
(1966) 11 GUJ CK 0004
In the Gujarat High Court

The Manekchowk and Ahmedabad Mfg. Co. Ltd.	APPELLANT
Vs	
I.G. Thakore and Another	RESPONDENT

Date of Decision : 17-11-1966

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78(1), 78(1), 78(1)A
Constitution of India, 1950 — Article 227

Citation : (1968) 10 GLR 786

Hon'ble Judges : P.N. Bhagwati, J;N.G. Shelat, J

Bench : Division Bench

Judgement

N.G. Shelat, J.—These petitions raise a short yet an important question relating to the extent and power of a Labour Court u/s 78(1) A of the Bombay Industrial Relations Act, 1946, hereinafter to be referred to as "the Act".

2. The facts leading to these petitions are quite simple. Narsinhbhai Motibhai, the respondent No. 2 in Special Civil Application No. 456 of 1963 was serving as a clerk and that way an employee in the Manek-Chowk & Ahmedabad Manufacturing Company Ltd., to be referred to hereinafter as the petitioner-Mills, since last about 28 years. On 29-4-1960 at about 11-40 a.m. while respondent No. 2 was on his duty in the office room of the Mills, the Manager of the petitioner-Mills happened to pass through that room, and he found respondent No. 2 sleeping with legs stretched on the Gadi. He had to be awakened by crying out by the Cashier working in the same office room. That led the Manager of the Mills to give him a notice Ex. 8 calling upon him to explain and show cause as to why he should not be dismissed from service on account of such gross misconduct which was subversive of discipline under Standing Order No. 22(1), he being treated as an operator in the Mills. Simultaneously, on that day a preliminary suspension order was passed whereby he was suspended for a period of four days i.e. from 29-6-60 to 2-7-60 as per Ex. 8/1 in the case. On 1-7-60 the respondent No. 2 gave his explanation Ex. 9 to the Manager of the Mills wherein he stated that he had some toothache trouble as a result of which he had no sleep on the previous night of 28-6 60. He had taken treatment from his

doctor and that since that pain had subsided, he had attended the office. He has further stated that as the pain started again, he closed his eyes and since he had no sleep on the previous night, he had fallen asleep and that he was sorry for the same. On that very day his statement was recorded by the Factory Manager as per Ex. 18 in the case. After reiterating the same what he had stated in his explanation Ex. 9, he stated in response to certain questions put to him that "he was aware that it amounts to an offence if any one were to sleep during the working hours in the office and that such an act was against the rules of discipline of the Mills" with regard to the question about his having stretched his legs, he had stated that he did not know whether his legs were stretched after he was asleep. He has, however, admitted that "it was on account of his being called out (...) by the Cashier that he woke up and that it was his mistake for which he was sorry. "Besides, he also admitted about his having been similarly found sleeping during the working hours of the office once before and in respect of which such a notice was given to him and that he had come to be dismissed by the petitioner-Mills, and that at the recommendation of the Majoor Mahajan he was allowed to be taken back on work by the petitioner-Mills. Such a statement by him before the Factory Manager, was taken to be in the nature of an admission of guilt in respect of the misconduct alleged against him and since he was once dismissed for similar offence and re-employed at the instance of the Majoor Mahajan, the Factory Manager dismissed him without notice or without wages in lieu of notice. That order was passed on the same day below his statement Ex 18.

3. Thereafter on 15th September 1960, before filing an application before the Labour Court u/s 71(1) A of the Act, the respondent No. 2 Narsinhbhai sent an approach notice to the Manager of the petitioner-Mills stating inter alia that he had given a proper written explanation to the show cause notice dated 29-6-1960 issued against him and that in support thereof he had shown a medical certificate. He further stated that "no questions were asked and the certificate was returned." Then he has stated that the reason for the passing of an order of dismissal from service was not sufficient and that the order was arbitrary, harsh, illegal and improper. He also added that the charge levelled against him did not amount to misconduct in the circumstances of the case and that, therefore, requested the Manager of the petitioner-Mills to cancel the said order and reinstate him with full back wages. That approach notice of 15-9-60, copies whereof were sent by him to (1) the Commissioner of Labour, Ahmedabad and (2) Govt. Labour Officer, Ahmedabad, was replied to by the Factory Manager as per the letter dated 20th September, 1960 wherein all that had taken place came to be mentioned, and according to him, after making a legal and impartial enquiry, on his having admitted his guilt and taking into account a similar misconduct for which he had come to be dismissed before from service the order of dismissal was passed. It was, thus, said to be a just, legal and proper order and nothing can be done in the matter.

4. That led him to prefer an Application No. 1956 of 1960 before the Labour

Court at Ahmedabad u/s 78(1) A of the Bombay Industrial Relation Act, 1946. It contains the same allegations as made in his approach notice of 15-9-60 stated above and it is, therefore, not necessary to repeat the same. The opponent-Mills resisted the application by reiterating the same facts, which it set out in the reply of 20-9-60, and adding that since he was dismissed from service after making full and proper inquiry as required under the Standing Orders, the order was said to be legal and proper, and that the Court cannot interfere therewith.

5. During the course of hearing of this application, the parties were allowed to lead some evidence and that evidence appears to be in relation to a point made out by the applicant, viz. about his having produced the medical certificate before the Factory Manager at the time when the enquiry was made against him on 1-7-60 and the same having not been accepted, and on the contrary returned back to him. This was rather the only point set out in the application and even urged before the Labour Court for saying that the enquiry was thus not properly made, and the order of his dismissal passed against him was invalid. The applicant Narsinhbhai examined Dr. Bhupendra Vyas Ex. 14 from whom he had taken the treatment for the toothache trouble that he had and about his having issued a certificate in respect thereof on 30-6-1960. The applicant Narsinhbhai also was examined at Ex. 13 and his evidence also related to that point. The Factory Manager Mr. Indraprasad Chunilal Bhatt Ex. 19, who was then no longer in service of the petitioner-Mills, was also examined and in his evidence he plainly stated that the applicant had no talk whatever with him at the time of the inquiry about the doctor's certificate and that he had neither produced the doctor's certificate nor he had returned it to him. Taking into account this part of the evidence as also the papers of enquiry held by the Factory Manager, the Labour Court came to the conclusion that the medical certificate was not produced at the time of the enquiry as alleged by the applicant, and having regard to the circumstances disclosed from the statement of the applicant himself, the order passed by the Factory Manager about the applicant being guilty of misconduct was found to be legal and proper. He also found that the punishment of dismissal for such misconduct on the part of a clerk coupled with the fact that he was similarly found guilty of misconduct about two years ago, cannot be called to be so harsh or severe as justify an interference by the Court. He, therefore, held that the order of dismissal passed against him was legal and proper and that in the result he dismissed the application. Feeling dissatisfied with that order, the applicant preferred an Appeal No. 220 of 1961 before the Industrial Tribunal, Gujarat at Ahmedabad u/s 84(1)(a) of the Act.

