used by the employees on leave and license. Whatever payment was received from them was not therefore "rent" within the meaning of cl. (ii).

Our conclusion therefore is that no tax is leviable under the Punjab Urban Immovable property Tax Act, 1940, in respect of the buildings in these two appeals. The High Court therefore rightly quashed the orders of assessment. The appeals are accordingly dismissed with costs.

*Appeals dismissed.*

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## THE TATA OIL MILLS CO., LTD.

*v.*

## WORKMEN & ANR.

(P. B. GAJENDRAGADKAR, M. HIDAYATULLAH and J. C. SHAH JJ.)

*Industrial Dispute—Termination of service of an employee on payment of one month's salary in lieu of notice—Order of termination purported to be discharge under R. 40 (1) of Service Rules—Jurisdiction of the Tribunal to examine whether it amounts to a discharge or dismissal.*

Mr. Banerjee was an employee of the appellant. His services were terminated on the ground that the appellant had lost confidence in him and in lieu of notice he was paid one month's salary. The union to which Mr. Banerjee belonged took up his cause and on the failure of the parties to reach a settlement the matter was referred to the Industrial Tribunal by the Government.

The appellant contended before the Tribunal that the order of termination of service of Mr. Banerjee was an order of discharge which it was competent to make under R. 40 (1)

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of the Service Rules. It was contended by the respondent that the termination was not a discharge *simpliciter* but was in substance dismissal and that the Tribunal was entitled to consider the propriety of the appellant's action.

The Tribunal held that it had jurisdiction to look into the reasons behind the discharge of an employee. On the examination of the evidence the Tribunal found that no *malafides* on the part of the employer had been proved and that the termination of service did not amount to victimisation or unfair labour practice. Even so it held that the discharge was not justified and directed the reinstatement of Mr. Banerjee. The present appeal is by way of special leave.

Before this Court, in addition to the above contention the appellants contented that in the light of the evidence before the Tribunal its finding that the discharge was not justified, was wrong.

*Held*, that in the matter of an order of discharge of an employee the form of the order is not decisive. An Industrial Tribunal has jurisdiction to examine the substance of the matter and decide whether the termination is in fact discharge *simpliciter* or it amounts to dismissal which has put on the cloak of discharge *simpliciter*. The test always has to be whether the act of the employer is *bonafide* or whether it is a *malafide* and colourable exercise of the powers conferred by the terms of contract or by the standing orders.

*Buckingham & Carnatic Co. Ltd.* v. *Workmen of the Company* (1951) II L. L. J. 314, *Chartered Bank, Bombay* v. *Chartered Bank Employees Union* (1960) II L. L. J. 222 and *U. B. Dutt & Co. (Private) Ltd.* v. *Its Workmen*, (1962) II L. L. J. 374, referred to.

Since the reasons given by the Tribunal in support of its conclusion were wholly unsatisfactory its order must be set aside.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 322 of 1962.

Appeal by special leave from the Award dated September 13, 1961, of the Second Labour Court, West Bengal, in Case No. VIII-C-40 of 1960.

*M. C. Setalvad, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the appellant.

*C. K. Daphtary, Solicitor General of India* and *Janardhan Sharma,* for the respondent No. 1.

1963. February 15. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—Mr. R. K. Banerjee had been employed by the appellant, the Tata Oil Mills Co. Ltd., as a Salesman on April 3, 1956, as a probationer and he was confirmed on November 5, 1956. On December 5, 1959, his services were terminated and he was informed that the appellant had lost confidence in him, and so, it had decided to discharge him. Accordingly, in lieu of notice, he was paid a month's salary and was told that he ceased to be the employee of the appellant as from the date next after he received the order from the appellant. The discharge of Mr. Banerjee was resented by the Union to which he belonged and the Union took up his case. Since the dispute could not be settled amicably, the Union succeeded in persuading the Government of West Bengal to refer the dispute for adjudication to the Second Labour Court on the ground that the said discharge was not justified. That is how the discharge of Mr. Banerjee became an industrial dispute between the appellant and the respondents, its workmen represented by their Union. The Labour Court which tried the dispute came to the conclusion that the appellant had failed to justify the discharge of Mr. Banerjee and so, it has directed the appellant to reinstate him and pay him full emoluments from the date of his discharge up to the date of his reinstatement. It is this order which is challenged by the appellant by its present appeal brought to this Court by special leave.

