MANAGEMENT OF MONGHYR FACTORY OF ITC LTD., MONGHYR, BIHAR

v.

THE PRESIDING OFFICER, LABOUR COURT PATNA (BIHAR) & 3 ORS.

July 24, 1978

[N. L. UNTWALIA, JASWANT SINGH AND R. S. PATHAK, JJ.]

Supreme Court Rules 1966 *Order XV—Rules* 1, 5, 5A *with Articles* 131, 132, 135 *of Constitution of India—Scope of—Whether the leave of the Supreme Court is necessary to urge in appeal other grounds when certificate granted by a High Court is restricted to a particular ground—Considerations required to be looked into by the High Court while granting the certificate.*

Industrial Disputes Act, (14 *of* 1947), 1947, *S.* 10(1)(c)—*Whether a reference for adjudication of a labour dispute by the Labour Court which is in the prescribed proforma without striking off the appropriate words amounts to non-application of the mind and therefore the reference void.*

Standing Order No. 20 *clause* (i) *and* (ii) *and Standing Order* 21(*A*) *as certified under s.* 5 *of the Industrial Employment* (*Standing Orders*) *Act,* (*Act* 20) 1946—*Difference between "habitual" and neglect of work" explained—Relief which should be granted to the workmen whose dismissal has been found to be wrongful, mala fide or illegal, explained.*

A chargesheet to the effect viz., "Neglect of work in—that on 21-5-66 you packed approximately 130M, Embassy packets with Scissors slides whilst operating M/C No. 14 resulting in loss of 200 (two hundred man hours approximately for opening up the packets and changing the slides, and loss of material valued at Rs. 126/- approximately." was served upon respondent no. 3 for his misconduct which was followed up by a domestic enquiry which found him guilty. Accepting the report his services were terminated.

On the raising of an industrial dispute it was referred for adjudication by the Government of Bihar to the Labour Court, Patna, respondent no. 1 by a Notification dated the 6th/17th February, 1968. The Labour Court noticed "(1) from the documents of record it is abundantly clear that the management and Shri Ram Krishan Pathak are not on happy terms for several years" (2) "the service card indicates that the service records of Shri Pathak are not neat and clean". In view of its finding that the order of discharge was mala fide and unreasonable in the sense that the workman was guilty of the charge of fault only and not of misconduct the Labour Court made an award on November 23, 1970 ordering reinstatement of Respondent No. 3 with all his back wages from the date of dismissal till the date of reinstatement. The Appellant challenged the award by filing a writ petition in the High Court which was dismissed on July 23, 1973. At the instance of the Management a certificate of fitness was granted by the High Court on February 22, 1974. In the order granting the certificate the High Court mentioned that out of three points urged by the appellant only one point justified the ground of certificate as that point involved a substantial question of law of general importance needing the decision by the Supreme Court. Pursuant to the grant of the certificate, a petition of appeal was filed in this Court, followed in the usual course by a statement of the case. Various other points which have been argued on behalf of the management before the labour court as also in the High Court were taken in the petition of appeal and the statement of the case. However no separate petition was lodged by the appellant along with the petition of appeal in accordance with Rule 5 of Order XV of the Supreme Court Rules 1966. The appellant restricted his arguments only to the three following points out of the several argued before the High Court, viz. (a) That the reference is invalid on the very face of it, that it was mechanically made by the Government without the application of mind. (b) That the workman was guilty of misconduct within the meaning of

clause (ii) of Standing Order 20 applicable to the appellant and both the Courts below have committed errors of law on the face of the record in taking a contrary view. (c) That in any view of the matter on the facts and in the circumstances of the case it was not expedient, fit or proper to order reinstatement of the concerned workman and in lieu thereof only compensation should have been allowed.

A preliminary objection was raised on behalf of respondent no. 3 to the effect that the appellant, having not complied with the requirement of Rule 5 of Order XV of the Supreme Court Rules 1966, could urge only one point on the basis on which the certificate was granted by the High Court and not other.

Allowing the appeal in part the Court

HELD : (1) (a) Rule 5 of Order XV of the Supreme Court Rules, was not applicable and compliance thereof was not necessary to enable the appellant to urge and reiterate any of the points taken by it in the High Court; (b) Rule 5-A of Order XV suggests that the High Court is required to record the reasons or the grounds for granting the certificate. In this case the High Court in its order gave the reasons and finding that atleast one of the points was such that could justify the granting of the certificate under Art. 133(1) and granted the certificate to appeal to the Supreme Court; and (c) The certificate granted is an open one enabling the appellant to urge all the points arising in the appeal in this Court. There is nothing either in any provision of the Constitution or the rules to indicate the points other than the one which enabled the High Court to grant the certificate could not be raised in this Court without its leave. [1049B-E]

