Before S.S. Nijjar, J

ANIL KUMAR,—*Petitioner*

versus

THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON & ANOTHER,—*Respondents*

C.W.P. No. 11527 OF 1998

10th July, 2001

Constitution of India, 1950—Arts.14, 16 & 226—Charges of serious misconduct—Dismissal from service—Settlement between the Union & the Management—Removal of the petitioner & others accepted & upheld in a writ petition—All charges proved against the petitioner before the Tribunal—Findings against the petitioner—Independent findings of fact based on evidence—High Court not justified in interfering with the categoric findings of fact—Award does not suffer from error of law apparent on the face of the record—Dismissal of the petitioner upheld.

Held, that the charges which have been proved against the petitioner are of a very serious nature. Even criminal case is pending against the petitioner for having assaulted the superior officers. All the charges levelled against the petitioner have been found to be factually proved by the Tribunal. In such circumstance, it would not be possible to hold that the award suffers from an error of law apparent on the face of the record.

(Para 27)

Further held, that the evidence of the witnesses has been appreciated by the Tribunal. Only, thereafter findings of fact have been recorded. A finding of fact can only be termed as an error of law when it is based on no evidence. But this is not a case of no evidence. If that be so, then the findings cannot be challenged on the ground that relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings. The findings having been arrived at on the basis of evidence, this Court would not be justified in interfering with the same whilst exercising the jurisdiction under Article 226.

(Paras 36 & 37)

ARGUED BY

R.S. MITTAL, SENIOR ADVOCATE, WITH

SUDHIR MITTAL, ADVOCATE

M.L. SARIN, SENIOR ADVOCATE, WITH

AJEY LAMBA, ADVOCATE AND

SWEENA PANNU, ADVOCATE

JUDGMENT

S.S. NIJJAR, J. (ORAL)

(1) This petition under Articles 226/227 of the Constitution of India seeks issuance of a writ of certiorari quashing the Award Annexure P.1 dated 23rd March, 1998, made by respondent No. 1.

(2) Briefly stated the facts as pleaded and narrated by the learned Senior Counsel for the parties may be noticed.

(3) The petitioner was appointed as Operator in the Frame Assembly Department of M/s Hero Honda Motors Ltd. Delhi Jaipur Highway, Dharuhera, Distt. Rewari (respondent no. 2), on 25th August, 1986. He was in service of respondent no. 2 from 25th August, 1986 to 11th September, 1989. The petitioner is stated to be an enthusiastic trade union worker. He is alleged to have been victimised on account of his enthusiastic trade union activity which was legitimate and within the permissible parameters of law. The services of the petitioner were terminated by means of an order of dismissal from service dated 8th August, 1989. This order was not served on the petitioner. The order was passed without serving any charge-sheet or affording any opportunity of hearing to the petitioner. prior to the passing of the order of dismissal.

(4) According to the petitioner, the genesis of the whole dispute started in July, 1989 when a proposal was mooted within the Labour Union of Workers of respondent no. 2 that their Union should be affiliated to the Hind Mazdoor Sabha. This was not relished by respondent no 2. The Union of workmen of respondent no. 2 had taken a collective decision after due deliberation to officially affiliate

the Labour Union with Hind Mazdoor Sabha on 18th July, 1989. On that date, a flag of the Hind Mazdoor Sabha was to be hoisted alongwith the Union Flag at the main gate of factory of respondent no. 2. Therefore, on 15th July, 1989, to prevent the hoisting of the flag, respondent no. 2 got the President of the Labour Union and other Trade Union leaders arrested on false charges. As a result of these arrests, the date of affiliation was postponed to 23rd July, 1989 which was Sunday and a weekly off-day of the majority of the workmen of respondent no. 2. In order to stall the affiliation, respondent no. 2 concocted various episodes of mis-conduct against the petitioner and other active trade union workers on 15th of July, 17th of July and 19th of July, 1989. By mis-using their influence with local police, respondent no. 2 got a proclamation under Section 144 Cr. P.C. also issued in Dharuhera on 23rd July, 89 which banned the assembly of more than five persons at any place within Dharuhera. Additionally, a large number of police was deployed on 23rd July, 89 inside the factory of respondent no. 2 as well as outside. In the same scheme of events, respondent no. 2 had got a false and concocted FIR registered against the petitioner and 18 other workmen on 19th of July, 1989. In that case, even the prosecution evidence has not been completed due to dilatory tactics adopted by respondent no. 2. The petitioner and other workmen are being prosecuted under Sections 147, 323, 140 and 506 IPC. According to the petitioner, the orgy of victimisation of the petitioner has been continued by respondent no. 2 with unabated ruthlessness by taking the extreme step of dismissal from service on concocted charges, without holding a domestic enquiry inspite of the fact that no special circumstances, as envisaged by Standing Order no. 31.12 existed to render holding of domestic enquiry not feasible. There is a provision in Certified Standing Orders of respondent no. 2 for suspending a delinquent workmen in Clause 31.3. The Management deliberately did not exercise the power of suspension. Instead the petitioner was ordered to be dismissed from service by an order dated 8th August, 1989, without issuing any charge-sheet or holding a departmental enquiry. The petitioner served a demand

notice on 8th Novemeber, 1989. In the meantime, the Union had entered into a settlement with the Management of respondent no. 2 on 11th September, 1989. Relevant part of Clause 6 of the settlement is as under :—

