IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6055 of 1999
with
SPECIAL CIVIL APPLICATION No 6057 of 1999
with
SPECIAL CIVIL APPLICATION No 6058 of 1999
with
SPECIAL CIVIL APPLICATION No 6059 of 1999
with
SPECIAL CIVIL APPLICATION No 6060 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AMBUJA CEMENT PVT LTD

Versus

N D RATHOD C/O NASANTBHAI PAMNANI

Appearance:

1. In all matters :

MR KS NANAVATI for NANAVATI ASSOCIATES for Petitioner

MR PJ KANABAR for Respondents

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/05/2004

CAV COMMON JUDGEMENT

1. All these petitions are directed against the common judgment and award rendered by the Judge, Labour Court at Amreli dated 23rd April, 1999 in Reference [L.C.A.] No. 139 of 1998 and its allied cases. By the said award the reference cases filed by the respondents have been allowed and the petitioner has been directed to reinstate them on their original post with continuity of service and full back wages from the date of dismissal from service till reinstatement and all other incidental benefits and also to pay a sum of Rs.500/= to each of the respondents by way of costs.

1.1. Since these petitions are directed against the aforesaid common award, they are heard together and now they are being disposed of by this common judgment.

2. In these petitions two major controversies are involved. First controversy has been the subject matter of number of decisions that have been rendered by the Apex Court in different cases uptill now and that is, at what stage the employer or management can seek permission of the Industrial Tribunal or the Labour Court to lead additional evidence in the trial proceedings to substantiate order of dismissal passed against the workman. The second controversy is if the permission is sought at the appropriate stage, is it incumbent upon the Industrial Tribunal or the Labour Court, if it came to the conclusion that the departmental inquiry held against the delinquent was defective or invalid and hence vitiated, to call upon the employer or the management to lead additional evidence to substantiate the order of dismissal passed against the delinquent.

3. To decide these issues it is necessary to narrate certain relevant facts.

3.1. The petitioner is a company incorporated and registered under the Companies Act, 1956 and it is engaged in the business of manufacturing various types of cements. According to the petitioner, it is situated at Ambujanagar, Taluka Kodinar. At the relevant time it had employed 247 employees in its factory. It is the say of the petitioner that the present respondents together with seven other employees working in the factory and the

Mines Department of the petitioner, formed a workers' union known as 'Ambuja Cement Mazdoor Sangh' and posed themselves as leaders of the said union. Out of total 247 workmen, only few became the members of the said union. The rest of the workmen refrained themselves from the membership of the said union. According to the petitioner, the said union immediately upon formation, wrote a letter to the petitioner company dated 1st January, 1990 requesting it to recognize the union as well as the office bearers of the union. Together with the said letter, the union also submitted to the management a charter of demands requesting the petitioner to grant their demands. Since no positive reply was received from the company, the union again wrote a letter dated 18th January, 1990 inter-alia threatening the petitioner that if the demands of the union were not negotiated and settled, the workmen would start agitation/Dharna, etc. with effect from 29th January, 1990.

3.2. It is the say of the petitioner that pursuant to letter dated 18th January, 1990 declaring their intention, 78 out of 247 workmen started the agitation and went on strike, completely disrupting the work of the factory of the petitioner. These 78 workmen worked in different shifts and in general shift. Since the said workmen did not call off the strike despite initial request made by the management and thereafter by notice for calling off the strike and to commence the work of the factory; the petitioner was constrained to serve them with the notices to take disciplinary action against them and also made clear to them that the wages for the days on which the strike was observed would be deducted from their salary. It is the say of the petitioner that the workmen not only did not comply with the notice, but they continued the illegal strike and even misbehaved with the superior officers and instigated others to go on strike. Further they went to the extent of giving serious threats to other employees and tried to compel them to join the strike. The petitioner therefore had no alternative but to initiate departmental proceedings against them. It issued show cause notice cum charge-sheet against 8 employees including the present respondents on different dates, first being of 6th February, 1990.

3.3. It appears from the record of the petitions that three officers were appointed as the Inquiry Officers, namely S/s. D.V. Mankad, K. Gaurappan and A.C. Karnik. The charges levelled against the respondents were by and large identical with slight

variance in one or two charges. They were as under :-

"01. Use of impertinent language, to insult superiors, indecent behaviour, insubordination and committing act which is subversive of discipline;
02. Unlawful cessation of work or going on illegal strike in contravention of the provisions of law and the standing orders and participation in a sitdown strike;
03. Inciting and/or instigating other employees to take part in an illegal strike, sitdown strike and action in furtherance of such strike launched in contravention of the provisions of law;
04. Disorderly behaviour and conduct endangering the life or safety of any person within the factory premises;
05. Act of sabotage or causing damage to the work in progress or to any property of the management wilfully;
06. Wilfull interference with the work of another workman or of a person authorized by the management to work on its premises;
07. Holding or participating in the meetings, demonstrations and shouting slogans inside the factory premises or mines or residential colony;
08. Unauthorized absence from duty for more than eight consecutive days;
09. Committing a nuisance in the premises of the factory, breach of these Standing Orders;
10. Canvassing for Trade Union Membership and collection of Union funds within the premises except as permissible under law;
11. Making a false, vicious or malicious statement in public against management/factory of officer;
12. Instigation, incitement, abetment or furtherance of any of the above acts."

According to the petitioner, though they were duly served with the notices and summons to remain present at the inquiry, the respondents had not accepted the summons and had refused to participate in the inquiry. The Inquiry Officers were, therefore, obliged to conduct the inquiry in their absence. Upon conclusion of the recording of the evidence of the petitioner's witnesses, the Inquiry Officers proceeded to prepare the reports since the

respondents had not chosen to remain present and contest the charges.

3.4. It appears from the record that the Inquiry Officers found the respondents guilty of using impertinent language and insulting the superiors, indulging in unruly behaviour and having acted in a manner which was subversive of discipline. They also found that the respondents were guilty for participating in illegal strike. Further, they were also found unauthorisedly absent from service and guilty of committing nuisance in the premises of the company. However, they were not found guilty of incitement, abetment, instigation, etc. They were also not found guilty of canvassing for trade union membership and collection of union funds.