6. The Industrial Tribunal considered the question as to whether falling accidentally asleep while resting on account of a severe toothache when the person had no sleep on the previous night because of the toothache can be considered to be an act subversive of discipline. To that, in his view, the only answer that could be was that such an act could not be considered to be an act subversive of discipline. Thereafter he considered the effect of the order passed by the Factory Manager and observed that much though an opportunity was

given to the applicant to explain the circumstances alleged against him, the inquiry was confined only to an examination of the applicant and nothing beyond. He also observed that the order of the Mills was extremely brief and was not based upon a proper appraisal of evidence but upon what the Manager calls the plea of guilty. Then he considered the effect of the evidence and observed that it was not surprising or in any event not improbable that he may accidentally slip into sleep in view of the want of sleep on the previous night and that there was nothing Improbable in the story given out by the applicant with regard to his toothache and his having been treated by the doctor. He accepted that part of the story and since the Manager had merely picked up a part of his statement which in his view amounted to an admission of guilt and ignored the other part, the finding of the Manager was vitiated by reason of the same being perverse. He also felt and in fact found that the Manager had not applied his mind to the Various aspects both of the guilt and of the punishment to which he was bound to apply his mind as a domestic tribunal. The punishment, in his view, was far too severe having regard to his lapse only once before and having regard to his completing 28 to 30 years of service. In the result, therefore, he set aside the order of the Labour Court and directed the Mills to reinstate the original applicant in, service within two weeks from the date of the receipt of the order and to pay him six months' wages and dearness allowance in addition, as compensation. Feeling dissatisfied with that order passed on 9th April 1963 by Mr. Indrajit G. Thakore, President of the Industrial Tribunal, the petitioner-Mills have filed this writ petition under Articles 226 and 227 of the Constitution of India inter alia praying that a writ in the nature of certiorari or a writ, direction or order under Article 226 or an appropriate writ or order under Article 227 of the Constitution be issued and for quashing and setting aside the order passed by the Tribunal and for incidental reliefs arising therefrom.

7. The original applicant i.e. respondent No. 2 in this petition also felt dissatisfied with the order of the Industrial Tribunal in so far as he has not been awarded full wages for the entire period and has prayed for similar reliefs under Articles 226 and 227 of the Constitution of India by preferring Special Civil Application No. 598/63 before this Court. He has thereby prayed for setting aside or quashing the order passed by the Industrial Tribunal in so far as it went against him and a suitable writ or direction may be issued in respect thereof.

8. Since both these matters arise out of the same order passed dated 9th April 1963 passed by the Industrial Tribunal, they have been heard together and a common judgment is recorded.

9. The order of the Industrial Tribunal is challenged by the petitioner-Mills mainly on two grounds. The first is that the approach of the Industrial Tribunal in deciding the matter has been, as if it was acting as an appellate Court over the orders passed by the domestic tribunal, namely, in respect of an order passed by the Factory Manager of the Mills, and that again has been on a wrong application of standard of proof in respect of such domestic enquiries and that way

substituting its own judgment to that of the Manager. The other ground made out by Mills was that in absence of any allegations of sinister motive, unfair labour practice, victimisation or some such grounds which have been laid down by the Supreme Court in various cases, it was hardly open for the Tribunal to go into the appreciation of evidence to an extent of finding out as to whether the order passed by the Manager was wrong or improper, and that way it had exceeded in the exercise of its jurisdiction which can be said to have been a limited one by reason of Section 78(1)A of the Act. In other words, according to the petitioner the order of dismissal passed against the respondent No. 2 after making a proper enquiry having regard to the Standing Orders governing the parties should be taken as final and could not be disturbed by the Industrial Tribunal on such grounds which the Industrial Tribunal has chosen to make out and that therefore such an order is liable to be set aside. The respondent No. 2 on the other hand has claimed in his petition that the order passed by the Industrial Tribunal is perfectly legal and proper except in respect of second part thereof whereby he has been deprived of his full wages from 29-6-60 till the date of order instead of six months' wages and dearness allowance which he has been awarded by way of compensation. In other words, he claims to be reinstated with full wages by the petitioner-Mills.

10. The main point that thus arises to be determined is as to the extent of powers that the Labour Court has been invested with u/s 78(1) of the Act as against the orders passed by such domestic tribunals on an enquiry made as contemplated under the standing orders governing both the employer-Mills and its employees. Section 78(1) in so far as it is relevant for our purposes, runs thus:

78. (1) A Labour Court shall have power to--A. decide

(a) disputes regarding

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders:

(ii) the application and interpretation of standing order;

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of such change;

Section 78(1) A(a) would, thus, govern the present case inasmuch as the Labour Court has "to decide disputes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders. "The Standing Orders referred to therein are required to be settled as set out under the provisions contained in Chapter VII of the Act by the Commissioner of Labour. They are settled u/s 35 of the Act. Then as provided in Section 40(1) of the Act, Standing Orders in respect of an employer and his employees settled under this Chapter and in operation, or where there are no such standing orders, model Standing Orders, if any, applicable under the provisions of Sub-section (5)

of Section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. Sub-section (2) thereof says that notwithstanding anything contained in Sub-section (1), the State Government may refer, or an employee or a representative union may apply in respect of any dispute of the nature referred to in Clause (a) of paragraph A of Section 78, to a Labour Court. The Standing Orders which have been settled, have been placed before us and they govern the parties. In this connection as pointed out by the Industrial Tribunal, since the applicant a clerk at the relevant date and not an operative as was taken to be by the Mills, he would be governed by the Standing Orders, as finally settled for clerks employed in Cotton Textile Mills at Ahmedabad. They are placed before us, and for purposes of the applicability thereof, there is no prejudice caused to the applicant since in substance and effect there is no difference between the two vis-a-vis the nature of misconduct, enquiry and punishment for the same. The Industrial Tribunal has observed in this respect "that he would ignore the same in dealing with the order as the appellant does not appear to have suffered any injustice on merits as a result of this mistake.

11. The misconduct thus alleged against the respondent No. 2 is said to fall under Standing Order 12(k) second part which refers to "any act subversive of discipline." Then comes the punishing Standing Order 13. It provides as under:

13. (i) An employee guilty of misconduct may be--

(a) subject to and in accordance with the provisions of the Payment of the Wages Act, 1939, fined, or

(b) suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice.

The Standing Order 13 further provides that the order of suspension shall be in writing and may take effect immediately on communication thereof to the employee. Such order shall set out in detail the alleged misconduct and that the employee shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed or modified, the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded the employee shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended. It further provides that no order of dismissal shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him, and then it says that in awarding punishment under this Standing Order, Manager shall take into account the gravity of misconduct, the previous record, if any, of the employee and any other extenuating or aggravating circumstances that may exist. Then comes Standing Order 15 which says that subject to the provisions of the Bombay Industrial Relations Act, 1946, the decision of the

Manager upon any question arising out, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents and without prejudice to any right of an employee aggrieved by his or their decision to resort to legal proceedings in a Court of law.

12. It would appear from the Standing Orders 12, 13 and 15 read in the light of Section 40(2) of the Industrial Relations Act, 1946, that the employee is governed by those Standing Orders, and those Standing Orders become determinative of the relations between the employer and employee with regard to all industrial matters specified in Schedule I of the Act. Apart from authority, a plain perusal of the Standing Orders read with Section 40(2) of the Act, shows that a domestic tribunal is as it were, created whereby the Manager has to hold an enquiry in respect of any misconduct found to have been committed by the employee, and he has been authorised to pass punishment in respect thereof. His order, as it appears from Standing Order 15 is appealable to the Managing Agents and the decision arrived at or order passed in relation thereto either by the Manager or in appeal by the Managing Agents becomes final, subject no doubt to the provisions contained in etc. 78(1)A(a) of the Act. We may state here that the employee had not preferred any appeal against the order of the Manager, to the Managing Agents, and thus the Manager's order of his dismissal becomes final no doubt subject to the provisions u/s 78(1) A(a) of the Act.

