
(1994) 08 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 406 of 1988

Suresh A. Kerkar

APPELLANT

Vs

S.V. Nevagi and Others

RESPONDENT

Date of Decision : 17-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 20, 21, 226
Evidence Act, 1872 — Section 45
Industrial Disputes Act, 1947 — Section 10(1), 25
Industrial Employment (Standing Orders) Act, 1946 — Order 33(1)

Citation : (1995) 3 BomCR 571

Hon'ble Judges : E.S. Da. Silva, J

Bench : Single Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant; C.V. Pawaskar and G. Tamba, for the Respondent

Final Decision : Allowed

Judgement

E.S. Da. Silva, J.—This writ petition challenges the Award of the respondent No.1, the Presiding Officer of the Industrial Tribunal, dated 10-8-1988, in a Reference made by the Government to the Tribunal u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter called "the Act") which has held that the action of the Management of M/s. Hindustan Ciba-Geigy Limited, the respondent No.2., (hereinafter called "the respondent") in terminating the services of the petitioner who was working as Watchman for the respondent's Company from 7-2-1984 is just and legal and, therefore, the petitioner is not entitled to any relief.

2. It appears that the petitioner was working as a security guard/watchman for the Company since April, 1972 and by letter No. TE-6.5-114 dated 15-9-1983 was charge-sheeted for misconduct under Standing Orders applicable to him.

3. The case of the respondent is that the petitioner was involved in a criminal case and stolen property was recovered from him as a result of which he was detained in police custody from 27-8-1983 to 1-9-1983. In spite of that the

petitioner failed to report the factual position and instead misrepresented to the Company by his letter dated 29-8-1983 informing that he was suffering from typhoid and the doctor had advised him bed rest for 20 days with effect from 25-8-1983. The petitioner once again represented to the Company that he was suffering from jaundice and vomiting by producing a medical certificate dated 3-9-1983 from one Dr. Chodankar even though he was not under any medical treatment or illness during his detention in police custody. Dr. G.K. Salelkar, the Company's Physician, who examined him at his residence on 9-9-1983 certified that medical examination of the petitioner did not show that he was suffering from jaundice in the recent past. The petitioner in his explanation dated 21-9-1993 denied the charges and refused to admit that he had sought extension of his leave on a false pretext that he was sick or that he had misrepresented the Company about his illness. Instead it was contended that he was on leave from 16-8-1983 as he was not keeping good health but was required to resume his duties on 31-8-1988 at which time he was still under the medical treatment of Dr. Chodankar who is his family doctor. However, on 27-8-1983, the Ribandar Police called him at the Police Station and suddenly detained on suspicion that he was in possession of some stolen property about which he was not at all aware neither the police recovered any property from his possession. He further stated that the police has not filed any criminal case or complaint against him in the Court of law and merely because he was arrested under apprehension or because his name appeared in the newspapers he cannot be linked with any criminal offence so much so the Ribandar police as well as the Judicial Magistrate, First Class, Panaji set him free as innocent. The petitioner once again reiterated in his reply that he was under medical treatment of Dr. Chodankar from 16-8-1983 onwards and even after his release he had obtained a certificate from the doctor as he was asked by the Company to justify his sickness. He also stated he could not understand as to how Dr. Salelkar failed to trace his sickness and insisted that he was really sick as certified by Dr. Chodankar who is equally a competent doctor. With regard to his failure to inform the Company about his detention he pleaded that this was totally incidental and without any malice as he was of the opinion that the Company would not be concerned about his personal matters more so because he was not even questioned in this respect by the respondent prior to his charge-sheet. He contended that he had put in 12 years of service to the Company without any stigma on his past service records.

4. Subsequent to the termination of the services an industrial dispute was raised on his behalf and the Government of Goa, by Order dated 24th February, 1987, referred the same to the Tribunal for adjudication on the following terms:

"Whether the action of the Management of M/s. Hindustan Ciba-Geigy Limited, Corlim in terminating the services of Shri Suresh A. Kerkar, watchman with effect from 7-2-1984 is legal and justified? If not, to what relief the workman is entitled to?"

Thereupon the Reference Tribunal on the pleadings of the parties framed issues, recorded evidence and passed the impugned Order dated 10-8-1988 which is being challenged by the petitioner.

5. Shri Kakodkar, learned Senior Counsel appearing for the petitioner, has invited my attention to the letter dated 15-9-1984 addressed by the respondent to the petitioner which basically contains three charges of purported misconduct against him, namely, (1) concealing material and factual position from the Company; (2) attempting to obtain leave of absence on false pretext of illness and (3) obtaining and producing a medical certificate on false representation to the doctor about his illness from which he was in fact not suffering.

It was contended by the learned Counsel that all these three charges are within the purview of Standing Order 33(1). Standing Orders, according to the learned Counsel, are meant to make known to the employees conditions of service to which they are bound. This is the limited object of the Standing Orders. These are certified Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called "the S.O. Act"). Under this Act the Management of the Company has to refer the Orders to the certification of the competent authority. Then they become Standing Orders with statutory force binding on the employees of the Company and any term of the contract of employment conflicting with the Standing Orders is null and irrelevant. The learned Counsel urged that the contract of employment has by itself no statutory force and only creates a relationship of master-servant. However, standing orders have statutory force and are deemed to operate as terms and conditions of the contract.

It was further submitted that Clause (1) of Standing Order 33 is so general and vague which covers all other Clauses from (a) to (k) and from (m) to (z). Thus, if we accept that misconduct can be defined in terms of Clause (1) by itself there was no need of any other Clauses which aim at defining different types of misconduct. To this extent, the learned Counsel urged, it is a mischievous Clause which cannot remain in the statute. In this regard the learned Counsel has formulated the following propositions :

(1) Standing Order 33(1) insofar as it lays down the terms and conditions of the contract of employment of the workmen of the Company is void, fraudulent and violative of section 23 of the Contract Act;

(2) Standing Order 33(1) being a certified standing order is arbitrary and opposed to public policy being thus violative of Articles 14, 19 and 21 of the Constitution ;

(3) Standing Order 33(1) is not attracted in the instant case in view of the specific allegations made by the respondent in his charge-sheet, that is to say, the said allegations do not come within the purview of the Clause (1) of the Standing Orders;

(4) The findings of the Enquiry Officer as well as of the Industrial Tribunal are perverse being contrary to the evidence on record and or not supported by any evidence. On a true and correct appreciation of the said evidence such findings could not be sustained being thus perverse; and

(5) the Domestic Enquiry conducted by the Management of the Company was not justified, fair and proper and the Award of the Tribunal to the extent that it has upheld those findings is contrary to law.

