iron and Steel Co., Ltd.

and Another Vs. Their Workmen, that in cases where a proper domestic enquiry had been held and a workman had been dismissed. The tribunal

had the power to consider whether the impugned order of dismissal was preceded by a proper enquiry or not. Where a proper enquiry had been

held the Tribunal could not act as a court of appeal and substitute its own judgment for that of the management. It had the right to interfere in cases

where the order of dismissal was vitiated by want of good faith or amounted to an act of victimization or unfair labour practice or where the

management had been guilty of a basic error or violation of the principles of natural justice or when, on the materials, the findings were completely

baseless or perverse. Section 11A has altered the law in this respect, it has conferred power on the Labour court for the first time to consider the

evidence recorded at the domestic enquiry and reappraise the same. It will be open to the Labour court to come to its own conclusion of a

reappraisal of the evidence whether the workman has been guilty of misconduct even if it finds that the workman is guilty of misconduct whether

the punishment levied on him by the management is proportionate to the gravity of the misconduct proved. In other words, S. 11A empowers the

Labour court for the first time to differ from the management both on a finding of misconduct arrived at by it as well as the punishment imposed by

it. This proposition of law is laid down in The Workmen of Firestone Tyre and

Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, .

In the said case, Vaidialingam, J. speaking for the Supreme Court has observed as follows :

We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously

the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by

this court in Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , existed. The conduct of disciplinary proceeding and the

punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was

perverse or the punishment was so harsh as to lend to an inference of victimisation or unfair labour practice. This position, in our view, has now

been changed by S. 11A. The words in the course of adjudication proceedings, the Tribunal is satisfied that the order of discharge or dismissal

was not justified, clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy

itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible

conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction given place to a satisfaction being arrived

at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian iron and

Steel Co., Ltd., case (supra) can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of

misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the

realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter"".

In other words, the power conferred on the Labour Court under S. 11A in cases where in proper domestic enquiry has been held is an appellate

power. It is, therefore, clear that only in cases where a proper and valid domestic enquiry has been held, the Labour Court can consider the

evidence recorded at the domestic enquiry and find out whether the findings of guilt entered in the domestic enquiry justified and the punishment

imposed is proportionate to the proved misconduct. If the proportionate to the proved misconduct. If the domestic enquiry resulting in the passing

of the order of dismissal of the workman is vitiated, for some reason or other, it will not be open to the Labour court to rely upon the evidence

recorded at the defective domestic enquiry and they reappraise such evidence and give a finding whether the workman is guilty of misconduct or

not an if he is found guilty of misconduct to award a punishment for the same.

18. If there has been no enquiry held by an employer or if the enquiry held by it found to be defective, the Labour Court in order to satisfy itself

about the legality and validity of the order has to given an opportunity to the employer and employee to adduce evidence before it. It will be then

open to the employer for the first time to adduce evidence justifying his action and it will be open to the employee to adduce evidence contra. This

is because the effect of an employer not holding an enquiry or holding a defective enquiry is that the issue about the merits of the impugned order of

dismissal or discharge would be at large before the Labour Court and it will be open to the Labour Court to decide for itself on the basis of the

evidence adduced before it whether the alleged misconduct is proved. I have already found that in this case the entire disciplinary proceedings are

vitiated by a failure to give a second show-cause notice to the 17 workmen as enjoined by Rule 17(4)(c) of the Model Standing Orders.

19. In cases where no domestic enquiry is held or the domestic enquiry held is found to be defective the procedure to be followed by the Labour

Court is laid down in The Cooper Engineering Limited Vs. Shri P.P. Mundhe, . The Supreme Court has observed as follows :

When a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide, as a preliminary

issue, whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is

admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that the question must be decided

as a preliminary issue On that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before the

Labour court.

This decision has been followed by a Bench of this court in Madurai-Devakottai

Transport Private Limited Vs. Labour Court and Another, .

Where a workman was dismissed by the employer and when an industrial dispute was referred to the Labour industrial dispute was referred to the

Labour court for adjudication it called upon the parties to adduce evidence without deciding as a preliminary issue, whether the domestic enquiry

was according to the principles of natural justice. In this context, Veeraswami, C.J., stated as follows :

When as a result of a domestic enquiry, there is dismissal of the workman and an industrial dispute arises, the Labour court has first to see

whether the domestic enquiry was in accordance with the principles of natural justice. When this question itself is in controversy evidence has to be

taken on that question. Without doing this, in the instance case, the Labour Court had called upon the parties to adduce evidence on merits. Since

the method adopted by the Labour Court is erroneous, the Presiding Officer directed to follow the procedure laid down in The Cooper

Engineering Limited Vs. Shri P.P. Mundhe, "".