13. It is with this background that we have to consider the extent or ambit of the jurisdiction of the Labour Court u/s 78(1) A(a) of the Act. Now, as enacted in that section, the Labour Court has powers to decide any dispute regarding the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders. It was at one time thought that the words "propriety or legality" used in Section 78(1)A(a) of the Act were suggestive of only a revisional jurisdiction, akin to that provided in the Civil and Criminal Procedure Code, over the orders passed by an employer acting under the Standing Orders governing the employer and the employee working in any industrial concern. Such a point, however, came to be considered by the Division Bench of this Court in the case of *The Ahmedabad Sarangpur Mills Co. Ltd. v. I.G. Thakore and another* 4 Guj.L.R. 259, and it was held that the expression "legality and propriety" used in Section 78(1) of the Bombay Industrial Relations Act does not limit the jurisdiction of the Labour Court to a revisional jurisdiction. It further held that Clause (a)(i) of Paragraph A in Section 78 read with Sub-section (2) of Section 40 says that even though the Standing Orders are determinative, an order passed thereunder or in accordance therewith is subject to the jurisdiction conferred on a Labour Court u/s 78. The Labour Court, in dealing with such an application, therefore, does not exercise revisional jurisdiction, but the jurisdiction which is conferred on it by this section is a limited original jurisdiction. Except that such an application can only challenge the order on the ground of legality or propriety, there is no limitation, such as a revisional jurisdiction will have. It is also true that it has observed that the determinative character of the Standing Orders does not bind or circumscribe the jurisdiction of

the Labour Court in deciding an application u/s 78 challenging the legality or propriety of an order made by an employer acting under a Standing Order, and while deciding such a question, the Labour Court would not be bound by the Standing Order, for Section 78 postulates that the order is purported to have been made under a Standing Order and though it is made under a Standing Order, it has to adjudge its legality or propriety, However, the contention of Mr. Chhatrapati, the Learned Counsel appearing for respondent No. 2, went far beyond what came to be decided in that case. According to him, the Labour Court had a wider jurisdiction and he went to the length of suggesting that it can determine even the correctness or validity of the order passed by the employer under the Standing Orders and the Labour Court can say that it was not a proper order, and since an appeal is provided u/s 84 of the Act to the Industrial Tribunal from the order passed by the Labour Court, the Industrial Tribunal can look into the same and come to its own decision. In support of that proposition be invited our attention to a case of Vithoba Maruti Chavan v. S. Taki Bilgrami 66 Bom.L.R. 426. In that case, while considering the question of extent of jurisdiction of the Labour Court contemplated u/s 78(1)A(a)(i) of the Act, it was held that the Labour Court can examine the propriety of an order made by the employer acting under the standing orders and in appropriate cases can set aside or alter that order to avoid miscarriage of justice. While so holding it has been observed that whether or not, under the circumstances of a case, such an interference to avoid grave injustice is necessary will depend on the facts of each case. However, in that very case, at page 440 we find the following observations which cannot be lost sight of and they in substance help the determination of the question of jurisdiction and powers of the Labour Court. They are as under:

If an order is challenged on the ground of its propriety, in view of the wide language used by the Legislature, it is not possible to say that the Labour Court will not have the power to set aside or alter that order in proper cases, to avoid miscarriage of justice. This is not to suggest that the Labour Court will sit as a Court of appeal and interfere with a finding made by the domestic tribunal merely because the Labour Court may take a different view of the evidence led before the domestic tribunal. As we have already pointed out, a fresh or de nova inquiry is not contemplated if the inquiry conducted by the domestic tribunal has been fair and has been in accordance with the Standing Orders. In the light of the well-known principles accepted in industrial adjudication, it has to be borne in mind that the inquiry held by the employer is a domestic inquiry and, in the absence of compelling reasons (on the ground either of its unfairness or of its illegality), the Labour Court should not interfere with the findings or the conclusions of the domestic tribunal.

It appears, therefore, clear that much though as the case lays down that with a view to avoid grave injustice occurring in a particular case the order passed by the domestic tribunal can be judged on the ground of its propriety, but except that, any decision or order passed by the employer in a domestic inquiry cannot be interfered with unless on the ground either of its impropriety or of its

illegality. The mere fact that the Labour Court is likely to come to a different conclusion on the same evidence or on the material before the domestic tribunal, would not be a ground for any interference with any such order passed provided it is otherwise not found to be in any way illegal or suffering from any infirmity on the ground of impropriety. It follows from these two decisions that even if a wide meaning were given to the expression "propriety and legality" used in Section 78(1)A(a)(i) it comes to this much, namely, that unless it is shown to be suffering from impropriety or illegality, it would not be possible to interfere with any such order provided it has been passed by following proper procedure and after making the proper enquiry according to the Standing Orders governing the parties, as the Labour Court does not sit in appeal over the order passed by the domestic tribunal in the sense that it can substitute its own finding in place of the one arrived at by the domestic tribunal. It does not act as a revisional Court over the decision of any such domestic tribunal and, as pointed out in 4 Guj.L.R. 259, it exercises jurisdiction of an original character.

14. That again involves the consideration of the question as to the ambit and scope of exercise of the original jurisdiction by the Labour Court. It may be incidentally pointed out that we find no provision any where in the Act or even in the Standing Orders that it would be open to the party aggrieved, to lead any evidence with regard to the act of misconduct in respect of which an employee has come to be punished under the Standing Orders. But we find that in practice the evidence is allowed to be led by the employee with a view to decide the dispute raised by him, namely, when the question arises as to whether a particular procedure required to be followed, was followed or not, or with regard to any such illegality or impropriety alleged in relation to the order passed by the employer. In that event, that evidence is not and cannot be taken with a view to add or take away from the effect of the evidence that came to be recorded before the domestic tribunal on the charge complained against the employee. The employer is also allowed to meet such evidence by leading any relevant evidence oral or documentary. But as observed in the Bombay Case, a fresh or de novo enquiry is not contemplated provided a fair enquiry is held by the domestic tribunal in accordance with the Standing Orders. In other words, the scope for leading any evidence before the Labour Court is obviously limited, and the evidence has to confine itself with a view to point out that no fair enquiry was made in accordance with the Standing Orders governing the parties. To widen its scope is to negative the effect of any such enquiry made by the Management-employer and that way the existence and utility of the enforcement of the Standing Orders by such domestic tribunal. In our view, therefore, the scope of any such evidence would be that much before the Labour Court and it is with the assistance of such evidence as also from the material that was before the domestic tribunal that the Labour Court has to decide the dispute raised before it with regard to the propriety or legality of the order passed by the employer under the Standing Orders governing the parties.