With regard to the first and second propositions the learned Counsel has invited my attention to the very wording of the Standing Order 33(1) viz-a-viz to the provisions of section 23 of the Contract Act which both read as follows :

"S.O. 33. The following acts and omissions on the part of a workman shall amount to misconduct:-

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(j)

(k)

(1) commission of any act subversive of discipline or good behaviour on the premises of the establishment."

"Section 23 of the Contract Act :

23. What considerations and objects are lawful, and what not.---The consideration or object of an agreement is lawful, unless---

it is forbidden by law; or

is of such a nature that, if permitted,

it would defeat the provisions of any

law; or

is fraudulent; or

involves or implies injury to the person or property of another; or the Court

regards it as immoral, or opposed to public policy."

Section 23 thus shows that every agreement wherein the object or consideration is illegal, unlawful, fraudulent or immoral is void as opposed to public policy. According to the learned Counsel Clause (1) of Standing Order 33 gives to the employer a wide discretion to treat any behaviour of the employee without affording to the workman the possibility of knowing which conduct of his would fall within the meaning of misconduct thus enabling the management to hold an enquiry against the workman within its perception. In all other cases of the various Clauses of Standing Order 33 the workman knows exactly what he should not do in order to avoid the charge of misconduct differently from it happens in case of Clause (1) which is terribly vague. The workman cannot know what is specified in this clause and which might bring him within the fold of misconduct. It does not inform him in anticipation what behaviour can make him guilty of misconduct. It gives to the employer unfettered discretion to bring the employee within the meaning of misconduct which fact by itself makes the clause flagrantly opposed against the settled principles of industrial jurisprudence. Thus the very purpose of Standing Orders is lost in Clause (1) causing to the employee a sense of insecurity and permitting the employer to ex post facto hold the employee guilty of misconduct. The learned Counsel urged that arbitrariness and mala fides can conveniently be concealed under its umbrella. If the object of the Standing Orders is to give to the employees knowledge of the situation which would amount to misconduct it would not be possible to accept the said clause as a valid Clause and the same is to be declared as void and opposed to public policy. The learned Counsel has drawn my attention to the Preamble of the S.O. Act which lays down that the said Act is required to formally define the conditions of employment with sufficient precision so as to make these conditions of employment known to the workmen. This being the object of the legislation obviously Clause (1) does not satisfy the requirements of this object. The learned Counsel contended that the object of Clause (1) is therefore manifestly immoral inasmuch as it allows to the employer, without giving prior knowledge to the workmen, an opportunity, to brand on them for misconduct. It is also opposed to public policy which in industrial law means that the workman should always be given a fair deal. Thus the policy of hire and fire should not be allowed to prevail or to be applied by the Management.

In this regard reliance was placed by the learned Counsel on the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . This was for the purpose of showing that a provision of the contract which enabled the employer to terminate the services of the workman with three months' notice without prior enquiry was found to be against public policy. My attention was drawn also to the case of Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, , and this was for the purpose of showing that the construction of a statute must be strictly made and only specified instances in the standing order should be allowed to justify the findings of misconduct. Thus it should not be permissible to impose on the

workman a standing order which is per se vague and which can be misused by the employer against him so as to punish him for misconduct. If the Standing Order does not give to the workman a correct or precise notion of what is misconduct it is not a valid standing order which is open to arbitrariness being therefore de hors the object of a smooth industrial relationship between the employer and employee as a result of which it becomes perverse, void and non est. My attention was also invited to the case of *Shri Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and another*, 1985(1) L.L.J. 527. This was for the purpose of showing that no disciplinary action can be taken and punishment imposed for conduct not included in enumerated misconduct in service regulations or Standing Orders. It was further held by the Supreme Court that it was necessary for the employer to prescribe what would be the misconduct either in the certified Standing Order or service regulation so that the workman knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workmen will be on tenterhooks and be punished by ex post facto determination by the employer. Thus, unless an act or omission enumerated as misconduct either in the Standing Order or in the service regulation, it is not open to the employer to fish out some conduct as misconduct and punish the workmen even though the alleged misconduct would not be comprehended in any of the enumerated misconduct.

The learned Counsel also referred to the case of *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, , which reiterates certain basic constitutional principles, namely, that regulation which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing to the employee before passing the impugned order was wholly arbitrary, uncanalised and unrestricted by violation of principles of natural justice as well as Article 14 of the Constitution. The Supreme Court has further observed on the matter of Article 21 of the Constitution that the right to life, a basic and human right assured by Article 21, comprehends something more than mere animal existence, i.e., dignity of the individual. Thus the term "life" used in Article 21 means something more than mere animal existence. The Court further laid that an equally important facet of the right to life is the right to livelihood because no person can live without means of livelihood. An equally important aspect was also emphasized by the Supreme Court in this ruling from the perspective of public policy or a contract being opposed to public policy. It was observed that public policy is a valuable notion depending on changing manners, morals and economic conditions and in theory this flexibility of the doctrine of public policy could provide the Judge with an excuse for invalidating any contract which he violently disliked. The Court then held that public policy could be drawn from the Constitution itself and Article 14 sheds light to public policy to carve arbitrariness.

It was then urged that since the doctrine of public policy could be drawn from the

Constitution itself hence writ could go against anyone who is not even an instrumentality of the State on this ground alone. Thus the doctrine could disturb contracts executed by private bodies which oppose public policy in terms of section 23 of the Contract Act. The learned Counsel contended that the declaration of nullity of such Standing Order could be sought by the workman himself on exception in defence of any attempt by the employer to enforce such order. The submission was that workman could not do it individually under the Act because individuals had no right as such and only collective action is contemplated. On the other hand although the Act does not also provide for any individual constitutional challenge of the Act, however, the employee as a person could always raise such objection and challenge the Standing Order in defence, namely, in writ jurisdiction. Therefore, the petitioner should be free to challenge in this case the legality and validity of the Standing Order in view of the attempt made by the Management to enforce Standing Order 33(1) on which basis he has been purportedly dismissed from service.

6. With due regard and although prima facie appealing in its attractive and logic elaboration I am unable to share the view propounded by the learned Counsel that Clause (1) of Standing Order 33 is by itself, in its formulation, void, illegal, arbitrary and opposed to public policy.