3.5. They were thereafter served with a notice to show cause against the imposition of proposed punishment. The same was not accepted by them. Hence, the disciplinary authority, which was equipped with the entire material including the report of the Inquiry Officer, proceeded to pass the orders of dismissal against the respondents.

3.6. The respondents gave notices to take back them in service, but their request was not granted by the petitioner and, therefore, they raised industrial dispute. It appears that attempts to conciliate the dispute initially had yielded some positive result, but ultimately negotiations broke down and failure report was submitted. The dispute ultimately was referred to Labour Court for adjudication by the Assistant Labour Commissioner, Amreli by order dated 11th March, 1991. It also appears from the record that initially the reference cases were filed before the Labour Court at Rajkot and thereafter they transferred to the Labour Court at Bhavnagar and lastly they were transferred to Labour Court, Amreli with present reference case numbers.

4. Say of the respondents can be gathered from the averments made by them in their respective statements of claim. Before the common contentions raised by the respondents in the reference cases are narrated, it would be necessary to set-out certain individual details of the respondents.

4.1. Reference (L.C.A.) No. 139 of 1998 was filed by Mr. N.D. Rathod, respondent of Special Civil Application No. 6055 of 1999. He was working as Heavy Equipment Operator at monthly salary of Rs.1950/=. He

was dismissed from the service by order dated 24th March, 1990. He requested vide notice dated 24th January, 1991 to petitioner to take him back in the service, but the same was not acceded to.

4.2. Refrence (L.C.A.) No. 146 of 1998 was filed by Mr. D.D. Koradia, respondent of Special Civil Application No. 6057 of 1999 was working as Machinery Assistant at monthly salary of Rs.1,683=60. He was dismissed from service on 1st March, 1990. He demanded reinstatement by serving a notice dated 7th May, 1991, but the demand was not complied with by the petitioner.

4.3. Reference (L.C.A.) No. 162 of 1998 was filed by Mr. B.U. Parmar, respondent of Special Civil Application No. 6058 of 1999 was working as Plant Operator at monthly salary of Rs.1,700/=. He was dismissed from service on 1st March, 1990. He also made demand for reinstatement by serving a notice, date of which is not available on record, but the demand was not acceded to by the petitioner.

4.4. Reference (L.C.A.) No. 145 of 1998 was filed by Mr. U.B. Ghade, respondent of Special Civil Application No. 6059 of 1999 was working as Plant Operator at monthly salary of Rs.1,700/=. He was dismissed from service on 1st March, 1990. He demanded reinstatement by serving a notice dated 29th April, 1991, but the demand was not responded to.

4.5. Reference (L.C.A.) No. 150 of 1998 was filed by Mr. D.B. Upadhyay, respondent of Special Civil Application No. 6060 of 1999 was working as Senior Fitter at monthly salary of Rs.2,800/=. He was dismissed from service on 1st March, 1990. He demanded reinstatement by serving a notice dated 7th May, 1991. However, the demand was not complied with by the petitioner. Hence, industrial dispute.

4.6. All the respondents filed their statements of claim which were more or less based on the averments to the effect that demand was made for recognition of the union and to recognize the officer bearers and also to accede to their certain legitimate demands, but the petitioner did not agree. Hence, a programme of holding peaceful demonstration was organized on 31st January, 1990. In the meanwhile efforts to bring about amicable settlement were made with the help of Government Labour Officer, but the petitioner did not give any cooperation and ultimately all the members of the union were dismissed from service by the petitioner

by taking ex-parte decision. According to them, they had not received any communication with regard to holding of the departmental inquiry against them and the inquiry that was conducted was against the principles of natural justice. Further that the allegations levelled against them were not established and the findings given by the Inquiry Officers were erroneous. They also challenged the proportionality of the orders of dismissal and demanded reinstatement with continuity of service together with back wages and other incidental benefits. but the demand was not responded to.

4.7. All these reference cases were contested by the petitioner by filing written statements wherein it was contended that on account of the serious misconduct of the respondents, they were served with show cause notices and charge-sheets and their explanation was called for. But the same were not accepted by the respondents and they were returned with an endorsement 'refused'. Further that respondents had not filed any written statement to the charge-sheet. They were also given notice with regard to date fixed for hearing, but neither they had accepted the notice nor they had remained present. Further that upon inquiry, the acts of misconduct were held to be proved by the Inquiry officers and on the basis of the same, they were dismissed from the service in accordance with the principles of natural justice. It was further averred that since the respondents had lost confidence of the petitioner, they were not entitled to be re-employed in service of the petitioner.

4.8. It may be noted here that in this very written statement the petitioner had also averred and sought permission of the Labour Court that in the event it came to the conclusion that the inquiry held against the respondents was vitiated on any of the grounds alleged against it, the petitioner be permitted to lead additional evidence to prove the misconduct and substantiate the orders of dismissal.

5. At the hearing of the reference cases, both the parties produced documentary evidence. So far the respondents are concerned, they have also examined themselves as witnesses. It appears from the record that before the oral evidence was recorded, the respondents submitted individual pursis stating that they admitted the inquiry proceedings and did not challenge legality and validity of the inquiry. It appears that in view of this pursis, the petitioner did not choose to lead any additional evidence, but placed complete reliance on the

evidence of the witnesses examined by it before the Inquiry Officers, whose evidence had remained unchallenged because the respondents had not participated in the inquiry proceedings.