15. We may repeat here, as already pointed out above, in Standing Order 15 of

the Standing Orders, an appeal against any such decision of the Manager has been provided to the Managing Agents and the employee could well avail of that right given to him under the Standing Orders, and that if the employee was dissatisfied with the result of the enquiry on merits, the forum would be with the Managing Agents who act as appellate tribunal and not having done so, the Manager's decision stands as final subject to Section 71(1) A of the Act under which the employee can raise questions which would have to confine themselves as pointing to illegality or impropriety of the order. Thus the Labour Court is not an appellate Court over such tribunals so as to enable it to appreciate the evidence led before the domestic tribunal and substitute its own finding, if he cannot agree therewith. It does not exercise revisional jurisdiction as well. It has only the limited original jurisdiction and has to decide dispute provided it falls u/s 78(1) of the Act. If grave injustice is caused, it may interfere with its order on the ground that it lacked propriety though no doubt it can interfere if it suffers from any illegality either in procedure of enquiry or on other ground under the Standing Orders which bind the parties. Similarly in appeal against the order of the Labour Court u/s 84(1) of the Act, the Industrial Tribunal can exercise only such and similar powers which the Labour Court has u/s 78(1) of the Act and no more.

16. Mr. Patwari, the learned advocate for the petitioner, has then contended that the Supreme Court has in a number of cases laid down certain principles repeatedly, and much though they are laid down while dealing with cases falling under the Industrial Disputes Act (Central), they should apply to similar type of cases that fall under the provisions of the Industrial Relations Act, 1947. He then referred to a case of Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , where the Supreme Court has laid down certain principles and they are as follows:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not however, act as a Court of appeal and substitute its own judgment for that of the management. It will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse.

According to Mr. Patwari, the Industrial Tribunal has no justification or authority to interfere with the order of a domestic tribunal on any ground of impropriety as none of the four grounds set out in the Supreme Court case set out above, have been alleged and much less established before the Labour Court. The Industrial Tribunal was, therefore, wrong in interfering with any such order and more so, when even the Labour Court found nothing wrong with it justifying any

interference u/s 78(1)A of the Act. Mr. Chhatrapati, however, contended that those principles cannot govern the cases under Industrial Relations Act as observed in the Bombay Case 66 Bom. L.R. 426, and that, where the order is improper, the Industrial Tribunal can interfere with the order of the domestic tribunal, to prevent at any rate miscarriage of justice.

17. Now if we turn to the cases of Vithoba Maruti Chavan v. S. Takt Bilgrami 66 Bom. L.R. 426, it appears that the Court thought that the Bombay Act materially differs in its scheme from the Central Act and that the power of the Labour Court cannot be narrowly construed so as to enable the Labour Court to interfere with the order of dismissal on misconduct, only if circumstances which are enumerated in M/s. Indian Iron & Steel Co. Ltd. and another v. Their workman AIR 1953 SC 130, are established. Now the difference pointed out in the case is in substance of a two-fold character. The first is that while under the Industrial Disputes Act (Central) an industrial dispute cannot be taken for adjudication before the Industrial Tribunal by a workman himself directly it can be taken by a worker in his individual capacity u/s 78 of the Industrial Relations Act before a Labour Court. In other words, the industrial dispute under the Central Act has to be taken through a body, of workmen or and through the agency of the Government. The second ground is that while Section 78 of the Act provides for interference in certain circumstances, there is no such specific provision giving powers of interference to the Industrial Tribunal under the Central Act. We do not think that any such difference referred to in that case is so material as to ignore the principles laid down by the Supreme Court, for, in substance those principles can easily apply to the Labour Court as also the Industrial Tribunal determining question of "propriety or legality" of the order passed by the domestic tribunal. Now the powers of Tribunal considered by the Supreme Court were in respect of a "tribunal" contemplated u/s 15 of the Industrial Disputes Act. Broadly speaking it appears, that in matters where the Industrial Disputes Act, 1947, governed, if any industrial worker is guilty of misconduct, the proceeding taken in that respect have two stages. The first is that there will be an enquiry as contemplated under the Standing Orders governing that industrial concern when the employee is sought to be dealt with. That would be a domestic tribunal as is referred to in different Supreme Court cases. That domestic tribunal would then inquire into the same and decide the matter and then award punishment, if the misconduct or any act amounting to an offence under the Standing Orders is established, and that may even result in his dismissal or so, as it would depend upon the Standing Orders. The second stage then is that if the punishment of dismissal of that employee or so is wrongful or in breach of contract, the employee has recourse to Industrial Tribunal, but that dispute is taken by the Workers' Union, or the Government may decide to refer the matter u/s 10 as an industrial dispute to the Industrial Tribunal contemplated under the Act. Whether the industrial worker is directly able to take up his dispute and go before the Labour Court under Industrial Relations Act, and that a worker governed under Industrial Disputes Act cannot himself take it but has to go through the Union or

the Government, should make no difference, for after all these principles affect the determination of any such order passed by the domestic tribunal viz., of the management as against its employee under the Standing Orders. As to how the matter goes to any such Court or Tribunal would in that event become immaterial as the principles govern as to how the matter should be dealt with and decided. Similarly the powers of the Industrial Tribunal u/s 15 of the Central Act, stand even on a wider footing than perhaps the Labour Court has u/s 78(1) of the Act, as in the latter, it can decide disputes only as to the legality of propriety of the order of the domestic tribunal. The principles enunciated by the Supreme Court relate as to how far and in what way any interference can be made with the orders passed by the domestic tribunal while dealing with its employee under the Standing Orders governing the concern and its employees. In our view therefore, the distinction made out in Bombay Case is not substantial or even such as to justify us to ignore the same.

18. It follows from the discussion hereabove, that apart from the Labour Court acting u/s 78(1) and that the Industrial Tribunal acting as an appellate authority u/s 84 of the Act against the order of the Labour Court, their powers and jurisdiction are the same as described in Section 78(1) of the Act, in relation to the order passed by the management i.e. the domestic tribunal acting under the Standing Orders in relation to the employee working in its concern. Neither the Labour Court nor the Industrial Tribunal acts as a Court of appeal in cases of dismissal on misconduct of a workman by the domestic tribunal, so that it can substitute its own judgment for that of the management. Under the Standing Order 15 such powers are with the Managing Agents of the Mills against the order of the Manager called the "domestic tribunal". That has its basis on the recognised fact that the management of a concern must have power to direct its own internal administration and discipline, and much though its orders are otherwise final under the Standing Orders, they are subject to decision u/s 78(1) in a dispute raised before the Labour Court and then taken to Industrial Tribunal in appeal u/s 84 of the Act. Such a decision by the Labour Court u/s 78(1) of the Act can therefore be challenged on any of the grounds set out in the Supreme Court decision referred to above, so as to justify an interference with the order of the domestic tribunal on grounds of propriety or legality contemplated u/s 78(1) of the Act. On these basic principles read with Section 78(1) A of the Act and the Standing Orders governing the employee, we have to examine whether the interference by the Industrial Tribunal is in any way justifiable with the decision of the domestic tribunal such as of the Factory Manager of the Mills dismissing respondent No. 2 from service on ground of misconduct established against him.

