

(1995) 04 PAT CK 0038
In the Patna High Court
Case No : C.W.J.C. No. 911 of 1990 (R)

Tata Engineering and Locomotive Co. Ltd.	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0038

Judgement

R.N. Sahay, J.—By the application under Articles 226 and 227 of the Constitution of India, an award dated 29.1.90 rendered by the first respondent (Labour Court, Jamshedpur) in Reference case No. 2 of 1987 is impugned. By the impugned award, the Labour Court held the dismissal of Jitendra Prasad Singh, the second respondent, to be illegal and consequently directed his reinstatement with full back wages and other consequential benefits.

2. The petitioner-company is engaged in manufacture of commercial vehicles and earth moving machinery etc. The employees of the company have formed a Co-operative society namely, TELCO Co-operative Society Limited, Jamshedpur which was registered under Bihar & Orissa Co-operative Societies Act. There are about 20,000 permanent members of the Society who are all permanent employees of the company. The management of the Society is vested in the Managing Committee consisting of thirteen members of which three are nominated by the Company viz the Chairman, the treasurer and the Honorary Secretary. It appears that at the relevant time, there was a dispute between the Management and a Section of the employees-members of the Society over certain burning issues.

3. On 14.4.85, a general body meeting of the Society was being held in this TELCO new canteen premises. The meeting ended amidst pandemonium. The resolution passed in the said meeting did not find favour with a section of the employees. It is alleged that at about 11.45 a.m. the second respondent Jitendra Pd. Singh assaulted Sri M.P. Mishra Assistant Personnel Manager who was representative of the petitioner-company as per the bye-laws of the Society. The

assault took place when Shri Mishra was being escorted to the security room of Plant II gate. The second respondent rushed towards him and bodily pushed him as a result of which Shri Mishra fell down on the road and the second respondent along with others again assaulted him with fists, blows and kicks. On 16.4.85, the second respondent was served with a charge sheet cum notice of enquiry to the effect that while on duty along with others, he assaulted Sri M.P. Mishra, Asstt. Personnel Manager (Forge) who was on duty there (in the TELCO new canteen premises "" and this constituted "misconduct" under Works Standing Order No. 24 Sub-clause (XVI)- "disorderly or indecent behaviour or any acts subversive of discipline..." The workman was found guilty of "misconduct" with reference to Clause (xvi) of Standing Order No. 24 of the Company's Standing Order. The disciplinary authority accepted the report of the Enquiry Officer and by his order dated 21.6.1986 terminated the services of the respondent-workman.

4. The second respondent raised an industrial dispute. The State Government vide notification dated 31.12.1986 made a reference u/s 10 of the Industrial Disputes Act, 1947 to the Labour Court which was registered as Reference No. 2/87. The Labour Courts was called upon to adjudicate:-

Whether the termination of service of Shri Jitendra Pd. Singh, ticket No. 6620-66426-2 workman of Tata Engineering and Locomotive Company Ltd. Jamshedpur, is proper and justified, if not whether he is entitled to reinstatement and/or any other relief.

5. Before the Labour Court, written statement was filed by the Management as well as the workmen. The Management referred to the relevant facts of the case and sought to justify the punishment of dismissal imposed on the workmen. It was also pointed out that the domestic enquiry was held in accordance with the principle of natural justice and that the workman had no grievance with regard to the conduct of the enquiry. However, the workmen alleged to the contrary. He raised the question of legality of the enquiry. The petitioner filed application before the Labour Court, that the validity of domestic enquiry be decided as a preliminary issue and that if the Labour finds the enquiry to be vitiated for any reason whatsoever, the Management be given opportunity to adduce evidence afresh to establish the charges and sustain the punishment.