Indeed Standing Order 33 enumerates in its various Clauses several situations which are contemplated so as to bring certain acts and omissions on the part of the workmen within the mischief of misconduct. I have gone through them and I am satisfied that Clause (1) is not too different from the other ones with regard to its formal precision or alleged vagueness. There is no doubt that Clause (1) speaks of commission of an act subversive of discipline or good behaviour in the premises of the establishment. While the expression "subversive" means "violative", the words "discipline" and "good behaviour" have also no doubt a normal connotation. "Discipline" according to the Shorter Oxford Dictionary means a system of rules of conduct and "good behaviour" can be broadly defined as the individual conduct of a person according to the accepted norms of social behaviour. The learned Counsel contends that with such type of enunciation of the Clause the employer is vested with a wide discretion to charge post facto the workmen with any conduct according to its whims and perceptions and thus create on the employee a sense of insecurity as to what conduct would make them liable to punishment for misconduct. Therefore the unfettered discretion of the employer to punish the workmen for acts which they could not anticipate as violating the rules of good behaviour turns the rule arbitrary and subject to mala fide action on the part of the employer. But in my view and applying the same tests the other Clauses of Standing Order 33 cannot be said to be either concise or precise in its formulation so as to rule out the possibility of the same being also charged of suffering from a similar vice of vagueness and likelihood of arbitrary interpretation on the part of the employer. For instance Clause (a) refers to "wilful insubordination or disobedience of any lawful and reasonable order of a superior". Nowhere it is specified what would mean "wilful

insubordination" and what would correspond to the expression "lawful and reasonable order" of a superior. Clause (c) speaks also of "wilful showing down in performance of work" which again suggests some sort of imprecision and vagueness with regard to the extent of non-performances of the employee's work which would bring him within the mischief of misconduct. Clause (d) again when it refers to "theft, fraud or dishonesty" in connection with the employer's business or property nowhere qualifies what type of "dishonesty" would mean in the context of the other words of "theft" and "fraud". Clause (f) when speaks of "habitual absence" without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without "sufficient grounds" or "proper or satisfactory explanation" leads also to the wide discretion of the employer to qualify what would mean "habitual absence" or "sufficient ground" or "proper or satisfactory explanation". Clause (g) which refers to "late attendance" of the employee for work is not clear as to what would be deemed as "late" in the context of the aforesaid Clause. Clause (k) which takes care of drunkenness, riotous, "disorderly" or "indecent behaviour", use of "abusive language". etc. is again a grossly vague and imprecise Clause in its wording so as to enable the employer, if he chooses to attempt to victimize the employee, to unduly take advantage of this undefined expressions to charge the workmen for misconduct. There are also other similar instances which could be mentioned in this respect but in my opinion it is not necessary to say anything more in order to emphasize the similarity of the situations regarding the vagueness which the petitioner attributes to Clause (1) as being violative of Articles 14, 19 and 21 of the Constitution. In the context of the enumerative Clauses of Standing Order 33 in my judgment Clause (1) does not appear to be more vague or imprecise than any other Clauses of the Standing Order 33. At the most it can be said that the said Clause is like a residuary clause which allows the employer to punish a workman who has chosen not to follow the accepted rules of conduct and social behaviour to which everyone is expected to strictly adhere in the discharge of his professional duties. Thus the circumstance of Clause (1) defining certain type of misconduct with the qualification that the act has to be committed in the premises of the establishment amounts by itself to some sort of safeguard which is likely to give to the workman a clear indication of what he is required to refrain from doing so as to maintain discipline and good behaviour in the establishment wherein he is an employee. It follows therefore that if the Clause is thus to be held as valid and not in breach of any constitutional provision it is impossible to accept that the object of the said clause is manifestly immoral, fraudulent and opposed to public policy as contended by Mr. Kakodkar. Hence the question of the said Clause being also in breach of section 23 of the Contract Act does not seem to arise at all. However, this does not mean that the validity of the Clause would render the workmen unable to challenge any action of the employer going against the spirit and the object of the Clause itself. Therefore if Clause (1) of Standing Order 33 cannot be challenged on this count the action of the employer can always be taken care in case the power conferred to the Management to punish the workmen for violation of the aforesaid Clause is illegally exercised in

an arbitrary and unjudicious manner. This being the position in my judgment the petitioner is not required to make any specific grievance against the constitutionality and validity of Clause (1) of Standing Order 33.

7. Now and with regard to the third proposition the learned Counsel submitted that Standing Order 33(1) is not attracted at all to the alleged misconduct on the part of the petitioner. We have already seen that in terms of Clause (1) of the Standing Order 33 misconduct is defined as commission of any act subversive of discipline and good behaviour on the premises of the establishment. According to the learned Counsel in order to bring the act within the mischief of Standing Order 33(1) the workman must do something which should be subversive of discipline and good behaviour and this act should be committed in the premises of the establishment. The learned Counsel submitted that admittedly the charges imputed to the petitioner are that he has suppressed from the Company a material fact of his arrest by the police, that he has sought to obtain leave on false grounds and for that purpose has procured a false certificate from a private doctor alleging that he was sick and under his treatment on account of jaundice. It was contended that the fact of the petitioner having not disclosed to the Management the circumstance of his having been arrested on suspicion by the police could not, by any stretch of imagination, be held as a misconduct committed by him. The learned Counsel urged that there is no rule, standing order or regulation requiring any employee to report to the Company the fact of his eventual arrest. As such if there is no rule, regulation or such a condition of service in his appointment letter obviously there cannot be any charge on this ground of alleged suppression of his arrest.

8. The submission is correct and deserves acceptance. In order to make the petitioner incur in such misconduct there should be a duty on the workman to disclose to the Management the fact of his arrest when it occurred outside the premises. There being therefore no case of misconduct, no charge could be raised on the ground of such suppression and therefore the charge framed against him on this count is bad.