19. Now, Mr. Chhatrapati, the Learned Counsel for respondent No. 2 tried to justify the order passed by the Industrial Tribunal by pointing out certain illegalities said to have been either committed by the domestic tribunal or as would be apparent from the order passed in the case. Before we consider those points raised by Mr. Chhatrapati before this Court whereby the order is said to be illegal, it is essential to observe that the only specific ground on which the order

of the Manager passed on 1-7-63 was attacked before the Labour Court was that the Manager refused to accept the medical certificate though produced before him at the time of the enquiry. If the respondent No. 2 were able to establish, that inspite of his having produced the medical certificate before the Manager who was holding an enquiry under the Standing Orders, showing his illness or the like, he would have been perhaps on some ground in attacking the order, for that obviously would suggest that the enquiry was defective in the sense that he was not allowed to produce a material document before him. That was the only point raised by him both in the notice of approach sent to the Manager and in the application made before the Labour Court u/s 78(1)A of the Act. The Labour Court went into that question and in fact allowed full scope to the respondent No. 2 to lead evidence In that respect. The evidence of Dr. Vyas shows that Narsinhbhai had gone to him for the first time on 29-6-60 and he had made a slight operation on the gums. He had again gone to him on the next day at about 10-30 a.m. He found him slightly better and had advised him not to go for work. He has also stated that the certificate dated 30-6-60 was given by him. However, his evidence does not show that it was given to him on 30-6-60. That evidence, therefore, merely shows that Dr. Vyas had treated him for his tooth trouble on 29th and 30th of June and had given him a certificate dated 30-6-60. That certificate, according to Narsinhbhai, was produced by him before the Factory Manager while he filed his written explanation on 1-7-60 and that he was told that "he did not believe him and that the certificate was not necessary". He has then stated in his evidence that the certificate was given to the Manager, but he returned it back to him. He has also added that the Manager did not mention these facts in his notes of enquiry. In cross-examination he has said that he had offered the certificate when his statement was recorded and that he has made no endorsement about not accepting that certificate in the notes of enquiry though he has signed those notes of enquiry. In this respect, Mr. Bhatt, the Manager of the Mills who was then no longer in service of the Mills, gave evidence to say that Narsinhbhai had not produced the doctor's certificate and that it was not true that he had returned it back to him. He also denied to have said that no certificate was necessary. Now apart from it Mr. Bhatt has also stated in his cross-examination that he disbelieved the applicant when he tried to say that he was under doctor's treatment and that, according to him, the evidence regarding the doctor's certificate was false. After considering the effect of this evidence read with the material which was before the domestic tribunal and which had then been before the Labour Court, It came to the conclusion that this part of the story given by Narsinhbhai was highly improbable and cannot be accepted. The Labour Court has given good reasons for the same. Apart from the evidence of Mr. Bhatt who plainly denies to have refused to accept any such certificate, it appears that the certificate was obtained by him on 30th June 1960 i.e. on the next day of the incident and naturally if that was with him on the day when he filed his explanation viz. on 1-7-60 as stated by him, he would attach the same along with his written explanation. No reference is made about it in that written explanation. He would not have failed, at any rate, to produce the same at the

time when his statement was recorded by the Manager on that very day by referring it in his evidence. That is also not there. We have already pointed out above that Dr. Vyas does not say that he had given the certificate on 30-6-60 though it bears that date. The other circumstance is that notes of the enquiry made by the Manager were signed by this employee Narsinhbhai and as admitted by him, he did not make any endorsement in the notes of the enquiry about his certificate having been produced and yet not accepted by the Manager. That version, however, was put up on 15-9-60 when he sent a letter of approach to the Mills, obviously with the purpose of taking action in Labour Court, for showing that the enquiry was vitiated by such conduct of the Manager. In fact the Labour Court has believed the evidence of Mr. Bhatt in that respect, and that finding obviously stands and cannot for any reason be disturbed even by the Industrial Tribunal. Thus, it appears plain that the point made out by him for raising a dispute before the Labour Court with regard to the order passed by the Manager against him under the Standing Orders, was not accepted in any manner as true or probable in the circumstances of the case. Apart from that position, the medical certificate with regard to his having toothache on 29-6-60 or on the previous night cannot be said to be the direct cause of his having been obliged to sleep in the office at about 11-40 a.m. on 29-6-60. All that can be said may be about his having passed a sleepless night as a result of which he fell asleep on the date of the incident. If the pain had started, as he said, after coming to office, he could have taken leave and gone home. If he was so bad on the previous night, he could have taken leave and not attended the office. No one is said to have prevented him from so doing. In those circumstances, it cannot be said that the Manager was so wrong when he disbelieved the excuse put forth by him for the sleep that he had during the working hours in the office in absence of any such certificate produced before him. That part of his belief stands amply justified for the simple reason that if a person has a very serious toothache in respect of which, as stated by Mr. Narsinhbhai he had an operation of the gums, it would not be possible for anyone ordinarily to get sound sleep in the office where others would be working, so as to be awakened by snoring, and that again with legs so outstretched at such an hour at 11-40 a.m. In those circumstances, the Manager was perfectly justified in calling that as a false excuse. The Labour Court had gone into that question again. He also found that there was hardly any question of involuntary sleep as suggested before him by the learned Advocate for the applicant so as to exonerate him for the act of misconduct or even as a ground of any extenuating circumstance. The Labour Court also held that the Manager was perfectly justified in holding him guilty for sleeping with legs outstretched on Gadi during working hours in the office and that way committing an act subversive of discipline so as to call it an act of misconduct under the Standing Orders. The Industrial Tribunal had therefore no justification to reassess the appreciation of those facts and evidence in the manner he did, and has that way exceeded its jurisdiction.

20. Another point that weighed with the Industrial Tribunal in calling the order of

the Manager as perverse so as to enable it to interfere therewith is again one which can be easily characterized as entering into appreciation of evidence which he had no jurisdiction to do, as also about his applying the standard of proof expected to be applied in criminal trials. What he felt was that the Manager had made no enquiry at all. According to him, if he wanted to rely upon the admission of guilt given out by the employee, Narsinhbhai, he should have also accepted the other part of the statement, namely, about his having the toothache and gone to sleep under the circumstances mentioned by him. It may be easily said that what the Manager considered was the statement of Narsinhbhai recorded by him along with his written explanation and not any confessional statement as is understood by the Industrial Tribunal. There was, therefore, no question of choosing one part thereof and leaving out the other. If we were to turn to his statement Ex. 18 recorded by the Manager, he has plainly admitted that he was fast asleep and that when the cashier called him out that he woke up and he had stated that it was his mistake for which he expressed his regrets. The act complained against him was his having gone to sleep with legs outstretched during working hours in the office. That was said to be subversive of discipline amounting to misconduct under the Standing Orders. Then it also appears from his statement that he knew that it was an offence to sleep during the working hours of the office and that such an act would be against the discipline of the Mills. However, with regard to the stretching of legs, he tries to say that he cannot say if his legs were stretched after he fell asleep. From this it is plain that he admitted to have committed an act which was subversive of discipline viz. by reason of his act of sleeping during the office hours so much so that he had to be awakened by raising cries by the cashier of the Mills. It further shows that he had stretched his legs as well while he was asleep. Thus, there was a plain admission of the act alleged against him and in those circumstances, no further evidence was required to be taken. No other evidence was sought to be led by the applicant. The manager was, thus, perfectly justified to act upon it and close the enquiry on that very day. We do not think that there existed any justification for the Industrial Tribunal to appreciate that evidence and substitute its judgment in place of that of the domestic tribunal and that again found proper by the Labour Court. Even if, therefore, by reason of the evidence led before the Labour Court, it was established that he had really some pain that day, that would not justify one to say that the finding given by the Manager with regard to his misconduct was in any way so erroneous as to characterize it as perverse enabling it to justify an interference with the order passed in the matter. Whatever that be, the fact remains that the domestic tribunal cannot be said to be in so grave an error in thinking that he was telling a falsehood by way of excuse in the circumstances of the case. The learned President of the Tribunal has thus exceeded his powers in reassessing such evidence and substituting his own judgment on appreciation thereof. As we have said, it cannot act as a Court of appeal against the order passed by the domestic tribunal and interfere with any such order on that basis.