6. A lengthy written statement was filed on behalf of the 2nd respondent in which he pleaded as follows:

- i. The second respondent had raised some issues with the Management with regard to certain grievance of the workmen with regard to legitimate and genuine right of contractor-workmen. The dismissal was, therefore, an act of victimisation;
- ii. The company and few interested high officials of the company in connivance and collusion with the few office bearers of the recognised union of the company, used to interfere with the affairs of the Society and against the interest of the

Society and its members although the company has nothing to do with the affairs of the said Society. The workmen alongwith someother rival trade union office bearers/workers pointed out some financial irregularities and other irregularities relating to contract jobs contract jobs undertaken by the said Society particularly in labour matters. The company also wanted to divide and bifurcate the said society into five different societies against the interest and benefits of the member-workmen and against their will. The workman alongwith some rival trade union office-bearers vehemently opposed, objected and protested against this decision of the Management. Inspite of this protest, objection and opposition of the members and the concerned workman, the company took the division and bifurcation issue of the said Society and instituted several proceedings/cases and appeals under the provisions of Bihar & Orissa Cooperative Societies Act, 1935. The workman and one Shri Guru Dayal Singh (now dismissed) defended the case/ proceedings and the matter was also moved to the High Court, Patna and lastly as per direction of the High Court, there was vote of the members regarding the issue of division and bifurcation of the said Society but by majority of vote of the members, the issue of division and bifurcation of the said Society was rejected. The company took this defeat very seriously and this result in victimisation of this respondent.

iii. The company also made out false, fabricated concocted and motivated criminal cases against the workman and one Shri Guru Dayal Singh.

iv. On 14th April, 1985, there was general body meeting of the TELCO Cooperative Society Ltd. in the presence of the Asstt. Registrar Co-operative Societies Jamshedpur in which 400 member workmen of the company attended. The meeting was absolutely peaceful. The workmen and few other trade union office bearers pointed out to some irregularities and unfairness of the company and its officers in the said meeting and at this the company through the K.P. Mishra, convener of TELCO Co-operative Society Ltd. lodged a completely false, baseless, concocted, fabricated and motivated FIR in the TELCO police station against five trade union office bearers against Jitendra Pd. Singh (2nd respondent therein) Gurudayal Sinha, Mahesh Mishra K.P. Singh and N.P. Mishra.

The story of assault on Shri Mishra is cooked up fabricated, false, concocted and motivated.

7. The Labour Court vide order dated 23.12.1989 (Annexure-6) held that the domestic enquiry was fair and proper and in accordance with principle of natural justice.

8. Sri M.L. Verma Sr. Counsel appearing for the petitioner in support of the writ application urged that the Labour Court having found that the incident of assault had taken place in the Canteen hall of TELCO (within the premises of TELCO) and that the factum of assault of the Asstt. Personal Manager by the workman have been established, come to a grossly erroneous conclusion that the relevant standing order is not attracted and accordingly the workman could not be

punished at all. Sri Verma strongly submitted that the award suffers from a serious error apparent on the face of the record and hence it is liable to be invalidated. Sri Verma elaborated his points with reference to a catena of decisions of the Supreme Court, on the subject which shall be discussed in detail after considering the submission of Sri A.K. Sinha who appeared for the successful workman

9. Mr. A.K. Sinha learned Counsel for the 2nd respondent Jitendra Prasad Singh has vehemently supported the impugned award. He strenuously argued that the conclusion reached by the Tribunal is fully justified. He has argued that the Labour Court has examined the evidence of the complainant Sri Mishra whose evidence with regard to the assault on him was discrepant in character. He, however, disputed the finding of the Labour Court that Sri Mishra was in fact assaulted by the 2nd respondent. Mr. Sinha referred to the findings in the enquiry report and submitted that there was no legal evidence to substantiate the charge of assault against the 2nd respondent. He submitted that not a single witness produced on behalf of the petitioner-company stated that they had seen the workman assaulting the complainant. All the witnesses had only stated that they had been told by the convener about the assaulted, inflicted upon him by the workmen.

He, therefore, submitted that there is absolutely no evidence to support the charge of assault. The enquiry report in respect of four charge-sheeted workmen merely reveals that all the four workmen were opposing the bifurcation of the society. The disciplinary authority dismissed two workmen and gave minor punishment to other two workmen.

11. Sri Sinha submitted that the Labour Court in exercise of its powers u/s 11A of the Industrial Disputes Act passed the impugned award in favour of the workman after proper appraisal of material evidence on record. It was submitted that the Management in the facts and circumstances of the case cannot invoke the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India to question the award.

