

(1987) 10 BOM CK 0005

In the Bombay High Court

Case No : Writ Petition No. 1353 of 1980

Vamen Maruty Gharat and Others

APPELLANT

Vs

M.S. Apte and Others

RESPONDENT

Date of Decision : 01-10-1987

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(24), 85
Constitution of India, 1950 — Article 227

Citation : (1998) 3 LLJ 603

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.B. Sawant, J.—The short question involved in the present petition is whether the refusal of the employer to allow the workmen to resume their work unless they sign the undertaking in writing to the effect that they were calling off the illegal strike and that they will discharge their duties properly and will not cause any damage to the property, amounts to a lock-out and whether such a lockout was justified.

2. The present petition is filed by the Petitioner-workmen in their representative capacity on behalf of themselves and other employees of the 3rd Respondent-Company (hereinafter referred to as the Company). The Company is engaged in the business of dyeing cloth. All the employees of the Company numbering about 400 had gone on strike from April 2, 1978 following the dismissal of one of their Co-employees on March 9, 1978 and suspension of another pending inquiry. The Company therefore filed an application before the Labour Court under Sections 77, 78, 79 and 80 and 88 read with Section 97 of the Bombay Industrial Relations Act, 1947 (hereinafter referred to as the Act) for a declaration that the strike was illegal. By its order of May 3, 1978, the Labour Court declared the strike illegal; on May 5, 1978 the Company issued a public notice through a newspaper calling upon the workmen to resume their work by May 8, 1978 after

giving an undertaking in the above terms. The Petitioners' Union by their letter of May 7, 1978 informed the Company that as required by law, the workmen were withdrawing the strike which was declared by the Labour Court as illegal and that the workmen would present themselves at the factory on May 8, 1978 in their usual shifts. The Union, however, also informed the Company that the workmen would not give any undertaking in writing as a condition to join the work. The Union further made it clear that the strike was withdrawn without prejudice to the workmen's right to have their grievances redressed and also without prejudice to their right to challenge the order of the Labour Court declaring the strike; illegal, by adopting such legal proceedings as the workmen may be advised to institute. On the next day, i.e. May 8, 1978 the Company refused to allow the workmen to join their duties unless they signed the following undertaking which was already prepared and kept ready :

"I..... employed in Messrs New Rashma Dyeing Private Limited, do hereby express that I am calling off the illegal strike that I commenced with all other workers with effect from April 2, 1978.

I further assure that after entering the factory I will discharge my duties properly and will not cause any damage to the property, Machinery and any material in the Factory.

In view of the above I am willing to resume my normal duties and I may be allowed to resume my work.

Date :

Sd/-

(Name of The Worker)"

It appears that some of the workmen numbering about 210 gave the said undertaking and they were allowed to resume the work. However, the Petitioners who number about 178 were turned away because they refused to sign the undertaking.

3. On May 12, 1978 the Company terminated the Petitioners' services. The workmen therefore made a reference to the Labour Court on May 24, 1978 for declaration that the action of the Company in refusing to take them on work unless they give the undertaking amounted to an illegal lock-out. The Labour Court by its decision of September 8, 1978 held that the action of the Company amounted to illegal lock-out. The Company thereafter preferred an application before the Industrial Court for revision of the said order u/s 85 of the Act, and the Industrial Court in revision set aside the order of the Labour Court and dismissed the workmen's application by its order of April 30, 1979. It appears that thereafter the workmen approached Supreme Court by SLP No. 7120 of 1979 which was dismissed in limine on April 3, 1980. Thereafter the present petition was filed by them in this Court. Since now it is settled law that a summary dismissal of the petition by the Supreme Court filed directly against the

order of the Lower Court is not a bar to the entertainment by this Court of a writ petition under Articles 226 and 227 of the Constitution, no objection is raised on behalf of the Company to the hearing of this petition on merits.

4. As stated at the outset, the question that falls for consideration is whether the action of the Company amounts to a lock-out and whether the lock-out is illegal. Section 3 (8) defines "change" to mean an alteration in an industrial matter. Section 3(17) defines "industrial dispute" to mean any disputes or difference between an employer and employee or between employers and employees or between employees and employees, and which is connected with any industrial matter. Section 3 (18) defines industrial matter as follows :

"Section 3 (18)--"Industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes-

(a) all matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of functions of any employees or classes of employees;

(c) all matters pertaining to any right or claims under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole."