The resultant position is as follows : Where the management had held a regular domestic enquiry, it will be open to the Labour court to consider

whether on the evidence recorded in the domestic enquiry, the workman is guilty of misconduct alleged against him. If it is satisfied that the

workmen cannot be held to be guilty of misconduct then it can answer the reference in favour of the workman. On the other hand, if it finds the

workman has been rightly found to be guilty in the domestic enquiry it will bear open to it to consider whether the punishment imposed against

the workman is proportionate to the gravity of the proved misconduct and has got the power to award a lesser punishment if it finds that the

punishment imposed by the management is excessive. On the other hand, if the Labour court comes to the conclusion that no domestic enquiry has

been held at all or if the domestic enquiry held has been vitiated, the Labour court is bound to give a finding on the question as a preliminary issue

and then call upon the management to let in evidence to prove the misconduct and give an opportunity to the workmen as well enquiry held is

defective it will not be open to the management to rely upon the evidence recorded at the domestic enquiry which has been found to be vitiated

and then come to its own conclusion whether on such evidence the workmen can

be said to be guilty of misconduct and then inflict a punishment on them. I am, therefore, unable to accept the argument of Mr. M. R. Narayanaswami that in this case notwithstanding the fact that there was a failure on the part of the management to issue a second show-cause notice and notwithstanding the fact that the entire disciplinary proceedings has been thereby vitiated, it would be open to the Labour court to consider the evidence recorded at the enquiry and come to its own conclusion on an appreciation of the evidence recorded at the enquiry that the workmen were guilty of misconduct and were liable to be dismissed from service.

20. Mr. Narayanaswami, then conducted that Rule 17(4)(c) requiring the management to issue a second show-cause notice was not valid. This

argument was advanced on the basis of the decision of the Supreme Court in Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.

Vs. S.S. Railway Workers' Union, . In that case, the Supreme Court was concerned with the modification of the certified standing orders. One of

the modifications that was sought for was as follows :

In case the management proposes to remove the workman from service they shall serve on the workmen separate show-cause notice to that effect.

In that connection, the Supreme Court observed as follows :

As regards the modification requiring a second show-cause notice, neither the ordinary law of the land nor the industrial law requires an employer

to give such a notice. In none of the decisions given by courts or the Tribunal's such a second show-cause notice in case of removal has ever been

demanded or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Art.

311. Even that has now been removed by the recent amendment of that article. To import such requirement from art. 311 in Industrial matters

does not appear to be either necessary or proper and would be equating industrial employees with civil servants. In our view there is no jurisdiction

on any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial

peace should be disposed of in as short a time as possible. In our view it is not possible to consider this modification as justifiable either on the

ground of reasonableness or fairness and should, therefore, be set aside.

The Supreme Court found that it was not necessary to modify the standing orders by requiring the management to give second show-cause notice to the workman as regard the punishment to be inflicted. The fact that the Supreme Court felt that a provision directing the management to give second show-cause notice to the workmen cannot be justified on the ground of reasonableness or fairness will not invalidate the rule 17(4)(c) of the Model Standing Orders. Mr. Narayanaswami did not advance any argument on the basis of which it can be legally held that Rule 17(4)(c) of the Model Standing Orders was ultra vires of the powers of the State Government. I, therefore, overrule this contention.

21. In the view that I have taken as in the legal effect of the failure to issue a second show-cause notice it has to be held that in this case there has

been no regular domestic enquiry. The finding of the Labour Court that there has been a valid domestic enquiry was based on the fact that it

assumed that there was based on the fact that it assumed that there was no standing orders which obliged the management to issue a second

show-cause notice. In this connection, one of the contentions of Mr. Narayanaswami has to be stated. Mr. Narayanaswami contended that Rule

17(4)(c) of the Model Standing Orders was not placed before the Labour Court. In the claim statement the workman relied upon G.O. Ms. No.

954 dated 7th July, 1970 and the said G.O. was not placed before the Labour Court. In the circumstances, according to Mr. Narayanaswami the

Labour Court was justified in assuming that there was no standing order enjoining the management to issue a second show-cause notice and that

either the common law or the industrial law did not compel the management to issue a second show-cause notice. This contention has to fail. It was

not disputed that in the claim statement reliance was placed on G.O. Ms. No. 954 dated 7th July, 1970. Mr. Narayanaswami conceded that it

was by G.O. Ms. No. 954 dated 7th July, 1970 the Government of Tamil Nadu introduced Rule 17(4)(c) in the Model Standing Orders. It was

also not disputed before the Labour Court that the parties were governed by the Model Standing Orders. Therefore, even though the G.O. Ms.