> "6. Both the parties agreed that 14 workmen against whom there are charges of serious misconduct have been dismissed from the services of the company and 40 workmen agaisnt whom there are charges of misconduct have been suspended and disciplinary action against whom would continue. With the exception of these 54 workmen, rest of workmen whose names were on the muster roll of the company will report on work on 11th September, 89."

(5) There is some controversy between the learned Senior Counsel for the parties as to whether this Clause amounts to acceptance of the fact that 14 workmen against whom there are charges of serious mis-conduct have been legally dismissed. According to the learned Senior counsel for the petitioner, this Clause records the fact that 14 workmen have been dismissed. According to the learned Senior counsel for respondent no. 2, it amounts to acceptance of the fact that 14 workmen including the petitioner have been lawfully dismissed. The demand notice was rejected on 31st July, 1990 on the ground that it was a part and parcel of the settlement between the Management and the Union dated 11th September, 1989 and that criminal case is pending agaisnt the dismissed workmen. The petitioner alongwith others challenged the aforesaid Settlement by filing writ petition, namely CWP No. 13479 of 1989. The writ petition was dismissed by this court holding that the settlement cannot be challenged by way of writ petition. Subsequent to this, the settlement has become final. The petitioner also filed CWP NO. 15278 of 1990 challenging the order rejecting the demand notice. The writ petition was dismissed by the learned Single Judge by order dated 4th February, 1994. The petitioner filed Letters Patent Appeal No. 294 of 94 agaisnt the aforesaid order. By order dated 28th September, 1994, the LPA was allowed and the respondent-State was directed to make a reference before the Industrial Tribunal-cum-Labour Court under Section 10(1) of the Industrial Disputes Act. On 28th November, 1994, the Government referred the

matter for adjudication to the Industrial Tribunal-cum-Labour Court, Gurgaon (hereinafter referred to as "the Tribunal"). On 24th March, 1995, the petitioner filed statements of claim. On 8th June, 1995 respondent no. 2 filed the written statement. On 27th January,1995, the petitioner made an application for interim relief before the Tribunal claiming subsistence allowance. This was rejected by order dated 15th January, 1996. Again the petitioner challenged the order of the Tribunal in CWP No. 4457 of 1996 on 23rd March, 1996. This writ petition was disposed of on 23rd July, 1997 with a direction to the Tribunal to decide the dispute within six months.

(6) The dispute referred to the Tribunal was as follows :—

> "Whether termination of services of Shri Anil Kumar is justified and if not what relief he is entitled to."

(7) After completion of the pleadings, the Tribunal framed the following issues on 5th April, 1986 :—

> "1. As per terms of reference."

(8) Before the Tribunal it was argued that the petitioner has been victimised due to his trade union activities. He was got arrested by the Management by lodging a false complaint with the Police on 20th July, 1989. Settlement brought about between the workmen and the Management on 11th September, 1989 is false, fictitious and forcibly procured by the Management and approved/signed by the officer of the Labour Court without examining the fairness and reasonableness of arbitrary and unilateral terms of the settlement. Several other similarly situated workmen have been taken back on duty by the Management and thereby the petitioner has been discriminated against in violation of Articles 14 and 16 of the Constitution of India. It is also argued that the evidence led by the Management cannot be relied upon as there were many discrepancies in the statements of the witnesses produced. It was further argued that even if the order of dismissal is upheld, the petitioner is entitled to wages upto the date of award. The Management-respondent no. 2 pleaded that the services of the petitioner have been terminated on account of his committing serious acts of mis-conduct such as abusing and beating superior officers, thereatening them of dire consequences, making inflammatory speeches, preaching violence, use of force against

