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Narayan Bhagwantrao Gosavi Balajiwale v. *Gopal Vinayak Gosavi*

Hidayatullah J.

Respondents 6 and 7 raised before us the question of costs. They stated that the trial Judge had given two sets of costs, which was changed to one set by the High Court. These respondents should have cross-objected on this point against the judgment of the High Court, and in the absence of any such cross-objection, no relief can be granted to them. For the same reason, no relief can be given to respondent 7, in respect of whom the finding that he had no right of performing the *seva* and getting emoluments attached to that right, as respondents 1 to 4, has not been vacated, as was done in the case of respondent 6. In view of our observations that these matters were alien to the suit which had been filed, we do not propose to deal with them.

In the result, the appeal is dismissed. The appellant will personally pay the costs of Respondent 1. The other set of respondents will bear their own costs.

Appeal dismissed.

THE PUNJAB NATIONAL BANK, LTD.

v.

ITS WORKMEN

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. SUBBA RAO, JJ.)

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September 24

Industrial Dispute—Dismissal by employer pending adjudication —Omission to hold proper enquiry or obtain permission of the Tribunal—Such dismissal, if wholly void—Jurisdiction of Tribunal, Scope of—Pen-down strike—Legality—If disentitles a dismissed employee to reinstatement—Industrial Disputes Act, 1947 (14 of 1947), ss. 2(q), 10, 33, 33A.

The employees of the appellant Bank commenced pen-down strikes, which were followed by a general strike, pending arbitration of an industrial dispute between them. The Government of India intervened and as the result of an agreement that followed the Bank reinstated all the employees except 150, against whom it had positive objections, and the Government referred their cases under s. 10 of the Industrial Disputes Act, 1947, to the Industrial Tribunal for adjudication. The two issues before the Industrial Tribunal were whether the 150 employees had been wrongly dismissed and what wages and allowances would the

employees be entitled to on reinstatement. The case of the employees was that the Bank wanted to penalise the active trade union workers by the said dismissals while the Bank maintained that the employees were guilty of participation in illegal strikes intended to paralyse its business and scare away its customers. The Industrial Tribunal did not hear evidence and, by its final award, held that, the strikes being illegal, the Bank was, on that ground alone, justified in dismissing the employees. Even so, it directed the Bank to make certain payments to the employees on compassionate grounds. The Bank as well as the employees appealed. The Labour Appellate Tribunal held that even though the strikes were illegal under s. 23(b) read with s. 24(1) of the Industrial Disputes Act, 1947, the Bank had, by entering into the agreement with the Government of India, waived its right to take penal action against the employees for joining the illegal strikes and that, therefore, an enquiry should be held on additional evidence to decide the disputes on merits. Against this interlocutory order the Bank appealed to this Court and it was held by this Court that while the strikes were no doubt illegal under s. 23(b) of the Act, the orders of dismissal passed by the Bank were no less so under s. 33 of the Act, and it dismissed the appeal. The Appellate Tribunal, thereafter, heard the cases on merits, directed the reinstatement of 136 of the said employees, but refused to reinstate the rest whom it found guilty of issuing posters and circulars subversive of the credit of the Bank. Both the parties appealed to this Court. Preliminary objections were raised on behalf of the said employees that, (1) in view of the decision of this Court dismissing the Bank's appeal against the said interlocutory order the subsequent inquiry by the Tribunal and the orders of dismissal must be held to be void and, (2) no charges having been admittedly framed nor any proper enquiry held by the Bank against the employees, the orders of dismissal were wholly invalid. It was urged, *inter alia*, on behalf of the Bank in the appeals that participation in a pen-down strike by itself amounted to misconduct sufficient to disentitle an employee to reinstatement and that the entire body of strikers, being collectively responsible for the publication of the subversive documents in question, the dismissed employees could by no means escape liability.

Held (per curiam), that the preliminary objections must be negatived and the decision of the Appellate Tribunal affirmed with this modification that, in view of its inconsistent findings, the appeal of one of the employees must be allowed.

Per Sinha and Gajendragadkar, JJ.—The purpose the Legislature had in view in enacting s. 33 of the Industrial Disputes Act, 1947, was to maintain the *status quo* by placing a ban on any action by the employer pending adjudication.

But the jurisdiction conferred on the Industrial Tribunal by s. 33 of the Act was a limited one. Where a proper enquiry had been held and no victimisation or unfair labour practice had been

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resorted to, the Tribunal in granting permission had only to satisfy itself that there was a *prima facie* case against the employee and not to consider the propriety or adequacy of the proposed action. But to such permission, when granted, the Tribunal could attach no conditions; it can either grant or refuse it.

The effect of such permission was only to remove the ban imposed by s. 33 of the Act. It could neither validate a dismissal nor prevent it from being challenged in an industrial dispute; but in such a dispute, when raised, the employer could justify its action only on such grounds as were specified in the original charge-sheet and no others.

There was substantial difference between non-compliance with s. 33 of the Act and that with Art. 311(2) of the Constitution. Compliance with s. 33 only avoided the penalty under s. 31(1) of the Act, while compliance with Art. 311(2) of the Constitution made the order of dismissal final.

Atherton West & Co. Ltd. v. *Suti Mills Mazdoor Union*, [1953] S.C.R. 780, *The Automobile Products of India Ltd.* v. *Rukmaji Bala*, [1955] 1 S.C.R. 1241, *Lakshmi Devi Sugar Mills Ltd.* v. *Pt. Ram Sarup*, [1956] S.C.R. 916, *Indian Iron and Steel Co. Ltd.* v. *Their Workmen*, [1958] S.C.R. 667 and *McKenzie & Co. Ltd.* v. *Its Workmen*, [1959] S.C.R. (Suppl.) 222 referred to.

It was not, therefore, correct to contend that non-compliance with s. 33 of the Act could render the orders of dismissal wholly void or take away the jurisdiction of the Tribunal to hold the enquiry. Nor could the failure to hold a proper enquiry have that effect.

Under s. 33A of the Act, as construed by this Court, the jurisdiction of the Tribunal was not limited to an enquiry as to the contravention of s. 33 of the Act. Even if such contravention was proved, the employer could still justify the impugned dismissal on merits and there was no difference in this regard between a reference under s. 10 of the Act and a dispute raised under s. 33A of the Act.

The Automobile Products of India Ltd. v. *Rukmaji Bala*, [1955] 1 S.C.R. 1241 and *Equitable Coal Co. Ltd.* v. *Algu Singh*, A.I.R. 1958 S.C. 761, referred to.

Although there can be no doubt that in proper cases the Industrial Tribunal has the power to direct reinstatement in disputes arising out of dismissal of employees, it is not possible to lay down any hard and fast rule to be applied to such cases. In coming to its decision, the Industrial Tribunal has to reconcile the conflicting claims of the employer and the employee,—the latter's right to protection against wrongful dismissal, and in such a case the normal rule is reinstatement, and the interest and safety of the industry itself. Its approach to such a problem cannot, therefore, be legalistic or doctrinaire or as is permissible

in a civil court deciding the validity of dismissals under s. 240 of the Government of India Act, 1935, or Art. 311(2) of the Constitution.

Western India Automobile Association v. *Industrial Tribunal, Bombay,* [1949] F.C.R. 321 and *Buckingham & Carnatic Mills Ltd.* v. *Their Workmen,* (1955) II L.L.J. 314, referred to.

If no enquiry is held by the employer before it passes an order of dismissal, the propriety of such dismissal can be adjudged by the Tribunal on evidence and no employer can be allowed to object to it on the ground that it interferes with the exercise of its managerial function.

The Madras Electric Tramways, (1904) Ltd. Madras v. *Their Workers,* (1951) II L.L.J. 204, distinguished and held inapplicable.

The propriety of reinstatement in a case of wrongful or illegal dismissal is normally a question of fact and where the Industrial Tribunal on a proper consideration of the relevant factors refuses to pass such an order this Court would be reluctant, in absence of any general or substantial question of law, to interfere under Art. 136 of the Constitution.

A pen-down strike falls within the definition of a strike contained in s. 2(q) of the Industrial Disputes Act, 1947, and is not *per se* illegal. Even if it might involve an element of civil trespass, as in the present case, that cannot disentitle an employee to reinstatement.

M/s. Burn & Co. Ltd. v. *Their Workmen,* A.I.R. 1959 S.C. 529, referred to.

It is not safe to extend principles of American decisions to such a strike without a careful scrutiny of the relevant provisions of the American Statute and the facts on which the said decisions are based.

National Labour Relations Board v. *Fansteel Metallurgical Corporation,* 306 U.S. 238, considered and held inapplicable.

William Truax v. *Michael Corrigan,* 66 Law. Ed. 311, referred to.

Since in the instant case, the peaceful and non-violent conduct of the strikers, as found by the Appellate Tribunal, could not amount to criminal trespass within the meaning of s. 441 of the Indian Penal Code, mere participation in the pen-down strike did not disentitle them to reinstatement.

T. H. Bird v. *King-emperor,* (1934) L.R. XIII Pat. 268, held inapplicable.

The mere fact that the employer had engaged new hands during the strike, was not sufficient to defeat the claim to reinstatement of such employees as were subsequently found to have been wrongfully dismissed.

National Transport and General Co. Ltd. v. *The Workmen,* C.A. No. 312 of 1956, decided on January 22, 1957, referred to.

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But where, as in the instant case, the Appellate Tribunal took a common-sense view of the matter of evidence and held certain office-bearers and leaders of the union liable for subversive acts and refused to extend such liability to the entire body of strikers on theoretical and academic grounds, no principles of natural justice could be said to have been contravened by it.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 519 to 521 of 1958.

Appeal by special leave from the decision dated January 4, 1955, of the Labour Appellate Tribunal of India, Calcutta, in Appeals Nos. Cal. 69/52 and Cal. 70/52.

AND

Civil Appeal No. 521 of 1958.

Appeal by special leave from the decision dated January 4, 1955, of the Labour Appellate Tribunal of India, Calcutta in Appeal No. Cal. 70/52.

Ram Lal Anand and *Naunit Lal*, for the appellant in C.A. No. 519 of 58.

H. N. Sanyal, Additional Solicitor-General of India, Ram Lal Anand and *Naunit Lal*, for the appellants in C.A. No. 520/58 and respondents in C.A. No. 521 of 58.

M. C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General, M. K. Ramamurthi, Syed Mahummud, R. K. Garg, Miss. A. B. Varma and *Janardan Sharma*, for respondent No. 1 in C.A. Nos. 519 and 520 of 58 and appellant in C.A. No. 521 of 58.

Hardyal Hardy and *M. R. Krishna Pillai*, for respondent No. 2 in C.As, Nos. 519 & 520 of 58.

1959. September 24. The judgment of Sinha and Gajendragadkar, JJ., was delivered by Gajendragadkar, J. Subba Rao, J., delivered a separate judgment.

Gajendragadkar J.

GAJENDRAGADKAR J.—These three appeals arise out of an industrial dispute between the Punjab National Bank, Ltd. (hereinafter called the Bank) and two sets of its employees represented by the All-India Punjab National Bank Employees' Federation (hereinafter called the Federation) and the U.P. Bank Employees' Union hereinafter called the Union) respectively.

