1956

October 24.

LAKSHMI DEVI SUGAR MILLS LTD.

v.

PT. RAM SARUP.

(and connected appeal)

[BHAGWATI, VENKATARAMA AYYAR, S. K. DAS and GOVINDA MENON JJ.]

Industrial Dispute—Application for permission to dismiss workmen—Jurisdiction of Appellate Tribunal—Scope of enquiry—Interim order of suspension by employer pending enquiry and receipt of permission—If amounts to a lock-out—If amounts to punishment—Prior permission of the Appellate Tribunal, if required—Enquiry by General Manager—Non-co-operation by workmen—Enquiry not held within the prescribed time—If a breach of Standing Orders—Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), ss. 22, 23—Industrial Disputes Act (XIV of 1947), s. 33(a)(b)—Standing Orders, cl. L 12.

Seventy-six workers of the appellant company resorted to a tools-down strike in sympathy with a dismissed co-worker. Repeated attempts to persuade them to resume work having failed the General Manager suspended them until further orders. After mid-day recess the Management sought to prevent the workers from entering the mills but they violently entered the mills and the Police had to be called in by the company to keep the peace. Charges of misconduct and insubordination were thereafter framed against the workers and they were called upon to show cause in an open enquiry to be held by the General Manager why disciplinary action should not be taken against them and the order of suspension was extended pending the enquiry. The workers took up an attitude of total non-co-operation and the atmosphere was tense with the result that the enquiry could not be held within 4 days. The Management decided to dismiss the workers as a result of the enquiry but as an appeal was then pending before the Labour Appellate Tribunal, the company applied to it under s. 22 of the Industrial Disputes (Appellate Tribunal) Act of 1950 for permission to do so and extended the period of suspension pending receipt of such permission. The workmen in their turn filed an application under s. 23 of the Act to the Appellate Tribunal for requisite action to be taken against the company for having contravened s. 22(b) of the Act by resorting to an illegal lock-out and thereby punishing them without its prior permission. The Appellate Tribunal held that the company had not held the enquiry within the time specified by cl. L 12 of the Standing Orders and on that ground dismissed its application. It allowed the application of the workers holding that the wholesale suspension of the workers and preventing them from continuing work after the mid-day recess amounted to a lock-out

and punishment by the company and contravened s. 22(b) of the Act and directed their reinstatement. The company appealed. It was contended on behalf of the company that there had been neither a breach of cl. L 12 of the Standing Orders nor a contravention of s. 22(b) of the Act.

Held, that the contentions were correct and the appeals must succeed.

The conduct of the company did not come within the definition of a lock-out and even if there was any lock-out it was in consequence of the illegal strike resorted to by the workmen and as such could not be deemed to be illegal by virtue of s. 24(3) of the Industrial Disputes Act, 1947.

Moreover, even assuming that the company declared an illegal lock-out it was not necessary for it to obtain the permission of the Appellate Tribunal under s. 22 of the Act before it could do so.

A lock-out was neither an alteration of the conditions of service within the meaning of cl. (a) nor a discharge or punishment by dismissal or otherwise within the meaning of cl. (b) of s. 33 of the Industrial Disputes Act, 1947 or under s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 and no permission was, therefore, required for its declaration. If the lock-out was illegal the workmen had their remedy under s. 26 of the Industrial Disputes Act and in any event they had the right to have the dispute referred for adjudication.

Jute Workers Federation, Calcutta v. *Clive Jute Mills* ([1951] II L.L.J. 344) and *Colliery Mazdoor Congress, Asansol* v. *New Beerbhoom Coal Co. Ltd.* ([1952] L.A.C. 219), approved.

The Company having been declared a public utility concern, the workers had no right to go on strike without giving a notice in terms of s. 22(1) of the Industrial Disputes Act, 1947 and the tools-down strike resorted to by them was illegal and the company was within its rights in suspending them.

Buckingham and Carnatic Co. Ltd. v. *Workers of the Buckingham and Carnatic Co. Ltd.*, ([1953] S.C.R. 219), referred to.

Mere failure to hold an enquiry within the period of four days prescribed by cl. L 12 of the Standing Orders could not determine the matter before the Appellate Tribunal and where, as in the instant case, the delay was due to the conduct of the workers it was sufficiently explained.

Where full and free opportunity was given to the workers to be present and defend themselves in a duly notified enquiry and they failed to do so, the Management was quite within its right to come to its own conclusion as to their guilt and the punishment to be meted out to them and it was not open to the workmen thereafter to urge that such enquiry was not fair or impartial or violated the principles of natural justice.