No. 954 dated 7th July, 1970 was not placed before the Labour Court nothing prevented the Labour Court from looking into the Model Standing

Orders contained in the Tamil Nadu Industrial Employment (Standing Orders) Rules, 1947. The fact that the correct provision of law was not

placed by a party before the Court would not absolve the Labour court from applying the correct law and giving appropriate relief to the parties. I

am, therefor, of the view that the award of the Labour Court is vitiated by its wrong assumption that no second should-cause notice is necessary. If

only it had focused its attention to Rule 17(4)(c) of the Model Standing Orders, it would not have upheld the domestic enquiry as valid.

22. The second contention of Mr. Fenn Walter was that the order of dismissal was vitiated by the failure on the part of the management to bear in

mind the past record of the workmen in imposing the punishment of dismissal as provided for under Rule 17(5) of the Model Standing Orders.

Rule 17(5) of the Model standing orders reads thus :

In awarding the punishment under this standing order the employer shall take into account the gravity of the misconduct, the previous record of the

workman and any other extenuating or aggravating circumstances that may exist.

The rule empowers the punishing authority to take into account to past record of the workmen as well as other extenuating or aggravating

circumstances. The necessity to comply with this rule in a given case cannot be belittled. In case where a proved misconduct is not very grave,

even then it will be open to the management to take into account to the past record of the workman and other aggravating circumstances and give

the maximum punishment of dismissal to him In such circumstances, if no notice is given to the concerned workman giving the reasons for inflicting

the purposed punishment. The workman may not proposed punishment the workman may got know that what ultimately induced the management

to decide upon the punishment. Similarly in cases where the past record of the workman has been exemplary it will be open to the workman to

explain to th management that in view of his past exemplary record of service the proposed punishment is too serve the may not be imposed. This

view is supported by the decision in Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen, , already cited, where the Supreme Court has

observed as follows :

The workmen may show that the finding of the enquiring officer are not justified on the evidence on record or that even if the findings are justified,

they do not warrant to extreme penalty of dismissal from service having regard to the nature of gravity of the misconduct, the past record of the

workman and any other extenuating circumstances.

The language used by the Supreme Court in the said decision in the same as is found in the said decision in the same as is found in Rule 17(5) of

the Model Standing Orders.

23. In *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, , the validity of an order of dismissal

passed against a workman in a violation of a standing order which provided that in awarding a punishment for misconduct the management should

take into account the gravity of misconduct, the previous record, if any, of the workmen and other extenuating circumstances that might exist came

up for consideration. Ananthanarayanan, J. (as he then was) speaking for the Bench after extracting the relevant standing order observed follows :

Admitted, in the order of dismissal, the previous record and the gravity of the misconduct, etc., which are all relevant factors were not taken into

account. Section 19 is mandatory in its terms and there is no option or choice left which the management to neglect there relevant factors.

The learned Judge, however, gave an opportunity to the management to hold a fresh enquiry against the workman concerned.

24. The Bench Division in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, , was cited before

Ramakrishnan J. In *Management of Solar Works, Madras Vs. Workmen Employed in the Solar Works, Madras and Another*, . Ramakrishnan,

J., has observed as follows :

The facts in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, , showed that the misconduct of

the workers was comparatively trivial, viz., over style of leave. Prima facie the punishment of dismissal for such a venial fault will be

disproportionate and this seem to have been the justification for the Court to hold that was a proper case where the provisions of the standing

order relating to past conduct should have been taken into account because if it had been taken into account, there was every likelihood of the

punishment having been less severe. But, in the present case, participation in illegal strike, is a very serious one and there is no question of a milder

punishment being inflicted if the management had given weight to the standing order relating to past conduct. The misconduct per se was sufficient

to justify the dismissal because of its serious nature. Therefore, there is no scope at all for entertaining any apprehension that the management failed

to give due weight to the provision of standing order 16(d) regarding past good conduct of the workers in fixing the quantum of punishment or that

if it had done so, a different result would have followed. For the aforesaid reasons. I am of the opinion that this is a case to which the observations

in *The Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others*, will not apply".