On July 2, 1951, this dispute was referred by the Central Government for adjudication to the industrial tribunal of which Mr. A. N. Sen, a retired Judge of the Calcutta High Court, was the sole member. It raised two issues. The first was whether the 150 workmen mentioned in Sch. II attached to the reference had been wrongfully dismissed by the Bank, and the second had reference to the claim for reinstatement and payment of wages and allowances from the date of dismissal to the date of reinstatement. The reference thus made has gone through a long and protracted career and the final decision of the dispute would be reached after we dispose of the present appeals. In order to appreciate the points raised for our decision in these appeals it is necessary to indicate briefly at the outset the salient points of controversy between the parties, the findings made by the original tribunal, the conclusions reached by the Labour Appellate Tribunal in its interlocutory and final judgments and the decision of this Court in the appeal which had been brought before it by the Bank against the interlocutory judgment of the Labour Appellate Tribunal.

The 150 employees, whose dismissal has given rise to the present dispute are spread over several branches of the Bank. 52 of them work at its head office in Delhi, 15 in Bombay, 73 in East Punjab and 10 in U.P. 140 workmen in the first three areas are represented by the Federation while the last 10 in U.P. are represented by the Union. All of these employees took part in strike which, according to the Bank, were illegal. The strikes in which the two respective groups of workmen took part were, however, for different reasons.

The strike in which the Federation took part was the result of the suspension by the Bank of its typist Sabharwal employed in the Delhi Branch of the Bank on April 17, 1951. It appears that Sabharwal, who was the Secretary of the Punjab National Bank Employees' Union, Delhi, had applied for leave for seven days on April 3, 1951, but his application was rejected; even so he absented himself from duty and went to Bombay. As soon as he resumed his duties on

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April 14, 1951, he was supplied with a written charge-sheet for absence without leave which he refused to accept. It was then sent to him by registered post, and on April 17 he was suspended. This suspension was followed by an immediate pen-down strike at the head office of the Delhi Branch subsequent to which the Bank suspended 60 other employees. This led to a general strike in Delhi and many other branches and it commenced at different dates from April 18 to 20, 1951. On April 21-22, 1951, the Bank issued notices calling upon all striking members of the staff to report for duty by 10 a. m. on April 24, 1951, and it warned them that if they did not comply with the notice it would be taken that they had voluntarily ceased to be its employees and their services would be deemed to have terminated from that date. This was followed by another notice on April 24 which announced that the strikers who had failed to report for duty as aforesaid had ceased to be the employees of the Bank from April 24, 1951. An option was, however, given to the strikers who were still willing to rejoin duty to apply in that behalf and explain their action in staying away. It is common ground that the 140 employees represented by the Federation who had taken part in the strike were dismissed by the Bank for absence due to the strike. That is the genesis of the dispute between the Bank and the Federation in relation to the 140 employees of the Bank.

The strike in which the remaining 10 employees of the Bank from the U.P. branches are concerned commenced on April 23, 1951. This strike was in pursuance of the strike notice served by the Union on the Bank on April 22, 1951. This pen-down strike was a part of the general strike which affected not only the Bank but also the Allahabad Bank and other banks in the U.P. region. The Regional Labour Commissioner of the U.P. Government who intervened suggested that the general strike should be called off and recommended that some of the demands made by the strikers should be referred to the industrial tribunal for adjudication; in accordance with this request, on April 30, 1951, the strike committee decided to call off the strike and

advised workmen to join duty from May 1, 1951. This advice, however, did not reach all the branches in time with the result that some of the employees of the Bank offered to resume work on May 3, 1951. The other banks in the U.P. region took back their employees who rejoined on May 3, but the Bank refused to take back its employees on the ground that they had not offered to rejoin on or before the date fixed; and so it proceeded to dismiss them. The dismissal of the said 10 employees is also the subject-matter of the present reference. That is how the reference is concerned with the dismissal of 150 employees of the Bank in all.

The strikes in question which affected the head office and the large number of branches of the Bank operating in more than one State and a very large number of its employees caused public concern, and so the Prime Minister and the Labour Department of the Central Government thought it necessary to intervene; and a conference was arranged at New Delhi between the officers of the Government and the Bank. To this conference the representatives of the Federation or the Union were, however, not invited. This conference led to an agreement as a result of which the Bank undertook to reinstate all its employees who had taken part in the strikes except those to whose reinstatement it had "positive objections". This, however, was subject to the reservation that the number of such employees was not to exceed 150 and that their cases would be referred by the Central Government for adjudication by a tribunal. This agreement was the result of several meetings between the representatives of the Bank and the Labour Department of the Central Government and it was reached on or about May 9, 1951.

Thereafter the head office of the Bank sent a circular letter to all its branches calling for names of the employees who according to the branch managers could not be considered for reinstatement. The list of such employees received by the head office from the respective managers of its branches was examined by the head office and the Bank then compiled the

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list of 150 workmen whom it was not prepared to reinstate. This list was in due course communicated by the Bank to the Central Government; and in pursuance of the agreement aforesaid the Central Government referred the dispute in respect of the said 150 workmen for adjudication before the tribunal by its notification issued on July 2, 1951.

Before the tribunal the case for the Federation and the Union was that the refusal of the Bank to take back the 150 workmen in question was a part of the concerted and deliberate plan adopted by the management of the Bank for victimising the President, the Vice-President, the General Secretary and Secretaries and Treasurer of the Federation and of the working committees of the different trade unions of workers and the members of the strike committees, and it showed that the sole object of the Bank in refusing to take back those employees was to teach a lesson to the Federation and the Union and to penalise all active trade union workers who supported the cause of the employees.

On the other hand, the Bank contended that the strikes in which the 150 employees had participated were illegal and had been resorted to not with a view to obtain relief for the employees but with a view to paralyse the business of the Bank and to scare away its customers. The Bank further alleged that the said 150 employees were guilty of "unpardonable acts of violence, intimidation, coercion and victimisation."

The tribunal gave two interim awards by which it directed the Bank to make some payments to the 150 employees by way of allowance pending the final disposal of the dispute. On February 2, 1952, the tribunal pronounced its final award. It held that the strikes were illegal and that the Bank was entitled to dismiss the employees solely on the ground that the said employees had participated in an illegal strike. On this view the tribunal did not think it necessary to allow evidence to be given on the question as to whether some of the strikers were guilty of specific subversive or violent acts. It also did not allow

evidence to be led by workmen in support of their plea that their dismissal was the result of victimisation. It decided the dispute on the sole ground that the strikes were illegal and participation in illegal strikes justified the dismissal of the employees. Even so the tribunal made an order directing the Bank to pay certain amounts to the said employees on compassionate grounds.

The direction issued by the tribunal for the payment of the said amount was challenged by the Bank by its appeal (No. 25 of 1952) before the Labour Appellate Tribunal (hereinafter called the appellate tribunal), whereas the decision of the tribunal that the 150 employees were not entitled to reinstatement was challenged by the two sets of employees by two different appeals (Nos. 69 and 70 of 1952). The appellate tribunal recorded its interlocutary decision on September 22, 1952. As a result of this decision the dispute was set down for further hearing on the points indicated by it. It was urged by the Bank before the appellate tribunal as a preliminary objection that the appeals preferred by the employees were incompetent. This objection was overruled. The appellate tribunal then proceeded to consider two questions of law, (1) whether an employer has the right to dismiss a workman for his absence from duty by reason of his mere participation in an illegal strike, and (2) if he has, can the tribunal scrutinise the exercise of that right and grant relief to such a workman when it comes to the conclusion that the right has been exercised capriciously or by unfair labour practice. The appellate tribunal held that the strike started by the Federation was illegal under s. 23 (b) read with s. 24 (1) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act). It appears that on February 21, 1950, an industrial dispute between the Bank and the Federation had been referred to the arbitration of Mr. Campbell Puri, and whilst the proceedings in the said reference were pending before the tribunal the strike was commenced on or about April 17, 1951. That is why the strike was illegal. The appellate tribunal, however, held that, even if mere participation

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in an illegal strike by workmen is assumed to give the employer certain rights against the striking workmen, the employer can waive these rights, that is to say, rafrain from exercising those rights against the workmen. According to the appellate tribunal such waiver or relinquishment can be inferred from conduct, and it thought that the conduct of the Bank evidenced by the agreement which it reached with the Central Government on or about May 9, 1951, unambiguously proved that it had waived or relinquished its rights to take any penal action against its employees merely for their participation in the illegal strike. In other words, the effect of the findings of the appellate tribunal was that, though the strike was illegal, by its conduct the Bank had precluded itself from exercising its alleged right to dismiss its employees for their participation in such an illegal strike.

The appellate tribunal also considered the general question of law as to whether participation in an illegal strike can be said to deserve dismissal of the striking workmen. It took the view that an illegal strike absolves the liability of the employer to pay to its employees wages during the period of absence of the striking workmen, but that it cannot be stated as a general proposition that participation in an illegal strike would by itself necessarily involve the penalty of dismissal. The Bank attempted to justify the dismissal in the present case by urging that the 150 employees were guilty of violent or subversive acts but the appellate tribunal held that it was not open to the Bank at that stage to plead in justification of their dismissal any such acts of violence or subversive acts. "There is abundant authority", observed the appellate tribunal, "for the proposition that an employer can justify before the tribunal a dismissal only on the ground on which he purported to dismiss him and not a ground different from it". That is why in the end the appellate tribunal held that the dismissals were wrongful. The appellate tribunal had no doubt that mere participation by a workman in an illegal strike or his absence due to such participation does not entitle an employer to dismiss him and that it is

open to a tribunal to order reinstatement in a proper case. Having reached this conclusion the appellate tribunal observed that "though in the case of wrongful dismissals the normal rule is that the employees wrongfully dismissed should be reinstated, it would nevertheless be necessary to consider the question of reinstatement in the case of each individual employee in the light of requirements of social justice and fair play for which the employee claims and industrial peace and discipline which the employer emphasizes." In order to decide the cases of the several employees from this twofold point of view the appellate tribunal thought it was necessary to allow the parties to lead additional evidence on relevant points. The employees wanted to lead evidence in support of their case of victimisation and they were allowed to do so by the appellate tribunal. The Bank wanted to lead evidence on five points. The appellate tribunal held that evidence on items (3) and (5) would be irrelevant and it thought that item (4) was too vague. That is why the Bank was allowed to lead evidence only in respect of item (2) and some heads mentioned in item (1). In the result opportunity was given to the parties to lead evidence on the following points: (1) victimisation, (2) past service records of the 150 employees, (3) conduct of those 150 employees or any of them during the strike confined to acts of violence, intimidating loyal workers and acts subversive of the credit of the Bank, (4) employment which any of those 150 persons got after this dismissal, the period during which they were in employment and the wages or emoluments they received. The appellate tribunal then directed the Bank to file a statement within a month giving particulars of the acts confined to the matters on which the Bank was allowed to lead evidence in respect of each one of the 150 employees after supplying a copy of the same, one to the Federation and one to the Union. In the meanwhile the appellate tribunal directed the Bank to make interim payments to the employees as indicated in its order.