(2) For the purpose of granting the certificate all that the High Court is required to consider is whether the case raise a substantial question of law on the ground mentioned in the constitutional provision. Even if a single such question of law is found to arise in the case, a certificate must be granted. Once the certificate is granted and the appeal is lodged in the Supreme Court it is open to the appellant to raise all grounds which properly arise in the appeal. The circumstance, that there are grounds which were not found sufficient for the grant of a certificate does not preclude the Supreme Court from entertaining them as grounds arising in the appeal. The stage at which the High Court considers the grant of a certificate under Art. 133(1) and the stage at which the Supreme Court hears the appeal are two distinct stages and different jurisdictions are exercised with respect to each stage. Considerations pertinent to the grant of a certificate are not identical with considerations which govern the hearing of the appeal. Accordingly even if some of the points raised by the appellant in the High Court in support of the petition for a certificate are found insufficient for that purpose, they can still be considered as grounds during the hearing of the appeal. The amendment brought about in Art. 133(1) makes no difference in the matter of the applicability of the principle to the point at issue. In the instant case it is clear that the leave of this Court was not necessary to enable the appellant to urge in appeal the other grounds of attack in relation to the award as affirmed by the High Court. [1049 F-H. 1050 A. D]

Addagada Raghavamma & Anr. v. *Addagada Chenchamma* & Anr., [1964] 2 SCR 933 followed.

(3) Order XV of the Rules is not confined to a certificate granted by a High Court under clause (1) of Art. 133 only. But it relates to a certificate granted under clause (1) of Art. 132 also. Order XV of the Rules will be clearly attracted to such a situation stated in Art. 132(3). When a certificate is granted under Art. 133(1) only, then the party appealing to the Supreme Court can urge as one of the grounds in appeal filed pursuant to such certificate that a substantial question of law as to the interpretation of the Constitution has been wrongly decided. An express provision to this effect was, perhaps, thought necessary to remove any doubt for the raising of such a new point even without the leave of the Court. That being so, it will be highly unreasonable to hold that in an appeal filed in accordance with Art. 133(1) of the Constitution the appellant cannot urge any new grounds and must be confined to the grounds which enable the High Court to grant the certificate. [1050 E, F, H, 1051A]

A (4) The reference, in the instant case, was not bad for the alleged non-application of the mind by the Government though care should always be taken to avoid the mere copying of the words from the Statute while making an order of reference. [1051 F-G]

(a) To keep an order of reference free from the pale of attack on the ground that the Government did not apply its mind to the fact whether the dispute is only apprehended or whether a specific dispute existed, the Government must specify one or the other in their order of reference. The Government should clarify the position in such cases and remove the ambiguity by filing a counter when the reference order is challenged on this ground. [1051 H, 1052-A]

In the instant case, neither the one nor the other was done although the State was made a party respondent to this writ petition, and (b) on the facts and in the circumstances the industrial dispute existed when it was referred to by the Government to the Labour Court for adjudication and the Government made the reference on being satisfied that it was so. There was no question of dispute being apprehended. The mention of the words "or is apprehended" in the order of reference is a mere surplus age and does not in this case, necessarily lead to the conclusion that the reference was made in a cavalier manner without any application of mind; and (c) The observation in *M/s. Hindustan General Electrical Corporation Ltd. Karampura* v. *State of Bihar & Ors.* AIR 1967 Pat. 284 indicating that even if no definite opinion was formed as to the existence or apprehension of a dispute, the reference could be made are not quite correct. (d) In *Kurji Holy Family Hospital* case, 1970 , labour and Industrial Cases, 105, while making the reference an identically defective phraseology was used without specifying whether the industrial dispute existed or was apprehended. The view expressed by the Patna High Court therein viz. "merely because in the notification the words "or is apprehended" are also there, it cannot be said that the Government were not satisfied as to the existence of a dispute was not quite accurate either, though it can be sustained on a slightly different basis. [1052 A, C-D, F, 1053 C, E]

Addagada Raghavamma & Anr. v. *Addagada Chenchamma & Anr.*, [1964] 2 S.C.R. 933, *Hindustan General Electrical Corp. Ltd. Karampura* v. *State of Bihar & Ors.*, AIR 1967 Pat. 285; *India Paper Pulp Co. Ltd.* v. *India Paper Pulp Workers' Union & Anr.*, [1949-50] FCR 348; *State of Madras* v. *C.P. Sarathy & Anr.*, [1953] SCR 334; *Swadeshi Cotton Mills Co. Ltd.* v. *State of U.P. & Ors.*, [1962] 1 SCR 422; *Management of Express Newspapers Ltd.* v. *Workers & Staff employed under it and Ors.* [1963] 3 SCR 540 discussed and explained.