12. Sri Sinha next submitted that Clause (xvi) of the Standing Order No. 24 is not at all attracted in the case. He submitted that it is a clear case of victimisation of the workmen. The workman was protesting against bifurcation of the Co-operative Society.

He had also filed a case before the Co-operative Registrar, Patna against the said bifurcation of the society and accordingly an order was passed on 16.10.85 in favour of the workmen. The Ad-hoc Committee of the Co-operative Society filed a case before the High Court in which these second respondent had filed a caveat. It is alleged that on this ground the workmen was made to suffer the wrath of the management. Sri Sinha submitted that during argument of the aforesaid in the High Court, apprehension was expressed on behalf of the workmen that he may be subjected to victimisation for having opposed the writ

application (C.W.J.C. 5714/85). This Court had observed: "The company shall not victimise the workman who had come to the court in the interest of the society." (Annexure-1 to the supplementary counter affidavit).

13. Sri Sinha submitted that there was no casual connection between the employment of the workman and the allegation made against him. The workman was present in the meeting of the Co-operative Society not in the capacity as a workman but as a member of the Co-operative society misconduct, if any, not connected with his employment, cannot be brought within the mischief of the standing Order under which the action was taken. He submitted that the meeting was held in the Canteen premises and not within the premises of the Works of the company. He has referred to S.O. No. 5 which defined "Works". He strongly relied upon Glaxo Laboratories case reported in AIR 1984 SC 505, ratio of which decision formed basis of the award. Sri Sinha also placed reliance on 1979 LIC 1937 and Tata Oil Mills Co. Ltd. Vs. Its Workmen, also relied upon by the counsel for the petitioner.

14. Sri Sinha has contended that the decisions cited by Sri Verma counsel for the petitioner is distinguishable on facts. All the previous decisions on the construction of the Standing Order dealing with "Misconduct" and the "rioteous behaviour" of an employee have been considered in Glaxo's case (supra). Mr. Sinha submitted that the observation in Glaxo's case was that connection between misconduct and employment must be real, and substantive, immediate and proximate and not remote and tenuous irrespective of place of commitment of misconduct. A case of discrimination was also sought to be made out.

15. As recorded above Sri Verma, learned Sr. counsel appearing on behalf of the petitioner, submitted that Labour Court found as a matter of fact that the place of occurrence viz the canteen hall or the new canteen premises, is part of the TELCO works meaning thereby that it is within the premises of TELCO. The factum of assault of the Assistant Personnel Manager by the workman was held to have been established and proved in paragraph 43 of the award. However the Labour Court grossly erred in law in holding that the workman was not guilty of misconduct under the Standing Order in question essentially because of a gross misreading and misapplication of a judgment of the Supreme Court in Ram Pal Singh Vs. Union of India and Others, . He submitted that the Labour Court grossly erred in law inter alia, in holding that the "Act" was not connected with the terms of employment. It was not connected at the work spot.

16. The relevant Standing Order (Clause XVI) reads as follows:-

Without prejudice to the general meaning of the term "misconduct" it shall be deemed to mean and include the following:

(xvi) Drunkenness, fighting or riotous or disorderly or indecent behaviour or any act subversive of discipline or efficiency.

17. Mr. Varma submitted that assaulting a superior officer is per se an act of

serious and grave misconduct. The Apex Court had occasion to consider the meaning of the word "misconduct" in a recent case of State of Punjab and Others Vs. Ram Singh Ex. Constable, . The Apex Court quoted the meaning of the word "misconduct" in Black's Law Dictionary, 6th Edition:

A transgression of some established and defined rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful incharacter, improper or wrong behaviour; its synonymus are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence but not negligence or carelessness.