This interlocutary judgment was challenged by the Bank before this Court by its appeal under Art. 136

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of the Constitution. On behalf of the Bank it was urged that the conclusion of the appellate tribunal that the Bank had condoned the illegal strike by its workmen was unjustified and that it was open to the Bank to rely upon the illegal strike as justifying the dismissal of the said workmen. The case of the Bank thus was that the order passed by the appellate tribunal setting down the dispute for further enquiry was illegal and should be set aside. The judgment of this Court delivered by Patanjali Sastri, C. J., shows that this Court thought it unnecessary to express any opinion on the question of condonation or waiver of the illegal strike because, in its opinion, even if there was no such condonation or waiver and even if it was open to the Bank to rely upon the illegal strike as a valid ground for dismissing its employees, there was no doubt that the order of dismissal was illegal having regard to the provisions of s. 33 of the Act. The said section furnished a short answer to the Bank's contention that the appellate tribunal had no jurisdiction to order reinstatement of the 150 workmen. In other words, just as the strike of the employees was illegal so was the order of dismissal passed by the Bank illegal and for a similar reason. S. 23(b) of the Act made the strike illegal while s. 33 of the Act made the dismissal also illegal. In the result the appeal preferred by the Bank was dismissed; and it was held that there was no substance in the plea of the Bank that the appellate tribunal had no jurisdiction to direct reinstatement of the employees. This judgment was pronounced on April 10, 1953.

The proceedings before the appellate tribunal were subsequently resumed and they terminated on January 4, 1955, when the appellate tribunal directed the reinstatement of the 136 employees and passed incidental orders about the payment of their wages. It refused to reinstate the remaining 14 employees but passed orders in regard to payment of compensation even in their cases. Before the appellate tribunal four general points were sought to be raised at this subsequent hearing. The first was in regard to the invalidity of the reference itself. The second was in regard to

the *ultra vires* character of the relevant provisions of the Act. Both these contentions were not allowed to be raised by the appellate tribunal and they have not been urged before us either. The third contention raised was that both the strikes were not *bona fide* and so the striking workmen were not entitled to reinstatement; and the last contention was that the pen-down strike was illegal and participation in it should be considered as a circumstance disqualifying the strikers from reinstatement. The appellate tribunal has held that the strikes in question were *bona fide* and that mere participation in the pen-down strike cannot be treated as a valid ground for refusing reinstatement to the strikers. It considered the evidence led by the parties in regard to the character of the strike, and it held that the definite instruction issued to the employees was to continue occupation of their seats till the police intervened and threatened to arrest and so it was not prepared to accept the employees' case that the pen-down strikers "vacated their seats on the mere asking by the management" According to the finding, the persons who took part in the pen-down strike not only ceased to work but continued to occupy their seats. The appellate tribunal also found that the pen-down strikers were quiet and peaceful, that no slogans were shouted, no attempt at violence or coercion was made and that they simply occupied their seats without doing any work.

It was conceded before the appellate tribunal that pen-down strike falls within the definition of strike prescribed by s. 2(q) of the Act; but it was urged that the act of not vacating their seats when asked by the management to do so introduced an element of illegality and made the strikers liable in a civil court for trespass. The appellate tribunal was not impressed with this argument but it held that even if the striking workmen are assumed to have made themselves liable for civil trespass that itself would not be sufficient ground for refusing reinstatement.

It appears that the Bank relied upon several documents to show that the employees were guilty of subversive actions during the course of the strike. The

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appellate tribunal was not satisfied that these documents were genuine and could be effectively pressed into service by the Bank in support of its case. It was also urged by the Bank that during the course of the strike posters and circulars were issued which were clearly subversive of the credit of the Bank and it was contended that employees who were guilty of issuing such posters and circulars did not deserve reinstatement. The appellate tribunal examined these documents and held that three of them amounted to subversive acts. They are Exs. 255(a), 255(c) and 302. In regard to Ex. 302 the findings recorded by the appellate tribunal in two places of its decision are somewhat inconsistent; but the operative portion of the decision shows that the appellate tribunal was inclined to hold that Ex. 302 was also objectionable and that it amounted to a subversive act. The rest of the documents no doubt used strong and intemperate language but the appellate tribunal was not prepared to treat them as constituting subversive activity. On this finding a question which arose before the appellate tribunal was: Who should be held responsible for the offending documents? The appellate tribunal was not prepared to hold all the 150 employees responsible for them. In this connection it considered the statement made by H. N. Puri in this evidence and it held that since Puri had admitted that he consulted 11 specified persons in preparing Exs. 255(a) and 255(c) as well as other documents they must share the responsibility for the said documents along with Puri. Similarly the appellate tribunal held that the persons who were shown to have been responsible for Ex. 302 must be treated on the same basis. It was as a result of this finding that the appellate tribunal refused to direct reinstatement of 14 employees. In regard to the remaining 136 employees the appellate tribunal held that it would not be right to impute the responsibility for the publication of the three subversive documents to them merely because they were members of the working committee or were otherwise active leaders of the Union. The appellate tribunal the considered the voluminous evidence led by the parties in respect

of each one of the 150 employees, and it held that in regard to the 136 employees no case had been made out by the Bank for refusing them reinstatement.

It is clear from the decision of the appellate tribunal that it was not at all satisfied with a substantial part of the documentary evidence adduced by the Bank. It held that the affidavits filed by the Bank were sometimes prepared *en masse* and the deponents simply put their signatures on them. In most of the affidavits there were blank spaces for the name, parentage and age of the deponents and they have been subsequently filled up in ink. Some of them, though sworn at different places, used identical language; while in some others material additions and alterations have been made which do not bear the initials either of the deponents or of the oath commissioner. It appeared to the appellate tribunal that some of the statements made by the witnesses of the Bank showed that their affidavits had been prepared by the Bank's lawyers and they simply put their signatures thereon and affirmed them before the oath commissioner. Indeed the appellate tribunal apparently thought that there was some force in the contention raised by the employees that some of the documents produced by the Bank had been manufactured or tampered with long after the strike was over. It has noticed the argument urged by the Bank that even if it was so the Bank cannot be condemned for the act or acts of its branch managers in that behalf. This argument did not appeal to the appellate tribunal. Thus the decision of the appellate tribunal substantially upheld the case made by the employees in that it directed the reinstatement of the 136 out of the 150 employees and ordered payment of compensation to the remaining 14 whose reinstatement was not granted.

This decision has given rise to the three present appeals before us. Civil Appeal No. 519 of 1958 has been filed by the Bank against the order of reinstatement in respect of 126 employees represented by the Federation. Similarly Civil Appeal No. 520 of 1958 has been filed by the Bank against the order directing

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the reinstatement of 10 employees represented by the Union; and Civil Appeal No. 521 of 1958 has been filed by the Federation on behalf of the 14 employees the claim for whose reinstatement has been rejected. In regard to the first two appeals preferred by the Bank special leave was granted to the Bank on February 21, 1958, limited to grounds (b), (c), (d), (f) and (g) set out in paragraph 162 of its petitions. These grounds are:—

(b) Whether employees, who have been propagating against the stability and solvency of the Bank by propaganda oral as well as written through open letters, posters, leaflets and hand-bills amongst the customers and constituents of the Bank and the public at large before, during and after an illegal strike are entitled to an order of reinstatement?

(c) Whether after the declaration of an illegal strike, forcible occupation of the seats and refusal to vacate them, when ordered to do so by the Management, does not constitute as act of criminal trespass, it having been held by the appellate tribunal that the employees formed a large riotous assembly in and outside the premises of the Bank and delivered fiery and provocative speeches to accompaniment of scurrilous slogans directed against the institution and its high officers with a view to render impossible the business of the institution, are entitled to an order of reinstatement?

(d) Whether a 'pen-down' strike of such a character does not contravene the provisions of the law of the land and is exempted under the Trade Unions Act or the Industrial Disputes Act?

(f) Whether employees, who, notwithstanding the fact that they resorted to an illegal strike and were guilty of rioting, had been invited by the Management to come back and resume work and who spurned at this offer and in so many words treated it with contempt and whose places had, therefore, to be replaced by fresh recruits are entitled to an order that those fresh recruits be dismissed and replaced by the strikers?

(g) Whether it is open to the employees of a concern to raise with their Employers a question as to whether the Employers should employ in their service employees of a concern other than their own and whether such a question constitutes an 'industrial dispute' within the meaning of the Industrial Disputes Act ?

It may be mentioned that the Bank's petitions had raised several other grounds in paragraph 162 but leave has not been granted to the Bank to raise any of them.

Almost a month and a half after limited leave was thus granted to the Bank the Federation filed its petition for special leave on April 4, 1955, and it applied for condonation of delay made in presenting the petition. On April 9, 1956, this Court granted the employees' application for condonation of delay and gave special leave to them to prefer their appeal. This leave has not been limited to any particular grounds. Broadly stated these are the relevant facts which give rise to the three present appeals.

Before dealing with the merits of these appeals we must consider two preliminary objections raised by the learned Attorney-General on behalf of the employees. He has claimed that if these objections are upheld the Bank's appeals would have to be dismissed and the employees' appeal allowed without considering the merits of the orders under appeal. In pressing these objections he urged that the questions raised were of considerable importance, and, though he conceded that some aspects of the matter were covered by the previous decisions of this Court, he requested us to examine the whole question afresh once more. We would accordingly deal with these contentions at some length.

The first contention is that as a result of the decision of this Court in the appeal preferred by the Bank against the interlocutary judgment of the appellate tribunal, the whole of the enquiry held by the said tribunal pursuant to the said interlocutary judgment is invalid and infructuous. This Court has held that the dismissal of the 150 employees is illegal having

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regard to the provisions of s. 33 of the Act; if the dismissal is illegal it is void and inoperative and as such it cannot be said to have terminated the relationship of master and servant between the Bank and its employees. Despite the said order of dismissal the employees continued to be in the employment of the Bank and are entitled to reinstatement without any further enquiry. That, it is said, is the effect of the Bank's failure to comply with the provisions of s. 33.

It is next contended that the Bank does not dispute the fact that it had held no enquiry into the alleged misconduct of its employees before it passed the impugned orders of dismissal against them. It is well established that even where an employer is justified in terminating the services of his employees he is bound to give them a charge-sheet and hold a proper enquiry at which they would have a chance to meet the said charge-sheet. This requirement is universally treated as consistent with natural justice and fairplay and since the Bank has not complied with it the impugned orders of dismissal are wholly invalid for this additional reason; and the result again would be that the said orders are inoperative and void and the employees are entitled to reinstatement as a matter of course.