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There could be no punishment so long as there was no offence and any action of the employer to the deteriment of the workers' interest would not amount to punishment. The law did not contemplate anything like a contingent punishment of a worker and, consequently, where there was an interim order of suspension pending an enquiry or the grant of permission by the Appellate Tribunal, the question of pay for the period of such suspension depending on whether or not the permission would be granted, such suspension would not amount to punishment even where it was of an indefinite duration so as to attract the operation of s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

Champdany Jute Mills and Certain Workmen, ([1952] 1 L.L.J. 554), *Joint Steamer Companies and Their Workmen*, ([1954] II L.L.J. 221), *Assam Oil Co. Ltd.* v. *Appalswami*, ([1954] II L.L.J. 328), *Standard Vacuum Oil Co.* v. *Gunaseelan, M. G.* ([1954] II L.L.J. 656), relied on.

Under that section the only thing that the Appellate Tribunal had to consider was whether a *prima facie* case had been made out by the employer for lifting the ban imposed by the section and if, on the materials before it, it was satisfied that there had been a fair enquiry in the circumstances of the case and the Management had *bona fide* come to the conclusion that the worker was guilty of misconduct with which he had been charged and it would be detrimental to discipline and dangerous in the interests of the company to continue him in its employ, a *prima facie* case was made out and the Tribunal would be bound to permit the employer to punish the workman. It would be no part of its duty to judge whether the punishment was harsh or excessive, except so far it might bear on the *bona fides* of the Management, and could only grant the permission as sought for or refuse it and the question of the propriety of the punishment could be decided only by the appropriate Tribunal appointed by the Government for adjudicating the industrial dispute which would ensue upon the action of the management.

Atherton West & Co. Ltd. v. *Suti Mills Mazdoor Union and Others*, ([1953] S.C.R. 780), *The Automobile Products of India Ltd.* v. *Rukmaji Bala & Others*, ([1955] 1 S.C.R. 1241) *Champdany Jute Mills and Shri Alijan*, ([1952] II L.L.J. 629), *R.B.S. Lachmandas Mohan Lal & Sons Ltd. and Chini Mill Karmachari Union*, ([1952] II L.L.J. 787) and *Assam Oil Companies' Case*, ([1954] L.A.C. 78), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 244 and 245 of 1954.

Appeals from the judgment and order dated August 19, 1952, of the Labour Appellate Tribunal of India (Calcutta) at Allahabad in Miscellaneous Cases Nos. C-91 and 93 of 1952.

N. C. Chatterji, H. J. Umrigar, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath*, for the appellant in both appeals.

Purshottam Tricumdas, R. Ganapathy Iyer and *B. P. Maheshwari*, for respondents in both appeals.

M. C. Setalvad, Attorney-General for India, Porus A. Mehta and *R. H. Dhebar*, for the Intervener.

1956. October 24. The Judgment of the Court was delivered by

BHAGWATI J.—These two appeals by special leave arise out of an order of the Labour Appellate Tribunal of India, Lucknow Bench, by which it dismissed the application of the appellant under s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, hereinafter referred to as the Act for permission to dismiss the respondents from its employ and allowed the application of the respondents under s. 23 of the Act for reinstatement.

The respondents are 76 employees of the appellant, a limited company of Sugar Mills, situated in village Chitauni in the district of Deoria and were working in the engineering department of the mills in the mill house, boiling house and the workshop sections. There were disputes between the appellant and its workmen and, on the date in question, i.e., May 27, 1952, there was pending before the Labour Appellate Tribunal an appeal which was registered as Cal-101/51. It appears that one Motilal Singh, an employee of the appellant, had been dismissed by it sometime prior thereto and he had been inciting the workmen to make common cause with him, and, at a meeting held the previous night, some sort of action had been decided upon. When the workmen of the appellant entered the mills on the morning of May 27, 1952, these 76 workmen, though they entered their respective sections of the engineering department, did not commence any work from 7 a.m. as they should have done. The sectional engineers in-charge asked these workmen as to why they did not commence their work and became aware of their intention to resort

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to a tools-down strike. They reported the fact to the Chief Engineer who sent a slip to the General Manager informing him that the workers had gone on a tools-down strike. The General Manager thereupon personally went to the workshop, mill house and the boiling house and asked these workmen not to resort to such strike but the latter did not pay any heed to his advice. The General Manager then asked the Chief Engineer to persuade these workmen to commence the work, give them time for about 2 hours till 10-30 a.m. and report to him if, in spite of his persuasions, they did not commence work. The persuasions of the Chief Engineer and also of the section engineers proved of no avail and the 76 workmen persisted in their attitude with the result that the section engineers made their reports to the General Manager through the Chief Engineer giving the names of the workmen belonging to their respective sections who had resorted to the tools-down strike with effect from 7 a.m. that day. These reports were endorsed by the Chief Engineer and passed on to the General Manager who, in his turn, passed an order at about 10-30 a.m. suspending these 76 workmen till further orders. The order for suspension was communicated to these workmen through their sectional heads and was also pasted on the notice board of the mills. There was a recess between 11 a.m. and 1 p.m. and when the gates were opened at 1 p.m. these 76 workmen, in spite of the warnings of the gatekeepers and Jemadar to the contrary, rushed into the mills, entered their respective sections and adopted a threatening attitude. The sectional engineers made reports to the General Manager in regard to this occurrence and these reports also were endorsed by the Chief Engineer and passed on by him to the General Manager. The situation which was created by these workmen by forcibly entering their respective sections and continuing there threatening violence was explosive and the management had to call in the police in order to avert violence and damage to the property. The police came in at 5 p.m. and order appears to have been restored. There was no untoward incident that day