Management executives, man-handling his superiors with the help of his other colleagues, instigating co-workmen to resort to strike and violating the terms of settlement dated 22nd August, 1987. The petitioner was dismissed from service through a composite order containing charges and narrating circumstances created by him, due to which it had become impossible to hold a domestic enquiry. The dismissal order is asserted to be in conformity with the certified standing orders of the Management. The activities of the petitioner were neither constitutional nor peaceful. The petitioner was offered to collect his legal dues, but he refused to do so. Settlement dated 11th September, 1989 is binding on all the workers including the petitioner. It was also pleaded that according to the certified Standing Orders, the Management has right to justify its action by producing evidence before the Court. On the basis of the judgment given in the case of *Punjab Dairy Development Corporation* vs. *Kala.(1).* It was argued that when a Labour Court on the basis of evidence recorded by it, holds that enquiry was not held properly, but on the basis of evidence recorded by it, upholds the order of dismissal, then the order of dismissal would relate back to the date of dismissal and not from the date of award. The Management had also relied on the judgment of the Supreme Court in the case of *R. Thiruvirkolam* vs. *The Presiding Officer and another(2),* in support of the above argument. The Management examined six witnesses in support of its case and placed reliance on 31 documents. The petitioner produced four witnesses and relied on as many as 49 documents.

(9) In the composite order, after setting out the various misconducts, it is stated as follows :—

> "In the interest of discipline, industrial peace, safety and to avoid violence, recurrence of large dimensional indiscipline, unrest and the fact that you in connivance with your other colleagues have been preaching violence and have created fear psyche in the minds of the duty conscious employees, we are, therefore, convinced that your dismissal from service of the establishment will meet the ends of justice, and would be proportionate to the gravity of acts of misconduct committed by you as no mitigating circumstances exists. Accordingly, you are dismissed from service with immediate effect.

(1) 1997 (3) RSJ 369
(2) 1997 (1) RSJ 415

Due to the above circumstances created by you it has become impossible to hold a formal domestic inquiry into above acts of misconduct and the circumstances. However, this order is being issued after application of mind, considering the entire circumstances and the management convinced about your commissions and the gravity of the same.

Should you like to challenge this order of dismissal before any competent authority, the management reserves its right to prove the circumstances and the acts of misconduct before the competent authority, both orally and with documents as considered appropriate to prove the above charges and justify action of the management".

(10) The petitioner is stated to be an activist in the Trade Union Affairs. However, he was not an Office holder of the Union.

(11) The Award of the Labour Court is challenged on a number of grounds. It is stated that the services of the petitioner were terminated by order of dismissal dated 8th August, 1989 which was never served upon him. However, at the time of agruments, this ground is not pressed by the learned Sr. Counsel for the petitioner. The second ground on which the Award has been challenged is that in the absence of domestic enquiry preceding the order of dismissal, the same can not relate back to the date of its passing and can be made effective only from the date of the Award. However, Mr. Mittal has pointed out that aforesaid proposition of law has, in fact, been referred to constitution Bench in the case of *Vishweshwaraiah Iron & Steel Ltd.* vs. *Abdul Gani and others (3).* Therefore, learned Senior counsel appearing for the petitioner has not pressed this point. The point mainly urged on behalf of the petitioner is that the Labour Court erred in law by not adjudicating upon the justifiability or otherwise of the reasons recorded by the Management, in support of the order dispensing with the domestic enquiry. This finding, according to Mr. Mittal, is recorded by the Labour Court in paragraph 10 of the Award. In support of this proposition, learned Senior counsel has relied on the judgment of the Supreme Court in the case of *Chief Security Officer and others* vs. *Singasan Rabi Das (4)* (hereinafter referred to as Singasan's case)

(3) 1998(1) RSJ 69
(4) 1991(1) SCC 729

Learned counsel also relied upon a Division Bench judgment of this Court in the case of *Swaran Singh* vs. *Punjab State Electricity Board (5).* It has also been strenuously urged on behalf of the petitioner that the fidings returned by the Labour Court in the impugned Award are perverse having been rendered after ignoring the relevant piece of evidence tending to show that signatures of K.R. James on the complaints dated 15th July, 1989 and 19th July, 1989 have been forged. According to the learned Senior counsel, the signatures of Mr. K.R. James have been forged subsequent to the time of his death sometime in the year 1990. An application was made before the Labour Court for production of the original complaints on 11th March, 1998. No order was passed in this application. According to the learned senior counsel for the petitioners the complaints were never produced on the record. Learned Senior Counsel has also attacked the finding returned by the Labour Court as being contrary to the evidence on record. It has been pointedly urged that the Labour Court has erred in law in not relying on the evidence of the expert handwriting witness WW1-Sh. Yash Pal Jain with regard to charge No. 1. The finding is challenged on the basis that the Labour Court had totally ignored the evidence of forgery. According to the learned Senior counsel, a comparison of original signatures of Mr. K.R. James with the signatures on the complaints would clearly establish that the signatures on the complaints have been forged. To get over this hurdle, the Management has also got the complaints subsequently singned by Mr. K.D. Sharma. Mr. Mittal has also pointed out certain other circumstances which would make evidence of the Management unbelievable. Charge No. 1 states that the petitioner along with some other workers have broken the lock of Reduction gear box with hammer. While giving oral evidence the witnesses have spoken only of iron rod. Further, if there had been break down of the gear box, the same would have been recorded in the log book. Witness No. 5-Sh. B.K. Srivastava has not been mentioned in the complaint. It is further submitted that the same arguments would apply with regard to charge No. 3. However, the Lbour Court has not adverted to charge No. 3 at all. With regard to charge No. 2, it is sought to be argued that since the petitioner does not belong to the concerned department, there was no question of his confronting any of the Officers on behalf of his friends. With regard to charge No. 4, it is stated that the findings returned by the Labour court are