*Gajendragadkar J.*

The material facts leading to the termination of Mr. Banerjee's services lie within a very narrow compass. In November, 1959 Mr. Banerjee was working in the Assam area and as such, had to work

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as a Salesman at Dhubri, Bongaigoan, Rangia and Tejpur. The appellant expected that as its Salesman Mr. Banerjee should visit dealers in his area and carry on intelligent and intensive propaganda to popularise the sale of the appellant's products. The appellant has a Sales Office in Calcutta and the manager of the said Office visits the areas within his jurisdiction to inspect the workof Salesmen. Accordingly, Mr. Gupta, who was then the manager of the Calcutta Office, visited the area assigned to Mr. Banerjee, in the last week of October. He found that Mr. Banerjee was not working satisfactorily as a Salesman. In particular, he noticed that whereas Mr. Banerjee had reported to the Office that the Bongaigoan Stockists had 20 boxes of dried up and deshaped 501 Special Soap which could not be distributed in the market, he had in fact not opened a single box and had not cared to satisfy himself that the soaps had either dried up or had been deshaped. In fact, Mr. Gupta found that the boxes were intact and he opened them and discovered that five boxes contained soap which had dried up and had become deshaped, whereas the 15 other boxes were in good condition. Thereupon, Mr. Gupta made a report to the zonal Manager on November 2, 1959, adversely commenting on Mr. Banerjee's work. The said report was in due course forwarded to the Head Office in Bombay. The Head Office then instructed the Calcutta Sales Office by telephone to send for Mr. Banerjee and call for his explanation. Accordingly, Mr. Banerjee was sent for and his explanation taken; Mr. Gupta then made another report expressing his dissatisfaction with the explanation given by Mr. Banerjee. This report was sent on November 24, 1959. The Head Office accepted this report and on December 5, 1959, issued to Mr. Banerjee the order terminating his services. That, in brief, is the case set out by the appellant in support of the action taken by it against Mr. Banerjee.

The appellant had alleged that the termination of Mr. Banerjee's services was not dismissal but was a discharge *simpliciter*, and according to it, the discharge was justified by the terms of contract between the appellant and Mr. Banerjee as embodied in Rule 40 (1) of the Service Rules of the appellant. The appellant, therefore, urged that the Labour Court had no jurisdiction to consider the propriety of the appellant's action in discharging Mr. Banerjee.

The respondents, on the other hand, contended that the discharge was not discharge *simpliciter* but was, in substance, dismissal, and so, it was urged that the Labour Court was entitled to consider the propriety of the appellant's action. Basing themselves on the plea that the discharge amounted to dismissal, the respondents pleaded that the failure of the appellant to hold an enquiry against Mr. Banerjee introduced a serious infirmity in the order passed against him; and they argued that the conduct of the appellant was *malafide* and the dismissal of Mr. Banerjee amounted to victimisation.

The Labour Court has found that according to the terms of contract under which Mr. Banerjee was employed by the appellant, the appellant was entitled to discharge Mr. Banerjee from its employment under Rule 40 (1) of the Service Rules; but it held that merely because the order served on Mr. Banerjee purported to be an order of discharge, that would not exclude the jurisdiction of the Labour Court to examine the substance of the matter. In fact, Mr. Joshi who appeared for the appellant conceded before the Labour Court that an adjudicating Court can look into the reasons behind the discharge of an employee. That is why evidence was led by both the parties before the Labour Court. Having considered that evidence, the Labour Court has found that the respondents' plea about the *malafides* of the

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appellant was not proved and it held that the termination of Mr. Banerjee's services could not be said to amount to an act of victimisation or an unfair labour practice. Even so, it held that the discharge was not justified, and so, it has directed the appellant to reinstate Mr. Banerjee. It is the validity of this order that is challenged before us by Mr. Setalvad on behalf of the appellant.