Further and in respect of his alleged attempt to obtain leave on false ground of illness and on his procuring false medical certificate in support of his application for leave there appears also to be no rule or condition of service relied by the Management to show that a certificate for sanctioning leave to a workman on medical grounds should be issued always by the Company doctor. If this is the position there could not be any misconduct if the workman had produced a medical certificate from a private doctor stating that he was sick. The learned Counsel states and rightly that this charge is self-destructive since there was no wrong in obtaining a certificate from a private doctor in the absence of any obligation or duty cast upon the workman to secure always a certificate from the Company doctor. It is to be seen also that merely securing a wrong or false medical certificate does not amount by itself to a delinquent conduct. The certificate of the doctor may be false due to ignorance or incompetence and

therefore a wrong or false certificate does not necessarily create delinquency either on the doctor or on the person who produces it. As such it seems that the charge framed on this ground is bad and the charge-sheet obviously incompetent as the act by itself does not reveal misconduct of any type within the meaning of Clause (1) of Standing Order 33. Besides, according to the learned Counsel, misconduct in terms of Clause (1) should be an act subversive of discipline and good behaviour. The learned Counsel submitted that when a workman does not disclose to the Company the fact of his arrest this circumstance has nothing to do with the discipline in the premises of the establishment. I agree. Indeed rules of discipline are meant to avoid unruly and disorderly behaviour of the employee within the working premises which is likely to affect the peaceful atmosphere and the smooth running of the functioning of the establishment. The act must have the tendency to affect the peace and good order of the establishment or poison its tranquillity and Clause (1) cannot be said as contemplating minor misconduct. Therefore an application for leave even assuming that it is based on false and fabricated grounds cannot be said to be an act subversive of discipline and good behaviour in the premises. In this regard it was urged by Mr. Kakodkar that this act has no radiating potential as other employees or workmen may not even know about that and therefore if the employee commits such an act this has also no potential to affect the discipline of the other workmen. The argument is well conceived. It is difficult to visualize that such type of conduct of a workman is bound to subvert discipline in the premises of an industrial establishment as the same may not even have any effect on the others for want of any knowledge and neither the act is likely to have any impact on the future behaviour of the other workmen. As such and on a correct constructional perspective of the relevant Clause (1) of Standing Order 33 even on facts the charges of misconduct framed against the petitioner are to be held entirely misconceived and incompetent.

On the fourth submission the learned Counsel stated that the findings of the Enquiry Officer and for that matter of the Tribunal itself that the charges were proved on the basis of the evidence on record are contrary to the said evidence on a true and judicious appreciation of the material before the Enquiry Officer. The learned Counsel contended that no reasonable adjudicating person or Enquiry Officer could have so held. Hence the findings are ex facie perverse by misconstruction in law or by biased approach. Further, the learned Counsel argued, the Tribunal has not taken the trouble of re-appreciating the evidence or re-evaluating the findings and therefore it has again gone wrong.

9. The allegations of the learned Counsel seem to be entirely justified. A perusal of the Award shows that the only source of the finding given by both the courts below with regard to the purported falsity of the certificate of Dr. Chodankar who has attested that the petitioner was suffering from jaundice is the evidence of Dr. Salelkar, the doctor of the Company. The learned Counsel has invited my attention to the Clinical Laboratory Report dated 19-8-1983 which reveals a clear case of malfunctioning of the petitioner's liver. The grievance of the learned Counsel is that inspite of this Report and only because Dr. Salelkar had said that

on 9-9-1983 there were no traces of jaundice at the time he has examined the petitioner, the Enquiry Officer has wrongly jumped to the conclusion that the certificate of Dr. Chodankar saying that the petitioner was under his treatment for jaundice from 28th August is false. Truly, this appears to be the case. The evidence of Dr. Salelkar in this respect and his medical opinion on the point was not to be at all accepted because he admittedly did not rely it on any pathological tests. Hence the Enquiry Officer could not have based his findings on such untested opinion. But even assuming that the petitioner did not externally reveal traces of jaundice as on 9-9-1983 that by itself could not mean that during the relevant period of time from 16-8-1983 till 30-8-83, when the applicant made the application for leave on the ground that he was sick and which period was considered by the Enquiry Officer for the purpose of giving his findings, the petitioner was not suffering from jaundice. The petitioner has proved that he was sick with liver trouble even though he was in police custody. He even produced cash memos of medicines prescribed to him by Dr. Chodankar after his arrest and before he was taken to Belgaum by the police for investigation. Therefore, the learned Counsel appears to be right when he contends that the finding of the Enquiry Officer in this regard is a perverse finding. Besides the Enquiry Officer disbelieved Dr. Chodankar and virtually called him a liar only because Dr. Salelkar has given a contrary opinion from his. No other reason was given by the Enquiry Officer to discard the deposition or the medical certificate of Dr. Chodankar. This, in my judgment, is to be strongly castigated as being a totally one-sided and biased approach. Mr. Kakodkar may be therefore right in saying that this might have happened only because the Enquiry Officer and Dr. Salelkar were both employees of the Company. Admittedly the Enquiry Officer has given no other reasons to demolish the testimony of Dr. Chodankar on any ground of his professional incompetence or moral turpitude. It seems thus a clear case of non-application of mind and lack of judicious awareness. Further the Enquiry Officer has substantially relied on the petitioner's answers during his cross-examination inspite of his having been irregularly and illegally allowed to be cross-examined by the Management representative even after he made himself not available to lead evidence on his behalf.

Therefore the conclusions arrived at by the Enquiry Officer on the basis of such impermissible evidence are illegal and void and should not have been accepted by the Tribunal. Indeed the very fact that the petitioner was compelled to give evidence against him in cross-examination which was practically offered by the Enquiry Officer to the Management of the Company inspite of no such request having been made by the Presenting Officer fatally vitiates the proceedings and renders whatever findings based thereon null and violative of the principles of natural justice. In this respect needless to say that it is almost axiomatic to hold that there could not be cross-examination without any prior examination of a person. Admittedly the petitioner did not examine himself to lead evidence on his behalf and on the contrary expressly said that he had no statement to make. Hence in such circumstances there was no question of his being cross-examined

by anybody and much less by the Presenting Officer. Thus the attitude of the Enquiry Officer in asking Mr. P.H. Naik whether "he would like to cross-examine S.A. Kerkar" to say the least is grossly unjudicious and absolutely uncalled for.

Mr. Pawoskar has made a feeble attempt to persuade me that the statement of defence given by the petitioner in reply to the charge sheet issued by the Company should be read or construed as his examination for all purposes and therefore the Management should be permitted to contest and destroy the averments contained in his defence pleadings. The argument is obviously impermissible being thus bound to be summarily rejected being fallacious. I therefore refuse to accept this submission as sound and well conceived.