(5) 2000(2) RSJ 578

conflicting in nature. According to the learned counsel, they do not make any sense at all. Apart from this, the learned senior counsel has also argued that under Standing Order 31.3, the petitioner could have been suspended during the pendency of the departmental enquiry. Deliberately the Management dismissed him without any justification. This fact alone would have been sufficient to hold that the dismissal of the petitioner without holding a Domestic Enquiry was not justified.

(12) In reply, Mr. Sarin submitted that the Settlement dated 11th September, 1989 is binding on the petitioner and the other workmen who had been dismissed. Therefore, the present writ petition itself is not maintainable. It is further submitted that the petitioner has indulged in a series of grave acts of misconduct. He is alleged to have physically assaulted the senior officers of the Company. He is alleged to have made inflammatory speeches against the Company. He is alleged to have used very derogatory language against the Officers. Consequently, the Management was left with no option but to dismiss him from service with immediate effect. Learned counsel further submits that the Management was justified in taking such a course under Standing Order 31.12. It is for this reason,-the charges were mentioned in the impugned order. Specific reasons were also assigned as to why it was not feasible to hold the domestic enquiry. However, the management had reserved its right to justify the action before the competent authority. Certified Standing Orders having been made under the Industrial Employment (Standing) Orders Act, 1946 have force of law. The Certified Standing Orders (hereinafter referred to as the Standing Orders) have been duly certified by the competent authority. Therefore, these orders would constitute conditions of service of the entire work force. In support of this submission, the learned Senior counsel has relied on a judgment of the Supreme Court in the case of *Bharat Petroleum* vs. *Maharashtra General Kamgar Union(6)*. Learned Sr. counsel further submits that the petitioner has hardly three years service to his credit. He has managed to drag the company into litigation for the past 12 years. His effort to obtain any interim relief have not succeeded. The petitioner had made an application for interim relief claiming subsistence allowance before the Labout Court. This application was dismissed. Against the interim award, the petitioner has filed C.W.P. No. 4457 of 1996. This petition was

(6) 1999(1)SCC 626

dismissed with the direction that the dispute be decided within a period of six months. The petitioner is also stated to be facing criminal proceeding which have, however, been stayed by this Court. Learned counsel further submitted that once the Labour Court had adjudicated the matter on merits, it cannot be concluded that the Tribunal did not go into the question as to whether the Management was initially justified in not holding the enquiry before passing the order of dismissal. It is submitted that the judgment in Singasan's case (supra) was rendered in a writ petition. The Supreme Court was not considering the award made by the Labour Court. Therein a railway employee had been dismissed from service without holding a departmental enquiry. A Division Bench judgment of this Court in the case of *Swaran Singh* vs. *Punjab State Electricity Board & Another (supra)* has been cited by the counsel for the petitioner, during arguments in reply. It is however, submitted by Mr. Sarin that the aforesaid judgment is not applicable in the facts and circumstances of the present case. In any event in that case, no efforts were made by the Management to justify the order of dismissal. Mr. Sarin has further submitted that this Court would not be justified in reappreciating the evidence unless the award suffers from an error apparent on the face of the record. Since the learned senior counsel for the petitioner has not pressed the points about the dismissal order not relating back to the date of dismissal Mr. Sarin has not addressed any arguments on this point.

(13) Learned Senior counsel has relied on the judgment of the Supreme Court in the case of *Shri J.D. Jain* vs. *The Management of State Bank of India and another, (7)* and submitted that the scope of interference in writ jurisdiction is very narrow. On the basis of this judgment, the learned counsel also submitted that the evidence appreciated by the Labour Court is not to be scrutinized by the High Court as if the High Court is sitting in appeal over the findings recorded by the Labour Court.

(14) I have anxiously considered the arguments put forward by the learned counsel for the parties.