21. That takes us to the consideration of certain points raised by Mr. Chhatrapati whereby the order of the domestic tribunal is attacked on the ground of the same being illegal. The first point made out by him was that the Manager did not apply his mind while making an enquiry and passing an order against the employee Narsinhbhai and that therefore it is illegal. In that respect, he referred to his having applied Standing Orders 21 and 22 which, as pointed out by the learned President of the Industrial Tribunal, as being not applicable to the case of Narsinhbhai. Those Standing Orders applied to the operators whereas the Standing Orders 12 and 13 apply to the clerks serving in the Mills. However, as pointed out by the Industrial Tribunal itself, the substance of the allegations against him with regard to the Act of misconduct was the same and similar. That was also mentioned in the notice issued against him and there was no prejudice caused to him in making a charge against him. It was just a mistake in applying those Standing Orders. That, however, cannot make the order in any way invalid. The Standing Order 21(k) refers to the act subversive of discipline as we have the same in Standing Orders 12(k) of Standing Orders applied; to clerks. The Standing Order relating to punishment is also similar. The notice which was given to the employee refers to the nature of the act committed by him and the punishment he was called upon to meet in the event of the charge being established in respect of the misconduct. There was, therefore, nothing which can justify us to say that he had not applied his mind to the extent that he knew nothing in the matter and passed an order regardless of the nature of the charge levelled against him. Even the Tribunal has thought that no prejudice is caused to the employee and the order passed by the Manager cannot be termed on that account as in any way so illegal requiring interference by the Labour Court or the Tribunal.

22. The next point raised by him was that Standing Order 12(k) of the Standing Orders speaks of drunkenness or riotous or disorderly behaviour within the Mill premises or any act subversive of discipline. According to him, the words "any act subversive of discipline" should be taken to be somewhat similar as arising out of the drunkenness or disorderly behaviour of any person. The first part no doubt refers to drunkenness or riotous or disorderly behaviour within the Mill premises. Then comes the word "or" before the words "any act subversive of discipline". In other words, that "or" in the clause appears to be quite independent and in no way connected with or showing any connection with the first part of that clause. It refers to "any act" and not "any other act" so as to say that other act was one having connection with the act flowing from the drunkenness or riotous or disorderly behaviour. No such point was at all raised either before the Labour Court or the Industrial Tribunal in that respect. In our view, it is an independent part so as to cover any such act which can be said to be subversive of discipline so as to be treated as misconduct under Standing Order 12 in the case. That point, therefore, has no force.

23. Then it was said that no proper inquiry was held by the Manager. According to Mr. Chhatrapati, after the employee Narsinhbhai submitted his explanation in

response to the notice issued against him for showing cause as to why he should not be dismissed from service for the alleged misconduct, if he was not satisfied with the explanation, it was essential for the Manager to give another notice for proceeding with the further enquiry by fixing a date in that respect. Now we are not shown any provision in the Standing Orders under which any notice of the kind suggested by Mr. Chhatrapati is required to be given to the employees. The enquiry was fixed on 1-7-1960 and on that day when he presented the statement, the Manager was perfectly justified in examining him with regard to his say and if he did so, there is nothing wrong in it. It has not been said or suggested at any time that he wanted some time for leading evidence and that it was refused by the Manager. If after having recorded his statement, he found that it shows a clear admission about the misconduct in respect of which he came to be charged, he was perfectly justified in acting on the same and passing suitable orders. While passing an order, all that the Standing Orders contemplate in respect of any such enquiry is that if an order of dismissal has to be passed, he must have an opportunity to explain the circumstances alleged against him. That notice of an enquiry was given, and while awarding punishment he had taken into account the similar previous misconduct committed by Narsinhbhai as that was also admitted by him. In fact he had admitted that he was dismissed for similar misconduct of sleeping in the office during office hours and that it was at the instance of Majoor Mahajan of which he happened to be a member that he was reinstated. That was taken into account and since he disbelieved the excuse given by him, he passed the final order dismissing him from service. It cannot, therefore, be said that the enquiry was in any way defective or illegal as is attempted to be urged by Mr. Chhatrapati.

24. It was said that sleeping by itself is not made an act subversive of discipline so as to style it as misconduct under the Standing Orders. Besides, it was said that in order that such an act would amount to misconduct, there should be more than one instances of such acts having been committed by an employee. Now it is no doubt true that sleeping by itself is not shown to be one of the acts amounting to misconduct in the Standing Orders particularly in Standing Order 12. Standing Order 12 does not give an exhaustive list so as to justify one to say that anything not stated in it cannot be governed by the Standing Orders. In fact, the words "any act subversive of discipline" are wide enough to cover such an act of sleeping in office during his working hours, in the manner he was found. An employee goes to the office not for sleeping. He was required to work for which he is being paid. Sleeping in office, therefore, was subversive of discipline for it is an elementary rule of discipline that a person had to do his duty while in office and not indulge in sleep as is found to have been done by Narsinhbhai. Nor do we subscribe to the view that there should be more than one act subversive of discipline so as to amount to misconduct punishable under Standing Order 13 of the Standing Orders, One single act may well be enough to amount to misconduct as contemplated under Standing Order 12.

25. It was next urged by Mr. Chhatrapati that the order passed by the Manager

does not disclose any reason for awarding punishment by way of dismissal from service. Absence of any reasons given in any such order, according to him, renders it a nullity, or at any rate it can be characterized as illegal so as to justify an interference by a Court of law. Reliance was placed on the case of *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, where the Supreme Court has observed that "in passing orders u/s 5(3) of the C.P and Berar Revocation of Land Revenue Exemption Act, the Government must give reasons for the order. The Act lays upon the Government a duty which obviously must be performed in a judicial manner. The Act bars a suit and there is all the more reason that Government must deal with such cases in a quasi-judicial manner giving opportunity to the claimants to state their case in the light of the report of the Deputy Commissioner. The claimants are also entitled to know the reason why their claim for the grant of money or a pension is being rejected by Government and how they are considered as not falling within the class of persons who it is clearly intended by the Act to be compensated in this manner. "Now apart from authority which would hardly apply to the present case, it has to be remembered that it is a domestic tribunal which holds an enquiry against an employee for any alleged misconduct under the Standing Orders which govern them. The Manager of the Mills holds that enquiry. He is not supposed to be a person well-versed in law or procedure. He is as good as layman dealing with such matters and he has to keep in mind the Standing Orders under which he has to act. In fact the Standing Orders nowhere provide that he must necessarily give every reason for the conclusion that is reached. Apart from that position, if we turn to his order, the order is bound to be short and quite simple for the simple reason that it is passed below the statement made by the employee Narsinhbhai who, as already pointed out hereabove, has admitted his act which was against the discipline of the Mills and amounted to an offence under the Standing Orders. He treated his admissions, as we ordinarily understand, as plea of guilt in respect of the charges levelled against him. Therefore, he started by saying below his statement Ex 18 that Shri Narsinhbhai pleads guilty. What was urged by Mr. Chhatrapati was that he has not taken into account the extenuating circumstances while passing an order of dismissal from service and that can only be judged from the order passed by him. Going back to the order, he has then stated that he has been once dismissed for a similar offence but re-employed at the instance of the Textile Labour Association. That sentence amply covers the reason which justified him to give a punishment of dismissal under the Standing Orders. He has then stated that "I dismiss him without notice or without wages in lieu of notice." In a matter of this character, there is hardly anything more that one would expect him to state in the final order, for, according to him, as we have already seen, that he had disbelieved him when he tried to say that he had a toothache and he had fallen asleep in office on account of his having passed sleepless night on the previous day. Therefore, he did not consider it in any way an extenuating circumstance which he would choose to refer.