10. The last proposition advanced by the learned Counsel was that the enquiry conducted by the Enquiry Officer was not fair, just and proper. The Tribunal has upheld the fairness of the enquiry inspite of the fact that no evidence was taken by the Tribunal before it on the merits of the case sought to be established by the Enquiry Officer on the strength of the proceedings held by him. The learned Counsel submitted that before the Tribunal it was a case of Reference u/s 10(1) on account of the dispute raised by the individual employee whose services had been terminated u/s 2-A of the Act. According to the learned Counsel when a Reference of this type comes before the Tribunal in terms of section 11-A which gives wide powers to the Tribunal to give reliefs when the services of the workmen are terminated, the Tribunal should have borne in mind the scope of its powers and the manner as to how it should proceed to achieve and exercise the powers conferred by law. The learned Counsel contended that one way of the workman challenging the said findings is to attack the termination of his services on the ground that the enquiry was not fair. But assuming that the enquiry was fair and the workman has been given a proper opportunity to defend, still the workman could say that the findings given by the Enquiry Officer were unfair and illegal. The Tribunal would assume jurisdiction only when the Government makes a Reference and if he failed to do so the private employee can approach the High Court for a writ of mandamus in order to compel the Government to make such a Reference. If the Reference was made the Tribunal has to frame an issue, namely, a preliminary issue to find out whether the enquiry conducted by the Enquiry Officer was proper, just and legal. For the purpose of answering this preliminary issue the employer can lead evidence and the workman would be entitled to cross-examine the witness relied by the Management. Even after this procedure was followed the answer on the preliminary question was in the positive and the enquiry was found to be fair.

The second aspect to be considered by the Tribunal was to find out whether the findings of the Enquiry Officer were substantiated by the evidence on record. For this purpose the Tribunal was required and expected to re-appreciate the evidence before the Enquiry Officer on a proper perspective and decide whether the findings were justified. This will imply fresh application of mind and a right approach according to law. After that a third stage would arise and this was to

determine as to whether the penalty or relief imposed on the delinquent employee is commensurate or appropriate to the extent and the nature of the mischief. However, in case it is found that the enquiry is not fair on account of breach of principles of natural justice then it was the duty of the Tribunal to set aside the enquiry and the employer has a right to ask permission of the Tribunal to lead fresh evidence before the Tribunal framing charges. This permission should, however, be asked at the earliest opportunity when parties are filing their statements of claims even before the framing of the issues.

11. I am again in agreement with the learned Counsel. The record shows that in this case evidence was led before the Tribunal only on the preliminary issue as to whether the enquiry had been conducted in a fair and proper manner as the employer sought to justify the enquiry on the point of its fairness and legality. It is seen, however, that inspite of this preliminary issue having been framed which was meant for the respondent to prove, the Tribunal chose to record in this case firstly the evidence of the petitioner himself and only thereafter the respondent was directed to lead its evidence. In this regard the learned Counsel has made a strong grievance that the Enquiry Officer has permitted the Management to cross-examine the petitioner when he had not examined himself as a witness. It was urged that the norms of a fair trial according to which a person need not be cross-examined when he has not examined himself were not followed by the Enquiry Officer. The learned Counsel urged that nobody could be compelled to give evidence against him as per the mandate of the Constitution and for this reason itself the enquiry stands vitiated and has become unfair. As already held by me above I find the proposition perfectly valid and unassailable thus deserving acceptance.

12. It was also submitted by the learned Counsel that any objection which the respondent might raise to the effect that this point of unfairness was not brought earlier by the petitioner is certainly without merits. According to the learned Counsel the violation of the principles of natural justice is going to the very root of the jurisdiction of the Enquiry Officer and could be agitated at any time even before the writ Court. The learned Counsel thus submitted that the entire proceedings were vitiated on account of the illegal cross-examination of the petitioner allowed by the Enquiry Officer. Besides the Enquiry Officer has drawn conclusions to reach at his findings on the basis of such illegal cross-examination. In addition the unfairness of the enquiry conducted by the Enquiry Officer became also patent from the fact that he himself went to the extent of personally checking up certain statements made by the petitioner during his illegal cross-examination. This, according to the learned Counsel, shows that the Enquiry Officer has acted as an agent for the employer.

13. Indeed the submission appears to be entirely based on facts and in view of the legal position enunciated earlier, I have no difficulty in holding that the proceedings conducted by the Enquiry Officer on behalf of the Company are to be deemed as substantially unfair and violative of the principles of natural justice.

14. Without prejudice, the learned Counsel submitted that in case the Court comes to the conclusion that there was some misconduct on the part of the petitioner still the punishment awarded to him is clearly disproportionate. According to the learned Counsel the matter of punishment for misconduct of the workmen has been enumerated in Standing Order 34 and no other punishment other than the one provided in Standing Order 34 could be inflicted to the petitioner for any misconduct. Therefore this Court was free to consider any punishment more lenient than the one awarded to the petitioner irrespective of the right of the petitioner to be reinstated with full back wages because any finding of guilt for misconduct could have no effect on his being granted the relief of reinstatement with back wages.

15. On behalf of the respondent Mr. Pawoskar, learned Senior Counsel, has submitted that the petitioner being a watchman of the Company his employment was eminently based on trust and confidence. Thus, once the Management had come to the conclusion that the workman does not deserve confidence and trust the decision to terminate his service should not be interfered with. It was next submitted that the Court should exercise writ jurisdiction and not appellate jurisdiction in this case and therefore it was not expected that a fresh re-appraisal of evidence would be done. If the Tribunal had arrived to some conclusions on the basis of evidence obviously these findings should not be assailed unless the same were perverse and based on no evidence. Reliance was placed by the learned Counsel on a decision of State of Andhra Pradesh v. Chitra Venkata Rao, 1975(12) S.C.L.J. 143. This was for the purpose of showing that the jurisdiction to issue a writ of certiorari under Article 226 is merely a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior Court or Tribunal as a result of the appreciation of evidence are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be. It was also contended that if the finding of the Tribunal is supported by some evidence that is sufficient to be left undisturbed. Assuming that a different view could have been taken on this evidence even so a wrong view could not be assailed and only a perverse one which is a view which could not have been taken at all on the basis of the available evidence was liable to be challenged. My attention was drawn by the learned Counsel on the case of Sadhu Ram v. Delhi Transport Corporation, 1983(47) F.L.R. 326. This was for the purpose of showing that the jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Similar reliance was also placed