18. The award of the Labour Court is primarily based on the decision in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, . It is necessary therefore to examine the ratio of this case. This decision had taken note of the earlier decision of the Supreme Court on interpretation of some Standing Orders Parimative the present standing order. The Supreme Court for the first time laid down that provisions of the Standing Orders defining acts of "Misconduct" as penal in nature. In that case the allegation against the workmen was that they had abused and beat some loyal workers of the factory. The occurrence had taken place far away from the factory premises. The workmen concerned were charged for "misconduct" as enumerated in the Certified Standing Order No. 22 of the Company read as under:-

(10) Drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees, or conduct likely to cause a breach of the peace or conduct endangering the life or safety of any other person assault or threat of assault, any act subversive of discipline and efficiency and any act involving moral turpitude, committed within the premises of the establishment, or in the vicinity thereof;

(16) Conduct of a workman singly or in combination with others endangering the lives or the safety of other workmen or endangering the safety of the Company's premises, machinery or equipment;

(30) Being rude towards officers, employees, customers of and visitors to the company.

19. The Allahabad High Court before whom the award was unsuccessfully challenged by the Company took the view that various acts of misconduct collocated in Clause 10 in order to be a misconduct punishable under Standing Order 23 must be committed within the premises of the establishment or in the vicinity thereof, and that the situs of misconduct as set out in the charge-sheet will show that alleged acts of misconduct occurred far away from the establishment of the appellant-company and, therefore, Clause 10 of Standing Order 22 would not be attracted.

20. Sri Shanti Bhushan who had argued the case for the Company before the Supreme Court relied on earlier decision of the Supreme Court in Mulchandani

Electrical and Radio Industries Ltd. Vs. The Workmen, and had urged that "the trend of decisions indicates that the expression "committed in the premises of the establishment or in the vicinity thereof indicates not the situs of the place where the misconduct is committed but where the consequence of such misconduct manifests or ensues. "This was the decision in Mulchandani"s case.

21. In Mulchandani"s case (supra), the Standing Order read as under:-

...Commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment.

"Misconduct" alleged was that the delinquent workmen while travelling in a train between Thana and Mulund assaulted another workman who was on his way home after the day"s work. This led to a complaint by some, of the colleagues of the victim submitting a memorandum to the management protesting against the assault on the colleague.

The Supreme Court held:

On a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifest itself. In other words an act wherever committed if it has the one effect of subverting discipline or good behaviour within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24(1). An act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question is not outside the scope of Standing Order.

The decision proceeds on the language of the Standing Order. Mulchandani"s case was distinguished having regard to marked difference between the language of Clause 10 of Standing Order 22 of Galxo Laboratory"s case and that of Mulchandani"s case. The Supreme Court in Galxo"s case held that in Mulchandani"s case put a wider construction on a penal measure but did not choose to set out its reasons for departing from the well established principle that penal statutes generally receive a strict construction. The Supreme Court also distinguished the decision in India Coalfields Ltd. Calcutta v. Ram Bilas Shobnath reported in AIR 1961 SC 1189 in which the alleged misconduct had taken place outside the working hours as well as outside the pit where the respondent had to discharge his duties and accordingly it was held by the High Court that he could not be punished under the relevant Standing Order. The Supreme Court while allowing the appeal of the employer observed that "normally this Standing Order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. "The Supreme Court further observed that "it may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order No. 29 (5).

It was observed by Desai J. in Galxo case that the decision in India Coalfield case was reached as specifically stated in the special circumstances of the case. This clearly imports time-place content in the matter of construction. This decision would rather clearly indicate that the misconduct prescribed in a Standing Order which would-attract a penalty has a casual connection with place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours."

22. Sri Verma counsel for the petitioner submits that even in Galxo's case, it has been held that casual connection is enough to provide linkage between misconduct and employment though such a connection should be substantial, immediate and proximate and not remote or tenuous. Sri Verma submitted that in the case of British India Corporation v. Bhakshi Sher Singh 1962 23 FJR 484 time-place content was give a go-bye. In the said case, the workman entered the club and misbehaved with those present there. The workman was charge-sheeted and after inquiry he was dismissed. The Apex Court upheld the dismissal: However it has been observed in paragraph 20 of Galxo's case that there is no suggestion that the club premises did not form a part of the establishment of the company. In the present case, neither the workman not the official was on duty and the incident obviously took place after duty hours. Sri Verma submits that in any case the club cannot be work place of either the workman or the official yet the workman was held guilty and consequence dismissal was awarded.