25. In, *Messrs. P. Orr and sons (P) Ltd. v. presiding officer, Labour Court, Madras*, the management sought to quash the award of the Labour

Court, Madras. Dated 6th January, 1973 directing reinstatement of two workman found guilty of misconduct and dismissed by the management

after due enquiry, on the ground that the punishment awarded was harsh and shockingly disproportionate and that the management had not

complied with the requirements of Standing Order 18, Standing Order 18 stated among other things that in awarding punishment under the standing

order the management shall take into account the gravity of the misconduct, the record, if any, of the workmen and any other extenuating or

aggravating circumstances that might exist. I am, J. (as he then was) after quoting passage in *The Management of Mahalakshmi Textile Mills Vs.*

The Presiding Officer, Labour Court and Others, , observed thus :

In my opinion, this decision directly applied to the facts of the present case except with regard to the nature or the misconduct alleged against the worker concerned.

The Learned Judge further observed : "As a matter of fact, the decision to which I have drawn attention specifically states that those considerations

must appear to indicate that it has been so borne in mind or there must be evidence to show that those considerations were borne in mind.

since the order did not show nor there any evidence to show that the consideration mentioned in Standing Order 18 had been taken into account

by the management the learned judge affirmed the award of the Labour court and dismissed in writ petition filed by the management.

26. In this context, the observation of the Bombay High Court in *Borosil Glass Works Limited Vs. M.G. Chitale and Richard M. D'souza*, , may

be usefully referred to. That was a case where the approval of the Industrial

Tribunal was sought for by the management under S. 33(2)(b) of the Industrial disputes Act. Standing Order 25(6) of the Model Standing Orders relevant for that case laid down :

In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any of the workman and any the other extenuating or aggravating circumstances that may exist.

There was nothing on record to show that the management throughout exercised their mind as per the provisions of the Standing Order while

discharging the workman from service. It was contended before the Bombay High Court, among others, that the provisions of Standing Order

25(6) had been in substance complied with. After referring to a passage from The Management of Mahalakshmi Textile Mills Vs. The Presiding

Officer, Labour Court and Others, , the learned judge observed as follows :

These observations are clearly applicable to the facts of the present case. We may further observe that in the present case, it is patent on the fact

of the report of the enquiry officer as well as the impugned order of punishment, that the petitioner management did no awarding the punishment,

take any account of the past record of the respondent No. 2 which is imperatively required by Standing Order No. 25(6). Looking to the past

records is required by the Standing Order while awarding punishment by the employer there is no knowing that the petitioner-management would

have awarded the extreme penalty of discharge had the past record been looked into. The omission to comply with Standing Order 25(6) was an

independent ground upon which the Tribunal was entitled to reject the application for the approval of discharge under S. 33(2)(b) of the Industrial

Disputes Act, 1947.

27. In B. Subbiah v. A.H.W. Co-op, Society Ltd., the petitioner was employed in the respondent-society and he was dismissed from service.

When the matters came before the Labour Court, it upheld the dismissal. It was contended before the Andhra Pradesh High court on behalf of the

dismissed workman that the order in violation of the provisions of sub-rule (3) of Rule 20 of the Andhra Pradesh shops and Establishments Rules

and that the Labour Court was in error in ignoring the aspect of the matter, Sheth, J., speaking for the Bench observed as follows :

When a co-operative society punishes its employees after holding an enquiry it has got to take into account not only the gravity of the misconduct but his previous service records as well. It is also required to take into account the extenuating or aggravating circumstances, if any. In other words, having decided that the delinquent employee had committed an act of misconduct the quantum of punishment to be awarded to him must bear the reflection of his previous service record and must also be decided in the light of the also be decided in the light of the extenuating or aggravating circumstances that might be existing. This is the statutory right that Rule 20(3) gives the employee. This is not a procedural requirement but a right procedural requirement but a right conferred upon the employee. If this conferred upon the employee. If this right is denied the Labour court is bound to come to the conclusion that the dismissal is unjustified.

28. Mr. Narayanaswami drew my attention to the recent Bench division of this court in W.P. No. 383 of 1977-Sivakami Mills Ltd. v. Presiding

Officer, Labour Court, Madurai and another. The writ Petition was filed by the management of Sri Sivakami Mills Limited, Madurai to quash the

order of the Labour court Madurai refusing to accord sanction sought for by the management under S. 33(2)(b) of the Industrial Disputes Act.

