1958

Dr. Y. S. Parmar v. Sh. Hira Singh Paul and Another

Sarkar J.

agent whereby the latter was enabled to and did act as such. The appellant's election was consequently in our opinion rightly declared void.

The appeal is therefore dismissed with costs.

Appeal dismissed.

1958

October 17.

MCKENZIE & CO. LTD.

v.

ITS WORKMEN AND OTHERS

(JAFER IMAM, S. K. DAS and J. L. KAPUR, JJ.)

Industrial Dispute—Illegal strike—Enquiry by company—Rejection by Tribunal of application for permission to dismiss workmen—Fresh enquiry, if barred—Notice of enquiry, how to be effected—Dismissal after fresh enquiry—Jurisdiction of Tribunal—If can interfere with decision of company—Industrial Disputes Act (XIV of 1947), s. 33.

During the pendency of the adjudication of a reference before the Industrial Tribunal, the workmen illegally confined the works manager and went on strike. The company issued notices to the workmen to resume work immediately but they refused. The company declared a lock out and served charge sheets on the workmen calling upon them to submit their explanations. No explanation having been submitted the company held an enquiry and found the workmen guilty of gross misconduct amounting to major misdemeanour which merited dismissal. The company applied to the Tribunal under s. 33 of the Industrial Disputes Act for permission to dismiss the workmen. The Tribunal granted permission in respect of three workmen but refused it in respect of 61 workmen on the ground that there was reasonable doubt as to their identity and complicity in the incident. The order was upheld in appeal by the Labour Appellate Tribunal. Thereupon the company took fresh proceedings against the 64 workmen. It sent charge sheets to them by registered notices to their addresses registered with the company and also affixed notices on its notice boards both inside the premises and outside the gate. The registered notices could not be served upon workmen Nos. 2 to 24 as they were not found at the addresses given. The company wrote to the Workers

Union for the addresses of these workmen but received no reply. The company held the enquiry and, as at that time no proceedings were pending under the Act, terminated the services of the 64 workmen. The Government made a reference in respect of the termination of services of the workmen. Sixteen workmen resigned and one pleaded guilty. With respect to the rest the Tribunal held that workmen Nos. 2 to 24 had not been properly served and the order of the termination of their services was bad but upheld the order in respect of the remaining workmen. Both parties appealed to the Labour Appellate Tribunal. The Appellate Tribunal dismissed the appeal of the company but allowed that of the workmen holding that the testimony of the works manager could not be accepted and apart from that evidence there was no other evidence to show which of the workmen had taken part in wrongfully confining the works manager and in the illegal strike.

Held, that the Appellate Tribunal was in error in setting aside the order of termination of service on the ground that it was unable to accept the testimony of the works manager. It was for the management to determine what constituted major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions, and it must act in good faith, without caprice or discrimination or motive of vindictiveness or intimidation, without resorting to unfair labour practice and in accordance with the accepted rules of natural justice. When the management has so acted its judgment cannot be questioned. The Appellate Tribunal proceeded as if it were sitting in appeal against the decisions of the managerial enquiry and this was beyond the scope of its powers.

Indian Iron and Steel Co. Ltd. v. *Their Workmen*, A. I. R. 1958 S.C. 130; *Lakshmi Devi Sugar Mills Ltd.* v. *Pt. Ram Sarup*, A. I. R. 1957 S. C. 82 and *Hanuman Jute Mills* v. *Amin Das*, A.I.R. 1957 S.C. 194, followed.

Held, further, that both the Industrial Tribunal and the Appellate Tribunal were wrong in holding that proper notices had not been given to workmen Nos. 2 to 24. The standing order merely required that service of notice upon a workman may be made by communicating the same orally to the worker and/or by fixing the same on the company's notice board. The Company acted in conformity with this standing order by affixing the notices on its notice board.

Held, further, that the second enquiry was not barred by the principle of *res judicata* on account of the previous findings of the Tribunal on the application under s. 33. As the purpose of s. 33 is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under s. 33 could not operate as *res judicata* and bar the raising of an industrial dispute. There was nothing in s. 33 or in the findings of the

1958

Mckenzie & Co. Ltd. v. Its Workmen and Others

Tribunals in the s. 33 proceedings which could debar the company from holding the second enquiry and dismissing the workmen.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 500 of 1957.