23. Sri Verma strongly relied upon the judgment of the Supreme Court in Tata Oil Mills Co. Ltd. Vs. Its Workmen, Desai J while dealing with Galxo's case noticed it in paragraph 18 of his judgment, where it was observed that the Standing Order in Glaxo's case was quite different than the Standing Order in TOMCO 's case. Sri Verma submits that the wordings of the Standing Order in the petitioner's case is quite similar to that of the Standing Order in TOMCO's case and hence the decision in the TOMCO's case squarely covers the present case.

24. Sri Verma also placed strong reliance in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, . Sri Verma submitted that the decision in Lalla Ram's case has not been overruled and has neither been explained nor distinguished in Glaxo case but in fact has been noticed with approval. He submitted that facts in Lalla Ram's case do not appear to have been correctly noticed in the judgment in Glaxo's case. In that case, a plot of land belonged to another company though of the same group as the D.C.M. Chemical Works was being encroached upon by some one who was not even employed in DCM Chemical Works. The Assistant Security Officer of the DCM Chemical works went to prevent encroachment and unauthorised construction. At that point of time the workman Lalla Ram employed in DCM Chemical works manhandled the Assistant Security Officer. Lalla Ram was also not on duty at that time and the place of occurrence was certainly not the premises of the establishment. Even the Assistant Security Officer was not discharging his official

duty. However, Lalla Ram was held guilty of misconduct and dismissed. Sri Verma submits that here also the time place content was of no consequence.

25. Mr. Verma is right in his contention that even if the misconduct is in the vicinity of the premises of the establishment then also it is punishable. Mr. Verma submitted that the Labour court has grossly erred in law in holding that the assailant/workman was not guilty of misconduct inspite of holding that assault by the workman on a senior officer of the petitioner-company was proved. This error is the result of complete misreading and mis-application of the relevant Standing Order and the decision of the Apex Court in Glaxo's case. This contention is supported by observation of the Supreme Court in para 18 of the Glaxo's case referred to earlier part of this judgment.

26. Mr. Verma has also placed reliance on B.P.L. India Ltd. Vs. B.P.L. and P.S.P. Thozhilali Union, in which a learned Single Judge of Kerala High Court, Sukumaran J, has in a classic style discussed the effect of decision in Glaxo's case on the earlier decision of Supreme Court. In Kerala case the relevant standing order was as follows:-

Riotous and disorderly behaviour during working hours within the premises of the company or any act subversive of discipline either within or outside the premises of the company.

The allegation against the workman was that they had assaulted the managerial staff. The location of the incident was B.P.L. Bus stand. The Tribunal on evaluation of the evidence on record came to the conclusion that there was legal evidence to establish the infliction of physical injury by the workman concerned and in the manner alleged. The Labour Court, however, took the view that no misconduct was proved having regard to the situs of the incident. It was the legal tenability of this interpretation of the Standing Order which was canvassed before the Kerala High Court. Learned Single Judge in para 21 held that even a casual glance at the crucial clause of the Standing Order will reveal prominently and strikingly the wide wording indicating the expansiveness of the situs of the misconduct. Commenting upon the decision of the Supreme Court in Glaxo's case learned Judge observed that till the Glaxo Laboratory's case (supra) no decision of any court had referred to Standing Orders as Penal Statute. Learned Single Judge observed:-

26. The approach the inferior courts have to adopt in such circumstances, has been lucidly laid down recently in British Medical Association v. Greater Glasgow Health Board 1989 1 All E.R. 984. Even assumptions consistently made in the decision of House of Lords would not constitute a dictum binding on the courts below if they are not distilled ratios having binding effect. Viewed that way, many passages of the decision in Glaxo laboratory's case useful, as they are in understanding the approach which the courts and authorities should adopt towards the weaker of the two competing forces in the social set up cannot be understood divorced from all that had been laid down hitherto or had formed the

basis of the industrial jurisprudence.