(5) The argument that even neglect of work simpliciter can be a misconduct within the meaning of sub-clause (i) of clause (ii) of Standing Order 20 apart from its being a fault within the meaning of sub-clause (b) of clause (i) of the said Standing Order, as the word 'habitual' in the former merely qualifies the word 'negligence' and not the expression 'neglect of work' is not correct. [1056A]

Mere neglect of work cannot be both. If it is so it is a fault. If it is habitual, that is, if it is repeated several times then only it is misconduct. It may well be that fault of one kind or the other as enumerated in sub-clause (a) to (g) of Standing Order 20(i) if repeated more than once may be habitual within the meaning of Standing Order 20(ii)(i) and especially in the light of the fourth fault being a misconduct within the meaning of Standing Order 20(a). But on the facts of this case there being no charge against respondent no. 3 that he was guilty of habitual neglect of work, the Labour Court found that the negligence of the workman was not of a serious kind. Some others in the factory also contributed to it. [1056 B-C]

(6) While considering the proper relief to be granted to the workman whose dismissal has been found to be wrongful, mala fide or illegal, though no hard and fast rule could be laid down the Tribunal has to consider each case on its merits. 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. The High Court has the authority to

interfere with the discretion of the Tribunal where reinstatement was ordered without proper, adequate and justifiable factors in support of the alternative relief of compensation. [1056D, 1057A, E] A

Punjab National Bank Ltd. v. *Workmen,* [1960] 1 SCR 806; *Buckingham & Carnatic Mills Ltd.* v. *Workmen,* 1951 II L.L.J. 314; quoted again with approval; *Ruby General Insurance Co. Ltd.* v. *Chopra (P.P.)* 1970 I LLJ 63; *Hindustan Steels Ltd. Rourkela* v. *A. K. Roy & Ors.* [1970] 3 SCR 343 followed. *Western India Automobile* v. *Industrial Tribunal Bombay & Ors.* (1949-50) SCR 321 referred to. B

In the present case; (a) the Labour Court without applying its mind, in spite of its noticing the unsatisfactory record of respondent no. 3, as to whether it was a fit case where reinstatement should be ordered or compensation should be awarded, followed the former course which was affirmed by the High Court. (b) every case has to be adjudged on its special facts and in the instant case, the service record of the employee showed that he had committed several faults in the past, was sometimes warned, sometimes suspended and sometimes reprimanded for all those omissions and commissions. In the incident in question he was clearly guilty of neglect of duty in putting wrong slides, although they were wrongly supplied to him, while packing the cigarettes on the packing machine. Even shortly before the incident in question according to his own showing he was once warned for absence from proper place of work without permission and was suspended for three days for an act subversive of discipline before he was dismissed in June 1966. Therefore it was not a fit case where the High Court ought to have sustained the order of reinstatement as passed by the Labour Court [1057 F-H, 1058 B, C, E] C D

[The Court directed payment of a sum of Rs. 30,000/- to respondent no. 3 within a month's time by way of compensation in addition to the gratuity and provident fund admissible to him less any amount paid already.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 864 of 1974.

From the Judgment and Order dated 23-7-73 of the Patna High Court in C.W.J.C. No. 31 of 1971. E

G. *B. Pai, O. C. Mathur* and *K. J. John* for the Appellant.

Santokh Singh for Respondent No. 3.

R. C. Prasad and *U. P. Singh* for Respondent Nos. 1 and 4.

The Judgment of the Court was delivered by F

UNTWALIA J. This appeal on certificate granted by the Patna High Court under Article 133 (1) of the Constitution of India as it stands after the 30th Constitution Amendment Act is by the Management of the Monghyr Factory of India Tobacco Company Limited impleading the Labour Union as respondent no. 2 and the concerned workman as respondent no. 3. The State of Bihar is respondent no. 4. G

Respondent no. 3 was working as an operator on a packing machine in the appellant's factory at Monghyr on May 21, 1966 when he is said to have committed certain acts of misconduct. A charge-sheet was served on him by the Management on May 24. At the domestic inquiry held by the Management, he was found guilty and eventually dismissed from service on June 9, 1966. On the raising of an industrial dispute, it was referred for adjudication by the Government of Bihar to the Labour Court, Patna, respondent no. 1 by a H

notification dated the 6th/17th February, 1968. The Labour Court made an award on November 23, 1970 ordering reinstatement of the workman Shri Ram Krishan Pathak, respondent no. 3, with all his back wages from the date of dismissal till the date of reinstatement. The appellant challenged the award by filing a Writ Petition in the High Court, which was dismissed on July 23, 1973.