but the management appears to have viewed the situation with seriousness and approached the Regional Conciliation Officer the next day in order to ask for advice in regard to the dismissal of these workmen. The Regional Conciliation Officer, however, pointed out to the General Manager that, in view of the pendency of the appeal before the Labour Appellate Tribunal, he had no jurisdiction to entertain any application for such permission and referred the General Manager to the Labour Appellate Tribunal. The workmen, on the other hand, got a letter dated May 28, 1952, addressed to the General Manager by the General Secretary of the Chini Mill Mazdoor Sangh to the effect that they had gone to the gates of the mills as usual at 7 a.m. that day to attend to their work but they were not allowed to enter the mill premises. They charged the management with the intention to victimise them on the charge of a tools-down strike and stated that they had neither struck nor intended to strike but had been prevented from attending to their work and had therefore been advised to go back to their quarters with a view to maintain peace. The last paragraph of that letter was very significant. The General Manager was told that if he did not mend his illegal mistakes and did not take the workmen back on duty he would be responsible for any breach of peace.

After receipt of that letter it was evident that the workmen would resort to violent measures in order to attend to their work and a breach of peace was apprehended. The management evidently continued the police precautions and, after having waited for some time, the General Manager furnished to these 76 workmen on June 2, 1952, a charge-sheet wherein he charged them with having committed misconduct within the meaning of cl. L. 1(a) and (b) and wilful insubordination within the meaning of cl. L. 1(a), (b) and (w) of the Standing Orders. He called upon them to show cause within 24 hours of the receipt of the charge-sheet why disciplinary action should not be taken against them and gave them intimation that an open enquiry in connection with the said charges

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would be held by him at 8 a.m. on June 6, 1952. He also intimated that if all the workmen arranged to present themselves earlier than June 6, 1952, he would take up the said enquiry earlier provided, however, an intimation was received to that effect from them or from their Union. The workmen were to remain suspended till the enquiry was finished.

The workmen addressed uniform letters to the General Manager denying that there was any tools-down strike on May 27, 1952, and alleging that the sectional heads and the Chief Engineer had conspired together "under some mysterious preconceived plans" and stated that no useful purpose would be served by holding an enquiry on the 11th day of their suspension. They pointed out that such indefinite period of suspension during the pendency of the appeal before the Labour Appellate Tribunal and Reconciliation Board was illegal and unjustified and was in utter disregard of the Standing Orders. By their further letter dated June 5, 1952, similarly addressed to the General Manager, they voiced their apprehension that they would not get any justice from an enquiry held by the management itself and asked for investigation by an impartial tribunal. The management, however, held the enquiry as intimated at 8 a.m. on June 6, 1952. The workmen non-co-operated and did not present themselves at the enquiry.

The General Manager immediately addressed a letter to these workmen putting on record that in spite of the orders conveyed by him earlier the workmen had disobeyed the same and had not appeared at the appointed time and place for the enquiry into the tools-down strike. He pointed out that by not appearing in this manner they had made themselves liable to dismissal for insubordination, and intimated that the management was applying to the proper authorities for permission to dismiss them pending receipt of which the workmen would remain under suspension. This letter was received by the workmen at 9 a.m. that day and they replied through the General Secretary of the Chini Mill Mazdoor Sangh repeating that a demand had been made for an

investigation by an impartial tribunal and in so far as no impartial tribunal had been appointed they were not agreeable to present themselves and submit their defence at the enquiry which was conducted by the management itself.

The appellant thereafter made the necessary application under s. 22 of the Act before the Labour Appellate Tribunal of India, Lucknow Bench, for permission to dismiss these 76 workmen. In the affidavit which was filed in support of that application, all the facts hereinbefore mentioned were set out *in extenso* and it was pointed out that the management, after giving full consideration to the explanations and offering every possible opportunity to these workmen to explain their conduct coupled with the unreasonable attitude adopted by them, had adjudged them guilty of misconduct under cl. L. 1(a), (b) and (w) of the Standing Orders and considered that any further employment of these workmen would be extremely detrimental to discipline and dangerous in the interests of the industry.