27. The Glaxo Laboratories case (supra) has not given any interpretation which would render the Standing Order a dead letter. There is a summary of all relevant decisions rendered till then in the Glaxo Laboratories case (supra). The points on which special attention is merited may also be noted in the process of perusing that detailed judgment.

27. In Glaxo Laboratories case, (supra) the Supreme Court has taken an opposite view from the one taken by it in Tata Oil Mills' case the Mulchandani's case, although the facts in all the three cases were more or less similar. In the first instance, the Court has sought to distinguish the language of the Standing Order in Mulchandani's case which was couched as "Commission of any act subversive of discipline or good behaviour within the premises or precincts of the establishment".

28. Sri Verma also referred to CD. Fernandes v. Union of India reported in (1988) 57 FLR 234. In this decision Glaxo's case was noticed, but the case was decided against the workman on a reading of the Standing Order in that case. In Fernandes' case, the act of misconduct was neither at the place of work nor during duty hours and yet the workman was held guilty of misconduct even though the case against him on the same-set of facts under the Customs Act had resulted in his acquittal.

29. Mr. Verma submitted that in the present case place of occurrence was admitted within the premises of the establishment. Canteen was situated within the premises. He submitted that the Labour Court fell into error because of misreading and misapplication of the ratio in Glaxo's case. The Standing Order of TELCO defining "misconduct" does not contain the words found in the Standing order of Glaxo's case. This was the reason why TELCO's case was distinguished in Glaxo's case. He submitted that the Labour Court has not held that the act did not have any casual connection with the employment. The Labour Court has misdirected itself and grossly erred in law in holding that the act had no connection with the terms of employment. The law does not require that the act complained of should have any connection with the terms of employment. What is required is a casual connection with employment and not terms of employment.

30. In the instant case, the assault was not a purely private matter between the workman and the Assistant Personnel Manager and even if it were to be so since it took place within the premises of the petitioner-company, it is certainly and squarely covered by Order 24 of the Standing Orders of TELCO being a disorderly and indecent behaviour and an act subversive of discipline.

31. Mr. Verma then submitted that TELCO Co-operative Society comprises of members who are all permanent employees of TELCO. Only a permanent (and not even a temporary employee) can be a member of the Cooperative. The Society was run by a Committee in which the Chairman, Treasurer and Secretary were nominated by the management of TELCO. It is also admitted that TELCO

management wanted the bifurcation of the Society into six societies whereas the workman (who was not a member of the recognised trade union of TELCO) was opposed to such bifurcation. Pursuant to an order of this Court, meeting of the General body of the TELCO Cooperative Society was being held on the date of occurrence in which the complainant i.e. Sri M.P. Mishra, Assistant Personnel Manager, was the Convenor and the nominee of the management. No person who was not a member of the Society could attend the meeting or have the right to vote. Therefore, there can be no doubt about the fact that there was direct and casual connection of a substantial nature which was immediate and proximate and not remote and superficial between the assault and the employment both of the assailant as well as the complainant. It was not purely a private matter and it would be perverse to term it as such. The complainant was on duty as a nominee Secretary and as a Convenor of the General Body meeting of the Society representing the interests of the TELCO management.

32. In reply to the aforesaid contention of Sri Verma, Sri A.K.. Sinha submitted that the Victimisation by the petitioner is writ large on the background of the case. The Labour Court, however, has not found to be so. Mr. Verma, counsel for the petitioner-Company rightly submitted that once misconduct is established, the question of victimisation may affect the quantum of punishment but it would not nullify the action.