(15) The first submission made by Mr. Mittal was that the Tribunal committed an error of law by not considering whether the Management was justified, for the reasons recorded by the

(7) 1982(1) LLJ 54

Management, in not holding a domestic enquiry before passing the order of dismissal. In the facts and circumstances of this case, it would not be possible to agree with the submission made by Mr. Mittal. In my view, the interpretation given by Mr. Mittal of the observations made in paragraph 10 of the award by the Tribunal is not correct. A perusal of paragraph 9 of the award shows that a number of judgments were cited by the Management before the Tribunal in support of the contention that the Management is entitled to adduce evidence in support of the dismissal order. It was also argued that in view of Standing Order 31.12 of the Certified Standing Orders of the Company, the right to justify this action had been reserved by the Management while passing the order of dismissal itself. Considering these contentions, the Tribunal concluded that disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry at all. The right of an employer to adduce evidence in both the situations is well recognised. Thereafter, in paragraph 10 of the Award, the Tribunal observes as under :—

> "10. On a conspectus of the legal position, as discussed above, it is not necessary to dilate upon the justifiability or otherwise of the reasons recorded by the Management in support of order dispensing with the domestic enquiry. Enquiry has been held by this Court into the charges set out by the Management in dismissal order, copy of which is placed upon record as Ex. MW-6/15....."

(16) These observations have been made by the Tribunal in view of the ratio of the law laid down by the Supreme Court in the case of *P.H. Kalyani* v. *M/s Air France Calcutta (8).* The Supreme Court, *inter alia* observed as under :—

> "..... If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still

(8) 1964(2) SCR 104

relate back to the date when the order was made. The observation in Messrs. Sasa Musa Sugar Company's case, on which the appellant relies apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made out. In that case the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee continues in law and in fact. In the present case, an inquiry has been held which is said to be defective in one respect and dismissal has been ordered. The respondent had however, to justify the order of dismissal before the Labour Court in view of the defect in the inquiry. It has succeeded in doing so and therefore the approval of the Labour Court will relate back to the date on which the respondent passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the Labour Court's award came into operation must fail."

(17) From a perusal of the above, it becomes apparent that the ratio of law laid down in Sasa Musa Sugar Company's Case, supra would apply only to a case when the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made out. In that case, the dismissal of the employee takes effect from the date of the award and so until then, the relation of employer and employee continues in law and in fact. In the present case, the employer has given cogent reasons for reaching the conclusions that the workman deserves to be dismissed with immediate effect. Thus the Tribunal held that in view of the law laid down by the Supreme Court, it is not necessary to dilate upon reasons given by Management, as the employer has led evidence to justify the action before the Tribunal.

(18) The observations made in paragraph 10 of the award also have to be read in the context of the findings arrived at in paragraphs 25 and 26 of the award. The Management had reserved its right in the order of dismissal itself (Annexure P-8) to justify its action before the competent authority in case the order of dismissal is challenged. The relevant portion of the order of dismissal has already been

reproduced in earlier part of this judgment. This right is vested in the Management by virtue of Standing Order 31.12 also, which is as under :—

> "31.12. In special circumstances like Labour trouble etc. when it is found that it is not feasible to hold a domestic enquiry, the Management will have the right to justify the termination/dismissal before Labour Court."

(19) It has been held by the Supreme Court in the case of Bharat Petroleum, supra that once the Standing Orders are certified, they constitute the condition of service binding upon the Management and the Employees who are already in employment or may be employed after certification. Relying on Standing Order 31.12, in view of the dangerous circumstances created by the petitioner and other workmen, the Management passed a composite order of dismissal as well as dispensing with the domestic enquiry. The findings on justifiability of the action of the Management are given in paragraphs 25 and 26 of the Award. The Tribunal, in my opinion, had rightly come to the conclusion that the evidence on record has fully substantiated the acts of misconduct as are described in Clauses of Order 29.1 of the Certified Standing Orders. These are major misconducts for which punishment of dismissal from service is justified. The Tribunal thereafter, rightly relied on the judgment of the Allahabad High Court given in the case of *Trivani Structural* vs. *State of U.P., (9)* wherein it has been held that punishment of dismissal from service can be awarded even for a solitary act of major misconduct. In the present case, the petitioner had been held guilty of several acts of misconduct. The Tribunal, thereafter, rightly held that the punishment of dismissal from services cannot be held to be excessive or disproportionate to the misconduct. Thereafter, in paragraph 26 of the Award, the Tribunal specifically notices the argument of the counsel for the petitioner that even if order of dismissal is upheld, the petitioner is entitled to wages upto the date of award. This argument can only succeed, if the Tribunal had come to the conclusion that the Management was not justified in passing the order of dismissal without holding a domestic enquiry. The case of *M/s Sasa Musa Sugar Works* vs. *Shabrati Khan, (10)* was cited in support of the submission made by the learned counsel for the petitioner. On the other hand, it was contended by the counsel for the

(9) 1997 LLR 672 (All)

Management that if action of the Management is held valid and justified, then the dismissal would relate back to the date of actual issuance of dismissal letter. Apart from the ratio of law laid down in Kalyani's case *(supra)*, Learned counsel also relied on the case of *Punjab Dairy Development Corporation* vs. *Kala (supra)*, In support of the submission. In this case, it is clearly held as follows :—

> "2. In view of the aforesaid decisions and in view of the findings recorded by the Labour Court, we are of the considered opinion that the view expressed in Desh Raj Gupta's case is not correct. It is accordingly over-ruled. Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the Management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court."