Section 3 (24) defines "lock-out" to mean the closing of a place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, where such closing, suspension or refusal occurs in consequence of an industrial dispute and is intended for a purpose of--(a) compelling any of the employees directly affected by such closing, suspension or refusal or any other employees of his, or (b) aiding any other employer in compelling persons employed by him, to accept any term or condition of or affecting employment. Section 3 (8-A) defines "closure" to mean the closing of any place or part of a place of employment or the total or partial suspension of work by an employer or the total or partial refusal by an employer to continue to employ persons employed by him, whether such closing, suspension or refusal is or is not in consequence of an industrial dispute. Section 3 (35-A) defines "stoppage" to mean a total or partial cessation of work by the employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, whether such cessation or refusal is or is not in consequence of an industrial dispute. Section 3 (36) defines "strike" to mean a total or partial cessation of work by the

employees in an industry acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work or to accept work, where such cessation or refusal is in consequence of an industrial dispute. Section 42 requires a notice of change whenever an employer intends to affect any change in respect of an industrial matter specified in Schedule II and when any employee desires a change not specified in Schedule I or III of the Act. It may be mentioned here that industrial matters are listed in Schedule I, II and III of the Act. The industrial matters mentioned in Schedule I are the subject-matter of the Standing Orders, and those mentioned in Schedule III (except item 5 thereof, as well as the orders passed by the employer out of the application or interpretation of the Standing Orders) can be changed only by making an application to the Labour Court. The industrial matter relating to item 5 in that schedule can be changed by making an application to the Industrial Court. The application to the Labour Court or the Industrial Court for the said change can be made only if there is no agreement between the employer and the employee within the prescribed period. Section 78 (1) A (c) gives power to the Labour Court to decide whether the strike, lock-out, closure, stoppage, or any change is illegal under the Act. Section 84 provides for appeal to the Industrial Court against the decision of the Labour Court and Section 88 details the powers which can be exercised by the Court in appeal. The decision of the Labour Court given u/s 78 (1) A (c) is not appealable. Section 85 contains the superintending powers of the Industrial Court over Labour Courts. Sections 97 and 98 enumerate the circumstances in which strike and lockout respectively should be held as illegal and Section 99 gives power to the State Government to make a reference to the Industrial Court for a declaration that the strike or the lock-out as the case may be is illegal. Section 102 provides penalty for declaring and continuing with illegal lock-out or closure and Section 103 provides for penalty for declaring illegal strike or stoppage of work and continuing with the same. Section 104 provides penalty for instigating illegal lock-out and closure and illegal strike and stoppage of work. These are the provisions which are relevant for our purpose.

5. Before I, answer the two points, I must deal with a preliminary point raised on behalf of the Petitioners that the Industrial Court while exercising its powers of superintendence u/s 85 of the Act had no jurisdiction to substitute its finding for the finding of fact recorded by the Labour Court as if it was exercising the powers of an Appellate Court. The powers conferred on the Industrial Court u/s 85 are purely of superintendence analogous to those conferred on High Court under Article 227 of the Constitution. It is well settled that these powers are limited only to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of record, much less an error of law. The High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence. This is reiterated in *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, .

6. The contention raised before us is not that the Industrial Court has no powers of revision u/s 85 of the Act. What is questioned is the exercise of the said

powers in the present case beyond its limits. The finding recorded by the Industrial Court in paragraph 47 and 48 which is reproduced below should speak for itself :

"47. It was argued on behalf of the respondents that in the present case also, it has not been proved by evidence that when the Management of the Company insisted on an assurance or undertaking as aforesaid, the situation was such as is alleged by the Management. It is pointed out that no evidence was led by the Management in this case to show that the workers had resorted to violence after their strike commenced on April 2, 1978 was declared to be illegal by the Labour Court by its Order dated May 3, 1978.

48. But, it must be pointed out that these workers did not report for work till about May 8, 1978, when the Management published the notice writing the employees to resume work on giving assurance and when they turned up for work they were first asked to give assurance or undertaking as aforesaid. Therefore they had no opportunity to go inside the factory and resort to violence after May 3, 1978.

7. Shri Ramaswami for the Company while conceding that the reasoning of the Industrial Court was not proper, submitted that in fact neither the Labour Court nor the Industrial Court had looked into the evidence which was led by the Company in its earlier application No. 39 of 1978 for declaration of strike as illegal and which was specifically sought to be produced before the Court by its application made to the Labour Court on July 12, 1978. The Labour Court on the said application had only passed the following order :

"True copy of the order in Application No. 39 of 1978 is on record. At this stage at least the entire record is not necessary still if it is necessary at any stage it will be brought."