33. The expression "Victimisation" has not been defined in the Statute. It is an ordinary English word which means that certain person has become a victim. In other words he has been unjustly dealt with. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, it was held by the Supreme Court that the word "Victimisation" has acquired a special meaning in the Industrial Law and connotes a person who became victim of employer's wrath by reason of his trade union activities and the word could not relate to a person who has merely been dismissed. However, in the fact and circumstances of the case, this submission was not considered by the Court. In *Workmen Vs. Williamson Magor and Co. Ltd. and Another*, , the Court accepted the interpretation of the word "Victimisation" as normal meaning of being "Victim of unfair and arbitrary action. Victimisation has acquired considerable significance in the area of disciplinary action in the context of industrial law. Victimisation means in relation to industrial law one of two things. The first is where a workman though innocent yet he has been punished because he has taken active part in any trade union activities which is prejudicial to the employer's interest. Ordinarily a person is victimised when he is made a victim or scapegoat and is subjected to prosecution. Second instance of victimisation is where an employee has committed an offence but the punishment is disproportionate to the gravity of the offence simply because he has incurred displeasure of the employer. Reference may be made to: 1965(1) LLJ 462; and 1959(II) LLJ 66 . But once it is held that finding of misconduct alleged against the delinquent workman were properly arrived at the question of "victimisation" against the employee concerned does not arise. See *Lalla Ram Vs. Management*

of D.C.M. Chemical Works Ltd. and Another, .

34. Sri A.K. Sinha counsel for the respondent workman tried to make out capital of the fact that three other workmen were proceeded against on identical allegation of assault were not dismissed, but taken back in employment while the second respondent has been dismissed. These three other workmen are N.P. Misra, 2. K.P. Singh and Gurudayal Singh. The Charge against N.P. Mishra was not proved in the enquiry. The Labour Court dismissed the charge of discrimination. It is no doubt true that K.P. Singh was held guilty of the charge by the Enquiry Officer, but the disciplinary authority awarded him a minor punishment partially differing with the report of the enquiry officer. Sri Verma has submitted that it is for the disciplinary authority to decide as to what punishment will be appropriate in the facts and circumstances of the case. Sri Verma submitted that K.P. Singh was let off with lesser punishment for the reason that he had helped another very senior officer, namely Sri H.S. Varma in escaping from the pendumonium which prevailed in TELCO canteen on the fateful day. K.P. Singh could not committed assaulted when at the same time he was protecting Sri Verma. Hence there was no question of discrimination.

35. So far Gurudayal Singh is concerned, Sri Verma submitted that Labour Court award does not mention his case on the point of discrimination. It is worthwhile to mention that separate enquiries were conducted against all the four workmen, by the second respondent and three persons mentioned above. Separate enquiry was conducted by separate enquiry officers and thereafter separate disputes were raised and separate references were made to the Labour Court. In the case of Gurudayal Singh, it was found that domestic enquiry was not fair and proper. There was no finding that he had assaulted Mr. Mishra. It was, therefore, submitted that the case of Gurudayal Singh is clearly distinguishable from the case of respondent No. 2.

36. Sri A.K. Sinha submitted that the Management had challenged the award in favour of Gurudayal Singh before this Court in C.W.J.C. 1673/93R. That writ application was dismissed by a Bench comprising the Chief Justice and Mr. Justice Narayan Roy, J. In the sai order, the relevant finding of the Labour Court has been extracted in detail. This Court did not interfere with the award since no contention was raised on behalf of the Management that finding of the Labour Court is against the Standing Order. Sri A.K. Sinha submitted that in view of the above observation of this Court in the case of Gurudayal Singh, it should be held that the Standing Order on the basis of which action was taken against the workman is not attracted. Herein it may be stated that Management went to the Supreme Court against the aforesaid order but the special leave application was rejected on 29.4.1994.

37. Sri A.K. Sinha argued with much vehemence that the decision in the earlier case should be applied in the instant case also otherwise this will cause prejudice to the workman, respondent in this case, Gurdayal Singh having been reinstated pursuant to the award of the Labour Court. Sri Verma seriously disputed this

submission of the learned Counsel for the second respondent. He submitted that the decision in Gurudayal Singh's case cannot operate as res judicata or precedent against the petitioner. The fact that SLP against the judgment of this Court was dismissed by the Apex Court cannot prevent the petitioner from challenging the award against other workmen. He referred to certain decisions of the Supreme Court as to the effect of dismissal of special leave petition. He submitted that Gurudayal Singh is back in the employment does not mean that respondent No. 2 has been subjected to discrimination. In his case, the assault stand proved and domestic enquiry was held to be fair.