At the instance of the Management, a certificate of fitness was granted by the High Court on February 22, 1974. Since by that time Art. 133(1) had been amended by the 30th Constitution Amendment Act, the certificate was granted in accordance with it. In the order granting the certificate it is mentioned that three points were urged by the appellant but the High Court thought that two of them were such as would not justify the grant of the certificate, but one of the points involved in the case was a substantial question of law of general importance and the said question needed to be decided by the Supreme Court. Pursuant to the grant of the certificate a petition of appeal was filed in this Court followed in the usual course by a statement of the case. Various other points which have been argued on behalf of the Management before the Labour Court as also in the High Court were taken in the petition of appeal and the statement of the case.

Mr. G. B. Pai appearing in support of the appeal urged only the three following points out of the several argued before the High Court :—

(1) That the reference is invalid as on its very face it indicates that it was mechanically made by the Government without application of mind.

(2) That the workman was guilty of misconduct within the meaning of clause (ii) of Standing Order 20 applicable to the appellant and both the Courts below have committed errors of law on the face of the record in taking a contrary view.

(3) That in any view of the matter on the facts and in the circumstances of this case it was not expedient, fit or proper to order reinstatement of the concerned workman and in lieu thereof, only compensation ought to have been allowed.

Mr. Santokh Singh, appearing for the Union and representing the workman raised a preliminary objection and submitted that the appellant having not complied with the requirement of Rule 5 of Order XV of the Supreme Court Rules, 1966, hereinafter to be called the Rules. could urge only one point on the basis of which the certificate was granted by the High Court and no other. Mr. Ram Chandra Prasad appearing for the State of Bihar refuted the first submission made on behalf of the appellant while Mr. Santokh Singh combated the other two.

We shall first deal with the preliminary objection of Mr. Singh. Order XV, Rule 5 of the Rules reads as follows :—

> "Where a party desires to appeal on grounds which can be raised only with the leave of the Court, it shall lodge along with the petition of appeal a separate petition stating the grounds so proposed to be raised and praying for leave to appeal on those grounds."

It is true that no separate petition was lodged by the appellant along with the petition of appeal in accordance with Rule 5. But in our opinion the said Rule was not applicable and compliance thereof was not necessary to enable the appellant to urge and reiterate any of the points taken by it in the High Court. Rule 5-A(d) of Order XV of the Rules enjoins that "an appeal on a certificate granted by a High Court under Articles 132(1) and/or 133(1)(c) of the Constitution or under any other provision of law if the High Court has not recorded the reasons or the grounds for granting the certificate" shall be put up for hearing *ex parte* before this Court. Article 133(1)(c) mentioned in the above extracted words has got to be read now (and it would be advisable to correct it by an amendment of the Rule, if not already done) as Article 133(1). The said Rule suggests that the High Court is required to record the reasons or the grounds for granting the certificate. In this case, the High Court in its order gave the reasons and finding that at least one of the points was such that could justify the granting of the Certificate under Article 133(1) granted the certificate to appeal to the Supreme Court. But it did not limit it to that extent alone, even assuming it could do so. The certificate granted, as is commonly known, is an open one enabling the appellant to urge all the points arising in the appeal in this Court. Nothing was brought to our notice by Mr. Singh either from any provision of the Constitution or the Rules to indicate that the points other than the one which enabled the High Court to grant the certificate could not be raised in this Court without its leave.

For the purpose of granting the certificate, all that the High Court is required to consider is whether the case raises a substantial question of law of the kind mentioned in the constitutional provision. Even if a single such question of law is found to arise in the case, a certificate must be granted. Once the certificate is granted and the appeal is lodged in the Supreme Court, it is open to the appellant to raise all grounds which properly arise in the appeal. The circumstances that there are grounds which were not found sufficient for the grant of a certificate does not preclude the Supreme Court from entertaining them as grounds arising in the appeal. The stage at which the High Court considers the grant of a certificate under Article 133(1) and the stage at which the Supreme Court hears the appeal are two distinct stages, and different jurisdictions are exercised with respect to each stage. Considerations pertinent to the grant of a certificate are not identical with considerations which govern the hearing of the

A appeal. Accordingly, even if some of the points raised by the appellant in the High Court in support of the petition for a certificate are found insufficient for that purpose, they can still be considered as grounds during the hearing of the appeal.