on the case of *Balkrushna Misra v. Presiding Officer, Central Government Industrial Tribunal, Orissa and another*, 1977(35) F.L.R. 11. This was for the purpose of showing that a finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced. In a domestic enquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence. Even though there can be any possibility to arrive at a different conclusion on the same evidence the High Court cannot substitute its conclusion on facts. In an application under Articles 226 and 227, the High Court cannot sit in appeal over the findings recorded by the competent Tribunal. It cannot reappreciate the evidence. It would however be justified in setting aside the finding if it is based on no evidence. As such, the learned Counsel submitted, only an error apparent on the face of record can be corrected by a writ Court in the exercise of its extraordinary jurisdiction. It was also urged that the question in issue was whether the act of the petitioner would amount to a misconduct or whether this act had or not any bearing on the relationship between the Management and the workman or was an act of misconduct which is amenable to disciplinary action by the Management. The learned Counsel then submitted that Standing Orders become part and parcel of the terms of the agreement between the parties. As such standing orders as part of a private agreement could not be subject to writ jurisdiction. Admittedly the respondent Company was not a State nor a instrumentality of the State and public policy was not involved in the private sector. Therefore Standing Order 33 could not be challenged in this writ jurisdiction because there are always remedies available under the S.O. Act, namely, its section 10 and if somebody felt aggrieved by a standing order he could have sought its amendment. Besides the disputed standing order was one of the orders certified on 4th September, 1974 and the present challenge is clearly belated and hit by delay and laches. The learned Counsel strongly disputed the petitioner's contention that standing orders had a statutory force as, according to him, they were merely part of private agreements wherein no public policy is involved. Hence there was no question of any challenge to the standing order going to the root of the very jurisdiction of the Tribunal. My attention was drawn to the case of *M.L. Kamra v. New India Assurance Company Ltd.*, 1992(1) L.L. NOT 401. This was for the purpose of showing that it is a settled law that there is a presumption of constitutionality of the rule. The Court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, since the Legislature or the rule-making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. Therefore, there is a presumption in favour of constitutionality of a legislation or statutory rule unless ex facie it violates the fundamental rights guaranteed under Part III of the Constitution. Thus, since standing orders provide adequate safeguards to the workmen, arbitrariness could not be inferred or imputed in Standing Order 33(1)

and therefore challenge under Article 14 of the Constitution was not available to the petitioner being the Management a Private Company.

16. With due regard I do not think that in the instant case the question of trust and confidence becomes a relevant issue which was supposed to have any material bearing on the decision which the Management opted to choose while dealing with the alleged misconduct purported to have been committed by the petitioner. I say so because in my judgment the issue of loss of confidence must always be viewed with reference to the position of trust and confidence. As rightly urged by Mr. Kakodkar the higher you are, more responsibilities you have to carry in the strict and faithful compliance of one's duties and only then the question of trust and confidence assumes importance. In other words it is a matter of the nature of functions which are entrusted to a person and the extent of the breach of misconduct in the discharge of duties which are imputed to the employee. If it is not understood every misconduct was likely to lead to a situation of distrust on the part of the Management and cause the loss of confidence on the concerned workmen. Further on the restricted scope of the writ powers of this Court under Articles 226 and 227 of the Constitution there could be no dispute that while exercising supervisory jurisdiction the Court is not to sit as an Appellate Authority for the purpose of re-appraisal of evidence afresh or to substitute its views from the different ones taken by the Courts below on the basis of the evidence on record. I am quite aware of the limitation to which the Court must adhere in this regard but the fact remains that standing orders once certified having statutory binding although being part and parcel of private contracts of employment of the workmen the right and duties arising out of the same can be constitutionally enforced and as such any perverse finding given by the Management on account of gross mis-reading of evidence during a preliminary enquiry in breach of principles of natural justice or violation of the doctrine of public policy and which is likely to lead to the application of a wrong and undue punishment to the workmen on the ground of purported misbehaviour is bound to be interfered with in the exercise of writ jurisdiction under Articles 226 and 227.

17. It was next submitted by the learned Counsel that in the instant case the certificate issued by Dr. Chodankar to the petitioner could not be believed as it has been apparently procured only for the purpose of securing leave and hence the Enquiry Officer was justified in rejecting the said certificate. The Tribunal also could not be faulted with when it upheld this finding of fact given by the Enquiry Officer. The learned Counsel vehemently contended that the petitioner has lied to the Management when he asked for extension of his leave on the ground of sickness. The petitioner had applied for privilege leave but immediately thereafter he pretended that had fallen sick. No reference was made in his application for privilege leave to his alleged sickness. The petitioner while submitting his explanation to the charge-sheet given by the Company by his letter dated 21-9-1983 has produced two medical certificates of Dr. Chodankar being one dated 3-9-1983 and the other 14-9-1983. The first certificate refers

that the petitioner was suffering from jaundice and vomiting on 29-8-1983 and was under his treatment. In the second certificate dated 14-9-1983 Dr. Chodankar again says that the petitioner was under treatment from 29-8-1983 to 14-9-1983 for jaundice. However, these two certificates are inconsistent with the contents of the petitioner's letter to the Company, dated 28-9-1983, wherein he has stated that he was under treatment of Dr. Chodankar since 16-8-1983. This inconsistency has not been explained and therefore the certificate of Dr. Chodankar could not be believed. The learned Counsel urged that there was also one more reason to discard the certificate of Dr. Chodankar and this is because the petitioner had been admittedly arrested and taken to Belgaum on 29-8-1983. It was urged that if a person who is arrested falls sick the police is always duty bound to refer him to the nearest Government Hospital. Hence the question of the petitioner having been taken to a private doctor by the police would not arise. Besides the petitioner did not even put any question to Dy. S.P. Moraes in cross-examination to suggest that he had been examined by Dr. Chodankar on 29-8-1983 after his arrest. Further the letter from the Police Department addressed to the Company in reply to its letter dated 14-9-1989 seeking to know whether the petitioner had been sick during the time of his detention in police custody shows that during that period the petitioner did not complain of any illness. In addition the evidence of Dr. Salelkar also shows that he did not find him sick at the time of his examination on 9-9-1983. The learned Counsel submitted that if the petitioner was really sick on 27-8-1983 Dr. Salelkar would have definitely said so but instead he had made a categorical statement that he had no vestiges of jaundice when he saw him on 9-9-1983. Thus, the learned Counsel concluded, if this evidence was accepted by the Enquiry Officer this could not be faulted with. Besides the Tribunal had also come to the same conclusion on this evidence and both the courts below had given reasons as to why they had disbelieved the medical certificate of Dr. Chodankar and chose to believe the statement of Dr. Salelkar.