Appeal by special leave from the judgment and order dated September 11, 1956, as altered by Order dated September 28, 1956, of the Labour Appellate Tribunal of India, Calcutta, in Appeals Nos. Cal. 208 and 223 of 1956, arising out of the Award dated June 7, 1956, of the Sixth Industrial Tribunal, Calcutta, in Case No. VIII-233 of 1955.

M. C. Setalvad, Attorney-General for India, D. N. Mukherjee and *B. N. Ghosh*, for the appellants.

Y. Kumar, for respondents Nos. 2 to 25 and 27 to 48.

1958. October 17. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This is an appeal by special leave against the order of the Labour Appellate Tribunal and the question for decision is the dismissal of some workmen. The appellant before us is the employer and the respondents are some of the workmen, 47 in number who might be divided into two sets, the first set Nos. 2 to 24 and second Nos. 25 to 48. Out of the latter No. 26 is dead.

The facts leading to the appeal are that on August 3, 1953, the Government of West Bengal referred under s. 10 of the Industrial Disputes Act, hereinafter called the Act, to the second Industrial Tribunal, an industrial dispute between the appellant and its workmen. During the pendency of this Reference the workmen acted in a manner subversive of discipline, wilful insubordination and disobedience inasmuch as they surrounded by forming a kind of cordon round E. L. D'Cruz, acting Works Manager of the company, illegally confined him in a small place in the factory premises and kept him so confined between the hours of 9-15 a.m. to 2-15 p.m., till he was rescued by the police. The cause of this action on the part of the workmen is stated to be a dispute as to the payment of Puja bonus for the year 1953. The same

day the workmen went on strike at 9-15 a.m. D'Cruz called upon them to resume work but they refused and the appellant-company issued notices at 9-45 a. m., and 10-45 a.m. asking the workmen to resume work immediately. The workmen took no notice of these notices and the appellant company after the arrival of the police declared a lock out. Some of the workmen were then arrested. The appellant company then served charge sheet on the workmen calling upon them to submit their explanations within 24 hours. The workmen gave no explanation. An enquiry was held and the workmen were found guilty of gross misconduct amounting to major misdemeanour which merited dismissal and the company proposed to dismiss them. For that purpose the appellant company on October 31, 1953, made three applications Cal. Nos. 518, 519 and 557 of 1953 to the Tribunal for permission under s. 33 of the Act to dismiss 170 workmen with effect from October 6, 1953. During the course of the proceedings the appellant company withdrew its case against a large number of workmen and the proceedings were ultimately continued against 67 workmen. One of these workmen died and two resigned leaving 64 workmen against whom the proceedings were continued.

The workmen in their defence denied the commission of any offence and also denied the receipt of charge sheets. They pleaded that there was no enquiry, that the lock-out was illegal and that the appellant had acted in contravention of the principles of natural justice. The three applications were heard together and were disposed of by one order. The Tribunal held that a *prima facie* case had been made out for granting permission for dismissal of workmen directly involved in the incident; that the appellant company had acted *bona fide* and that it was not guilty of discrimination, vindictiveness or arbitrary action. Although it had started cases against 170 workmen it took back a majority of them on their expressing regret. The Tribunal gave permission for the dismissal of only three workmen Subbas Roy, Madhusudhan

1958

Mckenzie & Co. Ltd. v. Its Workmen and Others

Kapur J.

Rout and Bimal Kumar Ghose and permission with regard to the rest was refused on the ground that there was reasonable doubt as to their identity and complicity in the incident.

On January 8, 1954, the workmen made an application under s. 33A of the Act which was allowed on July 2, 1954. Three appeals were filed, two by the appellant company against the orders under s. 33 and the other made under s. 33A of the Act. The third appeal was filed by workmen as to the dismissal of three workmen. On March 29, 1955, the appeal of the company with regard to application under s. 33 of the Act was dismissed and so was the appeal of the workmen and thus the order as to 3 workmen was upheld. The employers contended that as the strike was illegal, the management had the right to terminate the services of the workmen and the Tribunal was therefore bound to accord sanction to the management but the Labour Appellate Tribunal did not go into this matter as the question had not been raised at any previous stage. On the same day the Labour Appellate Tribunal set aside the order of the Tribunal under s. 33A on the ground that the application under that section was misconceived and the order made by the Tribunal was without jurisdiction.