5.1. At the end of the recording of the evidence, the Labour Court on the strength of the material produced before it, passed its judgment and award. It is pertinent to note that in para. 19 of the judgment the Labour Court has referred to the respective pursis submitted by the respondents admitting the legality and validity of the inquiry proceedings and has recorded a conclusion that since the applicants of those reference cases (i.e. the present respondents) have not challenged the legality and validity of the inquiry and have admitted the same, there was no need to take any decision with regard to the said inquiry. Thus, in other words, though the respondents had initially challenged the validity in their statements of claim, the said challenge was given up by filing pursis and the Labour Court had decided to proceed with the judgment on the basis that there was no need to give any finding with regard to validity of the inquiry. It also appears that since the challenge was given up, the petitioner did not think it proper to lead additional evidence and chose to rely on the material of the inquiry.

6. The Labour Court, however, thereafter recorded the conclusion that considering the material on record, no opportunity was granted to the respondents to defend their interest at the inquiry. It further concluded that copy of the report was not furnished to the respondents to enable them to make representation against it, that the strike was not illegal. Further it came to the conclusion that there was undue haste shown by all concerned including the Inquiry Officers in concluding the inquiry proceedings. It also recorded a finding that undue haste was shown by the disciplinary authority in passing the order of dismissal. It further concluded that the findings given by the Inquiry Officers were with malafide intention and further that the findings were not legal and proper and were not based on legal procedure. Thus, the most of the findings given by the Labour Court are relating to the procedural aspect of the inquiry and the Labour Court has impliedly held that the inquiry was violative of principles of natural justice, defective and hence vitiated. In view of this finding, the Labour Court allowed all the reference cases and ultimately gave award in terms stated above. It is this award which is now being challenged before this Court.

7. Mr. K.S. Nanavai, Learned Senior Advocate for Nanavati Associates for the petitioner has submitted that the judgment and award of the Labour Court are perverse, erroneous and are against the settled principle of law. He has submitted that the inquiry was legal and valid and all the opportunities were extended to the respondents to defend their interest at the hearing, but they did not choose to avail the same. The petitioner, therefore, cannot be blamed and it cannot be said that the inquiry was ex-parte. It is his submission that when challenge to the inquiry was given up, it was not proper for the Labour Court to hold that it was defective. He has also submitted that the petitioner at the very first instance, namely at the stage of filing written statement, had requested for permission to lead further evidence in case the Labour Court came to the conclusion that the inquiry was not legal or it had got vitiated for any reason. In view of this request, the Labour Court ought to have granted permission to lead additional evidence but the same has not been done and that has caused serious prejudice to the petitioner. He has lastly submitted that the matters be remanded back to the Labour Court to give proper opportunity to the petitioner to lead additional evidence.

7.1. As against that, Mr. P.J. Kanabar, learned advocate appearing for the respondents in all petitions has fully supported the judgment and award passed by the Labour Court and has submitted that no illegality has been committed by the Labour Court and its award is just and proper. According to him, the judgment of the Labour Court is based on the material that was placed before it and it was well within its limits to consider the same and give appropriate findings with regard to the issues involved. He has also submitted that on the questions of fact the Labour Court has decided against the petitioner and this Court may not interfere with such findings under Article 227 of the Constitution of India. He has further submitted that the Labour Court has decided the matter mainly on the basis that the orders of dismissal passed against the respondents were not legal and not in accordance with the standing orders and, therefore, the judgment is not required to be disturbed. It is submitted that merely because there are some incidental findings with regard to the defective procedure adopted by the Inquiry Officers, it cannot be said that the judgment and award are solely based on such finding. He has further submitted that even if the permission is sought by the petitioner in the written statement, it was the petitioner's duty to lead

additional evidence at the appropriate stage and it was not for the Labour Court to call upon it to lead evidence. In his submission, when the petitioner had passed pursis not to lead evidence, it had forfeited its right to lead additional evidence and now it cannot make any grievance regarding it. Lastly he has submitted that these petitions have no merit and they are required to be dismissed.

7.2. It may be noted here that in the course of the hearing both the learned counsels have made extensive submissions relating to the aforesaid controversies and have also placed reliance on various decisions of the Apex Court as well as of this Court and some other High Courts. I will refer to the same in the due course of this judgment.

7.3. Apart from the aforesaid submissions, both the learned counsels have also made certain submissions, which are purely based on the facts of the case and, therefore, I will express my opinion on the question whether they can be considered in a petition under Article 227 of the Constitution of India little later.

8.0 I may first deal with the aforesaid two controversies.

8.1. As stated above, so far the first one is concerned, it is by now a well defined proposition of law that the employer or the management has to seek permission for leading additional evidence to substantiate the orders of dismissal in the event the inquiry is held to be vitiated at the first available opportunity. It is pertinent to note that claiming the right of leading additional evidence by the management and grant of permission for the same by the Labour Court or the Tribunal are not by way of any statutory provision, but this procedure has been evolved and recognized by the Apex Court all over these years with a view to curtail the cumbersome proceedings of holding inquiry again. It has been found that instead of having the entire inquiry proceedings de-novo in the event of earlier inquiry being vitiated on account of any inherent infirmity, it was more convenient and desirable to permit the management to lead additional evidence to substantiate its action. Ofcourse the issue regarding stage to seek permission has constantly remained in debate and it has been recently considered by the five Judge Bench of the Apex Court in a decision rendered in the case of Karnataka State Road Transport Corporation

v/s. Lakshmidevamma reported in (2001) 5 S.C.C. p.433 and controversy has been finally put at rest. However, since both the learned counsels have argued this issue extensively before me and it has also got some overlapping effect on the second controversy, I am inclined to discuss it in little detail. With this background in mind, I would like to refer to certain decisions which have been cited at the bar by both the sides. First I will refer to the decision rendered by the Apex Court in the case of Delhi Cloth & General Mills v/s. Ludh Budh Singh reported in (1972) 1 S.C.C. p. 595. In the said decision several principles of law have been laid down by the Apex Court in relation to the domestic inquiry held by the management; the jurisdiction of the Tribunal in the proceedings arising from the decision taken by the management as a result of the said inquiry and the right of the management in such proceedings with regard to leading the additional evidence. The Apex Court has said that at the trial proceedings before the Tribunal the management has two fold right, namely that it can rely upon the domestic inquiry held by it in the first instance and alternatively and without prejudice to its plea that the inquiry was proper and binding, lead simultaneously the additional evidence before the Tribunal. It is thereafter held that it was open for the management to request the Tribunal to try the validity of domestic inquiry as preliminary issue and also to ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue was against the management. The Apex Court has further held, which is required to be reproduced verbatim, as under :-

"(e) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to be decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(g) If the employer relies on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity

during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the mater. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(h) If the management wants to avail itself of the right, that it has in law, of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. An enquiry into the preliminary issue is in the course of the proceedings and the opportunity given to the management, after a decision on the preliminary issue, is really a continuation of the same proceedings before the Tribunal."