(20) After noticing the aforesaid judgments, the Tribunal, in my opinion, has rightly come to the conclusion that the relationship of employee and employer had existed between the parties upto 8th August, 1989. Therefore, the petitioner was not entitled to wages upto the date of the award. In paragraph 28 of the award, the Tribunal observed as under :—

> "28. No enquiry was conducted in this case by the management and the petitioner was not heard before his dismissal from service. The petitioner considered, *bona fide* in his estimation, that he had been wrongly punished and, therefore, he fought this long drawn legal battle with his employer. Although the order of dismissal is valid and justified, yet in the peculiar circumstances of this case, I feel that the petitioner should be awarded some compensation. Therefore, I allow Rs. 50,000 as compensation to the petitioner to be paid by the management."

(10) AIR 1959 SC 923

(21) Implicit in this finding would be the finding of the Tribunal that the Management was justified in not holding domestic enquiry before passing the order of dismissal. In view of the above, it would not be possible to hold that the Tribunal had failed to go into the justifiability of the reasons for dispensing with the enquiry before passing the order of dismissal. Mr. Mittal has, however, placed strong reliance on the observations made by the Supreme Court in the Case of Singasan Rabi Das, supra. In that case, the Supreme Court was considering the case of a railway servant who had been removed from service without holding a domestic enquiry by invoking the powers of the Management to do so under Rule 47 of the Railway Protection Force Rules, 1959. The matter did not reach the High Court or the Supreme Court by way of a reference under the rules of Industrial Disputes Act and a consequential award by the Labour Court or the Industrial Tribunal. Infact, Singasan (the dismissed employee) filed a writ petition challenging the order of dismissal. The order was challenged before the Division Bench on the ground that the same was passed without any enquiry into the charges and without giving any opportunity to the respondents to show cause against the proposed punishment. The order was said to be contrary to the law laid down by the Supreme Court in the case of *Divisional Personnel Officer, Southern Rly.* v. *T.R. Chellapan,(11).* It was held that the reasons given by the Management for dispensing with the enquiry were sufficient. The High Court was, however, of the view that Singasan Rabi Das was entitled to a show cause notice against the proposed punishment. Since an opportunity to show cause had not been given, the order of removal was bad. The High Court quashed the order of removal and gave opportunity to the disciplinary authority to pass fresh order, after giving opportunity to Singasan to show cause against the proposed punishment. The matter was taken to the Supreme Court by the Railway Authorities. It was contended before the Supreme Court that in view of the judgment in the case of *Union of India* vs. *Tulsiram Patel, (12)* it was not necessary to give a second show-cause notice. In these circumstances, the Supreme Court observed that it was not necessary to go into the submission made by Dr. Anand Prakash, counsel for the appellant therein because it was of the opinion that the reasons given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. Thus, it becomes

(11) (1976) (3) SCC 190
(12) (1985) 3 SCC 398

evident that the High Court as well as the Supreme Court were not dealing with the case where the workman had initially challenged the order of dismissal by way of Reference under the Industrial Disputes Act, 1947, with a consequential award by the Industrial Tribunal or the Labour Court. When the matter comes up before the Tribunal in a reference under the Industrial Disputes Act on the ground that no enquiry has been held or that a defective enquiry has been held, the Tribunal/the Labour Court, on an application made to that effect, is duty bound to afford an opportunity to the Management to justify its action. Such was not the positioin in Singasan's case (supra), Therefore, the High Court as well as the Supreme Court examined the reasons given by the Management for dispensing with the enquiry. In the present case, the Management had reserved its right to justify the action in the order of dismissal itself. Before the Tribunal both the parties had led evidence. The Tribunal has come to the conclusion that the action of the Management in dismissing the petitioner is justified. Therefore, the judgment in Singasan's case would be of no assistance to the petitioner. Mr. Mittal has also strongly relied on the Division Bench judgment of this Court in the case of Swaran Singh, supra. The Division Bench was considering a case where the workman had been dismissed from service without holding an enquiry. The allegation against the workman was that he had remained absent from duty for a period of two years. Without holding an enquiry by exercising its powers under Regulation 14 read with Regulation 5 (iii) of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1970 (for short, the Regulation), the petitioner therein was dismissed. The wordings of regulation 14(ii) are as under :—

> "14. Notwithstanding anything contained in Regulations 8,9,10,11,12 and 13 :—
>
> (i) ....
>
> (ii) Where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these regulations; or
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> (iii) xxx xxx xxx the punishing authority may consider the circumstances of the case and make such orders thereon it deems fit."