On April 20, 1955, the management of the appellant company took fresh proceedings against the 64 workmen and in order to serve charge sheets on them sent registered notices to their addresses, registered with the appellant company, and also affixed notices on its Notice Boards both inside the premises and outside the gate of the premises which remained affixed there from April 20, 1955, till June 9, 1955. Out of the registered notices sent notices could not be served on workmen Nos. 2 to 24 and they were returned to the sender with the remark that the addressees had either left or their addresses were unknown. On April 28, 1955, the appellant company wrote a letter to the Labour Commissioner informing him of the offences committed by the workmen and the action that it proposed to take against its workmen. On May 20, 1955, the appellant company wrote to the secretary of the Workers' Union

asking him for the addresses of the workmen who had not been served but it received no reply from the secretary. The enquiry started by the management of the appellant company terminated on June 9, 1955, and as at that time no proceedings were pending under the Act, the appellant company terminated the services of all the 64 workmen on June 22, 1955.

The termination of the services of these workmen gave rise to an industrial dispute and a reference was made by the West Bengal Government on August 8, 1955, in regard to all the 64 workmen. The points referred for adjudication were:—

(1) Whether the dismissal of the 64 workmen mentioned in the attached list is justified. Whether the Company should not reinstate them. What compensation should they be paid for the action taken against them by the Company?

(2) What compensation should be paid to them in respect of the period of enforced idleness from 6-10-53, particularly for the period they were refused permission to rejoin work even after their cases had been disposed of by the Tribunal?

(3) Whether the Tribunal Awards concerning the 64 workmen have been properly implemented. What compensation should be paid to them by the company for not having properly implemented the Award?

Sixteen workmen resigned and one of them Haroo Haldar pleaded guilty and therefore proceedings were continued against only 47 workmen. The Tribunal (6th Industrial Tribunal, West Bengal) made its award on June 7, 1956. It held that the workmen Nos. 2 to 24 had not been properly served and ordered their reinstatement as from April 1, 1955, with back wages, dearness allowance, etc., from April 1, 1955, but upheld the dismissal of workmen Nos. 25 to 48. It held that there was evidence to establish the identity of persons who had taken part in the strike and had wrongfully confined D'Cruz and that no bias or illwill could be attributed to the management nor was it inspired by any vindictive motives. It said:

"Since there was evidence and it was a possible

1958

Mckenzie & Co. Ltd. v. *Its Workmen and Others*

Kapur J.

view, the Tribunal must accept the finding and hold that the dismissal of those workers was justified ".

In regard to wages the Tribunal held that the strike of October 6, 1953, was illegal as at that time the reference was pending before the Industrial Tribunal; that the lock out was fully justified as the strikers had taken a belligerent attitude and had actually kept the acting Works Manager illegally confined till he was rescued by the police; that no compensation could therefore be claimed for the period from October 6, 1953, upto the time that the Labour Appellate Tribunal on March 29, 1955, disposed of the proceedings under s. 33; but the workmen Nos. 2 to 24 who were held to be wrongfully dismissed and had been ordered to be reinstated but had not been allowed to return to work were entitled to wages but only from April 1, 1955, upto the date of reinstatement. On the third issue i. e. the matter of Subbash Roy, Madhusudan Rout and Bimal Kumar Ghosh permission for dismissal granted by the State Tribunal was confirmed on appeal. No question of compensation could arise in their case.

Against this order of the 6th Industrial Tribunal, two appeals were taken to the Labour Appellate Tribunal one by the Union and the other by the appellant company. On September 11, 1956, the Labour Appellate Tribunal dismissed the appeal of the appellant company and allowed that of the Union. It held that the evidence of E. L. D'Cruz given in the managerial enquiry in May 1955 could not be accepted. In its order the Appellate Tribunal said :—

"In June 1954 Mr. E.L. D'Cruz was unable to give evidence against the appellants in Appeal No. Cal. 223 of 1956. In May 1955 he gave evidence connecting the appellants with the misconduct that was committed on the 6th October, 1954. No other evidence is to be found on the record to show that the workmen who are concerned in these proceedings committed misconduct on the 6th October, 1954."

In these circumstances, it is difficult to act on the evidence given by Mr. E.L. D'Cruz in the managerial enquiry in May 1955 ".

After refering to the principles laid down in the case of

Buckingham and Carnatic Co. Ltd. v. *Its workmen* (1) the Labour Appellate Tribunal ruled out the evidence of D'Cruz and as there was no other evidence to prove misconduct against the workmen, it came to the conclusion that the decision of the managment was perverse. It held :—

" In these circumstances, we set aside the order of the Industrial Tribunal giving permission to the management to discharge the appellants from service"

and consequently the order of the Industrial Tribunal giving permission to discharge workmen Nos. 25 to 48 was set aside. The Appellate Tribunal *suo motu* amended this order on September 28, 1956, and the following order was substituted in place of the operative portion of the order of September 11, 1956 :

" In these circumstances we set aside the order of the Industrial Tribunal upholding the action of the Management in discharging the appellants from service.....In the result the Award under appeal confirming the action of the Management in discharging twenty four workmen from service is set aside. In other respects that Award is confirmed. In other words we order the reinstatement of the twenty four workmen discharged by the Management with back wages for the period between the 1st of April, 1955, to the date of reinstatement".