The true legal position about the Industrial Courts' jurisdiction and authority in dealing with cases of this kind is no longer in doubt. It is true that in several cases, contract of employment or provisions in Standing Orders authorise an industrial employer to terminate the service of his employees after giving notice for one month or paying salary for one month in lieu of notice, and normally, an employer may, in a proper case, be entitled to exercise the said power. But where an order of discharge passed by an employer gives rise to an industrial dispute, the form of the order by which the employee's services are terminated, would not be decisive ; industrial adjudication would be entitled to examine the substance of the matter and decide whether the termination is in fact discharge *simpliciter* or it amounts to dismissal which has put on the cloak of a discharge *simpliciter*. If the Industrial Court is satisfied that the order of discharge is punitive, that it is *malafide*, or that it amounts to victimisation or unfair labour practice, it is competent to the Industrial Court to set aside the order and in a proper case, direct the reinstatement of the employee. In some cases, the termination of the employee's services may appear to the Industrial Court to be capricious or so unreasonably severe that an inference may legitimately and reasonably be drawn that in terminating the services, the employer was not acting *bonafide*. The test always has to be whether the act of the employer is *bonafide* or not. If the act is *malafide*, or appears to be a colourable

exercise of the powers conferred on the employer either by the terms of contract or by the standing orders, then notwithstanding the form of the order, industrial adjudication would examine the substance and would direct reinstatement in a fit case. This position was recognised by the Labour Appellate Tribunal as early as 1951 in *Buckingham and Carnatic Co Ltd.*, v. *Workers of the Company*, (1), and since then, it has been consistently followed *vide Chartered Bank, Bombay*, v. *Chartered Bank Employees' Union* (2), and *U. B. Dutt & Co. (Private) Ltd.* v. *Its Workmen* (3).

In the present case, the Labour Court has made a definite finding in favour of the appellant that its action in terminating the services of Mr. Banerjee was not *malafide* and did not amount to victimisation. Even so, it proceeded to examine the propriety of the said action and came to the conclusion that Mr. Banerjee's discharge from employment did not appear to it to be justified. In coming to this conclusion, the Labour Court has given some reasons which are clearly unsupportable. It has observed, for instance, that the appellant has not produced any documentary evidence in support of its allegation against the efficiency of Mr. Banerjee. This is clearly wrong because the two reports made by Mr. Gupta in respect of Mr. Banerjee's conduct do amount to documentary evidence which cannot be lightly brushed aside. It has then commented on the fact that the allegations made by Mr. Gupta against Mr. Banerjee on six counts are of a general character. This comment again cannot be justified because Mr. Gupta stated in clear terms the defects in Mr. Banerjee's work which had come to his notice. These defects are specific and it is idle to refuse to give importance to this evidence merely on the ground that no specific instances had been cited. In regard to the question as to whether the 20 boxes had been opened by Mr. Banerjee before he made his report

(1) (1951) II L.L.J. 314. (2) (1960) II L.L.J. 221.
(3) (1962) I L.L.J. 374.

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to the Zonal Office, the Labour Court has observed that on this point, there is the evidence of Mr. Banerjee against that of Mr. Gupta and there was no particular reason to believe one in preference to the other. Now, it is clear that such an observation is hardly of any help because it was necessary for the Labour Court to express its conclusion on this point; it might have believed either Mr. Banerjee or Mr. Gupta, but by saying that there is no reason why one should be believed rather than the other, the Labour Court left this part of the dispute entirely undecided. Similarly, the Labour Court has accepted the fact that Mr. Gupta tha called for and received Mr. Banerjee's explanation and to that extent it has rejected Mr. Banerjee's suggestion that he had not given any explana tion a all; but even so, the Labour Court has not considered the effect of this conclusion on the main controversy between the parties. In our opinion, therefore, the reasons given by the Labour Court in support of its conclusion that the discharge of Mr. Banerjee was not justified are wholly unsatisfactory and so, it has become necessary for us to examine the evidence ourselves.

The first report made by Mr. Gupta expressly states six grounds on which Mr. Banerjee's work was found to be unsatisfactory. Mr. Gupta took the view that Mr. Banerjee was very slow in his work as a Salesman, that he was not able to judge the capacity of the dealers and to give them sufficient stocks in time, that he took no steps to put the products of the appellant on prominent view in the dealers' shops, that he was not looking after the pasting of the posters, in fact in one place the poster was pasted upside down, that he was not educating the stockists and dealers as he could have done and that he was reluctant to put hard and intelligent work. It is remarkable that when Mr. Banerjee was asked about this report in cross-examination, he frankly stated that

Mr. Gupta was not unfriendly towards him and he was really unable to say why Mr. Gupta should have made these adverse comments against his work. In fact, the Labour Court itself has found that the appellant was not actuated by any ulterior considerations in discharging Mr. Banerjee. This report was made by Mr. Gupta soon after he inspected Mr. Banerjee's work and there is no reason, whatever, why the Labour Court should have been reluctant to accept this report.