The view which we have expressed above is amply supported by the decision of this Court in *Addagada Raghavamma and Anr.* v. B *Addagada Chenchamma and Anr.*(1), wherein at page 945 it was said with reference to Article 133 of the Constitution, as it stood before the 30th Amendment Act :—

> "Under Art. 133 of the Constitution the certificate issued by the High Court in the manner prescribed therein is a precondition for the maintainability of an appeal to C the Supreme Court. But the terms of the certificate do not circumscribe the scope of the appeal, that is to say, once a proper certificate is granted, the Supreme Court has undoubtedly the power, as a court of appeal, to consider the correctness of the decision appealed against from every standpoint, whether on questions of fact or law."

D The amendment brought about in Article 133(1) makes no difference in the matter of the applicability of the principle to the point at issue. Thus it is clear that the leave of this Court was not necessary to enable the appellant to urge in appeal the other grounds of attack in relation to the award as affirmed by the High Court.

Order XV of the Rules is not confined to a certificate granted by E a High Court under clause (1) of Art. 133 only. But it relates to a certificate granted under clause (1) of Art. 132 also. Clause (3) of Art. 132 says :—

> "Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Sup- F reme Court, on any other ground."

Order XV Rule 5 of the Rules will be clearly attracted to such a situation. In contrast, we may quote clause (2) of Art. 133 which says :—

> "Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may G urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided."

It is interesting to notice that when a certificate is granted under Art. 133(1) only, then the party appealing to the Supreme Court can urge as one of the grounds in appeal filed pursuant to such certificate H that a substantial question of law as to the interpretation of the Constitution has been wrongly decided. An express provision to this

(1) [1964] 2 S.C.R. 933.

effect was, perhaps, thought necessary to remove any doubt for the raising of such a new point even without the leave of the Court. That being so, it will be highly unreasonable to hold that in an appeal filed in accordance with Art. 133(1) of the Constitution the appellant cannot urge any new grounds and must be confined to the grounds which enabled the High Court to grant the certificate. We, therefore, reject the preliminary objection raised by Mr. Santokh Singh.

We now proceed to deal with the three submissions made on behalf of the appellant.

POINT NO. 1.

The relevant words to be extracted from the order of reference for deciding this point are the following :—

> "Whereas the Governor of Bihar is of opinion that an Industrial dispute exists or is apprehended between the management of the Imperial Tobacco Company of India Limited..... and their workmen represented by Tobacco Manufacturing Workers' Union ..... Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Governor of Bihar is pleased to refer the said dispute for adjudication to the Labour Court, Patna....."

The dispute referred was in the following terms :—

> "Whether the dismissal of Shri Ram Kishan Pathak is proper and justified ? If not, whether he is entitled to reinstatement and/or any other relief ?

Mr. Pai's contention is that on the facts of the case either an industrial dispute existed or it could be apprehended. It could not be both. It was necessary for the Governor to be satisfied about the one or the other, namely, whether the dispute "exists or is apprehended". The use of both the phrases in the order of reference demonstrates that there was no application of mind of the authorities concerned before making an order of reference. The point is not free from difficulty. The High Court repelled it relying upon its two earlier decisions. On a close scrutiny, however, on the facts of this case we do not feel persuaded to hold that the reference was bad for the alleged non-application of the mind of the Government. We would, however, like to observe that care should always be taken to avoid a mere copying of the words from the Statute while making an order of reference. Ordinarily and generally in a large number of cases, a reference is made when the Government finds that an industrial dispute exists. There are cases where a dispute is only apprehended or even there may be some where some disputes exist and some are apprehended. To keep an order of reference free from the pale of attack on such a ground, the Government will be well-advised to specify one or the other in their order of reference. As observed in some of the cases of this Court, to be alluded to hereinafter, the Government should clarify the position and remove the ambiguity by filing a counter when

A the reference order is challenged on this ground. We are unhappy to note that neither the one nor the other was done in this case although the State was made a party respondent in the Writ Petition.

Out of the cases cited at the Bar on the first point, we shall refer only to a few which are very near it, there being no direct decision of this Court on it. The Labour Court repelled the contention of the Management apropos the alleged invalidity of the reference, by stating B in paragraph 9 of its order—"The fact that a dispute existed cannot be denied." In that Court the next attack on the competency of the reference was on the ground that the concerned workman was not a member of the Union on the date when the cause giving rise to the dispute arose and, therefore, the Union could not have espoused his cause to make it an industrial dispute. While repelling this argument, the Labour Court said in the 10th paragraph :—In my opinion C there appears no merit in the contention made on behalf of the management and it is held that in reality an industrial dispute existed when the appropriate Government was approached to refer the matter to this Court for adjudication.' On the facts and in the circumstances of this case, therefore, we have no doubt in our mind that the industrial dispute existed when it was referred by the Government to the D Labour Court for adjudication, and the Government made the reference on being satisfied that it was so. There was no question of the dispute being apprehended. The mention of the words "or is apprehended" in the order of reference is a mere surplusage and does not, in this case, necessarily lead to the conclusion that the reference was made in a cavalier manner without any application of mind.