One of the contentions urged on behalf of the workmen was that the management had failed to take into consideration the past record of the

workman as required by the Standing Order 20(1). Mohan, J., after referring to the decisions in Mohan, J., after referring to the decisions in The

Management of Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others, : Messrs. P. Orr and sons (P) Ltd. Presiding

officer, 1974 II L.L.J.517 and Borosil Glass Works Limited Vs. M.G. Chitale and Richard M. D'souza, observed as follows :

This is a case in which we find by a reading of the ultimate order of dismissal, that the past record had been taken into account. No doubt, it is not

specifically referred to as of the past record. But when the order of the dismissal states that in spite of the past experience of the workmen, such as

experience is gatherable only from the past record, it cannot be from the imagination of the management. If therefore, there was substantial

compliance with the Standing order 20(1) which undoubtedly has the statutory force, we see no reason to accept the argument advanced on behalf

of the second respondent. The cases cited on behalf of the second respondent no doubt lay down that the past records must be referred to. But no

court has gone to the extent of saying that the order of the management should be like that of a Court. On the contrary, what is insisted upon as is

seen from the decision in *Solar Works v. Their Workmen*, 1968 II L.L.J.765, is the substantial compliance with the standing order and not be

bristled with rights and technicalities.

I am unable to accept the argument of Mr. Narayanaswami that the decision of the Bench in W.P. No. 383 of 1977-*Sivakami Mills Ltd. v.*

presiding Officer, Labour Court Madurai and another has dissented from the dictum laid down by the Bench of this Court in *The Management of*

Mahalakshmi Textile Mills Vs. The Presiding Officer, Labour Court and Others, : P. Orr and Sons (P) Ltd. v. Presiding Officer, 1974 I L.L.J.517

Borosil Glass Works Limited Vs. M.G. Chitale and Richard M. D'souza, and B. Subbiah Vs. Andhra Handloom Weavers' Co-op Society Ltd.

and Others, . The judgment of Mohan J., has to be distinguished on its own facts. The learned judge has clearly stated that on a reading of the

ultimate order of dismissal, he had no doubt that the past record had been taken into account.

29. On an analysis of the above decisions, I am unable to accept the principles on the basis of which Ramakrishnan, J., sought to distinguish the

Bench decision in *Mahalakshmi Textiles Mills v. Labour Court*, 1963-II L.L.J. 58 in his judgment in *Solar Works, Madras, v. Their Workmen*. I

am unable to form an opinion on a reading of the judgment in *Mahalakshmi Textiles Mills v. Labour* in holding that the order of dismissal was

vitiating by a failure to take into account the previous record and the gravity of the misconduct was swayed by the triviality of the misconduct in that

particular case. I, therefore, feel bound by the Bench decision in *Mahalakshmi Textiles Mills v. Labour court* (supra) which has been subsequently

followed by this Court in *Messrs. P. Orr and Sons (P) Ltd. v. Presiding officer*, (supra) and by the Bombay High Court in *Borosil Glass Works*

Ltd. v. M. G. Chitale (supra) and by the Andhra Pradesh High Court in *B. Subbiah v. A.H.W. Co-op. Society Ltd.* (supra)

30 Mr. Narayanaswami did not argue that the order of dismissal would show that the management had taken into account the past record of the

workmen. On the other hand, the learned counsel sought to justify the order of dismissal on the ground that the gravity of the misconduct was so

serve that even if the management had taken into account the past record of the workmen, it would not have in any way affected the mode of

punishment decided upon by the management. According to Mr. Narayanaswami, the riotous and disorderly behaviors on the part of the workmen

merited the punishment of dismissal and there was not need for the management to take into account to past record of the workmen. I do not

agree. Rule 17(5) of the Model Standing Order provides that in awarding the punishment the employer shall take into account the gravity workmen

and any other extenuating or aggravating circumstances that might exist. Therefore, it is not only enough that the management takes into account the

gravity of the misconduct, but is is also imperative that the management should takes into account previous record of the workmen as also the

extenuating or aggravating circumstances that might exist. The order of dismissal passed by the management does not show that the management

has taken into account the consideration mentioned in rule 17(5) of the Model standing orders.

31. In the result, in view of my finding that the domestic enquiry is vitiated by a failure to confirm to the mandatory provisions of Rules 17(4) (c)

and 17(5) of the Model standing Orders, the order of dismissal of the 17 workmen passed by the management and the award of the management

and the Labour Court confirming the same are set aside. The matter is remanded to the Labour Court for a fresh consideration in accordance with

law. Since the entire Industrial dispute regarding the non-employment of the 17 woken is at large before the Labour court it will be open to the

management to adduce independent evidence with regard to the misconduct alleged the workman and it will be open to the workmen in their turn

to adduce evidence contra. The Writ petition succeeds and is allowed. There will be no order as to costs.