It however appears from record that the Company did not pursue its request of July 12, 1978 at any time thereafter. On the other hand, by its subsequent application of September 1, 1978 the Company made it clear that it did not want to lead any oral evidence but wanted to produce only the following documents :

" 1. One of the original undertakings given by one of the Workers, Bhiva A. Sawant with the list of the workers who have given the undertaking.

2. Address Book of the workers employed in the factory.

3. List of the workers whom the copies of the discharge letters have been sent C/ o. the Union alongwith covering letter to the Union, Postal Registration Receipts and A.D. Forms duly signed by the Union.

4. Certified copies of the Complaints made to the Turbhe Police Station."

On this application, the Advocate of the Petitioner-workmen wrote that they did not admit any of the documents and they objected to their being taken as evidence in the Court. The Labour Court allowed the Production of documents in

spite of the workmen's objection. Hence the workmen's Advocate stated in writing on the same day as follows :

"Since this Hon'ble Court has allowed only production of documents, Applicants do not lead any evidence further, in as much as no evidence is led by Opponent to prove the documents."

In spite of this clear warning to the Company, that they had to lead evidence to prove all the facts of their case, no steps were taken by the Company to bring any evidence on record. Hence, neither before the Labour Court nor before the Industrial Court there was any evidence of the alleged violence, indiscipline or damage to the property indulged in by the workmen. I am also unable to appreciate as to how by mere production of the record of the earlier case without anything more the evidence in that case could have been brought on record in the present case. It was therefore not open for the Industrial Court to give a finding as it has done in paragraphs 53 and 54 of its order as follows :

"53. Thus it is clear that although the management did not lead independent evidence in this case to show that the workers had in fact resorted to violence, there is ample evidence to show that as a matter of fact the workers had resorted to violence so much so that the management was constrained to seek police aid to remove the unruly workers from the factory.

54. In view of this background of the previous application for declaration of strike illegal, the management was perfectly justified in asking the workers to give the assurance in explicit terms which was indeed on implicit term in the contract of services as already discussed above."

This unwarranted finding is in addition to the obviously unsolicited reasoning contained in paragraphs 47 and 48 of its order quoted above. I have therefore no doubt that the Industrial Court had far exceeded its powers. What is worse it has drawn inferences from facts which are not on record. The impugned order of the Court is therefore prima facie illegal."

8. Shri Ramaswami's further contention that in the earlier case the same Labour Court had recorded a finding that there was no illegal lockout and hence that finding was res judicata in the present case, is also misconceived. The earlier application was by the Company for the declaration that the strike resorted to by the workmen from April 2, 1978 was illegal. That application was opposed by the workmen contending that it was not a strike but a lockout. The Labour Court on the facts proved according to it, declared that it was a case of illegal strike and hence answered the alternative point of lock-out against the workmen. That declaration was given on May 3, 1978. The workmen, without prejudice to their rights to challenge the said declaration, offered to resume work thereafter. But they were not allowed to do so unless they signed the undertaking in question. In the present application, therefore, what was to be considered by the Courts below was the conduct of the parties and the events after May 3, 1978. The Labour Court therefore rightly held that the earlier finding was not a res judicata.

9. Shri Ramaswami then contended that the workmen had not resumed duties within 48 hours of the declaration on May 3, 1978, that the strike was illegal. But this contention ignores, firstly, that the workmen were contemplating challenging the declaration, as is evident from the Union's letter of May 7, 1978. Secondly, the only penalty that the workmen incur for not joining the duties within 48 hours, is a fine as laid down in Section 103 of the Act. The penalty does not extend to the termination of their services on that account. In any case they had offered to join the service and had physically presented themselves on May 8, 1978.

10. It was then contended that the earlier order of the Labour Court declaring the strike illegal was on record and the Industrial Court was justified in relying on the observations made therein to hold that the workmen had indulged in acts of violence and indiscipline. This argument has also to be rejected. Firstly in the said proceedings, the only issue was whether the strike was illegal. That issue had nothing to do with the violence or indiscipline and no issue with regard to the same was ever framed and finding recorded on the same. There was therefore no opportunity for the workmen to contest the said issue. The observations made in the said order therefore cannot be elevated to the status of a finding on the said allegations. Secondly, all that the Labour Court has recorded there is that the workmen had resorted to a sit-down strike and as contended by the management there, they had to be removed with the help of the police. There is no finding that there was violence as indeed there could not have been without an issue being framed for the purpose.