Against this order the appellant company has come up in appeal by special leave and on its behalf the learned Attorney General raised two questions : (1) that appeal to Labour Appellate Tribunal on behalf of the Union was not competent as no question of law was involved and (2) that it could not sit in appeal against the managerial enquiry. It is not necessary to go into the first question because, in our opinion, the second question raised is well founded. The principles which govern the power of an Industrial Tribunal to interfere with the decision of the employer following an enquiry made by him were laid down by this Court in *Indian Iron and Steel Co. Ltd.* v. *Their Workmen* (2) where S. K. Das J., said at page 138 :

(1) (1952) L.A.C. 490. (2) A.I.R. 1958 S.C. 130.

1958

Mckenzie & Co. Ltd. v. Its Workmen and Others

Kapur J.

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

In *Lakshmi Devi Sugar Mills Ltd.* v. *Pt. Ram Sarup* (1) which was a case under s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, this Court held that if it was established that the workmen had resorted to illegal strike, 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 and as a result of enquiry the management had found the workmen guilty of misconduct and insubordination with which they had been charged and the management had come to the conclusion that continuing the workmen in its employ was dangerous in the interest of the company the Tribunal would not interfere with such order.

In *Hanuman Jute Mills* v. *Amin Das* (2) it was held that no appeal lies against the order of an Industrial Tribunal where the Tribunal had examined the question whether the discretion of the employer to dismiss certain workmen was properly exercised, whether the employer was acting bona fide, whether he had resorted to any unfair labour practice or victimisation and whether his desire to dismiss the workmen was actuated by any improper motive.

It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in

(1). A.I.R. 1957 S.C. 82. (2) A.I.R. 1957 S.C. 194.

determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct its judgment cannot be questioned provided the abovementioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above its position is untenable.

In our opinion, the Industrial Tribunal proceeded on correct principles as to its power in regard to an enquiry held by the management and the Labour Appellate Tribunal seems to have approached the question as if it was sitting in appeal against the decision taken by the management in regard to the termination of service of their workmen. In the instant case none of the principles, which have been laid down by Labour Courts as well as by this Court in regard to enquiry by the management into the misconduct of their workmen, have been violated and the Labour Appellate Tribunal was in error in setting aside the order of the Industrial Tribunal on the ground that it was unable to accept the testimony of D'Cruz as to the identity of persons who had taken part in wrongfully confining him on the day of the illegal strike. It appears to have proceeded as if it was sitting in appeal against the decision of the managerial enquiry and further it was under a misapprehension as to the nature of the proceedings before the Industrial Tribunal and before itself, inasmuch as it seems to have been under the wrong impression that the appeal before it arose out of an application under s. 33 of the Act and that the Industrial Tribunal had given permission to the appellant company to discharge its workmen. Its amended order shows that it thought, and again wrongly, that really the proceedings were under s. 33A of the Act and it was that mistaken view of the nature of the proceedings which led to its order for reinstatement of the workmen with back wages from April 1, 1955, to

1958

Mckenzie & Co. Ltd. v. Its Workmen and Others

Kapur J.

the date of reinstatement. The Labour Appellate Tribunal seems to have overlooked the fact that the appeal before it arose out of a Reference made by the West Bengal Government under s. 10 of the Act. This misconception as to the nature of the proceedings vitiated its order as the Appellate Tribunal misdirected itself as to the scope of the powers to be exercised by it and consequently it led to the making of an erroneous order.

The question then arises as to whether the managerial enquiry was vitiated by the infraction of any principle of natural justice. According to the standing orders Major Misdemeanours have been defined in cl. 15, the relevant portion of which is:—

(a) Wilful insubordination or disobedience.

(b) Inciting to take part or taking part in an illegal strike. (Any strike resorted to without giving notice as provided under Section 22 of the Industrial Disputes Act will be considered as illegal)".