Confining ourselves to the main complaint against Mr. Banerjee that he had not examined even a single box before he reported that the contents of the said boxes were not marketable, Mr. Gupta expressly stated that he had seen the 20 boxes and found that none of them had been opened at all. They were intact in the company's packing with the straps on them. Mr. Gupta got them opened and found that the contents to the extent of 5 cases were really damaged and that the remaining contents were alright and could be marketted at the company's prices. Mr. Banerjee stated in his evidence that he had all the cases opened and he added, as he had to, that the said cases were repacked for avoiding further deterioration. When he was asked how that could be done, he agreed that the metal straps had to be removed for opening of the boxes, but he added that he had arranged to have them restrapped and nailed. It is clear that the strapping is done in a factory by machines. Mr. Banerjee, however, suggested that he could manage to get the straps put and nailed with hands. This evidence is patently unreliable. Besides, it is significant that when he gave his explanation to Mr. Gupta, Mr. Banerjee admitted that he had opened only 5 or 6 out of the 20 boxes in question though his report suggested that he had opened all the 20 boxes. Therefore, there can be no doubt that Mr. Gupta's statement is absolutely true and that Mr. Banerjee had made his report about the

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unsatisfactory condition of the contents of the 20 boxes without as much as opening any one of them. That being so, it is difficult to understand how the Labour Court could have come to the conclusion that the order of discharge was not justified.

The learned Solicitor General, however, attempted to argue that there was nothing on the record to show that the 20 boxes which Mr. Gupta got opened were the same boxes in respect of which Mr. Banerjee had made his report. We do not think that having regard to the evidence given by Mr. Gupta and Mr. Banerjee and the explanation offered by the latter when he was called to Calcutta by Mr. Gupta, there is any room for such an ingenious suggestion. Both parties knew that they were talking about the same 20 boxes and so, it is futile now to suggest that the 20 boxes which Mr. Gupta examined were different from the boxes in respect of which Mr. Banerjee had made his report. It was also suggested on behalf of the respondents that Mr. Gupta did not admit that he had received some letters from Mr. Banerjee in which he had complained that owing to heavy rains, conditions were not favourable for effective work in the area entrusted to him. It is true that when Mr. Gupta was asked about these letters, he said he did not remember if he had received them. We do not think that the answers given by Mr. Gupta in respect of these letters can be of any assistance to the respondents in discrediting Mr. Gupta's evidence in any manner. On the whole, we have no hesitation in holding that the appellant acted *bonafide* in discharging Mr. Banerjee's services when it accepted Mr. Gupta's report and concurred with his conclusions that the explanation given by Mr. Banerjee was not satisfactory.

The result is, the appeal is allowed and the order passed by the Labour Court directing the

appellant to reinstate Mr. Banerjee is set aside. In the circumstances of the case, there would be no order as to costs.

*Appeal allowed.*

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RANENDRA CHANDRA BANERJEE

*v.*

UNION OF INDIA



(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH JJ.)

*Public Servant—Probationer—Discharge from service for unsatisfactory work—If entitled to protection under the Constitution and the Rules—Civil Services (Classification, Control and Appeal) Rules, rr. 3 (a), 49, 55-B—Constitution of India, Art. 311 (2).*

The appellant was appointed on probation for one year as Programme Assistant on May 3, 1949, on condition that his services might be terminated without any notice and cause being assigned during that period. He agreed and joined service on these terms on July 4, 1952, he was called upon to show cause why his services should not be terminated and as the explanation given was not satisfactory, his services were terminated after August 31, 1952. On an application moved under Art. 226 of the Constitution the High Court dismissed the application and held that the appellant was not entitled to the protection of Art. 311 (2) of the Constitution, that rr. 49 and 55-B of the Civil Services Rules did not apply and that he was governed by the contract of his service.

*Held*, that in the present case the appellant was a probationer and the termination of his service was not by way of punishment and could not amount to dismissal or removal within the meaning of Art. 311. As a probationer he would be liable to be discharged during that period subject to the