26. It was then pointed out by Mr. Chhatrapati that he did not take into account

the consequences that would flow from the order of dismissal of the employee from service, viz. about his losing a large sum of gratuity due to him and any other amount available to him under the law. That way the order of punishment was highly improper and harsh and that justified the Industrial Tribunal to rightly interfere therewith. Now once the domestic tribunal thought that, here is a person, who never cared for the discipline of the office, and was found asleep at such an hour soon after the starting of the office viz. at 11-40 a. m, not merely having a nap for a few seconds or so but having sound sleep with his legs out stretched and wakes up after the cashier calls him out, he would be justified in thinking that he deserves to be harshly dealt with under the Rules. Not only that, but he tried to give an excuse which was found to be false by the Inquiry Officer. With all that his previous antecedent was also of the same type, and for which he was similarly dismissed about two years ago, and by showing some sympathy to him at the instance of the Majoor Mahajan he was reinstated in service. If in those circumstances the Manager who held a fair enquiry and finding him guilty for such misconduct, were to take a strong view and pass an order of dismissal which under Standing Order 13 he was entitled to, it cannot be said to be suffering in any such defect amounting to any illegality or even impropriety requiring any interference by the Industrial Tribunal as done in the case. It is not the shortness of the order that renders it illegal. Nor do we find that it contains no reasons that it can be called bad in law. The order has to be read as a whole together with the statement of the applicant, it being passed below the same. In our view, therefore, the challenge sought to be made on the ground of illegality of the order by Mr. Chhatrapati cannot stand.

27. The greater emphasis was, however, laid by Mr. Chhatrapati on the ground that the order suffers from impropriety in respect of the order of punishment passed by the domestic tribunal. According to him, the punishment awarded to respondent No. 2 was unduly severe or wholly unjustified, inasmuch as it was not at all proportionate with respect to the misconduct committed by him. It was his contention that the act committed by him was obviously of a minor character, for, it came to be committed only on that day, and that again was after a period of two years that he was found to have committed similar act, and therefore, such an act of sleeping during working hours only twice in his 28 years of service should not invite a very harsh attitude against him as to dismiss him from service without realising its consequences or loss to him. According to him, with dismissal from service on that account, he would lose the amount of gratuity that he would be entitled to have from the Mills, and also would have to incur some other disadvantages on that account. On those considerations, he tried to say that grave injustice has been caused to him and that to avoid any such grave injustice the Industrial Tribunal was justified in interfering with the order on the "ground of impropriety as done in the case of Vithoba Maruti Chavan v. S. Taki Bilagrami 66 Bom.L.R. 426 already referred to hereabove. Now in this connection, Mr. Chhatrapati referred to certain observations of the Supreme Court in some cases. The relevant observations relied upon by him from the

decision in *Hind Construction and Engineering Company Ltd. v. Their Workmen* reported in 1965 1 LLJ 462 are as under:

But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

From this last part of the observation, an attempt was made to suggest that by giving such extremely harsh punishment, it is perfectly open to infer that the management wanted to victimize him and it was that way that such a punishment was given. Be it said in this connection that at no stage, down from the time that the inquiry came to be held by the Manager and then later on before the Labour Court, nor even in the Industrial Tribunal any the slightest hint or suggestion was made as to say that the management was out to victimize him or that it again was wanting in bona fides. We shall, however, point out hereafter that not only the enquiry was fair and bona fide, but there was nothing as to point at the domestic tribunal having given any cause of complaint with regard to any ground except in respect of his not being allowed to produce the medical certificate, which, as already found, was a ground quite devoid of truth and only put up later on with a view to challenge the fairness of the enquiry. Now from this case, the other side sought support for other principles laid down before referring to the question of shockingly disproportionate punishment for interference by any Court in the decision of a domestic tribunal. Those observations are as under:

It is now well-settled that the industrial tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a Court of appeal. The industrial tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimization of employee or employees or unfair labour practice. The tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair-play have not been followed or where the enquiry is so perverted in its procedure as to amount to do enquiry at all. In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the tribunal should not interfere. The tribunal is not required to, consider the propriety or adequacy of the punishment or whether it is excessive or too severe.

The last part of the observations cannot be lost sight of. It is, therefore, clear that the Court has not to judge the order of punishment merely from the point of view as to whether he could not have passed it or as to whether it was excessive or too severe, or consider its propriety or adequacy in any such matter. The question is whether in the circumstances of the case, can it be said that no

reasonable employer would ever impose such punishment which was characterised as "shockingly disproportionate" to the employee's conduct and his past record.

28. The next case to which Mr. Chhatrapati invited our attention was of *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, . It was pointed out in that case that in some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may legitimately and reasonably be drawn that in terminating the services, the employer was not acting bona fide. The test always has to be whether the act of the employer is bona fide or not. If the act is mala fide, or appears to be a colourable exercise of the powers conferred on the employer either by the terms of contract or by the standing orders, then notwithstanding the form of the order, industrial adjudication would examine the substance and would direct reinstatement in a fit case. With these observations we entirely agree, and if it was possible for the employee to show that the act on the part of the employer was mala fide or appears to be a colourable exercise of the powers conferred on the employer either by the terms of contract or by the standing orders, then notwithstanding the form of the order, industrial adjudication would be able to examine the substance and would direct reinstatement in a fit case. Nothing of the kind has happened in the present case and, at any rate, it would be too much to infer from a mere order of dismissal that the act of the employer was lacking in bona fides or his act was mala fide.