In support of this argument reliance has been placed on the decision of the Privy Council in the case of *The High Commissioner for India and High Commissioner for Pakistan and I. M. Lall* (1). This decision holds that the order of dismissal passed against a person who is a member of the Civil Service of the Crown in India without complying with the mandatory relevant provisions of s. 240 of the Government of India Act, 1935, is void and inoperative, and that the Civil Servant against whom such an order is passed is entitled to a declaration that he remained a member of the Indian Civil Service at the date of the institution of the suit in which he challenged the validity of the impugned order. Similarly in *Khem Chand* v. *The Union of India* (2), this Court has held that an order of dismissal passed against a public servant specified in Art. 311 (a) without complying with the mandatory

(1) 75 I. A. 225. (2) [1958] S.C.R. 1080.

provisions of Art. 311 (2) is void and that the public servant sought to be dismissed by such an invalid order continued to be a member of the service at the date of the institution of the suit. It is in the light of these decisions that the learned Attorney-General asks us to hold that the relationship between the Bank and its employees remains wholly unaffected by the orders of dismissal passed by the Bank against them; and so, as soon as the orders are held to be void nothing more remains to be done but to make a declaration about the the continuance of the relationship of master and servant between the parties and to direct reinstatement. Thus presented the argument no doubt appears *prima facie* to be attractive; but, in our opinion, a careful examination of the relevant sections of the Act shows that it is not valid.

The three sections of the Act which are relevant are ss. 33, 33A and 10. Let us first consider s. 33. This section has undergone several changes but we are concerned with it as it stood in 1951. It provides *inter alia* that during the pendency of any proceedings before a tribunal in respect of any industrial dispute no employer shall discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute save with the express permission in writing of the tribunal. It is clear that in cases to which this section applies a ban has been imposed on the power of the employer to dismiss his employees save with the express permission in writing of the tribunal. The object of the Legislature in enacting this section is obvious. By imposing the ban s. 33 attempts to provide for the continuance and termination of the pending proceedings in a peaceful atmosphere undisturbed by any causes of friction between the employer and his employees. In substance it insists upon the maintenance of the *status quo* pending the disposal of the industrial dispute between the parties; nevertheless it recognises that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employees; and so it allows the employer to take such action subject to the condition that before doing so he must obtain the

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express permission in writing of the tribunal. It is true that the ban is imposed in terms which are mandatory and s. 31(1) makes the contravention of the provisions of s. 33 an offence punishable as prescribed therein. But the question which calls for our decision is: What is the effect of such contravention on the decision of the industrial dispute arising from it?

Where an application is made by the employer for the requisite permission under s. 33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a *prima facie* case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a *prima facie* case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the *prima facie* aspect of the matter and either grant the permission or refuse it according as it holds that a *prima facie* case is or is not made out by the employer.

But it is significant that even if the requisite permission is granted to the employer under s. 33 that would not be the end of the matter. It is not as if the permission granted under s. 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of s. 33 is thus substantially different from the effect of compliance with s. 240 of the Government of India Act, 1935, or Art. 311(2) of the Constitution. In the latter classes of cases, an order of dismissal passed after duly complying with the

relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of s. 33 the removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by s. 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requiste permission obtained under s. 33 has to face the scrutiny of the tribunal.

The decisions of this Court show that this position is well established. In *Atherton West & Co. Ltd.* v. *Suti Mills Mazdoor Union* (1) this Court was dealing with the provisions of cl. 23 of the relevant U. P. Government notification which is similar to the provisions of s. 33 of the Act. "The enquiry to be conducted by the Regional Conciliation Officer under the said clause", observed Bhagwati, J., "was not an enquiry into an industrial dispute as to the non-employment of workmen who was sought to be discharged or dismissed which industrial dispute would only arise after an employer, his agent or manager discharged or dismissed the workman in accordance with the written permission obtained from the officer concerned. The only effect of obtaining permission from the officer concerned was to remove the ban imposed on the employer. But the order of dismissal passed after obtaining the requisite permission can still become the subject-matter of an industrial dispute under s. 2(k) of the Act and the workman who has been dismissed would be entitled to have the industrial dispute referred to the appropriate authority."

In *The Automobile Products of India, Ltd.* v. *Rukmaji Bala & Ors.* (2), this Court was dealing with a similar problem posed by the provisions of s. 22 of Act 48 of 1950, and s. 33 of the Act. Dealing with the effect of these sections this Court held that the object of s. 33 was to protect the workmen against the victimisation by the employer and to ensure the termination of the proceedings in connection with the industrial disputes in a peaceful atmosphere. That being so, all that the tribunal, exercising its jurisdiction under s. 33, is

(1) [1953] S.C.R. 780. (2) [1955] 1 S.C.R. 1241.

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required to do is to grant or withhold the permission, that is to say, either to lift or to maintain the ban. This section does not confer any power on the tribunal to adjudicate upon any other dispute or to impose conditions as a prerequisite for granting the permission asked for by the employer. The same view has been expressed in *Lakshmi Devi Sugar Mills Ltd.* v. *Pt. Ram Sarup* (1).

In cases where an industrial dispute is raised on the ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a proper enquiry or not. Where such a proper enquiry has been held in accordance with the provisions of the relevant standing orders and it does not appear that the employer was guilty of victimisation or any unfair labour practice, that tribunal is generally reluctant to interfere with the impugned order. The limits of the tribunal's jurisdiction in dealing with such industrial disputes have been recently considered by this Court in the *Indian Iron & Steel Co. Ltd.* v. *Their Workmen* (2) and it has been held that the powers of the tribunal to interfere with cases of dismissal are not unlimited because the tribunal does not act as a court of appeal and substitute its own judgment for that of the management. In this judgment this Court has indicated the classes of cases in which the tribunal would be justified in interfering with the impugned order of dismissal. It would and should interfere when there is want of good faith, when there is victimisation or unfair labour practice, when the management has been guilty of a basic error or violation of the principle of natural justice, or when, on the materials, the finding of the management is completely baseless or perverse. The same view has been again expressed by this Court in *G. McKenzie & Co., Ltd., and Its Workmen* (3).

There is another principle which has to be borne in mind when the tribunal deals with an industrial dispute arising from the dismissal of an employee. We have already pointed out that before an employer can

(1) [1956] S.C.R. 916. (2) [1958] S.C.R. 667.
(3) (1959) 1 L.L.J. 285.

dismiss his employee he has to hold a proper enquiry into the alleged misconduct of the employee and that such an enquiry must always begin with the supply of a specific charge-sheet to the employee. In *Lakshmi Devi Sugar Mills, Ltd.* (1), it has been held by this Court that in dealing with the merits of the dismissal of an employee the employer would be confined to the charge-sheet given by him to his employee when an enquiry was held into his conduct. It would not be open to the employer to add any further charges against the employee and the case would have to be considered on the original charge-sheet as it was framed. It is significant that in the case of *Lakshmi Devi Sugar Mills, Ltd.* (1), this Court was apparently inclined to take the view that the additional acts of insubordination on which the appellant-mills wanted to rely would have justified the employee's dismissal; but even so it was not allowed to raise that plea because the said plea had not been included in the original charge-sheet. It, therefore, follows that where a proper enquiry has been held by the employer and findings are recorded against the employee that the principles laid down by this Court in the case of *Indian Iron & Steel Co. Ltd.* (2) would be applicable; and in applying the said principles the employer would be confined to the grounds set out by him in his charge-sheet against the employee.

This position is not disputed before us. Indeed the learned Attorney-General contends that the principles applicable to the decision of an industrial dispute arising from the dismissal of an employee to which we have just referred serve to emphasise the obligatory character of the limitation imposed on the employer by s. 33 of the Act and by the requirements of natural justice that every dismissal must be preceded by a proper enquiry. Where the ban imposed by s. 33 of the Act has been defied and/or where a proper enquiry has not been held at all the action of the employer in dismissing his employee must be treated as void and inoperative. Such a case

(1) [1956] S.C.R. 916. (2) [1958] S.C.R. 667.

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stands outside the principles which we have discussed so far. That in brief is the main contention raised by the employees.

This contention is, however, untenable in view of the decisions of this Court where the provisions of s. 33A have been construed and considered, and so we must now turn to s. 33A. This section was inserted in the Act in 1950. Before it was enacted the only remedy available to the employees against the breach of s. 33 was to raise an industrial dispute in that behalf and to move the appropriate Government for its reference to the adjudication of a tribunal under s. 10 of the Act. The trade union movement in the country complained that the remedy of asking for a reference under s. 10 involved delay and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government; because even in cases of contravention of s. 33 the appropriate Government was not bound to refer the dispute under s. 10. That is why s. 33A was enacted for making a special provision for adjudication as to whether s. 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal and it adds that on receipt of such complaint the tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the tribunal to submit its award to the appropriate Government and the provisions of the Act shall then apply to the said award. It would thus be noticed that by this section an employee aggrieved by a wrongful order of dismissal passed against him in contravention of s. 33 is given a right to move the tribunal in redress of his grievance without having to take recourse to s. 10 of the Act.

After this section was thus enacted the scope of the enquiry contemplated by it became the subject-matter of controversy between the employers and the employees. This Court had occasion to deal with this controversy in the case of the *Automobile Products of India Ltd.* (1). Das, J., as he then was, who delivered

(1) [1955] 1 S.C.R. 1241.

the judgment of the Court construed s. 33A of the Act and the corresponding s. 23 of Act 48 of 1950, which applied to the Labour Appellate Tribunal then in existence, and observed that "the scheme of the section clearly indicates that the authority to whom the complaint is made is to decide both the issues, viz., (1) the effect of contravention, and (2) the merits of the act or order of the employer". "The provision in the section that the complaint shall be dealt with by the tribunal as if it were a dispute referred to or pending before it quite clearly indicates", said the learned Judge, "that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs (p. 1253)". It was urged before this Court that in holding an enquiry under s. 33A the tribunal's duty was only to find out whether there had been a contravention of s. 33, and if it found that there was such a contravention to make a declaration to that effect. The argument was that no further question can or should be considered in such as enquiry. This contention was, however, rejected.

The same question was raised before this Court in *Equitable Coal Co. Ltd.* v. *Algu Singh* (1) and following the previous decision of this Court in the case of the *Automobile Products of India Ltd.* (2) it was held that in an enquiry under s. 23 two qustions fall to be considered: Is the fact of contravention of the provisions of s. 22 proved? If yes, is the order passed by the employer against the employee justified on the merits? Thus there can be no doubt that in an enquiry under s. 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of s. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant

(1) A.I.R. 1958 S.C. 761. (2) [1955] 1 S.C.R. 1241.

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aspects of the said dispute fall to be considered under s. 33A. Therefore, we cannot accede to the argument that the enquiry under s. 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of s. 33 has been proved or not.

In the present case the impugned orders of dismissal have given rise to an industrial dispute which has been referred to the tribunal by the appropriate Government under s. 10. There can be no doubt that if under a complaint filed under s. 33A a tribunal has to deal not only with the question of contravention but also with the merits of the order of dismissal, the position cannot be any different when a reference is made to the tribunal like the present under s. 10. What is true about the scope of enquiry under s. 33A is *a fortiori* true in the case of an enquiry under s. 10. What is referred to the tribunal under s. 10 is the industrial dispute between the Bank and its employees. The alleged contravention by the Bank of s. 33 is no doubt one of the points which the tribunal has to decide; but the decision on this question does not conclude the enquiry. The tribunal would have also to consider whether the impugned orders of dismissal are otherwise justified; and whether, in the light of the relevant circumstances of the case, an order of reinstatement should or should not be passed. It is only after all these aspects have been considered by the tribunal that it can adequately deal with the industrial dispute referred to it and make an appropriate award.