8.2. Again this question was considered by the Apex Court in the case of Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v/s. The Management reported in (1973) 1 S.C.C. p.813. That decision was rendered in view of the introduction of section 11-A of the Industrial Disputes Act (for short 'I.D. Act'). There were several questions under consideration of the Apex Court, one of them being that by virtue of the amended provision, namely section 11-A whether the Labour Court had no discretion, in the event of its coming to the conclusion that the inquiry held was not proper, but to reinstate the employee. In the said decision the Apex Court held that the Industrial Tribunal or the Labour Court did not have any power to straightaway order reinstatement if the inquiry was held to be improper or no inquiry was held, but in such cases the employer should ask for an opportunity to lead evidence at an appropriate stage. If the misconduct was established either by managerial inquiry or by evidence before the Industrial Tribunal, the punishment would not be interferred with except it was so harsh as to suggest victimization. It was further held that if no inquiry was held or inquiry held was defective, then under section 11-A the employer could adduce evidence for the first time before the Industrial Tribunal but in that case the Tribunal had to be satisfied about the guilt of

the workman. It has also held that words occurring in proviso to section 11-A "materials on record before it" could not mean only the materials which were available at the domestic inquiry but it would refer to materials on record before the Tribunal. The Apex Court has described the following as the materials on record before the Tribunal as specified in proviso, namely (i) the evidence taken by the management at the inquiry and the proceedings of the inquiry or (ii) the above evidence and in addition any further evidence led before the Tribunal, or (iii) evidence placed before the Tribunal for the first time in support of the action taken by the employer as well as the evidence adduced by the workmen contra. Thus, in this case also the right of the management to lead evidence before the Tribunal is recognized by the Apex Court.

8.3. Again this controversy arose before the Apex Court in the case of Cooper Engineering Ltd. v/s. P.P. Mundhe reported in (1975) 2 S.C.C. p. 661. While rendering decision in this case the three Judge Bench of the Apex Court has taken into consideration several earlier decisions of the Apex Court on this issue, one of them being in the case of Workmen of Motipur Sugar Factory Ltd. v/s. Motipur Sugar Factory reported in AIR 1965 S.C. p.1803. It would be worthwhile to reproduce a passage from the said judgment, which is also verbatim reproduced by the Apex Court in the decision of Cooper Engineering (supra). It aptly describes why it is desirable to permit the employer to lead additional evidence in trial before the Tribunal or Labour Court.

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is, why this Court has consistently held

that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes."

The aforesaid passage clearly gives the idea why such course is required to be adopted and the same has been considered as a desirable course consistently by the Apex Court in different decisions. This view has been reiterated by Apex Court in Cooper Engineering's case by making following observations :-

"21. ..... Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see Section 15) will be clearly defeated resulting in duplication of proceedings. This position has to be furtherance of the ultimate aim of the Act to foster industrial peace."

Keeping the aforesaid purpose in view, the Apex Court has proceeded to decide in Cooper Engineering's case what course was required to be adopted by the Tribunal or Labour Court at the trial. In the opinion of the Apex Court, it would be desirable to try the issue regarding validity of inquiry as preliminary issue so as to be fair with the employer and not to spring a surprise on him at the closure of the proceedings and deprive him of chance of leading additional evidence. The Apex Court has further held as under :-

"22. We are, therefore, clearly of opinion that

> when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issued. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it, chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

Thus, the Apex Court has held that when there is no domestic inquiry or the defective inquiry is admitted, there is no difficulty, but when the matter is in controversy, it is incumbent upon the Tribunal to first decide the issue regarding inquiry's validity and if it is found to be invalid, it should pronounce its decision on that which may then give a right to the management to lead fresh evidence if it so desired.

8.4. The view taken by the Apex Court in the decision of Cooper Engineering's case came under consideration of the Apex Court in the decision again rendered by the three Hon'ble Judges in the case of Shankar Chakravarti v/s. Britannia Biscuits Co. Ltd. reported in (1979) 3 S.C.C. at page 371. In Cooper Engineering's case the proceedings had arisen challenging the order of dismissal by the workman passed against him by the management before the Labour Court. In the case of Shankar Chakravarti while granting leave to the aggrieved workman to appeal, it was kept in view whether the principle in Cooper Engineering's case (supra) would apply to situation where the management sought approval for an order of dismissal u/S. 33 (2)(b) of the I.D. Act. It is held by the Apex Court in this decision that

the right which the employer has in law to adduce additional evidence before the Labour Court or the Industrial Tribunal in a proceedings under Section 10 or Section 33 of the Act is to be availed of by making proper request in the statement of claim, application or written statement. Further if the request is made before the proceedings were concluded, the Labour Court or the Industrial Tribunal, should ordinarily grant opportunity to adduce evidence. But if no such request is made, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such opportunity. In this decision it was also held that so far the decision in Cooper Engineering's case was concerned, the Apex Court in that case had only laid down, the stage at which opportunity was required to be given, if it was sought by the employer. Hence, it was for the employer to avail of such opportunity by specific pleading or by specific request. It was held that the principle of law regarding seeking opportunity at appropriate stage; and also in cases where no opportunity was sought to lead additional evidence by the employer, there was no duty cast on the Labour Court or the Tribunal to suo-motu call upon the employer to lead evidence would equally apply to proceedings under Section 33 (1) (b) of the I.D. Act.