E We may first briefly deal with the two Patna decisions which were relied upon by the High Court in repelling the first point of the appellant. They are—(1) *M/s. Hindustan General Electrical Corporation Ltd., Karampura* v. *State of Bihar and others*(1) and (2) *Kurji Holy Family Hospital* v. *State of Bihar and others*(2). In the case of *Hindustan General Electrical Corporation* (supra) although the relevant phraseology in the order of reference was in identical F terms, the argument advanced was somewhat different. In that case it was urged on behalf of the petitioner management that there was no industrial dispute before the Labour Court. It was a simple dispute between an individual workman and the management and hence the Court had no jurisdiction to decide it. The High Court, while rejecting this argument, observed at page 285 column 2 :—

G "Moreover, it is well known that even an individual dispute between a workman and an employer might have the potentiality of becoming an industrial dispute, and if there is an apprehension that such an industrial dispute might exist, the Government have jurisdiction to make a reference under Sec. 10(1). In the order of reference, which I have already quoted, the Government had made H it clear that in their opinion there was in existence an

(1) A.I.R. 1967, Patna, 284.
(2) [1970] Labour and Industrial Cases, 105.

industrial dispute, or else there was an apprehension of the existence of such a dispute. In the circumstances of this case, this opinion of the Government must be held to be not liable to challenge in this application."

It would thus be seen that neither in argument nor in the judgment attention was focussed whether the reference could be bad when the order of reference did not indicate precisely as to the existence of an industrial dispute or whether it was apprehended. The observations, extracted above, indicating that even if no definite opinion was formed as to the existence or apprehension of a dispute, the reference could be made, are not quite correct. In *Kurji Holy Family Hospital* case (supra) the dispute raised related to the action taken by the management against two of its employees. While making the reference an identically defective phraseology was used without specifying whether the industrial dispute existed or was apprehended. The validity of the reference in this case was directly attacked on the ground—"the Government were not definite while making the reference whether a dispute was existing or was apprehended and were not able to form any opinion in the matter." This argument was repelled by the Bench of the High Court relying upon its earlier decision in the case of *Hindustan General Electrical Corporation* (supra) and three decisions of this Court and a decision of the Federal Court which will be shortly adverted to. Finally it was said at page 111 column 1 :—"In the circumstances, there can be no doubt that a dispute was existing on the date of the reference. Merely because in the notification the words "or is apprehended" are also there, it cannot be said that the Government were not satisfied as to the existence of a dispute." The view so expressed by the Patna High Court is not quite accurate. But it can be sustained on a slightly different basis as discussed by us above.

In the case of *The India Paper Pulp Co. Ltd.* v. *The India Paper Pulp Workers' Union and another*(1) the attack on the order of reference, as could appear from page 355, was not identical to the one with which we are concerned in this case. But the lacunae pointed out were that the order of the Government did not mention any industrial dispute and secondly, the order, as worded, was only an order of appointment and there were no words of reference to the Tribunal. The attack was repelled by Kania C.J. on the same page in these words :—

"It is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act however requires a reference of the dispute to the Tribunal. The Court has to read the order as a whole and determine whether in effect the order makes a reference."

(1) [1949-50] Federal Court Reports 348.

A The Court found on reading the order as a whole that the order could be reasonably construed to constitute a reference to the Industrial Tribunal. In *State of Madras* v. *C. P. Sarathy and another*(1) it was contended at page 345 that "the reference was not competent as it was too vague and general in its terms containing no specification of the disputes or of the parties between whom the disputes arose." This argument was repelled by Patanjali Sastri C.J., with reference B to the decision of the Federal Court in the case of *The India Paper Pulp Company* (supra). The learned Chief Justice added at page 346 :—

> "This is, however, not to say that the Government will be justified in making a reference under section 10(1) without satisfying itself on the facts and circumstances brought C to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference."

D Even in this case the attack to the validity of the reference was not on the ground exactly as has been done in the present case. In *The Swadeshi Coton Mills Co. Limited* v. *The State of U.P. and others*(2), the reference was assailed on somewhat different grounds. The argument was not accepted by Wanchoo J., as he then was, by saying at page 432 :—

> E "This opinion is naturally formed before the order is made. If therefore such an opinion was formed and an order was passed thereafter, the subsequent order would be a valid exercise of the power conferred by the section. The fact that in the notification which is made thereafter to publish the order, the formation of the opinion is not recited will not take away the power to make the order which had already arisen and led to the making of the order."