(22) The workman, Swaran Singh challenged the action of the Punjab State Electricity Board by raising an industrial dispute which the Government of Punjab referred to Labour Court, Ludhiana under Section 10(1) (c) of the Industrial Disputes Act, 1947. The plea taken by the petitioner therein was that action of the employer was liable to be nullified because neither any notice was given to him in terms of Section 25 (F) of the Industrial Disputes Act nor any enquiry was held to prove the allegation of mis-conduct, namely, absence from duty. Punjab State Electricity Board, the employer, resisted the claim of the workman by contending that he had abandoned the service on 4th February, 1984. It was also pleaded on behalf of the employer that the services of the workman had been terminated under Regulation 14 (ii) of the Regulations because he failed to report for duty inspite of the notices issued by the concerned authority. The Labour Court held that the action taken by the employer was outside the purview of Regulation 14(ii) because there did not exist any reasonable ground for dispensing with the enquiry. Thus, the Labour Court declared the termination as illegal and reinstated the workman into service with continuity of service. He was, however, denied wages for the period from the date of termination of service i.e. 4th February, 1984 to the date of demand notice i.e. 26th April, 1986. P.S.E.B., the employer challenged the award by way of a writ petition in this Court. The learned Single Judge quashed the award passed by the Labour Court holding that the charge on which the workman was retrenched from service was proved to the hilt and he cannot complain of violation of the principles of natural justice. The workman, therefore, filed Letters Patent Appeal against the judgment of the learned Single Judge. The Division Bench set aside the judgment of the learned single Judge and the award of the Labour Court was restored. Whilst examining the reasons of the Board for dispensing with the enquiry, it was observed that no attempt was made on behalf of the Management to justify the termination of the services of the appellant by stating that he was punished on the basis of finding recorded in the departmental enquiry held according to the Regulations and the principles of natural justice. It was not even urged on behalf of respondent No. 1 (PSEB) that the Labour Court may itself hold an enquiry and give an opportunity to the parties to adduce evidence. Therefore, the Division Bench held that the learned Single Judge was not justified in holding that the charge on which the workman was retrenched was proved to the hilt or that his conduct was deplorable or blame-worthy. From the above, it becomes apparent that the Division Bench was considering a case where no departmental enquiry had been held and the Management

had made no effort to justify its action before the Labour Court. The learned single Judge had set aside the award by merely relying on the pleadings of the parties in the Labour Court. In such circumstances, the Division Bench held that there was no material before the learned Single Judge to hold that the mis-conduct has been proved. That is not the position in the present case. Both the sides had led evidence. Lengthy arguments had been addressed before the Tribunal. On the basis of the evidence adduced by the parties before the Tribunal, certain findings of fact have been recorded. As noticed earlier, the Management had reserved its right to justify its action in the order of dismissal. The standing order 31.12 also permitted the Management to adopt such a course. Therefore, it cannot be said that the Tribunal has not examined the reasons given by the Management for dispensing with the enquiry. The Supreme Court in the latest judgment rendered in the case of *Karnataka State Road Transport Corpn.* v. *Smt. Lakshmidevamma and another,(13)* examined the law with regard to the giving of an opportunity to the employer to adduce evidence to justify its action, in the event, the Tribunal or the Labour Court comes to the conclusion that the enquiry was either not held or the enquiry held was defective. It was held that the right of the employer to adduce evidence is not a statutory right. This is actually a procedure laid down by the Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the Management and the workman. This procedure is said to be beneficial for both the management and the workman alike. The Supreme Court traced the genesis and the history of this rule of practice. The law on this point was laid down in the case of *Cooper Engineering Limited* v. *P.P. Mundhe, (14).* The Supreme Court held as under :—

> "13. The above judgment in D.C.M's case came to be considered again by this Court in the case of *Cooper Engineering Limited* v. *Sri P.P. Mundhe,* (1976) 1 SCR 361: (AIR 1975 SC 1900: 1975 Lab IC 1441), wherein this Court held (para 22) :
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> "We are, therefore, clearly of the opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry

(13) 2001 AIR SC Weekly 1981
(14) AIR 1975 SC 1900

has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer : there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

(23) From the above, it becomes evident that the Tribunal acted strictly in conformity with the law laid down by the Supreme Court. Since the order of dismissal was passed without holding an enquiry, the Management justified its action before the Tribunal. On an application being made at the appropriate time, the Tribunal was duty bound to independently examine the action of the Management in dismissing the workman. The Supreme Court in fact sounded a note of warning and made it clear that there will be no justification for any party to stall the final adjudication of the disputes by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. Thus it becomes apparent that the Tribunal was duty bound to consider the case on merits.