The workmen, in their turn, filed on June 9, 1952, an application under s. 23 of the Act for requisite action to be taken against the appellant for having contravened s. 22(b) of the Act by inflicting on them the punishment in the shape of harassment by resorting to an illegal lockout for an indefinite period with effect from May 27, 1952, without obtaining the prior permission of the Labour Appellate Tribunal and "thereby acting contrary to law and resorting to *mala fide* actions in direct violation of the provisions of the Standing Orders in continuation of the management's anti-trade (Union) activities".

Counter-affidavits were made by the workmen as also the management in reply to both the above applications. The Labour Appellate Tribunal held that the appellant did not act in strict compliance with cl. L. 12 of the Standing Orders and was, therefore, not entitled to ask for permission to dismiss the 76 workmen. It accordingly dismissed the appellant's application under s. 22 of the Act. In regard to the application of the workmen under s. 23 of the Act, it held

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that the wholesale suspension of the 76 workmen and their prevention from resuming work at 1 p.m. after the lunch hour amounted to a lockout and that this conduct of the appellant amounted to punishment of the workers whether by dismissal or otherwise and was, therefore, in contravention of s. 22(b) of the Act. It accordingly ordered the reinstatement of the workmen if they presented themselves at the office of the General Manager during office hours on any day within 15 days of the order, and also ordered payment of half the salary and allowances for the period of non-payment, viz., from the date of their suspension up to the date on which they were taken back in service.

Shri N. C. Chatterjee for the appellant before us has strenuously urged that the workmen had resorted to the tools-down strike which was an illegal strike and that the appellant was well within its rights in suspending them pending enquiry and also pending the application for permission to dismiss them made before the Labour Appellate Tribunal. Even if it be held that the appellant had declared a lockout, such a lockout was in consequence of the illegal strike resorted to by the workmen and could not be deemed to be illegal. He further urged that the management had held an enquiry into the illegal strike which had been resorted to by the workmen and found that the workmen were guilty of misconduct and insubordination within the meaning of cl. L. 1(a), (b) and (w) of the Standing Orders and the appellant rightly came to the conclusion that any further employment of these workmen would be extremely detrimental to discipline and dangerous in the interests of the industry. He also contended that the delay in holding the enquiry was not unreasonable and the suspension of the workmen pending enquiry for more than four days was due to sufficient reason, the atmosphere created by the non-co-operation of the workers being so tense as not being appropriate for the holding of an enquiry within those four days, that there was no breach of cl. L. 12 of the Standing Orders and that the Labour Appellate Tribunal was in error when it

refused to grant the application under s. 22 of the Act.

Civil Appeal No. 245 of 1954 which is directed against the order of the Labour Appellate Tribunal under s. 23 of the Act may be disposed of at once. The Labour Appellate Tribunal was of opinion that the conduct of the appellant in preventing the workmen from continuing work after 1 p.m. on May 27, 1952, came within the definition of a lockout and the workmen being employed in a public utility concern such lockout would be illegal without a proper notice. It was further of opinion that this conduct amounted to punishment of a worker whether by dismissal or otherwise and was, therefore, in contravention of s. 22(b) of the Act. This conclusion of the Labour Appellate Tribunal was, in our opinion, based on a misapprehension of the whole position. The position had been summed up by the Labour Appellate Tribunal in the following words:—

"As a matter of fact, the management never thought of a lockout. Their idea was to suspend the suspected persons pending enquiry for which they gave a notice".

If this was the correct position, the conclusion reached by the Labour Appellate Tribunal that the conduct of the management came within the definition of a lockout was absolutely unjustifiable. The Labour Appellate Tribunal recorded its inability to come to a definite finding as to what was the position which obtained on May 27, 1952. It observed:—

"We have got a number of affidavits in support of the parties' case and there is oath against oath. We do not find ourselves in a position to hold definitely as to what was the exact situation. But it does appear to us that a mountain has been made of a mole hill and conclusions have been arrived at without going deep into the matter".

Even if the parties had made a mountain of a mole hill and had reached conclusions without going deep into the matter, it was certainly the business of the Labour Appellate Tribunal itself to record a finding of fact in regard to the situation as it obtained on