18. I have already dealt with this point while analysing the submissions of the learned Counsel for the petitioner and in my view the whole approach of the matter and the assessment of the evidence recorded by the Enquiry Officer appears to be wrong and unjudicious thus lacking proper balance and perspective.

19. Now on the point of the petitioner's cross-examination the learned Counsel has submitted that there was a written statement produced by the petitioner in reply to the charge-sheet given to him whereby he denied all the charges. This statement must be treated as a defence statement and as such the Management should have a right to cross-examine the delinquent workman on its contents. If there was no written statement of defence then any cross-examination of the petitioner allowed by the Enquiry Officer might have become objectionable. Thus since the statement of defence had been filed by the petitioner the respondent was to be given an opportunity to test that statement and challenge whatever documentary evidence the petitioner had relied in support of his defence.

20. For the reasons earlier mentioned while discussing the issue raised by the learned Counsel for the petitioner, I have already held that it is impossible to accede to such submission which is therefore bound to be rejected.

21. Further, according to the learned Counsel, both on merits as well as on the point of fairness of the enquiry while going through the impugned Award it seems that the Tribunal had come to the conclusion that the charges against the petitioner were proved on the basis of not only the petitioner's evidence during his cross-examination before the Enquiry Officer and the testimony of witnesses relied by him but also on the strength of the evidence given by the petitioner himself before the Tribunal. Thus the Tribunal has arrived at clear findings of fact with regard to the falsehood of the medical certificate produced by the petitioner in support of his application for leave which findings are substantially based on evidence which fully justifies the action taken by the Management against him.

22. Besides, according to the learned Counsel, in the instant case every steps contemplated in law to establish the charges of misconduct against the petitioner were complied with by the respondent. The petitioner was fully protected and given the right to defend himself. As such there was no arbitrariness in the action taken by the Management. Indeed after the enquiry was held the Management was required to give his findings and these findings were communicated to the workman who was permitted to make his comments and raise objections, if any, against the findings. Thereupon a second show cause notice was also given to him and these were the safeguards which were provided in the standing orders so as to guarantee the rights of the workmen. Therefore no injustice or unfairness could be seen in the Standing Order and it was not open to the workman to challenge any action against an act of misconduct committed by him which would come within the purview of the said Standing Order. The learned Counsel concluded on this point that since Standing Orders were providing adequate safeguards arbitrariness could not be inferred or imputed to the respondent. Thus Article 14 was not applicable and the question of its violation would not arise in the circumstances of the case.

23. All these points have been already sufficiently discussed and dealt with by me in connection to the contrary submissions canvassed by the learned Counsel for the petitioner not only while challenging the constitutionality of Clause (1) of Standing Order 33 vis-a-vis Articles 14, 19 and 21 of the Constitution and for the reason of the same being violative of section 23 of the Contract Act but also when he disputed the circumstance of the petitioner's action, on facts, bringing his conduct within the purview of the said Clause (1) as well as the very fairness/propriety of the proceedings held by the Enquiry Officer in breach of the principles of natural justice.

24. If on one side the behaviour of the petitioner in submitting to the Management an application for extension of his leave by falsely alleging that he was sick and bedridden on account of typhoid fever when at the relevant time he was in police custody (and it appears that this is the only reason why he was

seeking further leave due to his inability to resume duties on the expiry period of the leave earlier sanctioned) cannot be certainly commended as morally justified or ethically defensible, however, in my view, this conduct is to be seen in the context of the constraints which have prompted him to make such application which the record shows was not even personally written by the petitioner but only just signed by him while in detention. It thus stands to reason that placed in a somehow humiliating situation the workman might have reasonably felt shy in disclosing the real motive and was probably wrongly advised to just invoke a grounds of illness which at that moment would save him face and spare embarrassment or eventually avoid further complications in relation to his duties as watchman of the Company. This being the position it seems that once in the aftermath of his release on bail and subsequent discharge from any criminal liability the petitioner sought to justify the extension of leave on real grounds of illness which he was actually suffering and for which he was being treated by Dr. Chodankar, at least right from 16-8-1983 as the evidence substantially reveals, the over-eagerness of the Management in trying to blow out of proportion a simple or venial sin of his employee who admittedly had put in 12 years of work with the Company so as to award him the extreme punishment of termination of his services is just inconceivable and thoroughly unjustified. It is in the light of these circumstances that the whole issue has to be viewed if in a proper balance of the situation principles of fairness, good faith and natural justice assume really any meaning or acceptance in the Code of Conduct of the Company's Management". In my judgment nothing more is required to be said in full answer to the learned Counsel's detailed and elaborate submissions on the matter.

25. Now and on the matter of punishment awarded to the petitioner the learned Counsel urged that the same was not disproportionate to the misconduct found to have been committed by the workman. Since the Company had lost confidence in him there was no question of his being reinstated to service. In such case it could be at the most a case for compensation only. In this respect the learned Counsel submitted that the punishments prescribed for the workmen are the ones contained in Standing Order 34 and though the respondent could have simply dismissed the petitioner he however was discharged from the service by being given one month's salary. Whether this punishment was disproportionate or not this was a question to be decided on the basis of the Standing Order itself. u/s 11-A the Tribunal was given powers to consider the question as to whether the punishment to a workman is justified or not and therefore the propriety and adequacy of the punishment is not amenable to writ jurisdiction. My attention was drawn in this respect to the case of Bank of Baroda v. Arvindkumar Hiralal Mehta, 1994 (1) C.L.R. 455 . This was a case wherein a Division Bench of this Court ruled that the finding of the Tribunal which had held that the punishment of dismissal awarded to the workman was justified should not be interfered with. Reliance was also placed on the case of The Binny Limited Vs. Their Workmen, . This was for the purpose of showing that in a case of misconduct by a workman in obtaining leave on false representation and the

Management raising the question of losing confidence in the workman, the reinstatement and payment of back wages ordered by the Labour Court was held to be wrong by the Supreme Court. My attention was also drawn to the case of *B.D. Tripathi v. Indian Airlines Corporation*, 1987(55) F.L.R. 33. This was also for the purpose of showing that the dismissal of an employee of the Corporation on the ground that after the petitioner made a false leave application he tried to justify it by false explanations and the Corporation raised the question of loss of confidence, was found to be not shockingly disproportionate and therefore upheld. Another case to which my attention was invited is of *Francis Klein v. Their Workmen*, 1971(2) L.L.J. 615. This was for the purpose of showing that there was no justification in ordering reinstatement of a workman if the employer loses confidence in his employee particularly in respect of a person who is discharging an office of trust and confidence. One more ruling cited by the learned Counsel is in the case of *Air India Corporation v. V.A. Rebellow and another*, 1972(1) L.L.J. 501 and this was for the purpose of showing that once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him even though erroneous, if bona fide is final and not subject to review by the industrial adjudication. Thus, the learned Counsel submitted, the opinion of the Management with regard to the misconduct and loss of confidence of the workman when it is bona fide is to be deemed as final and should not be subject to any review or challenge.