11. As against this in the present application, the issue with regard to violence and indiscipline directly arose for consideration in view of the undertaking sought from the workmen. As per the decision of a Division Bench of this Court reported in *Industrial Tubes Manufacturing Co. Ltd. v. S. R. Samant and Ors.* 1980 XI LLJ 444 the insistence on undertaking will be justified if there were acts of violence and indiscipline prior to it. In other words, it will not be justified if there were no such acts. Hence the employer had to prove such acts to justify its action of insistence on the undertaking. The employees likewise could challenge the evidence brought by the employer to prove the acts. A specific issue therefore had to be raised and a finding recorded on the point. The employer chose not to lead any evidence on the point, no issue was therefore raised and finding recorded on it by the Labour Court. The Industrial Court therefore could not have given any finding on the subject.

12. The Industrial Court thus ignored all these factual and legal aspects, and going beyond its jurisdiction u/s 85, has interfered with the finding of the Labour Court. Hence the impugned decision is *prima facie* illegal, on that count.

13. Now coming to the question whether the employer was justified in demanding the undertaking and of the consequences of the refusal to comply with the same, the undertaking when analysed falls in two parts. (It is necessary to clarify here that the form of the undertaking which is annexed at Ex. "A" to

the present petition is admittedly not the kind of undertaking which was asked by the management. The correct form of the undertaking is with the consent of both the parties taken on record and is reproduced earlier in Para 2 hereinabove). By the first part it required the workmen to admit that the strike to which he had resorted was illegal and it was such illegal strike that he was calling off. The second part required him to state that while entering the factory he would discharge his duty properly and will not cause any damage to the property, machinery and any raw material in the factory. These two parts have to be considered separately. Coming to the first part, it is true that the Labour Court had declared the strike illegal, but that was not the end of the matter. The remedies to get the said declaration set aside were available. In fact, the Union had, in its letter of May 7, 1978, in terms, stated that it was calling off the strike and advising the workmen to resume duties in view of the declaration of the Labour Court that the strike was illegal. However, this was without prejudice to the workmen's right to challenge the said order of the Labour Court. This assertion having been made on behalf of the workmen at the first available opportunity and before they went to the factory to resume their duties, it was undoubtedly both high handed and illegal on the part of the Company to insist that the workmen should sign a document such as the undertaking in question in which they should admit that the strike which they had resorted to was illegal. Such admission on their part would certainly have defeated their right to challenge the order of the Labour Court. They would not be heard to blow hot and cold at the same time. The admission could have been held against them in any proceedings which they might have adopted to challenge the Labour Court's order. To contend, as was for the first time sought to be done before us by Shri Ramaswami, that the workmen could have given the undertaking without prejudice to their right to challenge the order of the Labour Court is to fly in the face of the facts. No such choice was given to the workmen and in fact the undertaking was kept ready to be signed by them, and it is only those signed on the dotted lines who were allowed to resume their duties. It was never the case of the employer that they had at any time given such option to the workmen. In fact, even after the Union had, in its letter of May 7, 1978 made it clear that in view of the intention of the workmen to challenge the order of the Labour Court, they would not give any such undertaking, the Company had not provided for "without prejudice clause" in the undertaking. Shri Ramaswami's contention that the workmen had in fact adopted no further proceedings to challenge the order of the Labour Court is also equally facetious. Admittedly, the Company had terminated the services of the workmen on May 12, 1978, i.e. within four days of their refusal to sign the undertaking. An altogether different situation therefore arose for the workmen. Within a short time of their refusal to sign the undertaking they were faced with the prospect of challenging the termination of their employment. They had therefore to adopt remedies to redress their said grievance which admittedly they did, and we are informed that at present the said proceedings are pending at different levels in respect of different employees. I am therefore of the view that the insistence by the Company on the admission

by the workmen that the strike was illegal as a condition precedent to their being allowed to resume their duty was both improper and illegal and this action on the part of the Company did amount to lock-out within the meaning of Section 3 (24) of the Act. Lock-out as defined there also means a total or partial refusal by an employer to continue to employ persons employed by him, all or some, where such refusal occurs in consequence of an industrial dispute and is intended for the purpose of compelling the employees to accept any term or condition affecting employment. To insist that the employees give up their remedy open to them under law for redressal of their grievance is to compel them to accept an illegal condition affecting their employment. That itself gives rise to an industrial dispute. Since in the present case the Company wanted the employees to admit that the workmen were on illegal strike which admission specifically implied that their remedy in law to challenge the order of the Labour Court was not available to them thereafter, the action of the Company squarely fell within the said definition of lock-out. Therefore I have no doubt that so far as the petitioner-employees are concerned, the Company had resorted to lockout. The further question to be answered is whether the lock-out was illegal.