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that day. This unfortunately the Labour Appellate Tribunal did not do and it came to record its conclusion that the conduct of the management came within the definition of a lockout without realizing that such conclusion was inconsistent with what it had stated a little earlier that the management as a matter of fact never thought of a lockout. We have been taken through the whole evidence by the learned counsel for the appellant and there is clear documentary evidence to show that the 76 workmen resorted to a tools-down strike from 7 a.m. on May 27, 1952. The reports which were made by the section engineers and sent to the General Manager through the Chief Engineer were clear and categoric in regard to such tools-down strike having been resorted to by the workmen in question and the list of the 76 workmen which was prepared by the General Manager ordering their suspension was based on those reports. The further reports which were made by the section engineers again sent by them to the General Manager through the Chief Engineer in the afternoon of May 27, 1952, also were clear and categoric in regard to the said workmen having been asked not to enter the workshop, the boiling house and the mill house at 1 p.m. but their having entered the same threatening violence. A faint attempt was made to charge the section engineers and the Chief Engineer with having conspired "under some mysterious preconceived plans" but the same rested merely on a bare allegation and was not substantiated by any tangible evidence. Even though there was some conflict of evidence in regard to the time when the notice of suspension was given by the General Manager to these workmen and when the notice in that behalf was pasted on the notice-board of the appellant, it is abundantly clear on the documentary evidence above referred to that the 76 workmen resorted to a tools-down strike from 7 a.m. on the morning of May 27, 1952, that they were suspended till further orders immediately after the receipt by the General Manager of the first series of reports from the section engineers, that they were prevented from entering the premises

at 1 p.m. but entered the same threatening violence. If this is the true position it follows that there was no lockout declared by the appellant, much less an illegal lockout. The workmen had resorted to an illegal strike and the General Manager rightly ordered that the workmen indulging in such strike should be suspended pending further orders which obviously meant pending enquiry into their conduct and the obtaining of the permission to dismiss them as a result of such enquiry if the management thought fit. If there was thus no illegal lockout at all, the conclusion reached by the Labour Appellate Tribunal in that behalf was absolutely unjustified. Even if there had been a lockout as concluded by the Labour Appellate Tribunal the same was in consequence of the illegal strike which had been resorted to by these workmen and could not by virtue of s. 24(3) of the Industrial Disputes Act, 1947, be deemed to be illegal.

There is, however, a more fundamental objection that, even if the appellant be held responsible for having declared an illegal lockout, the lockout would not come within the ban of s. 22 of the Act. The Labour Appellate Tribunal had before it an earlier decision of its own in *Jute Workers Federation, Calcutta* v. *Clive Jute Mills*(1), in which the same question had beed considered with reference to s. 33 of the Industrial Disputes Act, 1947. In that case, a lockout had been declared which involved 4,000 workers of the company and a preliminary contention was urged that there was no contravention of the provisions of s. 33 of the Industrial Disputes Act, 1947. The Labour Appellate Tribunal considered the question whether the lockout had (1) in fact altered the conditions of service of the workmen to their prejudice, or (2) had the effect of discharge, or (3) amounted to punishment of the workmen. It came to the conclusion that a lockout had not the effect of a discharge, for a lockout does not automatically terminate the services of the workmen. It did not also amount to punishment, for punishment presup-

(1) [1951] II L.L.J. 344.

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poses an offence or misconduct. A lockout is generally adopted as a security measure and may in certain cases be used as a weapon corresponding to what the employees have in the shape of a strike and that, therefore, s. 33(b) would not be contravened by the company by declaring a lockout. The Labour Appellate Tribunal then considered whether a lockout would attract the operation of s. 33(a). It was of opinion that no automatic termination of the services of the employees was brought about by a lockout and the question was whether any of the conditions of service was altered thereby to their prejudice. The contention of the Union was that the conditions of service were altered to the prejudice of the workmen because those employees did not in fact get their pay during the period of the lockout with the possibility of losing it. This contention was negatived and the Labour Appellate Tribunal was of opinion that the conditions of their service would be altered by the lockout if the employees lost their right to receive their pay during the period of lockout in all circumstances but the question whether they would be entitled to get their pay during that period could not be postulated with certainty for that would depend on a variety of considerations. In the opinion of the Labour Appellate Tribunal to bring a case within s. 33(a), the questioned act of the employer must directly and in fact alter the conditions of service to the prejudice of the workmen concerned, that is to say, the moment the lockout was declared. The possibility that they may or may not get their pay meant that the lockout may or may not alter the conditions of their service to their prejudice. Section 33(a) would not, therefore, be attracted by the mere fact of a lockout. The Labour Appellate Tribunal thus came to the conclusion that neither s. 33(a) nor s. 33(b) would be contravened by the company in declaring the lockout.

This decision of the Labour Appellate Tribunal was followed in *Colliery Mazdoor Congress, Asansol*, v. *New Beerbhoom Coal Co. Ltd.*(1) and the Labour

(1) [1952] L.A.C. 219.

Appellate Tribunal there held that a lockout did not come within the ambit of s. 33 and, therefore, no permission under that section was required for declaring a lockout.