8.5. In the case of Shambhu Nath v/s. Bank of Baroda reported in AIR 1984 S.C. p.289 again the Bench of the Hon'ble three Judges of the Apex Court was required to consider this issue and also the stage at which such request should be made. It has been laid down by the Apex Court that the management has to be on its guard regarding the stand taken by the concerned workman vis-a-vis the validity of the inquiry from the averments that have been made in the statement of claim, if it is a proceedings under section 10 of the Act or the defence filed by him against the application made by the management u/S. 33 of the Act. In both the events the management would receive the notice with regard to challenge of validity of the inquiry held against the delinquent at the initial stage of the proceedings and, therefore, it was required to make the request at that stage itself. The Apex Court has held as under :-

> "16. We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workmen referred to in the above passage is the application which may be filed by the management

during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under sec. 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under sec. 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do."

The ratio of this decision is that the right which the employer has in law to lead additional evidence must be availed of by the employer by making appropriate request at the time when it files its written statement, if the proceedings are under Section 10 of the I.D. Act, questioning the legality of the order of terminating the service of workmen and if it is proceedings under Section 33 of the Act, seeking either permission to take certain action or approval of the action taken by him, immediately after receiving the reply of the concerned employee by filing appropriate application. If no

request is made at that stage, the employer cannot be permitted to do it at any later stage.

Further in this case the Apex Court has explained what is meant by the words "application of the management" occurring in the judgment of Shankar Chakravarti's case. It has reproduced the relevant para of that judgment in para. 15 of its judgment.

By referring to the aforesaid words, the Apex Court in Goyal's case has clarified that it is application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under section 33 of the Act to take certain action or grant of the approval of the action taken by it that after filing of the application under section 33 of the Act. It can be immediately after receiving the written statement of defence of the workman. Because at that stage the management is made aware of the contention regarding defective domestic inquiry by the written statement of defence which may be filed by him in such proceedings.

8.6. The question regarding right of employer to lead additional evidence in proceedings u/S. 10 or 33 (2)(b) of the I.D. Act against termination of service and the appropriate stage of exercise of it, has been considered by the Bench of five Hon'ble Judges of the Apex Court in the case of Karnataka State Road Transport Corporation [supra]. In this decision the law laid down by the Apex Court in the case of Shambhu Nath Goyal (supra) has been approved by the majority decision. It has held as under :-

"16. While considering the decision in Shambu Nath Goyal's case (AIR 1984 SC 289 : 1983 Lab IC 1697), we should bear in mind that the judgment of Vardarajan, J. therein does not refer to the case of Cooper Engineering, AIR 1995 SC 1900 : 1975 Lab IC 1441 (supra). However, the concurring judgment of D.A. Desai, J. specifically considers this case. By the judgment in Goyal's case the management was given the right to adduce evidence to justify its domestic enquiry only if it had reserved its right to do so in the application made by it under Section 33 of the Industrial Disputes Act,

1947 or in the objection that the management had to file to the reference made under Section 10 of the Act, meaning thereby the management had to exercise its right of leading fresh evidence at the first available opportunity and not at any time thereafter during the proceedings before the Tribunal/Labour Court."

17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in Shambu Nath Goyal's case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workman inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyal's case is just and fair." (emphasis supplied)

The majority view has been summarised in para. 45 of the said judgment, which is as under :-

"45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court / Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/ Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should

not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence, including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice."

Thus, the five Hon'ble Judge Bench has now laid the controversy at rest by holding that it is at the stage of filing written statement u/S. 10 of the Act or an application u/S. 33 of the Act of the management or the employer has to make request for leading additional evidence in the event the inquiry is found to be defective.

8.7. The sum and substance of the propositions of law that have been evolved by the Apex Court are (i) the right of the employer to lead additional evidence before the Labour Court or the Industrial Tribunal either in the proceedings under section 10 of the Act or under section 33 of the Act to justify its impugned action is to be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application for permission to take certain action or for approval of the action taken by him, (ii) if the Labour Court or the Industrial Tribunal comes to the conclusion that the inquiry held against the workman was defective, it must grant permission to the employer to lead additional evidence to substantiate or justify his action taken against the workman and permission to workman to lead evidence contra, (iii) it is when the Labour Court or the Industrial Tribunal holds the inquiry to be defective, it derives the jurisdiction to deal with the merits of the dispute, (iv) if the employer does not choose to avail of the right at the appropriate stage, it cannot be allowed to do it at any later stage of the proceedings, (v) no duty is cast on the Labour Court or the Industrial Tribunal suo-motu to call upon the employer to lead additional evidence if it has not sought permission for exercising the right, (vi) power of the Labour Court or the Industrial Tribunal is unfettered and it can require to direct the parties to lead additional evidence at any stage before closure of the proceedings, if on facts and circumstances, deemed just and necessary in the interest of justice.

8.8. In light of the aforesaid propositions of law, if the facts of this case are viewed, there are averments raised by all the respondents in their

statements of claim to the effect that charge-sheet containing alleged acts of misconduct was not served upon them; that they had not received any intimation with regard to holding the departmental inquiry against them, that they had not received any intimation with regard to the date of hearing fixed by the Inquiry Officer, that the inquiry was against principles of natural justice, that the inquiry had been held ex-parte, that the copy of the report of the Inquiry Officer was not furnished to them and the decision to dismiss them was also taken ex-parte without affording any opportunity to them to make representation against the report as well as proposed punishment. Thus, all the respondents in no uncertain terms had made averments challenging the validity of the departmental inquiry held against them in their statements of claim. As against that, the petitioner in para. 5 of its written statement at Exh. 36 had made averments as under:

> "5. We the opponents, seek permission to state that the departmental inquiry has been held as per the principles of natural justice and legally and if at any stage this Hon'ble Court holds that the departmental inquiry is not proper, due to technical or any other reasons, then the opponent (wrongly mentioned as applicant) requests that the ample opportunity may be accorded to prove the misbehaviour of the applicant in such circumstances."