F

Says the learned Judge further at page 434 :—

> "We are equally not impressed by Shri Pathak's argument that if the recital is not there, the public or courts and tribunals will not know that the order was validly passed and therefore it is necessary that there must be a recital on the G face of the order in such a case before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied H with."

(1) [1953] S.C.R. 334.
(2) [1962] 1 S.C.R. 422.

In the case of *The Management of Express Newspapers Ltd.* v. *Workers & Staff employed under it and others*(1) the point canvassed and decided was a different one. The attack was on the wordings of issue no. 2 referred to the Industrial Tribunal for adjudication. The argument was that this issue had in fact been determined by the Government and nothing was left to the Tribunal to consider or decide. It would appear from pages 555 and 556 that this argument was not accepted. In our opinion, reliance on this case by the appellant before us or by the High Court in the case of *Kurji Holy Family Hospital* (supra) is not quite apposite.

For the reasons stated above, on the facts of this case, we do not feel persuaded to accept the first contention of the appellant as correct.

POINT NO. 2

To substantiate this point Mr. Pai relied upon the relevant words of clauses (i) and (ii) of Standing Order 20 and Standing Order 21(a). Standing Order 20(i) says :—

> "The following acts or omissions shall be treated as faults :—
>
> (a) Careless work.
>
> (b) Laziness or neglect of work
>
> ....."

Standing Order 20(ii) provides :—

> "The following acts or omissions shall be treated as misconduct :—
>
> .....
>
> (1) Habitual negligence or neglect of work."

Standing Order 21(a) provides for different kinds of punishment in cases of first, second and third faults committed within the meaning of Standing Order 20(i). Lastly it is provided in the Standing Order 21(a) that—"In the case of a fourth fault by the same worker such worker shall be reported to the Factory Manager by the head of the department as a worker regarded guilty of misconduct as defined in Order No. 20(ii)." Mr. Pai submitted with reference to the service card of respondent no. 3 which was an exhibit before the Labour Court that his service record was bad, he had committed several faults in the past and the fault in question even if it was a fault was a fourth one which could be treated as a misconduct under Standing Order 21(a) entailing dismissal of the workman. This argument, as presented before us, is not well-founded and must be rejected. No such stand was taken in either of the Courts below. Nor was the charge framed on this line. The charge served on respondent no. 3 is as follows :—

> "Neglect of work in—that on 21-5-66 you packed approximately 130 M. Embassy packets with Scissors slides whilst operating M/C. No. 14, resulting in loss of 200 (two hundred) man hours approximately for opening up the packets and changing the slides, and loss of material valued at Rs. 126/- approximately."

(1) [1963] 3 S.C.R.

Mr. Pai submitted that even neglect of work simpliciter can be a misconduct within the meaning of sub-clause (1) of clause (ii) of Standing Order 20 apart from its being a fault within the meaning of sub-clause (b) of clause (i) of the said Standing Order as the word 'habitual' in the former merely qualifies the word 'negligence' and not the expression 'neglect of work'. This argument has to be stated merely to be rejected. Mere neglect of work cannot be both. If it is so, it is a fault. If it is habitual that is, if it is repeated several times then only it is misconduct. It may well be that fault of one kind or the other as enumerated in sub-clauses (a) to (g) of Standing Order 20(i) if repeated more than once may be habitual within the meaning of Standing Order 20(ii)(1), and especially in the light of the fourth fault being a misconduct within the meaning of Standing Order 20(a), but on the facts of this case, there was no charge against respondent no. 3 that he was guilty of habitual neglect of work. Moreover the Labour Court found that the negligence of the workman was not of a serious kind. Some others in the factory also contributed to it. We, therefore, reject point no. 2.

POINT NO. 3

The law as to the proper relief which should be granted to the workman whose dismissal has been found to be wrongful, *mala fide* or illegal has gradually been developed by the Federal Court and this Court. In *Western India Automobile Association* v. *Industrial Tribunal, Bombay, and others*(1) the argument on behalf of the employer that reinstatement could not be ordered in an industrial adjudication as no contract of service would be specifically enforced, was rejected. In some cases the view taken was that there should be a general rule of reinstatement except in very exceptional cases. Later on. it was ruled that no hard and fast rule could be laid down and the Tribunal would have to consider each case on its merits.

In *The Punjab National Bank, Ltd.* v. *Its Workmen*(2) Gajendragadkar J., as he then was, speaking for himself and other learned Judge has said at page 833 :—

> "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 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."

(1) [1949-50] S.C.R. 321.
(2) [1960] 1 S.C.R. 806.