We agree with the reasoning adopted in the above cases and are of opinion that a lockout is neither an alteration to the prejudice of the workmen of the conditions of service applicable to them within the meaning of cl. (a) nor a discharge or punishment whether by dismissal or otherwise of the workmen within the meaning of cl. (b) of s. 33 of the Industrial Disputes Act, 1947, or s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, and that, therefore, no permission of the Conciliation Officer, Board or Tribunal as the case may be is necessary to be obtained before a lockout can be declared. If the lockout is legal, no question can at all arise. If, on the other hand, the lockout is illegal, a remedy is provided in s. 26 of the Industrial Disputes Act, 1947. The employees affected by a lock-out would in any event be entitled to refer the industrial dispute arising between themselves and the employer for adjudication by adopting the proper procedure in regard thereto.

The Labour Appellate Tribunal was, therefore, clearly in error when it came to the conclusion that the conduct of the appellant came within the definition of a lockout and that it amounted to punishment of the workmen whether by dismissal or otherwise and was, therefore, in contravention of s. 22(b) of the Act. The application of the respondents under s. 23 of the Act was accordingly liable to be dismissed and should have been dismissed by the Labour Appellate Tribunal. Civil Appeal No. 245 of 1954 will, therefore, be allowed and the order of the Labour Appellate Tribunal reinstating the respondents in the service of the appellant will be set aside.

Coming now to Civil Appeal No. 244 of 1954, the first question to determine is whether the respondents had resorted to an illegal strike. We have already pointed out the circumstances under which the 76 workmen resorted to the tools-down strike from 7 a.m. on May 27, 1952, and recorded the finding

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that they not only resorted to such strike but persisted in their attitude in spite of the persuasions of the Chief Engineer and the General Manager of the appellant. The appellant having been declared a public utility concern, the workmen were not entitled to resort to such strike without giving to the appellant notice of the strike in terms of s. 22(1) of the Industrial Disputes Act, 1947, and the tools-down strike which was resorted to by them was, therefore, an illegal strike. The fact that the strike was of a short duration viz., from 7 a.m. till 10-30 a.m. would not exculpate the respondents from the consequences of having resorted to such illegal strike, the avowed intention of the strikers being not to resume work until their pre-concerted plan conceived at the meeting held on the previous night was carried out. The strike resorted to by the workmen was of an indefinite duration and the management, having failed in its attempts to persuade the workmen to resume their work, was well within its rights to suspend these workmen pending further orders. (Vide *Buckingham and Carnatic Co. Ltd.* v. *Workers of the Buckingham and Carnatic Co. Ltd.*(1)).

The Labour Appellate Tribunal did not decide this issue at all but only considered the alleged non-compliance by the appellant of cl. L. 12 of the Standing Orders as determinative of the whole enquiry before it observing that "although the delay (in holding the enquiry) was not unreasonable, there was no doubt that the management did violate the letter of the rule". It further observed that there was no sufficient reason indicated for extending the period of suspension beyond the period of four days provided in cl. L. 12 of the Standing Orders, the tension created by the non-co-operation of the workers not having been considered sufficient to preclude the management from collecting materials for conducting the enquiry within the said period of 4 days. This reasoning of the Labour Appellate Tribunal was unsound. Having once come to the conclusion that the delay was not unreasonable, there was no justification for the further

(1) [1953] S.C.R. 219.

conclusion reached by the Labour Appellate Tribunal that the tension created by the non-co-operation of the workers was not a sufficient reason for extending the period of such suspension. The workmen had forcibly entered the premises of the mills in spite of the warnings of the watchmen and the Jemadar and had also entered the workshop, the boiling house and the mill house and continued to stay there threatening violence. In their letter dated June 3, 1952, they had also threatened the General Manager that if he did not mend his illegal mistakes and did not take the workmen back on duty he would be responsible for any breach of peace. This was enough evidence of their mentality and the management naturally enough apprehended breach of peace at the hands of these workmen. If this was the tense atmosphere created by the non-co-operation of the workmen, the management was perfectly justified in postponing the enquiry by a few days and continuing the workmen under suspension. The delay which was thus caused in furnishing the charge-sheets and giving notice of the enquiry to these workmen on June 2, 1952, was, therefore, sufficiently explained and if there was any one responsible for this delay it was the workmen and not the management. It did not then lie in the mouth of the workmen to protest against this delay in the enquiry and trot out their suspension for a period exceeding four days as an excuse for abstaining from the enquiry. As a matter of fact, the management intimated to the workmen that in spite of June 6, 1952, having been fixed as the date for the open enquiry, the management would be prepared to take up the enquiry earlier provided an intimation was received either from the workmen or from their Union to that effect. Instead of responding to this gesture of the appellant the workmen persisted in asking for an independent enquiry and non-co-operated with the management in the enquiry which was ultimately held by it as notified at 8 a.m. on June 6, 1952. We are of opinion that under the circumstances the appellant was not guilty of having contravened cl. L. 12 of the Standing Orders and the Labour Appellate

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Tribunal was in error when it came to the contrary conclusion and dismissed the application of the appellant under s. 22 merely on that ground without making any further enquiry into the circumstances of the case. It appears that the Labour Appellate Tribunal was driven to take this step because it found itself unable to hold definitely as to what was the exact situation on May 27, 1952. We shall only observe that if the Labour Appellate Tribunal had really applied its mind to the question it would have come to the conclusion that the respondents in fact did resort to the illegal strike from 7 a.m. on May 27, 1952, and that there was no contravention of cl. L. 12 of the Standing Orders by the appellant.