It is, therefore, clear that in response to the averments made in the statements of claim by the respondents, the petitioner in its written statement has in articulate manner requested the Labour Court to give proper and full opportunity to it to prove the misbehaviour of the respondents in case it held that the inquiry was defective for any reason. In other words the petitioner has exercised its right to lead additional evidence at the very first instance i.e. in the written statement. In view of the aforesaid case law, it was then the duty of the Labour Court to grant permission to the petitioner to lead additional evidence at appropriate stage, because the judgment shows that the Labour Court has found several defects in the inquiry and has granted reinstatement with all other incidental reliefs after quashing the order of dismissal on account of defective inquiry.

9. The next question that is to be decided is whether in such event, it was necessary for the Labour Court to call upon the petitioner to justify its action

taken against the workmen i.e. the respondents and to show by leading additional evidence that the dismissal order passed against each respondent was proper, especially when the Labour Court had decided to conclude that the inquiry was defective for the reasons which are now obvious from its judgment, or it was for the petitioner to use its discretion to lead additional evidence at the appropriate stage of the proceedings without being called upon to do so by the Labour Court. Before I embark upon the discussion on this aspect, it is necessary to refer to certain factual aspects which have already been broadly stated above. It is already seen that each respondent in his statement of claim has raised several averments challenging the validity of the departmental inquiry held against him. In view of those averments, the petitioner in para. 5 of its written statement has sought permission of the Labour Court. It may further be noted here that all the respondents, before their evidence was recorded, have submitted pursis admitting the validity of departmental inquiry held against them. Mr. N.T. Rathod, whose evidence is recorded at Exh. 32 has submitted such pursis at Exh. 31. Mr. U.B. Gadhe has submitted pursis at Exh. 54 and his evidence is recorded at Exh. 55. Mr. D.B. Koradia has submitted pursis at Exh. 57 and his evidence is recorded at Exh. 58. Mr. Dilip Upadhayay has given evidence at Exh. 43, whereas his pursis regarding admission of the departmental inquiry is at Exh. 42 and lastly Mr. Bhavsinh U. Parmar has given such pursis at Exh. 33 and his evidence is recorded at Exh. 34. Thus, whatever challenge to the validity of the inquiry that has been raised in the statements of claim, has been given up by the respondents during the actual hearing of their respective cases i.e. before their evidence was recorded. It may be noted here that in para. 19 of the judgment of the Labour Court details regarding aforesaid pursis have been mentioned and thereafter the Labour Court has held that by submitting such pursis the applicants have not challenged the legality/validity of the departmental inquiry held against them and since the proceedings of the inquiry have been admitted, no decision with regard to the validity of the departmental inquiry is to be taken.

9.1. It may be further noted here that in the course of the judgment at several places the Labour Court has held that the procedure adopted by the Inquiry Officers was not legal and the findings recorded on the basis of such illegal procedure were also illegal and without assigning proper reasons. It has also held that the findings given by the Inquiry Officers against the

respondents were malafide, perverse and were based on extraneous considerations. It has also held that the departmental inquiry had been held ex-parte and there was undue haste shown in holding the inquiry and in completing the same and also giving adverse findings against the respondents without affording any opportunity to them of hearing. Thus, in short it has been held that there was no proper opportunity given to the respondents to contest the inquiry and every action of the petitioner as well as the Inquiry Officers was taken in undue haste. It has also in no uncertain terms held that the Inquiry Officers have acted in a prejudicial manner and no proper opportunity of defence has been afforded to the respondents. These are the findings meant for holding that the procedure adopted by Inquiry Officers was defective and illegal and the enquiry was defective. Apart from the aforesaid, the Labour Court has also given certain findings that conclusions drawn regarding charges of illegal strike, insulting the superiors, etc. were erroneous. However, resultant orders of dismissal have been quashed and set aside for the reasons which are necessary for reaching to a conclusion that the inquiry was defective. These findings have been ultimately recorded in the judgment by the Labour Court. The question is whether in the background, which has been stated above, was it incumbent upon the Labour Court to call upon the petitioner to lead additional evidence to substantiate its action against the respondents, particularly when it had already formed the opinion regarding defective inquiry. For searching the answer to this, it would be necessary to again revert to the decisions discussed above to ascertain what is the proposition of law on this issue.

9.2. The Apex Court while rendering decision in the case of the Cooper Engineer (supra) has incidentally considered this aspect and for that purpose it has taken into consideration several of its earlier decisions. It has considered the case of Management of Ritz Theatre (P) Ltd. v/s. Workmen reported in AIR 1963 SC p.295 and has reproduced the following passages from that judgment :-

"In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with

the merits of the dispute. ...."

It is further quoted as under :-

"If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence." (emphasis supplied)

However, for the purpose of the case on hand, it is relevant to note that even in the case of Ritz Theatre the Apex Court had in no uncertain terms held that if the finding on the issue whether the inquiry was not proper is against the employer, permission will have to be given to the employer to cite additional evidence. Similarly in the case of State Bank of India v/s. R.K. Jain reported in (1972) 4 S.C.C. p.304 it has been held as under :-

"Even assuming that the domestic inquiry conducted by the Bank was in any manner vitiated, the Industrial Tribunal erred in law in not giving an opportunity to the management to adduce evidence before it to establish the validity of the order of discharge."

It is also held in the case of State Bank of India (supra) that whether to lead evidence is a decision exclusively of the management and it has to exercise its discretion whether to avail the right given to it to prove its action. Similar view has been taken by the Apex Court in the case of Delhi Cloth and General Mills (supra) :

".... But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. ....."