14. Section 98 details the circumstances under which the lock-out becomes illegal. The circumstances which are relevant for our purpose are enumerated in clauses (a) and (b) of the said Section. They are :

"Section 98 (1)--A lock-out shall be illegal if it is commenced or continued-

(a) in cases where it relates to any industrial matter specified in Schedule III or regulated by any Standing Order for the time being in force;

(b) without giving notice in accordance with the provisions of Section 42."

Items (2) and (6) under Schedule III are as follows:

"Item (2) of Schedule III--Assignment of work and transfer of workers within the establishment.

Item (6) Employment including-

(i) reinstatement and recruitment;

(ii) unemployment of persons previously employed in the industry concerned."

15. Thus the present lock-out related to assignment of work to the workmen and also to their reinstatement and unemployment. What is further, it was commenced as far as the Petitioners are concerned without giving notice as required by the provisions of Section 42. There is therefore no difficulty in holding that the lockout was illegal.

16. This being the case it is not really necessary to go into the question as to whether it was illegal also on account of the refusal of the company to allow the workmen to resume their duties unless they signed the second part of the undertaking, namely, the undertaking relating to proper discharge of their duties

without damage to the property, machinery and any material in the factory. I may however in passing also refer to this aspect of the undertaking since some of the authorities cited before us have as their basis undertakings which can be said to impinge on both the aspects. In *India Machinery Mazdoor Union v. India Machinery Company, Ltd.* 1956 II LLJ 408 the Labour Appellate Tribunal had to decide both the questions viz. whether a simple good conduct bond could be insisted on by the employer and whether the bond which incorporated an insinuation against the Union and its office bearers was unjustifiably refused to be signed by the workmen. The Tribunal answered both the questions in the negative. It held as follows:

"The management demanded a good conduct bond from the workmen. There was no necessity for such a bond; for, good conduct is always an essential condition of employment even without a bond. The workmen had also no objection to give a good conduct bond if it was a simple good conduct bond without any insinuation against the President of the union. Obviously, the intention of the management appears to have been to get a forced accusation from the workmen against the President of their union, the effect whereof was calculated to be prejudicial to the union which had recently been formed. In our opinion, this was unfair labour practice."

17. In *Northern Dooars Tea Co. v. Workmen of Dem Dima Tea Estate* 1964 II LLJ 436 which was decided by the Supreme Court the facts were that six workmen were ordered to be dismissed by the management for leaving their work. The union informed the management by a notice well in advance that if the management did not refrain from dismissing the workmen, the workmen would stage a token strike for three days. The management did not take any steps to avert the strike. After the strike was commenced, the management put up a notice that the workers must resume their work immediately and it also insisted on an assurance from each worker to behave in a disciplined manner. The workmen were willing to resume work after the expiry of the token strike but the management refused to open the gates and permit them to resume work. Subsequently as a result of settlement the lock-out was lifted and the workmen were permitted to return to work. In regard to the dispute to the wages for the period of lock-out, the Industrial Tribunal, on the evidence, found that the action of the management in declaring and continuing the lockout was not fair or bonafide and directed the management to pay to the workmen three-fourth of their wages for the period of lock-out. During the course of its decision, the Tribunal had recorded a finding that the employer had prolonged the period of lock-out with a view to obtain an oral assurance from each workman of his/her good behaviour and that the said conduct of the management could not be said to be fair and that in declaring the lock-out and in continuing it, the management had acted vindictively. The Supreme Court held that the conclusion of the Tribunal was well founded. The Supreme Court only modified the direction to pay the workmen three-fourth of their wages and instead directed the payment of half of their wages on the ground that the workmen had gone on strike for three

days. In *Industrial Tubes Manufacturing Co. Ltd. v. S.R. Sawant*, Judge, Industrial Court and Ors. (supra) which is a decision of the Division Bench of this Court under the MRTU and PULP Act, the undertaking was couched in the following language :

"I am willing to terminate the strike and resume duties forthwith. Upon resumption of work I am willing to perform my duties sincerely and diligently and continue to give normal output, observe normal discipline whilst on duty. I, therefore, request you to permit me to resume work."