The next question that falls to be determined is whether the enquiry which was held by the management on June 6, 1952, was a fair enquiry and whether the General Manager observed the principles of natural justice in the conduct of that enquiry. Due notice of the enquiry was given to the respondents by the letter of the management addressed to them on June 2, 1952, and if the respondents did not avail themselves of the opportunity of presenting themselves and defending their action at the enquiry they had only themselves to blame for it. It was within the province of the management to hold such an enquiry after giving due notice thereof to the respondents and to come to its own conclusion as a result of such enquiry whether the respondents were guilty of the charges which had been levelled against them. If full and free opportunity was given to the respondents to present themselves at the enquiry and defend themselves it could not be said that the enquiry was anything but fair. No principles of natural justice were violated and the management was at liberty to come to its own conclusions in regard to the culpability of the respondents and also to determine what punishment should be meted out to the respondents for the misconduct and insubordination proved against them. If the ban which is imposed by s. 22 of the Act had not been in existence, the management would have been entitled to impose the punishment on the

respondents and dismiss them without anything more, if it honestly came to the conclusion that dismissal of these workmen was the only punishment which should be meted out to them in all the circumstances of the case. The respondents would no doubt then have been entitled to refer the industrial dispute which arose out of their dismissal for adjudication by adopting the proper procedure set out in the Industrial Disputes Act, 1947, and the Industrial Tribunal appointed by the Government for the adjudication of such dispute would have been in a position to thrash out all the circumstances and award to them the appropriate relief. This course was, however, not open to the appellant by reason of the pendency of the appeal before the Labour Appellate Tribunal and the only thing which the appellant could do, therefore, was, after coming to its own conclusion as a result of such enquiry, to apply to the Labour Appellate Tribunal under s. 22 of the Act for permission to dismiss the respondents and this the appellant did on June 8, 1952. It was not open to the respondents then, having regard to the attitude which they had adopted throughout in relation to the said enquiry, to urge that the enquiry was not fair or impartial or that the principles of natural justice had been violated by the General Manager of the appellant in the conduct of the enquiry.

It was, however, urged on behalf of the respondents that the suspension for an indefinite period beyond the period of four days provided in cl. L. 12 of the Standing Orders was a punitive measure and the appellant was not justified in imposing that punishment on them without the permission of the Labour Appellate Tribunal. It was contended that such suspension involved loss of pay by the respondents and being of an indefinite duration inflicted such harassment on them that it could not be deemed to be anything except a punishment. We do not accept this contention. It has been rightly held by the Labour Appellate Tribunal that suspension without pay pending enquiry as also pending permission of the Tribunal under the relevant section could not

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be considered a punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal had passed orders thereupon. If the permission was accorded the workman would not be paid during the period of suspension but if the permission was refused he would have to be paid for the whole period of suspension. There is nothing like a contingent punishment of a workman and therefore such suspension could not be deemed to be a punishment of the workman at all. Such suspension would of necessity be of an indefinite duration because to get a written permission of the Tribunal would mean delay and no Tribunal would likely issue any order without notice and without hearing all the parties concerned. Orders for suspension were meant only as security measures or precautionary ones taken in the interest of the industry itself or its employees in general. These measures were sometimes called for immediately after an incident and any delay, however small, might defeat the purpose for which such measures were intended. It would therefore be necessary to adopt these measures immediately and to suspend the workman pending the enquiry as also the permission to be obtained from the appropriate Tribunal for dismissing him if as a result of the enquiry the management thought fit to inflict such punishment upon him. The suspension, however, would not be a punishment by itself. The ordinary dictionary meaning of the word "punish" is "to cause the offender to suffer for the offence" *or* "to inflict penalty on the offender" *or* "to inflict penalty for the offence" (Concise Oxford Dictionary, 4th Ed.). Punishment can be otherwise defined (Vide Law Lexicon by P.R. Aiyar, 1943 Ed.) as penalty for the transgression of law, and the word "punish" denotes or signifies some offence committed by the person who is punished. Any action of the employer to the detriment of the workman's interest would not be punishment so long as no offence was found to have been committed by the workman. The suspension under such circumstances, therefore, could

not be a punishment even though it may be of an indefinite duration and would not attract the operation of s. 22 of the Act. It could not be contended, therefore, that suspension without pay even for an indefinite period pending enquiry or pending the permission of the appropriate Tribunal to dismiss the workman would be a punishment which would require permission under s. 22 of the Act before the same could be meted out to the workman. (Vide *Champdany Jute Mills And Certain Workmen*(1); *Joint Steamer Companies And Their Workmen*(2); *Assam Oil Co. Ltd.* v. *Appalswami*(3); *Standard Vacuum Oil Co.* v. *Gunaseelan, M. G.*(4)).