A

At the same page the learned Judge approvingly quoted from the well-known decision of the Full Bench of the Labour Appellate Tribunal in the case of *Buckingham & Carnatic Mills Ltd.* v. *Their Workmen*(1). A sentence from that quotation will be of use in deciding this case also. It runs thus :—"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." Shelat J. speaking for this Court in the case of Ruby *General Insurance Company, Ltd.* v. *Chopra (P.P.)* (2) considered some other reported and unreported decisions and concluded at page 66, column 2 thus :—

B

> "These decisions clearly show that though industrial adjudication may not regard a wrongful dismissal as amounting to termination of service resulting only in a right to damages as under the law of master and servant and would ordinarily order re-instatement, it can refuse to order such reinstatement where such a course, in the circumstances of the case, is not fair or proper. The tribunal has to examine, therefore, the circumstances of each case to see whether reinstatement of the dismissed employee is not inexpedient or improper."

C

D

The same learned Judge reiterated the principles in *Hindustan Steels Ltd., Rourkela* v. *A. K. Roy & Ors.*(3) and pointed out at page 348 :—"As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient." On a consideration of the entire facts and circumstances of the case. this Court took the view in *Hindustan Steel's* case that High Court had the authority to interfere with the discretion of the Tribunal where reinstatement was ordered without proper, adequate and justifiable factors in support of the grant of the alternative relief of compensation. Finally a compensation for a period of about two years was determined payable by the management to the workman concerned in lieu of the order of re-instatement.

E

In the present case the Labour Court found that the order of discharge was *mala fide* and unreasonable in the sense that the workman was guilty of the charge of fault only and not of misconduct. Domestic inquiry was found to be fair and proper from its precedural aspect. The Labour Court also noticed the following facts :—

F

1. "From the documents on record it is abundantly clear that the management and Shri Ram Kishan Pathak are not on happy terms for several years."

G

2. "The service card indicates that the service record of Shri Pathak are not neat and clean."

Yet without applying its mind further as to whether it was a fit case where reinstatement should be ordered or compensation should be awarded, it followed the former course.

H

(1) [1951] II L.L.J., 314.
(2) [1970] 1 LLJ 63.
(3) [1970] 3 S.C.R. 343.

A The High Court while affirming the order of the Labour Court in this regard did refer to some of the relevant decisions of this Court and correctly enunciated the principles. But it seems to us that it felt fettered in treating the facts referred to in those cases as if they were exhaustive examples of the circumstances under which reinstatement could be ordered. In that view of the matter the High Court, on B comparison of the facts of the present case did not feel persuaded to travel outside the limits of those facts. But it should be remembered, as observed in the *Punjab National Bank* case (supra), that every case has to be judged on its special facts. In the present case the service card of the employee shows that he had committed several faults in the past and was sometimes warned, sometimes suspended and sometimes reprimanded for all those omissions and commissions. In the incident C in question, he was clearly guilty of neglect of duty in putting wrong slides, although they were wrongly supplied to him, while packing the cigarettes on the packing machine. Even shortly before the incident in question, as pointed out to the High Court on behalf of respondent no. 3 himself, he was once warned for absence from proper place of work without permission and was suspended for three days for an act subversive of discipline before he was dismissed in June, 1966. We D were also informed by the management that respondent no. 3 has superannuated, according to them in December, 1972. The fact that he has superannuated was not disputed by Mr. Santokh Singh. What was, however, asserted on his behalf was that he had superannuated not in December, 1972, but about two years later. At the time of the hearing of the appeal, the management offered to pay a very reasonable amount of compensation and all sums of money due to the workman E on account of gratuity and provident fund. We think on the facts and in the circumstances of this case it is not a fit case where the High Court ought to have sustained the order of reinstatement as passed by the Labour Court. We, accordingly, direct that in lieu of reinstatement, respondent no. 3 will be entitled to get a compensation of Rs. 30,000/- which will, roughly speaking, include almost all sums of money payable to the workman such as basic pay, dearness allowance etc. etc. for a F period of about five years. Out of the said sum of Rs. 30,000/- total amounts of Rs. 14,250/- are said to have been paid by the appellant to respondent no. 3 in pursuance of the interim orders made by the High Court and this Court. The balance of Rs. 15,750/- on account of compensation is to be paid. Adding to that the sums of gratuity—Rs. 8,852/- and provident fund—Rs. 2,451/- the total amount payable comes to Rs. 27,053/-. The management has also agreed to make an G ex-gratia payment of Rs. 2,947/. The total sum payable by the management to the workman concerned comes to Rs. 30,000/- over and above the sum of Rs. 14,250/- already paid. We direct the appellant (and at the time of the hearing of the appeal it has agreed to do so) to pay the said sum of Rs. 30,000/- to respondent No. 3 within a month from today.

H The appeal is accordingly allowed to the extent and in the manner indicated above. There will be no order as to costs.

S.R. *Appeal allowed.*