In this connection it would be relevant to remember that in dealing with industrial disputes arising out of dismissal of employees the tribunal undoubtedly has jurisdiction to direct reinstatement in proper cases. The question about the jurisdiction of an industrial tribunal to direct reinstatement was raised as early as 1949, before the Federal Court in *Western India Automobile Association* v. *Industrial Tribunal, Bombay* (1). In this case the Federal Court considered the larger question about the powers of industrial tribunals in

(1) [1949] F.C.R. 321.

all its aspects and rejected the argument of the employer that to invest the tribunal with jurisdiction to order re-employment amounts to giving it authority to make a contract between two persons when one of them is unwilling to enter into a contract of employment at all. "This argument", observed Mahajan, J., as he then was, "overlooks the fact that when a dispute arises about the employment of a person at the instance of a trade union or a trade union objects to the employment of a certain person, the definition of industrial dispute would cover both those cases. In each of those cases, although the employer may be unwilling to do so, there will be jurisdiction in the tribunal to direct the employment or non-employment of the person by the employer". The learned Judge also added that "the disputes of this character being covered by the definition of the expression 'industrial disputes,' there appears no logical ground to exclude an award of reinstatement from the jurisdiction of the industrial tribunal." Since this judgment was pronounced the authority of the industrial tribunals to direct reinstatement in appropriate cases has never been questioned.

In exercising its jurisdiction to direct reinstatement of dismissed employees industrial tribunals have indicated certain general considerations for their own guidance. In the case of a wrongful dismissal the normal rule adopted in industrial adjudication is that reinstatement should be ordered. "But", observed the Full Bench of the Labour Appellate Tribunal in *Buckingham & Carnatic Mills Ltd., And Their Workmen* (1), "in so ordering the tribunal is expected to be inspired by a sense of fairplay towards the employee on the one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse and the ground on which the order of the management is set aside are also relevant factors for consideration." It is obvious that no hard and fast rule can be laid down in dealing with this problem. Each case must be considered on its own merits, and, in reaching the

(1) [1951] II L.L.J. 314.

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final decision an attempt must be made to reconcile the conflicting claims made by the employee and the employer. The employee is entitled to security of service and should be protected against wrongful dismissals, and so the normal rule would be reinstatement in such cases. Nevertheless in unusual or exceptional cases the tribunal may have to consider whether, in the interest of the industry itself, it would be desirable or expedient not to direct reinstatement. As in many other matters arising before the industrial courts for their decision this question also has to be decided after balancing the relevant factors and without adopting any legalistic or doctrinaire approach. No such considerations can be relevant in cases where in civil courts the validity of dismissals is challenged on the ground of non-compliance with s. 240 of the Government of India Act, 1935 or Art. 311(2) of the Constitution.

There is one more point which still remains to be considered and that is the effect of the Bank's default it not holding an enquiry in the present case. If the Bank has not held any enquiry it cannot obviously contend before the tribunal that it has *bona fide* exercised the managerial functions and authority in passing the orders of dismissal and that the tribunal should be slow to interfere with the said orders. It is true as we have already pointed out that if the employer holds a proper enquiry, makes a finding in respect of the alleged misconduct of the employee and then passes an order of dismissal the tribunal would be slow to interfere with such an order and would exercise its jurisdiction within the limits prescribed by this Court in *The case of Indian Iron & Steel Co. Ltd.* (1).

But it follows that if no enquiry has in fact been held by the employer; the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make. In such a case the point about the exercise of managerial functions does not arise at

(3) [1958] S.C.R. 667.

all. This answers the argument which Mr. Sanyal has raised before us in his appeal.

Mr. Sanyal, however, seeks to derive support to his argument from the decision of the Labour Appellate Tribunal in *The Madras Electric Tramways (1904) Ltd., Madras And Their Workers* (1). In that case the order of reinstatement passed by the tribunal was reversed in appeal by the appellate tribunal which observed that in dealing with cases of dismissal where the management had acted *bona fide* and with knowledge and experience of the problems which confronted in the daily work of the concern it should be considered to be well qualified to judge what sentence would be appropriate, and the sentence imposed by the management should normally stand subject to the qualification that it must not be unduly severe. It is obvious that in that case the management had held a proper enquiry and the question which arose for decision was what are the limits of the jurisdiction of the tribunal in dealing with an industrial dispute arising from an order of dismissal passed by an employer after holding a proper enquiry. The principles applicable to such a case have been already considered by us; but they can have no application to the present case where the employer has held no enquiry at all. Therefore, this decision on which Mr. Sanyal relies is irrelevant.

The position then is that the effect of the double default committed by the employer is not to limit the enquiry to the decision of the sole question as to the commission of the said default, and so, despite the said default the subsequent enquiry held by the appellate tribunal pursuant to its interlocutory judgment was proper and legal. The two preliminary objections raised by the learned Attorney-General must, therefore, fail.

Let us now deal with the two appeals filed by the Bank (Civil Appeals Nos. 519 and 520 of 1958). We have already indicated that in dealing with these appeals we have to bear in mind the limitations imposed by the nature of the limited leave granted to

(1) (1951) II L.L.J. 204.

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the Bank; it is only the grounds specifically covered by the leave which fall to be considered, and even these grounds will necessarily have to be dealt with in the light of the findings already recorded by the appellate tribunal which are no longer open to challenge. The subsequent enquiry held by the appellate tribunal was limited to the question as to whether the Bank was able to prove any specific circumstances which disentitled the employees from claiming reinstatement. In other words, the object of the said enquiry was to ascertain the nature of the "positive objections" which the Bank had against each one of them. The rest of the matters in dispute between the parties are concluded by the other findings which have become final. Considered in the light of these limitations the grounds on which leave has been granted to the Bank must first be examined. A bare perusal of the said grounds would show that some of them are vague and they are urged on assumptions of fact which run counter to the findings recorded by the appellate tribunal. That is why when those appeals were urged before us, Mr. Anand and Mr. Sanyal have recast their contentions within the frame-work of the grounds in respect of which leave has been granted and have urged the following points before us: (1) that participation in a pen-down strike is itself an activity of such a subversive character that it disqualifies the employees who took part in it from claiming the relief of reinstatement, (2) that the publication and circulation of subversive documents was the result of a concerted plan and represent a collective activity of all the strikers and as such all the employees before us should be held responsible for it and on this ground reinstatement should be refused to them, (3) that the finding recorded by the appellate tribunal that only 14 persons were directly and actively concerned with the preparation and publication of the subversive documents is opposed to the weight of evidence and is perverse, (4) that the appellate tribunal erred in law in not taking into account the fact that after the 150 employees were dismissed the Bank has engaged fresh hands and the order of reinstatement would, therefore, be unjust and

unfair, and (5) that the appellate tribunal was also in error in not taking into account the fact that some of the employees have in the meanwhile taken employment elsewhere. It is these five grounds which we are asked to consider by the Bank in its present appeals.

Before dealing with these contentions we would like to make one general observation. Though not in the same form, in substance these contentions were raised before the appellate tribunal in support of the plea that the dismissed employees should not be reinstated. As we have already emphasized whether or not reinstatement should be ordered in cases of wrongful or illegal dismissals is normally a question of fact and in deciding it several relevant factors have to be borne in mind. If the appellate tribunal applied its mind to those relevant factors and came to the conclusion that 14 employees did not deserve to be reinstated while the remaining 136 did, we would be reluctant to interfere with the said order under Art. 136 unless it is shown that the order suffers from an error which raises a general or substantial question of law.

The first contention raised by the Bank is in regard to the conduct of the employees in entering upon a pen-down strike and its effect on their claim for reinstatement. The finding of the tribunal on this point is that the persons who took part in the pen-down strike not only ceased to work but continued to occupy their seats. A tumultuous crowd had gathered outside the premises of the Bank and some persons in the crowd were shouting slogans in support of the strike. The strikers had been definitely instructed to stick to their seats until the police intervened and threatened arrest or until orders of discharge or suspension were served on them. There has been some argument before us as to the number of persons who actually took part in this kind of pen-down strike. For the Bank Mr. Anand has urged that the finding of the appellate tribunal suggests that most of the strikers took part in this strike; and in any event, according to him, at least 52 persons took part in it. He has filed in this Court a list of these 52 employees. On the other hand,

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the learned Attorney-General has contended that on the findings recorded by the appellate tribunal not more than 10 persons can be said to have taken part in it. In dealing with the present contention of the Bank we are prepared to assume that most of the strikers participated in the pen-down or sit-down strike as generally found by the tribunal.

Is this pen-down strike a strike within s. 2(q) of the Act or not? S. 2(q) defines a strike as meaning a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. It was conceded before the appellate tribunal that a pen-down strike falls within this definition, and this position is not seriously disputed before us either. On a plain and grammatical construction of this definition it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the Bank and refused to take their pens in their hands that would no doubt be a strike under s. 2(q). The main grievance of the Bank is that these employees not only sat in their places and refused to work but they would not vacate their seats when they were asked to do so by their superior officers. Such conduct may introduce an element of insubordination but that is a different matter. In our opinion, therefore, the pen-down strike in which the employees participated in the present case cannot be said to be outside s. 2(q) of the Act.

It was, however, urged that the entry of the strikers in the premises of the Bank amounted to civil trespass. The argument is that by virtue of their employment the employees had a licence to enter the premises of the Bank but this licence is subject to the condition that the employees are willing to carry out their obligation of the contract and do their allotted work during the

office hours. If the employees had decided not to work they were not entitled to the licence in question and so their entry into the Bank itself constituted a civil trespass. On their hand, the employees contend that during the continuance of their employment they are entitled to enter the premises of the Bank and having thus entered they were also entitled to exercise their right of going on strike. They entered the premises as employees of the Bank and having taken their seats they exercised their right of striking work. If the Bank had suspended the employees it would have been another matter; but so long as the relationship of master and servant continued the employees could not be said to have committed civil trespass when they entered the premises at the time.

In support of its case the Bank has relied on the proposition that "even if a person has a right of entry on the land of another for a specific purpose he commits a trespass if he enters for any other purpose or under any other claim or title apart from that under which he might lawfully enter. As an illustration of this proposition it is stated that if a person having a licence for entry on land enters the land not by virtue of the said licence but in order to contest the licensor's title, he commits a trespass" (1). "But this proposition is subject to the exception that if a person enters for a lawful purpose he is not a trespasser unless the case is one to which the doctrine of trespass *ab initio* applies" (2). So the decision of this technical point would depend on whether or not the employees are given a limited or conditional licence to enter the premises and that if they have decided to go on strike the said conditional or limited licence is no longer available to them. We do not think it necessary to consider this academic question in the present proceedings because, in our opinion, the appellate tribunal was obviously right in holding that even if civil trespass was involved in the conduct of the employees that by itself cannot justify the rejection of their claim for reinstatement. Incidentally we may add that even

(1) Salmond on Torts, 12th Ed., p. 158.

(2) Salmond on Torts, 12th Ed., p. 159.

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in America "the simple act of trespassing upon the employer's property is no bar to reinstatement nor is the act which at most a civil tort" (1).