Finally and on the point of compensation to be eventually paid to the petitioner the learned Counsel has relied on the case of *Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. & another*, 1990(2) L.L.J. 226.

It was last submitted by the learned Counsel that the respondent had held a proper enquiry against the petitioner but if the Court was of the view that the same was suffering from any infirmity the matter could be remanded to the Tribunal for fresh adjudication and the respondent should be allowed to lead evidence in this regard.

26. Dealing first with the authorities cited by the learned respondent's Counsel I must say that all of them are perfectly distinguishable and thus not attracted in this case. On a plain reading of the judgments on which reliance was placed, I am satisfied that they were given on the peculiar facts of each case and most of them did not consider either the letter or spirit of section 11-A which was inserted in the Act only on 15-12-1971. Hence these decisions are based on a pre-amended law while some others are either concerning writs filed against the instrumentalities of the State or under provisions of different statutes and delivered in the exercise of exceptional jurisdiction of the Supreme Court under Article 142 of the Constitution.

Now and on the question of relief, the learned Counsel for the petitioner although fairly conceding that there may be some sort of a wrong or improper behaviour on the part of the petitioner has however contended that in the event the Court

is inclined to so hold then the punishment awarded to him is grossly disproportionate. He therefore submitted that even assuming that any lenient or minor punishment might be deserved by the petitioner he should not be however deprived of his right to be reinstated to service with full back wages. On the point of remand to which the learned respondent's Counsel has made a passing reference without prejudice to his contentions it was urged that if the Court was of the view that the enquiry was suffering from any infirmity in which case the respondent should be allowed to adduce fresh additional evidence. Mr. Kakodkar has vehemently opposed to such move by placing reliance on the case of, *E. Merck (India) Limited, Bombay v. V.N. Parulekar and others*, 1991(2) C.L.R. 73 : 1991(2) Bom.C.R. 201 and also of *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, . It was argued by the learned Counsel that in the special facts and circumstances of this case it was too late for the Management to expect that it should be permitted to hold a second round of litigation against the petitioner. It was contended that the remand in such a situation would amount to reward who had ostensibly prevaricated in this whole affair as no person with a logical approach in law could ever reach to such a finding arrived at by the Enquiry Officer and accepted by the Tribunal.

27. .It is thus clear that once it is to be held that the termination of the petitioner's services is wrong, bad and illegal the consequence which would follow is his reinstatement in service with full back wages. Termination of services of all workmen as a result of a wrong and illegal action by the Management will have to be declared for all purposes as arbitrary and ineffective. As such reinstatement with entirety of back wages appears to be the relief to be granted as a matter of course and only in exceptional circumstances it can be conceived that such benefit should be denied to the workmen.

28. I do not think that the instant case seems to be one of those rare cases which will justify that the petitioner should be deprived from the right of being reinstated in service. Since I have held that the nature of the alleged misconduct imputed to the petitioner in the backdrop of his faithful past service to the Company for a long period of about 12 years does not necessarily involve the question of loss of any trust and confidence as sought to be projected by the learned respondent's Counsel, it is difficult to maintain that whatever mischief found as having been committed by him is one which is likely to be either subversive of the interest of the industry or having the effect of disturbing the morale of the Management and the very ethos of the Establishment as such.

29. I have made my best efforts to strike an objective and judicious balance vis-a-vis the conflicting stand taken by the parties and tried to appreciate the plight of the petitioner consequent upon his unexpected arrest by the police in the context of the need to protect the interest of the Management in effectively asserting its authority and discipline amongst the workmen while at the same time requiring from them utmost loyalty and fair behaviour towards the Establishment.

30. On an overall assessment of the situation I am more inclined to believe in a simple case of impropriety, if not of a sheer immaturity, on the part of the petitioner in this whole unfortunate affair, which, in my judgment, does not seem to explain and much less justify the ostensibly impulsive and over tough reaction of the Management in awarding to the petitioner, a unskilled watchman, (a post neither particularly sensitive nor highly responsible for the purpose of an actual assessment of the seriousness of his alleged wrong) with a clean record of more than a decade of unblemished service to the Company, the extreme punishment of termination of his services. This fact, by itself, is enough to make me persuade that the petitioner is entitled in the circumstances to reinstatement in service.

31. On the other hand and with regard to the back wages there is no evidence that during the long period of his being out of job the petitioner has managed to survive and maintain his family by securing a profitable employment which would enable him to meet their daily needs with some sort of security and continuity. This fact and the agony of the protracted litigation in which he appears to have been unnecessarily dragged in throughout this time with all its financial implications leads me to think that already a heavy toll has been paid by the petitioner for his past mistakes and therefore no further penalty is required or warranted in the instant case. I therefore hold that in the facts and circumstances which emerge besides reinstatement the relief of full back wages cannot be withheld from the petitioner.

32. Needless to say that in the computation of back wages in the case of a reinstated workman the benefit of back wages arising out of revision of pay-scales as also yearly increments and revised Dearness Allowance should also enter the calculation of arrears of back wages. Leave encashment and bonus, if other workmen in the same category have been paid the same, would also be his dues. Normally interest from the date the amount became due should also be held to be one such entitlement of a workman in the situation. This much has been already held by a Division Bench of this Court in the case of Goa Bottling Co. Pvt. Ltd. v. Pradeep Sardessai & another, 1992(1) Bom.C.R. 297 of which I was a party and I see no reasons to depart from the view earlier taken on the matter. However, I refrain myself from awarding any interest to the petitioner bearing in mind that the benefits already acknowledged in his favour will work out also as a just and fair compensation to mitigate whatever grievances he might have had against the Management.

33. In the result the petition is allowed and the Award of the Industrial Tribunal dated 10-8-1988 is hereby quashed and set aside. The respondent Company is directed to forthwith reinstate the petitioner with full back wages and all the accrued additional benefits mentioned in the precedent paragraph.

Rule accordingly made absolute in the above terms. There will be, however, no order as to costs.