Even after introduction of section 11-A in the I.D. Act the aforesaid view has remained consistent, namely that if the permission is sought, the employer be given opportunity to lead evidence if the Tribunal or the

Labour Court came to the conclusion that the inquiry was improper or defective. In the case of The Workmen of M/s. Firestone Tyre and Rubber Co. (supra) the Apex Court laid down that even after introduction of section 11-A and in particular the proviso thereto, no power was conferred on the Tribunal or Labour Court to straightaway, without anything more, direct reinstatement of the dismissed or discharged employee once it was found that no domestic inquiry had been held or that the said inquiry was found to be defective. In the case of Cooper Engineering (supra) therefore the Apex Court raised a question in para. 21 of its judgment, which can be reproduced as under :-

> "....Is it, however, fair and in accordance with the principles of natural justice for the labour court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the court to give an opportunity to adduce additional evidence at the commencement of the proceedings or, at any rate, in advance of the pronouncement of the order in that behalf? In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the labour court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves discrimination of the larger issue of discharge or dismissal and not merely whether a correct procedure has been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to? .... "

Though this question and answer thereto contained in this decision are subsequently held to be in the facts of that case, this question would definitely arise in the facts and circumstances of the case on hand before me also; meaning thereby that when all concerned, including the Labour Court and the petitioner were given to understand by the respondents that they did not raise any challenge to the validity or legality or propriety of the departmental inquiry held against them, was it proper for the Labour Court to examine the legality of the inquiry without affording any opportunity to the petitioner to lead evidence. This was more so when the Labour Court

initially persuaded itself not to examine this question in view of the pursis given by the respondents as can be seen from para. 19 of the judgment. Was it then fair for the Labour Court to withhold its decision on jurisdictional point at the appropriate stage? It is true that in a subsequent decision rendered in the case of Shankar Chakravarti (supra) this Court has held that it is not the role of the Labour Court or the Industrial Tribunal to give advice to the employer to adduce additional evidence to substantiate the misconduct but such observations have been made by the Apex Court for the cases where no request is made at any stage before the conclusion of the proceedings to permit the employer to lead additional evidence in case the inquiry was held to be illegal. The Apex Court has held that if the request is made in application or written statement or the statement of claim, Labour Court or the Industrial Tribunal must give such opportunity. Thus, on the issue whether the permission is required to be granted, several decisions of the Apex Court discussed above, very clearly prescribe the proposition of law that when the opportunity is sought at the earliest, then it is incumbent upon the Tribunal or the Labour Court to grant permission. In the facts and circumstances of the case on hand, this aspect has to be examined from two angles viz. whether the petitioner was required to be called upon to lead additional evidence and whether due permission and adequate opportunity was granted to it to lead additional evidence to substantiate the orders of dismissal. Admittedly neither the petitioner was called upon to lead additional evidence at any point of time and consequently no permission was granted. Was this fair on the part of the Labour Court? The answer obviously would be 'no'. It is rather matter of concern that if such surprises are sprung at the end of the proceedings i.e. in the final judgment, there is every possibility that in a given case some unscrupulous employee or workman may mislead the employer and even the forum by not raising any such averment in the statement of claim or his written statement or having raised it, giving it up later on by filing pursis and then again make submissions at the final stage of the proceedings requiring the concerned forum to give its decision regarding validity of the inquiry without leaving any scope for the employer to take any decision to lead additional evidence. It may be noted here that the evidence that was adduced before the Inquiry Officers consisted of several eye witnesses who were not challenged, by way of cross-examination. Thus, that evidence had remained uncontroverted. It is also note-worthy that if the inquiry is not challenged the material produced before the Inquiry Officers is

required to be taken into consideration by the concerned forum and barring certain exceptions it has to be accepted. Thus, the petitioner in the present circumstances would not have thought it fit to lead additional evidence and examine its witnesses and offer them for cross-examination by the otherside when valid uncontroverted material was already in its favour. If the Labour Court was inclined to go into the question regarding validity of the inquiry despite the challenge having been given up by the respondents, it was bounden duty of the Labour Court to show its intention and call upon the petitioner to exercise its right if it so desired. Intention is a state of mind and it has to be gathered from the surrounding circumstances. In the present case the circumstances did not warrant any inference to be drawn by the petitioner to the effect that on the question of validity of inquiry, the Labour Court was likely to go into the question and decide against it. If at all the Labour Court wanted to give such finding it ought to have first called upon the petitioner to exercise its right to lead additional evidence. In every decision referred to above the Apex Court has uniformly held that if the opportunity is sought at the earliest, it has to be given by the Tribunal or the Labour Court. For giving that opportunity some intimation or action is required to be taken by the concerned forum. This is obvious from what has been laid down in the decision of the Apex Court rendered in the case of Neeta Kaplish v/s. Presiding Officer, Labour Court reported in (1999) 1 S.C.C. p.517.

"24. In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence." (emphasis supplied)

9.3. It may also be noted here that in

aforesaid peculiar circumstances it would not have been possible for the petitioner to assess at what stage it was required to lead additional evidence to support its action of dismissal made against the concerned workman. In fact the Apex Court in the decision rendered in the case of Karnataka State Road Transport (supra) has held that the Tribunal or the Labour Court's power is unfettered and it is not dependant on any application having been made by the employer to direct him to lead evidence. If Labour Court felt it necessary, it could call upon the employer to lead evidence so as to enable it to come to appropriate conclusion. Under the circumstances, at appropriate stage the Labour Court should have called upon the petitioner to lead additional evidence when it felt that the inquiry held against the respondents was defective. Mr. Kanabar has placed reliance on decision of the Apex Court rendered in the case of M/s. Chhatia Weaving Mills v/s. Presiding Officer, Industrial Tribunal reported in 1990 LAB.I.C. p. 1399 wherein it has been held by the Apex Court as under :-

> "Going through the record of I.D. Misc. Case No. 6 of 1986, we find that the management had filed an application in September, 1986, vide Annexure-6, pleading "The opposite party management also undertakes to substantiate its action through documentary and oral evidence at the time of hearing". Assuming the said pleading was sufficient adequate plea seeking an opportunity to adduce further evidence if the Tribunal held that the enquiry was not fair and proper, the record does not reveal that at any point of time in course of the proceeding they sought in articulate manner to exercise their right. They led evidence but not with a view to substantiating the allegations. They remained silent as if under an impression they they will be called upon by the Tribunal to adduce evidence if it were of the view that the enquiry was not fair and proper. Where piece-meal disposal has been directed by the Tribunal or the Labour Court and all the controversies are to be disposed of simultaneously, there is no scope for the Industrial Tribunal or the Labour Court disclosing its mind to the parties. It is for the party to remain alert and exercise its right. ....."