Does the conduct of the strikers as found by the appellate tribunal constitute criminal trespass under s. 441 of the Indian Penal Code? That is the next point which calls for decision. It is argued that the conduct of the employees amounts to criminal trespass which is an offence and as such those who committed criminal trespass would not be entitled to reinstatement. According to the Bank the employees committed the criminal trespass inasmuch as they either entered unlawfully or having lawfully entered continued to remain there unlawfully with intent thereby to insult or annoy their superior officers. It would be noticed that there are two essential ingredients which must be established before criminal trespass can be proved against the employees. Even if we assume that the employees' entry in the premises was unlawful or that their continuance in the premises became unlawful, it is difficult to appreciate the argument that the said entry was made with intent to insult or annoy the superior officers. The sole intention of the strikers obviously was to put pressure on the Bank to concede their demands. Even if the strikers might have known that the strike may annoy or insult the Bank's officers it is difficult to hold that such knowledge would necessarily lead to the inference of the requisite intention. In every case where the impugned entry causes annoyance or insult it cannot be said to be actuated by the intention to cause the said result. The distinction between knowledge and intention is quite clear, and that distinction must be borne in mind in deciding whether or not in the present case the strikers were actuated by the requisite intention. The said intention has always to be gathered from the circumstances of the case and it may be that the necessary or inevitable consequence of the impugned act may be one relevant circumstance. But it is impossible to accede to the argument that the likely consequence of the act and its possible knowledge

(1) Ludwig Teller's "Labor Disputes and Collective Bargaining" Vol. II p. 855.

must necessarily import a corresponding intention. We think it is unnecessary to elaborate this point; we would only like to add that the decision of the Patna High Court, in *T. H. Bird* v. *King-Emperor* (1) on which reliance was placed by the Bank is wholly inconsistent with the contention raised by it. Thus our conclusion is that the Bank has failed to prove that the conduct of the strikers as found by the appellate tribunal amounted to criminal trespass under s. 441 of the Code.

In resisting the employees' claim for reinstatement on the ground that participation in a pendown strike creates a bar against such a claim the Bank has strongly relied on the decision of the Supreme Court of America in *National Labor Relations Board* v. *Fansteel Metallurgical Corporation* (2). Both Mr. Anand and Mr. Sanyal have contended that this decision is an authority for the proposition that participation in pen-down strikes necessarily disqualifies the strikers from claiming reinstatement. It is, therefore, necessary to examine this case carefully. In this case, the National Labor Relations Board had directed the reinstatement of participants in a sit-down strike whom, upon their refusal to leave the employer's plant, the employer declared to be discharged. The Board had held that despite the illegal strike and the consequent order of discharge the status of the employees continued by virtue of the definition of the term "employee" in s. 2, sub-s. (3) of the National Labor Relations Act. It had also taken the view that it had jurisdiction to direct reinstatement of the said employees under s. 10(c) of the said act with a view to effectuate the policies of the Act. Both these conclusions were reversed by the Supreme Court by a majority judgment. According to the majority view, when the Congress enacted the National Labor Relations Act it "did not intend to compel employers to retain persons in their employ regardless of their unlawful conduct,—to invest those who go on strike with an immunity from discharge for acts of trespass or violence against the employer's property, which they

(1) (1934) I.L.R. XIII Pat. 268. (2) 306 U.S. 238; 83 Law. Ed. 627.

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would not have enjoyed had they remained at work." It was also held that "the Congress was intent upon protection of employees' right to self-organisation and to the selection of representatives of their own choosing for collective bargaining without restraint or coercion." On the facts the conclusion of the majority was that the strike was illegal in its inception and prosecution. This was really not the exercise of the right to strike to which the Act referred. It was an illegal seizure of the building in order to prevent their use by the employer in a lawful manner, and thus by acts of force and violence compel the employer to submit. The conclusion, therfore, was that to provide for the reinstatement or re-employment of employees guilty of the acts which even according to the Board had been committed would not only not effectuate any policy of the Act but would directly tend to make abortive its plan for peaceable procedure. Mr. Justice Reed, who delivered a dissenting judgment thought that both labour and management had erred grievously in their respective conduct and so it would not be unreasonable to restore both to their former status. That is why he was not prepared to reverse the order of reinstatement passed by the Board. The Bank naturally relies upon the majority decision in support of its contention that its employees who participated in the pen-down strike are not entitled to reinstatement.

In considering the question as to whether the principle underlying the majority decision should be applied to a pen-down strike in India it is necessary to remember that the pen-down strike properly so-called is recognised as a strike under s. 2(q) of the Act and so it would not be safe to extend the principles of American decisions bearing on this question without a careful scrutiny of the relevant provisions of the American statute and the facts on which the said decisions are based. Let us then condsider the facts on which the majority decision was based. It appears that an acrimonious dispute had been going on between the Corporation and its employees for some time before February 17, 1937 when the pen-down strike commenced. The Corporation was not prepared to recognise the

outside union and had employed a labor spy to engage in espionage within the union and continued the employment of the said spy. It also appears that the superintendent of the Corporation when requested to meet the deputation of the union required that the deputation should consist only of employees of five years' standing. Subsequently the superintendent refused to confer with the committee in which the outside organisation had been included; and as a punitive measure he required the president of the union to work in a room adjoining his office with the purpose of keeping him away from the other workers. It was in this background of bitter relationship that the strike commenced.

In the afternoon of February 17 the union committee decided upon a sit-down strike by taking over and holding two of the respondent's key buildings. These were then occupied by about 95 employees, as a result of which work in the plant stopped. In the evening the superintendent accompanied by police officials went to each of the building and demanded that the men leave. They, however, refused whereupon the respondent's counsel who had accompanied the superintendent announced in loud tone that all the men in the plant were discharged for the seizure and detention of the buildings. Even so the men continued to occupy the buiildings until February 26. Their fellow members brought them food, blankets, stoves, cigarettes and other supplies. Meanwhile on February 18, the respondent obtained from the state court an injunction requiring the men to surrender the premises. The men refused to obey the order and a writ of attachment for contempt was served on them on February 19. When the men refused to submit a pitched battle ensued and the men successfully resisted the attempt by the sheriff to evict and arrest them. Efforts at mediation failed. Ultimately on February 26, the sheriff with an increased force of deputies made a further attempt and this time, after another battle, the men were ousted and placed under arrest. They were subsequently prosecuted and most of them were fined and given jail sentence for violating

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the injunctions. A bare statement of these facts would clearly bring out the true character of the strike with which the Supreme Court was dealing. It was not merely an illegal but violent strike; it was a strike which began with the wrongful seizure of the employer's property and his exclusion from it; a strike accompanied by violence which led to pitched battles between the strikers and the sheriff's men; a strike continued by the strikers even after they were formally discharged from the employment and against an order of injunction by a competent court. It is difficult to accede to the argument that the majority decision in that case can be extended to the facts before us. As Teller has observed "the strike in question can be more accurately defined as a strike in the traditional sense to which is added the element of trespass of the strikers upon the property of the employer". (1) Therefore, in our opinion, this decision does not assist the Bank in support of its case that mere-participation in the illegal strike in the present case can by itself defeat the claim of the employees for reinstatement.

In this connection we may point out that, according to Teller the Fansteel decision marks "what is hoped to be an end of an unfortunate chapter in the history of American labor activity"; he has added that "there is danger, however, in viewing the sit-down strike solely as the reflection of lawless labour leadership. The causes of its emergence are deeper. Indeed labour has contended that capital and labor share equal responsibility for its rise and development. No analysis of a sit-down strike can claim a broad view of the subject, says labor, without a full measure of consideration of the infamous Mohawk Valley methods used by Remington-Rand to break strikes, nor to the facts elicited in the recent Rand-Bergoff trial under the Byrnes Act. ..... The anarchy of law which resulted from unlawful employer utilisation of instruments of violence and chicanery in disregard of law needed the sit-down

(1) Ludwig Teller's "Labour Disputes and Collective Bargaining" Vol I, p. 311, s. 106.

strike as an effective counterpoise"; and so the author significantly concludes that "it is no coincidence that statistics show a precipitate drop in the prevalence of sit-down strikes immediately upon validation by the United States Supreme Court of the National Labor Relations Act." It is in the light of this background that the Supreme Court had been called upon to decide the question of reinstating employees in the *Fansteel case* (1).

The history of the trade union legislation in England shows that the trade union movement had to wage a long and bitter struggle to secure recognition for the workmen's right to organise themselves into unions and to exercise their right of collective bargaining if necessary by the use of the weapon of strikes. In America a similar struggle took place, and, as we have just pointed out, it was marked by violence on the part of both capital and labour, because the employer's theory of "hire and fire" offered relentless resistence to the workmen's claim to form unions and to resort to strikes for trade union purposes. In *Williams Truax* v. *Michael Corrigan* (2) Mr. Justice Brandeis, in his dissenting judgment, has given a very illuminating account of the history and progress of the trade union movement in the United States, in England and the Colonies. "Practically every change in the law", observed Mr. Justice Brandeis, "governing the relation of the employer and the employees must abridge in some respect the liberty or property of one of the parties, if liberty and property is measured by the standard of the law theretofore prevailing. If such changes are made by acts of the Legislature we call the modification an exercise of the police power, and although the change may involve an interference with existing liberty or property of individuals, the statue will not be declared a violation of the due process clause unless the court finds that interference is arbitrary or unreasonable, or that, considered as a means, the measure has no real or substantial relation of cause to a permissible end",

(1) 306 U.S. 238; 83 Law. Ed. 627.

(2) 66 Law. Edn. 311; 257 U.S 254.

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In that case the validity of the prohibition of Ariz. Civil Code 1913, cl. 1464 against the interference by injunction between employers and employees in cases growing out of a dispute concerning terms or conditions of employment was challenged; and the challenge was upheld by a majority of the learned judges who took the view that the said provision was contrary to the 14th Amendment of the Constitution. Holmes, Pitney, Clarke and Brandeis, JJ., however, dissented. The main decision in that case is not of direct assistance in the present appeals. No doubt Mr. Anand has attempted to contend that the acts of which the strikers were held guilty in that case are similar to the acts alleged against the employees in the present appeals; but this argument would be relevant only if it is shown by the Bank that the specific subversive acts alleged have been committed by the specific individual employees. To that point we will refer later on. Incidentally the present decision is of some importance because the dissenting opinion delivered by Mr. Justice Brandeis has been subsequently treated as an authoritative exposition of the problem of trade unionism and the history of its growth and development.

Fortunately, as the Indian Trade Unions Act 1926, (16 of 1926), the Industrial Employment (Standing Orders) Act 1946 (20 of 1946), and the Industrial Disputes Act 1947 (14 of 1947) show, our Legislature has very wisely benefitted by the experiences of other countries in the matter of the development of trade union movement, and has made progressive, just and fair provisions governing the important problem of industrial relationships, the formation of trade unions, and the settlement of industrial disputes. It can be justly claimed that though we have witnessed capital-labour conflicts in our country, on the whole neither party has departed from the pursuit of peaceful methods, and both parties submit their disputes to be resolved in accordance with the provisions of the Act. In dealing with industrial disputes like the present, we must, therefore, primarily consider the relevant statutory provisions and the material Indian decisions.