38. I am unable to accept this contention of Sri Sinha that the decision in Gurudayal Singh's case should be followed in this case also. It may be noticed that the judgment in Gurudayal Singh's case has not taken notice of elaborate argument made before this Court in the instant case on the Standing Order under consideration. The facts in this case is quite distinguishable from that of Gurudayal Singh's case against whom charge had not been proved.

39. In course of hearing, additional documents were filed on behalf of the second respondent and Sri A.K. Sinha has referred to the evidence led before the Enquiry Officer to demonstrate that enquiry was not fair and the evidence did not justify the finding against the workman that charge of assault is proved as found by the Labour Court Sri Sinha submitted that no independent witness has supported the version of Mishra.

40. In order to assure myself, I have looked into the evidence placed before me and I am unable to accept the contention of Sri Sinha for the finding of the enquiry officer was perverse and the charge against the second respondent was not proved. It is not for this Court to reappreciate the evidence on the face of positive finding of the Labour Court that charge of assault is established. It may be that there is no corroborative evidence to support the version of Sri Mishra that he was assaulted, but it does not mean that uncorroborated testimony of a person assaulted cannot be accepted. Mr. Sinha, however, is right in contending that the preliminary order of the Labour Court holding that the enquiry was fair and proper, is not unassailable and can be challenged before this Court since the preliminary order could not be challenged at that time before this Court. I am satisfied that the finding of the enquiry officer and the Labour Court is supported by evidence. It is not possible to take a contrary view of the matter.

41. Sri Sinha also brought to my notice another significant fact. The dispute between the Management and the members of the Co-operative Society once was brought before this Court in a writ proceeding. This Court had given certain direction. Apprehension was expressed on behalf of the second respondent that he may be victimised for raising voice against the Management. Mr. Sinha submitted that as the High Court directed that the workman should not be victimised in future. Mr. Sinha submitted that this apprehension proved right when the second respondent was dismissed on a trivial charge.

42. Sri Varma has seriously disputed this argument of Sri Sinha. He submitted that the second respondent was dismissed on 7.5.1986 and under the High Court's order referred to by Sri Sinha was passed on 16.5.1986. The submission of Sri Sinha is not tenable.

43. Shri Sinha also argued that a criminal case in respect of same incident was found to be false after investigation and police submitted final form. He contended that this fact also goes in favour of second respondent that he has been victimised.

44. A similar contention was considered by the Kerala High Court in 1994 (LIC) 1345. In that case the delinquent workman was dismissed on the charge of assault. He was also criminally prosecuted and the prosecution ended in acquittal. Learned Judge of the Kerala High court observed that "so far acquittal in criminal case is concerned, the same shall not have any effect in view of findings of fact arrived at by the Industrial Tribunal" Sri Verma referred to the decision of the Supreme Court in Fernandes 's case (supra) and submitted that discharge on acquittal in a criminal case has got no bearing on the disciplinary proceeding.

45. Sri Verma lastly submitted that the alleged misconduct is of grave nature and utmost the Management, in the facts and circumstances of the case, may offer a lump sum to the respondent No. 2 even if the award of the Labour Court is quashed. It was pointed out that the petitioner has been gainfully employed and therefore question of back wages should not be reckoned while quantifying the lump sum to be paid to respondent No. 2.

46. To sum up my conclusions: (a) The Labour Court was right in finding that second respondent had assaulted Sri Mishra. The finding is based on proper appreciation of evidence and is not perverse; (b) Charge of misconduct as defined in the Standing Order No. 24 is clearly established for the reasons stated above; (c) There is no evidence in support of charge of discrimination or victimisation. The impugned award of the Labour Court therefore cannot be sustained and is accordingly quashed.

47. Although the impugned award has been quashed for the reasons stated above, in the peculiar facts and circumstances of the case and in view of the sporting offer made by the learned Counsel for the petitioner that the management was willing to compensate the petitioner even if the award is set aside, I think adequate compensation should be paid to the second respondent. I, therefore, direct that the petitioner shall pay to the second respondent salary from the date of discharge till date and further a lump sum amount of Rs. 50,000/-. There shall be no order as to costs.