This decision, on facts, will not apply to the present case since in that case no proper permission was sought

and right granted in its favour was never exercised by the employer. In the case on hand, that right was duly exercised by the petitioner. Further, in view of peculiar facts of this case it was not possible for the petitioner to have any indication from any quarter that Labour Court was to examine the validity of inquiry and give its decision against the petitioner. In view of the ratio laid down by the five Judge Bench in the case of the Karnataka State Road Transport (supra) and the decision of the Apex Court in the case of Neeta Kaplish (supra), which is later in point of time than the decision rendered in M/s. Chhatia Weaving Mills (both being rendered by two Hon'ble Judges of the Apex Court), it is clear that the Industrial Tribunal or Labour Court has power to call upon the management or the employer to lead additional evidence. In the instant case therefore, when the challenge was given up by the respondents to the validity of the inquiry, the Labour Court was required to grant opportunity to the petitioner to lead additional evidence by calling upon it to do so. Admittedly, that has not been done and the Labour Court has straightaway proceeded to give judgment and award holding the inquiry to be vitiated. This action of Labour Court is erroneous and against proposition of law and procedure prescribed by the Apex Court over all these years. It is required to be quashed and set aside.

10. This brings me to several other contentions raised by Mr. P.J. Kanabar for the respondents on other aspects of the proceedings which are mainly based on the facts of the case. According to him, while sitting under Article 227 this Court cannot interfere with the decision of the Tribunal which is taken in accordance with the provisions of section 11-A of the I.D. Act. He has, therefore, placed reliance on a decision rendered by the Apex Court in the case of Jitendra Singh Rathor v/s. Shri Baidyanath Ayurved Bhawan Ltd. reported in 1984 LAB. I.C. p. 554 wherein it has been observed as under :-

> "Under Section 11A advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Art. 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal

> and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it."

The aforesaid ratio itself lays down that the High Court is entitled to scrutinise the order of the subordinate Tribunal within the well accepted limitations and it would, in an appropriate case quash the award of the Tribunal and remit the mater for reconsideration. Since in the instant case the Labour Court's decision suffers from inherent infirmity and it is against the settled principles of law, there is no difficulty for me to interfere with the same with a view to set it aside and remit it for reconsideration.

10.1. He has also placed reliance on decision of the Division bench of this Court rendered in the case of R.M. Parmar v/s. Gujarat Electricity Board reported in 1982 LAB I.C. p. 1031. It is also with regard to interference of the High Court with the order passed by the Industrial Court in accordance with section 11-A of the I.D. Act. For the reasons stated above, this decision will not be of any help to Mr. Kanabar. On the very same point he has also placed reliance on the decision of the Apex Court rendered in the case of M/s. Essen Deinki v/s. Rajiv Kumar reported in 2002 LA. I.C. p.3563. In this judgment also the Apex Court has held that interference can be done with the Labour Court's award if the same is erroneous on the question of law. It has said that there has to be error of law and patently on record committed by the inferior Tribunal so as to warrant intervention by High Court under Article 227. There is no doubt in my mind that in the present case it is so. This decision also will not be of any help to Mr. Kanabar.

10.2. He has further submitted that assuming there is error committed by the Tribunal in holding the inquiry vitiated no useful purpose will be served by remanding the matter to the Labour Court because (i) it has held that the strike was legal, (ii) that though previous conduct of the respondents was relied on by the Inquiry Officers and Disciplinary Authority while judging the guilt of the respondents, material was not made available to the respondents for rendering their explanation and (iii) lastly that there was undue haste shown by the Disciplinary Authority for passing order of

dismissal without following necessary procedure including that of furnishing the copy of the Inquiry Officers' report to the respondents. Since all the submissions are based on the factual aspects of the case and since no opportunity was given to the petitioner to lead additional evidence at this stage, it is difficult for me to reappreciate the facts and either confirm or disapprove the findings given by the Labour Court on these issues. They can be adequately threshed out after giving opportunity to both the sides to lead evidence and to explain the noncompliance of requisite procedure by the petitioner. At this stage the submissions of Mr. Kanabar on this aspect cannot be accepted.

11. For the reasons stated above, it is necessary to quash and set aside the impugned judgment and awards while giving the following directions :-

I. The proceedings of aforesaid Reference Cases are remanded back to the Labour Court for re-trial.

II. When the proceedings of the aforesaid cases are remanded back to the Labour Court, the petitioner will be at liberty to lead additional evidence to substantiate its action taken against the respondents.

III. The respondents will be at liberty to lead evidence contra.

IV. The material already adduced before the Labour Court including the oral evidence led on behalf of the respondents will remain as it is.

V. The Labour Court to complete the hearing and final declaration of the judgment and awards on or before 30th September, 2004.

VI. That parties to the aforesaid Reference cases will fully cooperate the Labour Court with the hearing of the cases and no adjournment will be sought without compelling reasons.

The common judgment and award passed in Reference (L.C.A.) Nos. 139/1998, 146/1998, 162/1998, 145/1998 and 150/1998 dated 23rd April, 1999 are hereby ordered to be quashed and set aside. The petitions are allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

Mr. K.K. Nanavati, learned advocate for the petitioner states that a pursis regarding continuance of compliance of section 17-B of the I.D. Act by the

petitioner till final disposal of the Reference cases before the Labour Court and declaration of the awards will be submitted on record of these petitions on or before 21st May, 2004. The respondents to submit their affidavit to the effect that they are not gainfully employed elsewhere, on or before 21st May, 2004. In that view of the matter, no order on this line has been passed.

Writ to be sent forthwith.

[AKSHAY H. MEHTA, J.]

* Pansala.