Thus considered the conclusion is inevitable that the pen-down strike is a strike within s. 2(q) and so *per se* it cannot be treated as illegal; it has been found to be illegal in this case because it was commenced in contravention of s. 23(b) of the Act; but, as has been held by this Court in *M/s. Burn & Co. Ltd.* v. *Their Workmen* (1) mere participation in such an illegal strike cannot necessarily involve the rejection of the striker's claim for reinstatement. As we have already indicated, on the findings of the appellate tribunal nothing more than such participation has been proved against the employees whose reinstatement has been ordered; and so, unless the said finding is reversed, the first contention raised by the Bank must fail.

It has been strenuously urged before us that in the case of a Bank which is a credit institution a pen-down strike, if continued for a long period, is likely to affect prejudicially the credit of the Bank. It is also pointed out that, even in regard to industrial concerns, if strikers entered the premises of the factory and sit around the plant in large numbers, in the heat of the moment unfortunate and ugly incidents are likely to happen, and so such pen-down or sit-down strikes should be positively discouraged. We are prepared to concede that in the surcharged atmosphere which generally accompanies strikes and when passions are aroused, a large scale and continuous pen-down strike may lead to untoward consequences. But, on the other hand, even in the case of such a strike, the employer is not without a remedy. He may bar the entry of the strikers within the premises by adopting effective and legitimate methods in that behalf as in fact the Bank did in the present case from April 23. He may call upon the employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper enquires according to the standing orders, and pass proper orders against them subject to the relevant provisions of the Act. If the Bank had been properly advised to adopt such a course, many of the difficulties which it had to face in the present proceedings would not

(1) A.I.R. 1959 S.C. 529.

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probably have arisen. Therefore, we do not think that the general hypothetical consideration that pen-down strikes may in some cases lead to rowdy demonstrations or result in disturbances or violence or shake the credit of the Bank would justify the conclusion that even if the strikers are peaceful and non-violent and have done nothing more than occupying their seats during office hours, their participation in the strike would by itself disqualify them from claiming reinstatement.

Let us then consider the second contention raised by the Bank. It is urged on behalf of the Bank that it is really unnecessary to examine which particular employee was directly associated with the preparation and circulation of the subversive circular or posters. The offensive posters and circulars had been drafted, printed and circulated in pursuance of the common object of the strikers, and each one of them must, therefore, share the responsibility for the said act. It is really an argument based on the theory of conspiracy which makes all conspirators liable for the act of any one of them.

This argument is countered by the employees with the contention that the activities of the Union do not fall to be considered in the present enquiry. It is the acts of individual strikers who have been dismissed that have given rise to the dispute and the enquiry must be confined to that dispute alone. The learned Attorney-General seriously asked us to bear in mind that the application of the doctrine of conspiracy to the decision of the present dispute may have far-reaching consequences on the future of the trade union movement itself, and he suggested that since the Union and its activities were not the subject-matter of the present enquiry we need not consider the argument of conspiracy at all. Besides, according to him, if the theory of conspiracy was upheld it would mean that if any office bearers of the Union were guilty of any subversive acts the whole membership of the Union would be constructively responsible and that is plainly unreasonable. In this connection he also referred us to ss. 17, 18 and 19 of the Indian Trade Unions Act 1926

(16 of 1926). We have indicated this argument at this place by anticipation. In fact this argument has been raised by the employees in their appeal but we thought it would be convenient to deal with both these aspects of the matter in one place.

Now the answer to both these technical and academic contentions is the same. In industrial adjudication tribunals should be slow to adopt any doctrinaire or legalistic approach. They should as far as is reasonably possible avoid the temptation of formulating general principles and laying down general rules which purport to cover all cases. Let us recall the nature of the enquiry which the appellate tribunal had directed as a result of its interlocutary judgment. This enquiry is confined to the question as to whether in regard to the case of each one of the dismissed employees, the Bank has shown any positive circumstances as a result of which reinstatement, which is the normal rule, should not be directed. Thus considered we do not think it necessary to deal with the academic points raised by both the parties before us.

The third argument urged by the bank is in regard to the finding of the tribunal that only 14 employees named by it are responsible for the subversive posters and hand bills. It is urged that this finding is perverse. We are not impressed by this argument. There is no doubt that the three posters Exs. 255 (a), 255 (c) and 302, to which strong exception has been taken by the Bank are subversive of the credit of the Bank. They make imputations about the honesty of the management of the Bank and in terms suggest improper use of the funds of the Bank for personal purposes. It is also true that a large number of other documents issued by the Union before and during the strike have used exaggerated, and unduly militant intemperate, language, and in our opinion the appellate tribunal was justified in expressing its disapproval of the use of such language; but the appellate tribunal thought that none of these documents could really be taken to be subversive of the credit of the Bank and with that conclusion we are in full agreement. Therefore the only question which we have to consider is whether

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the view taken by the appellate tribunal that 14 persons were actively concerned with these offensive documents can be successfully challenged by the Bank before us.

In making its finding on this point the appellate tribunal has substantially relied on the statement made by H. L. Puri. He was asked whether the drafts of the letters issued by him had been approved at the meeting of the working committee or on his individual responsibility and he replied that they were never written on individual responsibility but were based on consultation with the members of the working committee. Then he was asked whether he could name the persons whom he consulted in drafting the poster dated July 5, 1949 (Ex. 222). In reply to this he enumerated the names of 9 persons and added the word "so on." It appears that the appellate tribunal asked him several questions on the same topic and the effect of his admissions clearly was to show that most of the documents were issued by the secretary or the president after he had consulted the persons named by Puri. In this connection Puri gave the names of the office bearers of the Federation at Delhi. It was in the light of these admissions that the appellate tribunal came to the conclusion that 14 persons named by him can be safely taken to have been actively associated with the drafting and the publication of the subversive documents.

Mr. Anand contends that the list of office bearers separately supplied by Puri includes a much larger number of active workers of the Union and on the evidence of Puri all these active workers should have been held responsible for the said documents. In this connection he has relied on the affidavit filed by Amar Singh on behalf of the Bank. We do not think that this argument is wellfounded. It is significant that though the appellate tribunal had directed the Bank by its interlocutary judgment to file a statement giving particulars of the acts alleged against each one of the employees no such statement was filed. Besides it is fairly conceded before us by Mr. Anand that most

of the employees who made affidavits in the subsequent enquiry were not asked any general question about their alleged subversive activities and no particular question was put to them in regard to the relevant subversive documents. The judgment of the appellate tribunal shows that it first considered the general points and the evidence relied upon by the parties in that behalf; and then it exhaustively dealt with the whole of the evidence bearing on the case of each individual employees. We are satisfied that the Bank is not justified in contending that in excluding 136 employees from the responsibility of direct participation in the drafting and publication of the subversive circulars and hand-bills the appellate tribunal has ignored any important evidence. The argument that the said finding is opposed to the weight of evidence and as such perverse must therefore be rejected.

Then Mr. Anand has invited us to consider some individual cases. According to him the case against Joshi had not been properly considered by the appellate tribunal. It does appear that Joshi admitted that he had taken part in the drafting of documents P. 272, 274, 279, 280 and 286; but none of these documents has been found to be subversive and so it is idle to contend that Joshi's connection with any of the three subversive documents is established. So there is no substance in the argument that Joshi's case should be reconsidered.

Then our attention has been drawn to the cases of five other employees Narain Das, Chuni Lal, Som Datt, Trilok Chand and Charan Singh. In regard to these persons the appellate tribunal has found that the Bank had failed to prove any subversive acts against them, and that undoubtedly is a question of fact and the finding of the appellate tribunal cannot be reopened. But Mr. Anand has attempted to challenge the correctness of this finding on the ground that it is entirely inconsistent with one material document on the record. This document is the report made by Dina Nath on April 24 in which the incidents that took place on April 23 and 24 have been set out and the names of persons who took prominent part in the said incidents

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have been enumerated. This list includes the names of the five persons in question. Dina Nath had, however, died at the date of the enquiry and so he could not give evidence. Jagan Nath, who was then the Superintendent of Police, proved this report. Mr. Anand's grievance is that though the evidence of Jagan Nath had been accepted by the appellate tribunal in a part of its judgment it has failed to consider his testimony in dealing with the cases of these five persons. In our opinion this argument is entirely misconceived. It is not correct to say that the appellate tribunal has accepted the whole of Jagan Nath's evidence in any part of its judgment; while dealing with the question about the conduct of the crowd the appellate tribunal considered the evidence of Rajinder Nath, Mehta, Ram Pratap and Amar Singh and held that part of their evidence which was corroborated by Jagan Nath and also partially by Puri must be believed; that is all. Besides, the evidence of Jagan Nath itself does not carry the Bank's case any further against the five persons. No doubt, while proving the report of Dina Nath, Jagan Nath first stated that the facts narrated therein were correct; but in cross-examination when he was asked about some details mentioned in the report he added that the report was written by Dina Nath and he could not say anything about it. Further he also admitted that during the course of his visit and stay at the Bank when the strike was going on he only knew three persons who took part in the activity which was described by Dina Nath in his report. Thus the evidence of Jagan Nath does not show that he clearly knew any of the five employees and the same comment obviously falls to be made about Dina Nath himself who made the report. Therefore it is not accurate to say that the conclusion of the appellate tribunal in regard to these five cases suffers from any infirmity on which it can be successfully challenged before us; besides the Bank apparently relied upon other evidence against these five persons, and not the report of Dina Nath, and that evidence has been disbelieved.

Mr. Anand has then urged that in directing reinstatement of 136 employees the appellate tribunal failed to consider the fact that in the meanwhile the Bank has employed additional hands and it would be unfair to the Bank to direct that these dismissed employees should be taken back. The reinstatement order would lead to complications and the Bank may have to face the claims of those who have been employed in the meanwhile. Mr. Anand wanted to prove that the Bank had employed a large number of hands in the meanwhile by referring to the statement made by the Union in the bulletin and posters issued during the strike. These statements seem to indicate that the Union complained that pending the strike the Bank was employing new hands. But if the Bank wanted to urge this plea seriously it should have proved the relevant facts, e.g., how many employees have been appointed and on what terms. These are matters within the special knowledge of the Bank and they could have been proved very easily. The Bank did not choose to prove these facts. Indeed it does not appear that this plea was urged as a separate plea against the order of reinstatement before the appellate tribunal. In any case, in the absence of satisfactory materials it would be difficult to deal with this plea on the merits. Besides, if the Bank has failed to establish its specific case against any of the 136 employees, there is no reason why the normal rule should not prevail and the employees should not get the relief of reinstatement. The mere fact that the Bank may have employed some other persons in the meanwhile would not necessarily defeat such a claim for reinstatement. As has been held by this Court in the *National Transport and General Co. Ltd.* v. *The Workmen* (1), however much the court may sympathise with the employer's difficulty caused by the fact that after the wrongful dismissals in question he had engaged fresh hands, the court cannot "overlook the claims of the employees who, on the findings of the tribunals below, had been wrongly dismissed." In the case of such wrongful

(1) Civil Appeal No. 312 of 1956—Decided by this Court on January 22, 1957.