The mode of service of notice as given in the standing order No. 15 is as follows:—

"No order of dismissal shall be made unless the worker concerned is informed and given opportunity of explaining the circumstances alleged against him, but to avail himself of this privilege such worker must attend before the management when directed to do so. Service of any notice or direction upon a workman to attend under this rule may be made by communicating the same orally to the worker concerned and/or by fixing the same on the Company's Notice Board".

In the present case the management of the appellant company took the precaution of affixing the notices on its Notice Boards both inside and outside the company's premises, and there is evidence to show that they remained affixed from April 20, 1955 till June 9, 1955, i.e. right upto the termination of the enquiry. It also sent Registered Acknowledgement Due notices to all workmen. When some of them came back unserved it wrote to the secretary of the Union asking for the addresses of the workmen but that gentleman did not care to reply to this letter. The management also wrote

to the Labour Commissioner as to the action it was proposing to take.

The Industrial Tribunal held that there was no proper notice to workmen Nos. 2 to 24 and the mere affixing of the notices on the Notice Board of the company was not sufficient as the workmen could not enter the appellant company's premises due to the lock out. It overlooked the evidence as to the notices being affixed on the appellant company's board outside its gate from where the workmen were not excluded as a result of the lock out and it was open to them if they so desired to go and look up the notices there. Further the Tribunal was of the opinion that the appellant company might have sent the notices to the secretary of the Union " for circulation to the absentees ". In the first place this is not one of the recognised modes of effecting service and in this case the company would have been justified in not taking this action after the way that gentleman had neglected even to reply to the appellant company's letter asking him to supply the addresses of the workmen. Apart from complying with its standing orders the appellant company made every effort under the circumstances to serve notices on its workmen. No principle of natural justice has, in our opinion, been infringed and the finding as to the workmen having no notice of the charges against them and consequently not having a proper opportunity to meet the case against them cannot be sustained. It cannot be said that the workmen did not have a proper opportunity to answer the case against them. If the rule were as the order of the Industrial Tribunal holds it to be then by their action of not giving proper addresses to the employer or abstaining from looking up the Notice Boards where under the standing orders notices were required to be affixed the workmen might make it impossible for an employer to take disciplinary action assuming that such action is necessary or justified. The Labour Appellate Tribunal did not consider or apply its mind to this aspect of the case, it being under a misapprehension as to correct nature of the proceedings.

1958

Mckenzie & Co. Ltd. v. Its Workmen and Others

Kapur J.

Counsel for respondents raised four points: (1) that there was no proper notice served on workmen Nos. 2 to 24 after the decision of the Industrial Tribunal refusing permission to dismiss the workmen under s. 33 of the Act; (2) that no second enquiry could be held because the earlier findings of the Tribunal on the application under section 33 of the Act would not be challengeable on the principle of *res judicata*; (3) that there are basic errors in the award of the Industrial Tribunal which was rightly interfered with on appeal by the Labour Appellate Tribunal and (4) that the workmen were entitled to compensation. As to notices the submission of the counsel for the respondents was that notice given to the workmen Nos. 2 to 24 was not adequate as the employer did not send the notices to the Union for being served on the workmen and in any case in order to serve the workmen properly it was necessary in the circumstances of this case for the employer to advertise the case in Bengalee newspapers. We have already held that in the circumstances of this case the appellant company had done its best to serve the workmen and had complied with the standing orders and it was not necessary for the appellant to do anything more. This contention of the respondents' counsel must therefore be repelled.

As to the applicability of the principle of *res judicata* the argument raised by counsel for respondents was that the findings of the State Industrial Tribunal in proceedings under s. 33 of the Act which were confirmed by the Labour Appellate Tribunal barred the right of the management of the appellant company to start a fresh enquiry in respect of the same incident which formed the subject matter of the previous enquiry. There is no force in this contention, which seems to be based on a misapprehension as to the nature and scope of proceedings under s. 33. That section does not confer any jurisdiction on a Tribunal to adjudicate on a dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should

not be given, the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen the employer makes out a *prima facie* case. The object of the section is to protect the workmen in pending industrial disputes against intimidation or victimisation. As said above principles governing the giving of permission in such cases are that the employer is not acting *mala fide*, is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention of the principles of natural justice. Therefore when the Tribunal gives or refuses permission it is not adjudicating an industrial dispute, its function is to prevent victimisation of a workman for having raised an industrial dispute. The nature and scope of proceedings under s. 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. *Atherton West & Co. Ltd.* v. *Suti Mill Mazdoor Union* (1), *Lakshmi Devi Sugar Mills* v. *Pt. Ram Sarup* (2).