18. It should be noted that the aforesaid undertaking does not require the workmen to admit that the strike to which they had resorted was illegal. The Court held that by seeking such an assurance which was to act according to the terms of the employment, the employer could not be said to be making any demands on the workmen nor could he be said to have any point of view excepting what was implicit in the terms of the employment. The Court there further relied upon item 4 of Schedule IV of the Act which had listed as one of the unfair labour practices on the part of the employer, the following practice :

"To insist upon individual employees, who were on legal strike, to sign a good conduct bond, as a precondition to allowing them to resume work."

Since the aforesaid unfair labour practice did not refer to the employees who were on illegal strike, the Court held that the legislature had prohibited the taking of such undertaking only when the strike was legal. The Court further came to the conclusion that in that case the strike was illegal and the employees had resorted to several acts of indiscipline during the illegal strike. It has also further to be remembered that it was not the case of the employees there that they wanted to proceed further in law against the declaration that their strike was illegal. This decision therefore has to be confined to the facts of that case. In *Swastik Textiles Engineers P. Ltd. Vs. Rajansingh Santsingh and Others*, decided by the Gujarat High Court the undertaking insisted was in following language :

"I, the undersigned do hereby state that at the instigation of some workmen I had joined the illegal strike of the workmen of the factory from July 26, 1977, I am sorry for the same.

I hereby give an undertaking that henceforth I will act peacefully and in disciplined manner and I shall not commit similar or any other misconduct. I request the Company that taking this into consideration, I may be pardoned for my aforesaid misconduct. And the Company may impose any punishment on me and I shall not raise any objection in that regard."

19. The Court held that such an undertaking was clearly uncalled for and that it amounted to changing the service conditions because under the conditions of service, workmen were not bound to execute such an undertaking.

20. As pointed out above there is no evidence of violence and indiscipline in the present case Hence the second part of the undertaking is not justified.

21. Assuming however that the employer has succeeded in proving that there were acts of violence, indiscipline and damage to the property, the question that still falls for consideration is whether insistence on such an undertaking from all workmen, whether they were parties to the said acts or not, is justified. Surely in the last quarter of this century it is not necessary to emphasise that the contract of employment is always bilateral. The employer and employees are equal partners in the enterprise of production. The employees are no longer to be looked upon as bonded slaves. The terms of their relationship with the employer are governed by the contract of employment and/or the relevant statutes. The employees therefore cannot be treated as a tribe of delinquents much less can they be humiliated by asking them to sign undertakings which imply that they had indulged in misdeeds which they had not and that they atone for the same. One can understand and the employer will be justified, if such undertaking is taken from those workmen who are guilty of the misdeeds. But to insist on such undertaking from one and all is to subtract from the terms of their employment. It is not suggested that it is one of the terms of employment that whenever there are misdeeds on the part of some workmen, all workmen should enter, so to say the penitentiary, and give such undertaking. To contend that to act in a disciplined manner is an implied condition of service and hence there is nothing wrong in insisting upon such undertaking is to beg the question. If it is an implied condition of service, there is no need of such undertaking. If the undertaking is innocuous, it serves no purpose except satisfying the ego of the employer which is nothing but a display of a feudalistic attitude towards the employees. Such attitude has to be discouraged in any egalitarian society and much more so in a society like ours which has pledged itself to establish a Socialist Republic. Article 43-A of the Constitution, specifically directs the State to take steps to secure participation of workers in the management of the industry. It cannot be argued that the case of these constitutional objectives will be furthered by acquiescing in or conniving at the action of the employers in insisting on such undertakings even from the innocent workmen which has the inevitable effect of demeaning the workmen. I am therefore of the view that to insist upon such undertakings from all workmen, irrespective of their conduct, is to subject them to indignity. The individual is the bed rock of all human rights. It is and should be the basis of all human relationships including his contract of employment. To insist upon such undertaking therefore is to affect the terms of his employment. I have therefore my own reservations about the decision of this Court reported in *Industrial Tubes Manufacturing Co. Ltd. v. S.R. Samant*, Judge Industrial Court and Ors. (supra). It is however binding on me as a Single Judge. Since I have even otherwise come to the conclusion, as above, that the lock-out was illegal, it does not make any difference to the result of the petition.

22. The result therefore is that the petition succeeds. The impugned order of the Industrial Court is set aside and that of the Labour Court dated September 8, 1978 is restored.

23. Rule accordingly with costs.

24. P.C. In view of the difference of opinion between us the matter be placed before the learned Chief Justice (Acting) for being referred to a third Judge.