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dismissal the normal rule would be that the employees thus wrongfully dismissed must be reinstated. "The hardship in question", observed this Court, "has been brought about by the precipitate action of the appellants themselves who dismissed their workmen without holding the usual enquiries after framing a proper charge against them. If they had proceeded in the usual way and given a full and fair opportunity to the workmen to place their case before the enquiring authority, the result may not have been so hard." These observations are equally applicable to the conduct of the Bank in the present appeals.

The last argument urged by Mr. Anand is that a large number of employees who are clamouring for reinstatement have secured employment on a fairly permanent basis and so it is unnecessary that they should be forced on the Bank. This argument cannot be entertained because it has not been urged before the appellate tribunal, and though it was sought to be raised before us, Mr. Anand fairly conceded that in the absence of any material it would not be possible for him to press this point. Indeed it is the first two general points which were seriously pressed before us by Mr. Anand and Mr. Sanyal on behalf of the Bank. Mr. Anand no doubt raised three additional subsidiary points in Civil Appeal No. 519 of 1958, in which he appeared, but as we have pointed out there is no substance in any one of them. In Civil Appeal No. 520 of 1958, in which Mr. Sanyal appeared for the Bank he did not challenge the findings recorded by the appellate tribunal in respect of the 10 employees concerned in the said appeal. In the result both the appeals preferred by the Bank fail and are dismissed with costs.

That takes us to Civil Appeal No. 521 of 1958, filed by the employees. In this appeal we are concerned with the order refusing reinstatement to 14 employees. In addition to the two preliminary objections which we have already considered the learned Attorney-General raised two general points for the appellant. The first is that the appellate tribunal has erred in law in virtually penalising the 14 employees for the activities of the Union, and in that connection he raised the

question that the activities of the Union were outside the scope of the present enquiry. In dealing with the Bank's appeals we have dealt with this question, and held that the order passed by the appellete tribunal cannot be challenged on such a technical and academic ground. If the appellate tribunal held that those 14 persons were directly and actively concerned with the preparation and publication of the offending circulars it was certainly entitled to take that fact into account in deciding whether each one of them should be reinstated or not.

The other general contention raised is that in refusing reinstatement to the employees other than Puri the appellate tribunal has acted contrary to natural justice inasmuch as no opportunity was given to them to meet the case of the Bank that they were directly and actively concerned with the offending documents. The learned Attorney-Ceneral has strongly relied on the principle that in enquiries of this kind the principles of natural justice must be followed and that the employee against whom disciplinary action is sought to be taken must be given a charge-sheet, evidence against him must be recorded in his presence, and he must have an opportunity to rebut the said evidence. The validity of this principle is not in dispute (Vide: *Union of India* v. *T. R. Varma* (1); *New Prakash Transport Co. Ltd.* v. *New Suwarna Transport Co. Ltd.*(2); and *Phulbari Tea Estate* v. *Its Workmen* (3)). Has this principle of natural justice been really contravened in the present proceedings ? In our opinion, the answer to this question must be in the negative. In dealing with this point we cannot lose sight of the nature of the question which the appellate tribunal was called upon to consider. It is patent that in the present dispute the Union's case was that the refusal of the Bank to employ all the 150 employees was vindictive and it constituted an act of victimisation. It was known to the Bank that the strike was the result of the Union's decision, said the Union, and that all the acts committed by the Union and its officers before

(1) [1958] S.C.R. 499. (2) [1957] S.C.R. 98.

(3) [1960] (1) S.C.R. 32.

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and during the strike were the acts not of any individuals but of the Union as a whole; and so the Union pleaded before the appellate tribunal that there was no room for making any distinction between one workman and another and if the Bank took back a large number of strikers it should have taken back the 150 remaining workmen as well; but it refused to do so because of its policy of victimisation. It wants to teach a lesson to all the office bearers and active workers of the Union. This plea was denied by the Bank, which in turn alleged positive grounds against each one of the 150 employees.

The appellate tribunal was thus called upon to consider whether it would be justified in holding all the strikers responsible for each one of the acts of the office bearers or leaders of the Union; and, after considering the evidence, it decided to limit the liability for the said subversive acts only to 14 persons who, in its opinion, could be regarded as directly and actively responsible for them. In other words, the appellate tribunal did not proceed to deal with the question on any theoretical or academic basis and took a practical and common-sense view of the matter. It considered Puri's evidence and took into account the probabilities of the case. None of these workmen ever said anything contrary to the case which was made out by the Union and none of them made an attempt to deny the statements made by Puri on oath. It is certainly relevant to remember that Puri is undoubtedly one of the leaders of the Union and he gave testimony to the effect that these persons had been consulted and were responsible for the subversive documents. It is not a case where evidence has been led by the Bank making allegations against any of the employees in their absence. It is a case where one of the leaders of the employees' union himself has made statements on oath on which the appellate tribunal relied. Indeed it would be unreasonable to assume that it is the case of these employees that the relevant statements made by Puri are untrue. Besides the conclusion of the appellate tribunal is not based only on the evidence of Puri; it is also based on the probabilities, and on the

respective positions of those persons in the Union and the part they are otherwise shown to have taken in the affairs and activities of the Union. Having regard to the manner in which the implementation of the Union's decisions is usually left to its leadership it would have been unreasonable and unrealistic to have held the whole membership responsible for the offending documents. Besides the appellate tribunal took the view that the reinstatement of the thirteen persons would be harmful to the harmony and peace in the Bank and would prejudice the interest of the Bank; and that can not be said to be an irrelevant consideration. Therefore, we do not think that in the circumstances of this case it can be said that the conclusion of the appellate tribunal against these employees is vitiated by the contravention of any rule of natural justice.

But apart from this aspect of the matter, in regard to 4 out of these persons, the case against Seighal, Syal, Mahajan and Kedar Nath is based on the additional finding made by the appellate tribunal against them. It has been found by the appellate tribunal that on the first day of the strike an assemblage of boisterous crowd had gathered in the head office compound and at that gathering violent speeches were delivered by the leaders of the strike, obviously with the intention to make the work of the Bank impossible. The attitude of the crowd at this time was violent; and on the evidence the appellate tribunal came to the conclusion that in this activity, besides Puri, the four persons just mentioned by us had taken a leading part. In other words, on this finding itself it can be reasonably held that these 4 persons are not entitled to reinstatement. Then as to Sabharwal, he admitted that he was actively associated with the offending document Ex. 255 (c) and that would be enough to justify the order of the appellate tribunal refusing him reinstatement. Then as to Kakar, apart from Ex. 255 (a) and Ex. 255 (c), there is no doubt that he was actively concerned with the document Ex. 302, and if the said document is subversive that alone would be enough to disentitle him from claiming reinstatement.

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In this connection our attention was drawn to the fact that in dealing with the individual case of Kakar the appellate tribunal has considered several documents including Ex. 302 and has observed that it did not find anything substantial therein which can be classed as subversive, whereas in an earlier part of the judgment this document has been treated as subversive. Having regard to the fact that these apparently inconsistent observations have been made in respect of this document we have considered the said document (Ex. 302) ourselves. It purports to be an open letter to Yodh Raj, the General Manager of the Bank; after making several controversial statements which though couched in intemperate language may not amount to a subversive activity, it ends by saying that "the Bank's interests are more dear to us than to the power-conceited management which has been exploiting this foremost institution of the Punjabis for its own individual interests and self-aggrandisement, throwing to the winds the interests of the shareholders, the depositors and the poor Bank employees." This statement is very similar to the statements contained in Exs. P. 255 (a) and 255 (c), and, in our opinion, their publication can be regarded as subversive of the credit of the Bank. Therefore, for his direct connection with this document alone the appellate tribunal would have been justified in refusing Kakar reinstatement. In regard to Bery, the argument urged is purely technical. Bery admitted that in March 1952 he had adopted go-slow methods and had asked other workers also to go-slow and reprimanded those who would not listen to him. Go-slow methods have always been condemned by industrial tribunals, and so, in dealing with Bery's case, the appellate tribunal held that this past conduct was against him. The argument is that the enquiry was confined to the past records of the employees and this conduct had not been entered in the past record of Bery. In our opinion such a technicality is of no avail particularly when the conduct in question is admitted by Bery. Kedar Nath's case, is clearly unarguable and has not been pressed before us. He was convicted by a criminal court for an indecent assault on a girl of 11

years and sentenced to three months imprisonment. The appellate tribunal thought, and quite rightly, that it would be meaningless and improper to direct his reinstatement. Thus it would be seen that in regard to five out of the 13 employees there are other grounds also on which the final order is based and so the contention about the failure to comply with the requirements of natural justice would ultimately be available only in the cases of the remaining 5 employees. Out of these we will presently deal with the case of Munna Lal separately. We have considered the cases of the remaining 4, viz., Balraj Arya, Ved Parkash Sharma, A. C. Thakur and Ram Parkash Bhalla and we are satisfied that we would not be justified in interfering with the order passed against them. That leaves only one case to be considered and that is the case of Munna Lal Gupta.

In regard to Munna Lal's case, the record suffers from confusion. In his evidence Puri has not referred to any Munna Lal at all. He has referred to one Manohar Lal Gupta in connection with the subversive documents: and no attempt has been made by the Bank to show either that Manohar Lal Gupta has been wrongly taken down as Munna Lal or that the two names represent the same individual. Munna Lal does not appear to be a member of the working committee either. It is true that in the first part of its judgment the appellate tribunal has mentioned Munna Lal at Sr. No. 9 in setting forth the relevant evidence of Puri, which means that instead of Manohar Lal Gupta the appellate tribunal put down the name of Munna Lal in summarising the evidence of Puri; and this would naturally suggest that according to it Munna Lal was concerned with the said subversive documents along with the other persons mentioned by Puri. Curiously enough, in dealing with the individual case of Munna Lal Gupta the appellate tribunal has considered the other evidence produced by the Bank against him and ordered that Munna Lal Gupta should be reinstated with continuity of service and with compensation. Having made this finding in terms in favour of Munna Lal, in the last portion

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of its judgment it has again put Munna Lal's name in the list of 14 employess who are refused reinstatement. The position then is that Puri does not refer to Munna Lal by name and the appellate tribunal has made inconsistent findings in respect of him, Under these circumstances Mr. Sanyal found it difficult to press the case of the Bank against Munna Lal. We would, therefore, allow the appeal of Munna Lal, set aside the order passed by the appellate tribunal and direct his reinstatement on the same terms and conditions on which reinstatement of the other 136 employees has been directed by the appellate tribunal. Subject to this modification the appeal preferred by the employees fails and is dismissed. Since the appeal has succeeded in respect of Munna Lal, we direct that parties should bear their own costs of this appeal.

SUBBA RAO J.—I have had the advantage of perusing the judgment prepared by my learned brother, Gajendragadkar, J. I agree with his conclusion. I would prefer not to express my opinion on the construction of s. 33-A of the Industrial Disputes Act, 1947, for the reason that the argument which called for a consideration of the said section had not been raised at any of the earlier stages of the dispute, but was raised for the first time in this Court.

Appeals Nos. 519 and 520 dismissed.
Appeal No. 521 allowed in part.