In the *Automobile Products of India Ltd.* v. *Rukmaji Bala* (3) Das J.; (as he then was) said at p. 1256 :—

"The purpose of these two sections (s. 33 of the Industrial Disputes Act and s. 22 of the Industrial Disputes (Appellate Tribunal) Act) being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these two sections is to accord or withhold permission".

As the purpose of s. 33 of the Act is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding under s. 33 would not operate as *res judicata* and bar the raising of an industrial dispute nor is there anything in the section itself or in the findings arrived at by the Industrial Tribunal in s. 33 proceedings dated June 6, 1954, or of the Labour Appellate Tribunal dated March 29, 1955,

(1) [1953] S.C.R. 780, 788. (2) A.I.R. 1957 S.C. 82.
(3) [1955] 1 S.C.R. 1241.

1958

Mckenzie & Co. Ltd.
v.
Its Workmen and Others

Kapur J.

which would debar the appellant company from holding the second enquiry or dismissing the workmen provided the principles above set out are complied with.

It was next contended that in the present case there was a basic error within the meaning of the rule laid down by S. K. Das J., in *Indian Iron and Steel Co. Ltd.* v. *Their Workmen*(1). The basic error according to counsel was this that the appellant company's witness Serjeant Lourds had stated that the number of persons who had confined and were surrounding D'Cruz was 100 to 130 persons and if out of them 106 were reinstated there could not be 67 workmen left to be proceeded against. The appellant company had started proceedings against 170 workmen i. e. all their workmen and after reinstatement of a large number of them only 67 remained against whom the appellant company took proceedings with a view to take action against them and it was in regard to these persons that permission for dismissal was sought under s. 33. It is significant that this basic error does not seem to have been argued either before the Industrial Tribunal or the Labour Appellate Tribunal, on the other hand, the parties seem to have proceeded on the basis that the number of workmen proceeded against by the appellant company was 67 out of whom 64 were left after three were allowed to be dismissed. Out of the rest 16 had resigned and there were only 48 persons whose cases remained for adjudication by the Industrial Tribunal. No basic error is therefore made out.

The question of compensation to the workmen from the date when they were ordered to be reinstated i.e. from April 1, 1955, to June 6, 1955, when their services were terminated is equally unsustainable. The Industrial Tribunal in its order of June 26, 1954, and the Labour Appellate Tribunal in its order dated March 29, 1955, held the strike to be illegal. Mr. S. C. Sen Gupta Judge of the 6th Industrial Tribunal who gave the award dated June 7, 1956, refused to give any compensation to workmen Nos. 25 to 48 whose dismissal he upheld on the ground that the strike was illegal,

(1) A.I.R. 1958 S.C. 130.

the strikers had taken up a belligerent attitude and the lock out was fully justified. The Labour Appellate Tribunal awarded to the 24 workmen reinstated by its amended order dated September 28, 1956, back wages from April 1, 1956, to the date of reinstatement as was done by the Industrial Tribunal in the case of workmen Nos. 2 to 24, whom the Tribunal had ordered to be reinstated. As we have come to the conclusion that the order of reinstatement by the Industrial Tribunal of workmen Nos. 2 to 24 and by the Appellate Tribunal of workmen Nos. 25 to 48 was erroneous, neither of the two sets of workmen is entitled to back wages by way of compensation.

The appeal is therefore allowed and the decision of the Labour Appellate Tribunal as to all the workmen and the award of the Industrial Tribunal as to workmen Nos. 2 to 24 are set aside and the claim for compensation which was argued before us is disallowed. As the workmen have been dismissed and no compensation has been allowed the proper order as to costs is that both parties do pay their costs of this appeal.

Appeal allowed.

S. PL. NARAYANAN CHETTIAR

v.

M. AR. ANNAMALAI CHETTIAR

(JAFER IMAM, S. K. DAS and J. L. KAPUR, JJ.)

Debt Relief—Agriculturist—Scaling down of decree debt—Enabling statute coming into force pending appeal—Application made after appellate decree—Whether barred by res judicata*—Madras Agriculturists Relief Act, 1938 (IV of 1938), as amended, s. 19(2)—Madras Agriculturists Relief (Amendment) Act (XXIII of 1948), s. 16, cls. (ii), (iii).*

In 1944 the respondent instituted a suit for the recovery of money due under an award dated July 31, 1935, whereby the appellant and his brother were directed to pay a certain amount to the respondent. The suit was dismissed by the trial Court