The scope of the enquiry before the Labour Appellate Tribunal under s. 22 of the Act has been the subject-matter of decisions by this Court in *Atherton West & Co. Ltd.* v. *Suti Mill Mazdoor Union and Others*(5) and *The Automobile Products of India Ltd.* v. *Rukmaji Bala & Others*(6). The Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting *mala fide* or is not resorting to any unfair practice or victimization. It cannot impose any conditions on the employer before such permission is granted nor can it substitute another prayer for the one which the employer has set out in his application. If the permission is granted, the ban would be lifted and the employer would be at liberty, if he so chooses thereafter, to deal out the

(1) [1952] I L.L.J. 554.
(2) [1954] II L.L.J. 328.
(3) [1953] S.C.R. 780.
(4) [1954] II L.L J. 221.
(5) [1954] II L.L.J. 656.
(6) [1955] 1 S.C.R. 1241.

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punishment to the workman. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate Tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate Tribunal, the workman would be entitled to have all the circumstances of the case scrutinized by the Tribunal and would be entitled to get the appropriate relief at the hands of the Tribunal. If, on the other hand, such permission is refused, the parties would be relegated to the status quo and the employer would not be able to deal out the punishment which he intends to do to the workman. Even then an industrial dispute might arise between the employer and the workman if the workman was not paid his due wages and other benefits. Such industrial dispute also would have to be referred to the appropriate Tribunal by the Government and the Tribunal would award to the workman the appropriate relief having regard to all the circumstances of the case. The Tribunal before whom such an application for permission is made under s. 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a *prima facie* case had been made out for dealing out the punishment to the workman. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was *bona fide* or was actuated by the motive of victimization. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had *bona fide* come to the conclusion that the workman was guilty of misconduct with which he had been charged a *prima facie* case would be made out by the employer and the Tribunal would under these circumstances be bound to give the requisite permission to the employer to deal

out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case the dealing out of such punishment by the employer to the workman after such permission was granted would be the subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal, however, would have no jurisdiction to go into that question and the only function of the Tribunal under s. 22 of the Act would be to either grant the permission or to refuse it. (Vide *Champdani Jute Mills And Shri Alijan*(1); *R.B.S. Lachmandas Mohan Lal & Sons Ltd. And Chini Mill Karmachari Union*(2); *Assam Oil Companies' case*(3)).

In the circumstances of the present case, once the appellant succeeded in establishing that the workmen had resorted to an illegal strike from 7 a.m. on May 27, 1952, that a fair enquiry into the alleged misconduct and insubordination of the workmen had been held by the management without violating any principles of natural justice, that the management had as a result of such enquiry found that the workmen had been guilty of misconduct and insubordination with which they had been charged and that the management had come to the *bona fide* conclusion that continuing the workmen in its employ was detrimental to discipline and dangerous in the interests of the appellant, the Labour Appellate Tribunal ought to have held that a *prima facie* case for the dismissal of the workmen had been made out by the appellant and ought to have granted the appellant the permission to dismiss the workmen.

We are, therefore, of opinion that the Labour Appellate Tribunal was clearly in error in rejecting the application of the appellant under s. 22 of the Act and refusing it the permission to discharge the respondents from its employ. Civil Appeal No. 244 of 1954 will, therefore, be allowed and the order of

(1) [1952] II L.L.J. 629. (2) [1952] II L.L.J. 787.
(3) [1954] L.A.C. 78.

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the Labour Appellate Tribunal dismissing the application under s. 22 of the Act will be set aside. The appellant will be granted permission under s. 22 of the Act to discharge the respondents from its employ.

Under the orders of the Court, one-half of their salary has been already paid by the appellant to the respondents from May 27, 1952, onwards. As a result of this decision, the appellant would be entitled to recover the same back from them. Shri N. C. Chatterjee appearing on behalf of the appellant has, however, stated that the appellant would forego the recovery of that amount and would also keep the respondents on the reserve list to be employed in the mills as and when there were vacancies in their permanent cadre. We hope that the respondents will take this offer in the true spirit with which it has been made on behalf of the appellant and behave better in the furture. Shri N. C. Chatterjee has also left the question of costs of both these appeals to us and we do order that, in all the circumstances of the case, it would be proper that each party do bear and pay its own costs of both these appeals.

Appeals allowed.