29. Another case to which our attention was drawn was* one of *Doom Dooma Tea Co., Ltd. v. Assam Chah Karmachari Sangha and another* 1960 11 L L J 56. In that case, in the course of conversation touching the alleged mistake said to have been committed by the concerned workman the superior officer used some objectionable language towards such workman. Thereupon the workman assaulted the superior officer and caused some physical injury to him. On a complaint received from the said officer, the manager suspended the concerned workman pending departmental proceedings against him. Considering the evidence recorded at such domestic enquiry the manager found (he concerned workman guilty of the misconduct alleged against him and dismissed him from service. The industrial dispute relating to such dismissal was referred for adjudication. The industrial tribunal interfered with the findings arrived at by the employer at the domestic enquiry and also with the punishment of dismissal on the ground that it was unduly harsh and unjust. The industrial tribunal also found that the enquiring officer was biased against the concerned workman as he suspended him pending the enquiry merely on receipt of a complaint from the officer. Allowing the appeal by special leave preferred by the employer the Supreme Court held that the scope of the enquiry in such an industrial dispute has been considered in the decision reported in 1958 1 L.L.J. 260 *Indian Iron and Steel Company, Ltd. and Anr. v. Their Workmen* and it has been held therein that the tribunal can interfere only in four classes of cases which we have already set out hereabove. Then the Supreme Court has further said that it could not be

contended that in the instant case the enquiring officer was prejudiced against the concerned workman or that he had made up his mind to find him guilty on the sole ground that he suspended the concerned workman pending enquiry on receipt of the complaint without calling for any explanation from him. It is usual in cases of such kind to suspend, pending enquiry, the workman against whom a complaint of misconduct is received. How long such suspension can last and on what terms are matters which would normally be governed by the relevant standing orders. It was not suggested in the instant case that the suspension of the concerned workman pending enquiry against him was contrary to the relevant standing orders. Then the observations go further that it is true that the employers must realize that their employees, however humble their status and however poor their earnings may be, are entitled to be treated as human beings and must be treated with due respect to human dignity. Abuse of any kind not only shows bad manners but hurts the dignity of the person to whom it is addressed and inevitably creates strong reactions in his mind. The attitude adopted by the superior officer in dealing with the concerned workman, must be strongly disapproved. This however does not mean that the tribunal has jurisdiction to interfere with the order of punishment framed by the management. This question must be considered in the light of limits which are imposed by law on the jurisdiction of tribunals in dealing with such a dispute. Then Their Lordship, have said that it is not open to the industrial tribunal in such a case to reappraise the evidence on record or to sit on appeal over the finding reached at the domestic enquiry. Then it is said that even assuming that the industrial tribunal has jurisdiction to interfere with sentence in an industrial dispute of such kind, if it is satisfied that the sentence is unduly severe and wholly unjustified (vide 1952 II L.L.J. 314), the sentence of dismissal given in the instant case could not be considered to be unduly severe or unjust. Whether or not the industrial tribunal itself would have given the same finding and given the same punishment if the matter had come for its decision, is not material. Normally the awarding of proper punishment for misconduct under the Standing Orders is the function of the management, and unless there is valid justification the tribunal should be slow to interfere with the exercise of that function.

30. From the aforesaid cases, it does appear clear that it would not be open for the Labour Court or the Industrial Tribunal as the case may be, to reappraise the evidence on record or sit in appeal over the findings recorded by the domestic tribunal, and howsoever severe or unjustified the punishment may appear to him and howsoever he may be inclined not to give such punishment if he would have to deal with it, it would not be proper to interfere with the order of punishment passed by the domestic tribunal unless, if we were to say so, it was shockingly disproportionate to the act said to have been committed by him. In the present case, if we turn to the Standing Orders, a question of punishment has to be considered from various aspects. The question of punishment, it is indeed true that it will have something to do with the nature of the offence or act amounting to misconduct committed by the employee, but the punishment for

the same act at all places and at all times may not necessarily be the same. It would also vary with the outlook of a person or the Court having even to deal with in judicious manner. It would not therefore be proper to say that the act of sleeping during working hours in office was an act of minor misconduct and that it deserves necessarily to be dealt with very lightly as suggested by Mr. Chhatrapati. Another aspect which has to be considered is as to how discipline has to be maintained in such large factories as any undue latitude in respect of one may have adverse affect on general discipline against other workers in the Mills

31. Then again the domestic tribunal had to act within the powers given to him for giving punishment under the Standing Orders of the Mills. Now we turn to the Standing Order 13 which provides for punishment to an employee found guilty of misconduct. Clause (a) thereof provides for punishment of fine subject to and in accordance with the provisions of the Payment of the Wages Act. 1939. We are told that if that clause were to be applied, he could have been only fined to an extent of Rs. 5/- or Rs 6/-. Then comes Clause (b) which provides for suspension for a period not exceeding four days or dismissal without notice or any compensation in lieu of notice Now a mere fine of Rs. 5/- or Rs. 6/- may not be easily considered enough in a case of this type. Similarly, the suspension for a period of four days may not be considered to be in any way so adequate a punishment for an offence of this character in the eyes of the management. In fact he was so suspended as required under the Standing Orders for four days during which time he was asked for an explanation and enquiry was held. Thus the only alternative that remained with the manager was to dismiss him without notice or any compensation in lieu of notice. If, therefore, the domestic tribunal, namely, the Factory Manager thought of dismissing him from service, it cannot be said that he acted in contravention of the Standing Order No. 13, in the circumstances of the case. It would be all the more so when this very person was similarly found sleeping in the office and had come to be dismissed about two years ago. It was only through the intervention of the Textile Labour Association that clemency was shown to him and he was taken back in service. He also took that circumstance into account while giving him the maximum punishment provided under Standing Order 13 of the Standing Orders. Now under such circumstances, much though some consequences which may follow such a punishment may appear to be harsh or even severe, we cannot say that the punishment is shockingly disproportionate requiring interference by the industrial tribunal. In the first place, as we have pointed out hereabove, he was fast asleep even at 11-40 a.m. in the office i.e. soon after his having come to the office. Several other persons must be working there and in all that atmosphere, he finds it comfortable to have sound sleep so much so that he had outstretched his legs on the Gadi and wakes up only when shouted by the cashier working in the office. He did not wake up when the Manager had passed through that office at that time. It was subversive of all discipline expected of clerks working in such Mills and would create very bad example on others if he were to be let off lightly

by fining him Rs. 5/- or Rs. 6/- or suspending him for four days. Not only that, but he tried to put up a false excuse or an excuse which could not be believed by the Manager and that he was found committing such an act over again as before he had come to be dismissed and clemency was shown to him later at the instance of Majoor Mahajan. If in such circumstances, the Manager took a serious view of the matter and dismissed him from service after giving him a fair enquiry, it is not possible to say that interference is in any way justifiable by saying that lesser sentence should have been enough or that it was severe or harsh. Could it be said that no other person in the given instances would have awarded any such punishment at all? We think not. Could it be said that the order lacked propriety as it was shockingly disproportionate to the nature of the act committed by him? The Labour Court or the Industrial Tribunal cannot judge the severity or adequacy of punishment from its personal standards but has to judge it from the viewpoint of a management having to carry on administration of a large concern such as the Mills and for which discipline amongst its workers is of considerable importance. If the consequences of that punishment were harsh, he could have moved the Managing Agents of the Mills an appellate under the Standing Orders, and that could have been duly considered in its proper aspect. But that cannot be done by the Labour Court or the Industrial Tribunal unless it can be called shockingly disproportionate in relation to the act of misconduct committed by him.

32. We do not think the Industrial Tribunal was in any way so justified to interfere as it has done, and that it has thus exceeded its jurisdiction and powers to go into the re-appreciation of facts and evidence, and interfere with the order of the domestic tribunal as it were acting as an appellate Court over that and substitute its judgment in that respect over that of the domestic tribunal. We would, therefore, set aside the order of the Industrial Tribunal and restore the order of the Labour Court upholding the order of the domestic tribunal u/s 78(1) of the Act.

33. In this view of the matter, the petition filed by the employee Narsinhbhai shall stand dismissed. There shall be no order as to costs in both the petitions.