(24) Mr. Mittal had argued that the Management could have achieved the purpose of removing the petitioner from the seen by suspending him during the pendency of the enquiry. This power is given to the Management under Standing Order 31.3 which provides that the workman may be placed under suspension pending his expalanation or subsequent departmental enquiry till the final orders

are passed. This not having been done. it necessarily leads to the conclusion that the Management was not justified in passing the order of dismissal without holding a departmental enquiry. I do not find much force in the submission made by the leaned senior counsel. A perusal of the award passed by the Tribunal shows that this point was not even raised before the Tribunal. Even otherwise, the findings of the Tribunal leave no manner of doubt that the petitioner and his colleagues had created an atmosphere wihch would justify the Management removing them from service with immediate effect.

(25) Mr. Mittal has, thereafter, argued that the findings returned by the Labour Court are perverse as relevant evidence has been ignored. Mr. Mittal sought to challenge the findings recorded by the Tribunal on the ground that the evidence of the expert witness-WW1 has been totally ignored. Factually, this assertion of the learned senior counsel is incorrect. A perusal of the award shows that the Tribunal after appreciating the evidence has differed with the findings recorded by the expert witness. The Tribunal has given elaborate reasons for not relying on the evidence of the expert witness. Once the Tribunal has appreciated the evidence of the witness, it would not be possible for this Court to re-examine the same whilst exercising its jurisdiction under Articles 226/227 of the Constitution of India. The scope and ambit of the jurisdiction of the High Court under Articles 226/227 of the Constitution was explained by the Division Bench in the case of Swaran Singh, supra. In paragraph 7 of the judgment, the Division Bench held as under :—

> "7. We have thoughtfully considered the respective submissions. It is trite to say that a writ of certiorari can be issued for correction errors of jurisdiction committed by inferior Courts or Tribunals or an error of law apparent on the face of the record. A writ can also be issued where in exercise of Jurisdiction conferred upon it, the Court or Tribunal acts illegally or improperly, i.e. if it decides a question without giving an opportunity of hearing to the affected party or where the procedure adopted in dealing with the dispute is contrary to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it

is not entitled to act as an Appellate Court. This implies that the finding of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned except when it suffers from an error of law apparent on the face of it. What is the meaning of expression "error of law apparent on the face of the record?" The Courts have not given any fixed meaning to this expression in the context of the findings of fact recorded by the inferior Court or Tribunal but, broadly speaking, a writ of certiorari can be issued for correcting a finding of fact if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced its finding. Similarly, if a finding of fact is based on no evidence then it would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, it has to be kept in mind that a finding of fact recorded by the inferior Court or Tribunal cannot be challenged on the ground that relevant and material evidence adduced before the inferior Court or Tribunal was insufficient or inadequate to sustain the impugned finding. Likewise, mere possibility of the High Court, on reappreciatioin of evidence, coming to a different conclusion than the one reached by the inferior Court or Tribunal cannot be treated as an error of law apparent on the face of the record."

(26) From the above it becomes quite clear that this Court whilst exercising its jurisdiction under Article 226 ought not to sit over the finding of facts as an Appellate Court. This position has been reiterated by the Supreme Court and various High Courts time and again and does not need to be repeated here. This judgment relied upon by the petitioner is of no assistance for the case put forward by the petitioner. It rather helps the submission made by the learned Counsel for the respondents.

(27) The charges which have been proved against the petitioner are of a very serious nature. Even criminal case is pending against the petitioner for having assaulted the superior officers. All the charges

levelled against the petitioner have been found to be factually proved by the Tribunal. In such circumstances, it would not be possible to hold that the award suffers from an error of law apparent on the face of the record. Mr. Mittal was at pains to invite this Court to re-examine the whole evidence. I am of the considered opinion that this Court would be remiss, if such a course is adopted, However, in order to satisfy the anxiety of the counsel for the petitioner, I have gone through the record with the assistance of the learned counsel.

(28) Charge No. 1 states that the petitioner alongwith Trilok Raj and Zile Singh had broken the lock of Reduction Gear Box with hammer. They had also abused Mr. James who had tried to stop them from breaking the lock. The petitioner had shouted something in vernacular :—

> "HUM TEENO TERE BAAP MILKAR AAJ TERI MAAN CHOD DENGE".

(29) The petitioner had also tried to hit Mr. James with hammer but hand of the petitioner was held by Mr. James. Mr. James could have sustained grievous injury had he not blocked the hammer blow.

(30) Charge No. II states that on 17th July, 1989, the petitioner and his two co-workers namely Trilok Raj and Zile Singh had confronted Senior Division Manager (Maintenance) K.S. Bhambra, who was on his usual round, saying :—

> "SIKHDE BAHANCHOD TERE BHEJE MAIN BAAT GUSTI HAI KI NAHI TOO HAMMARE BANDO KO JALDI CHHOD DIYA KAR TERI ASANSIAL SARVIS SAALI GAEE BHAD MAI".

(31) The petitioner and his co-workers had got furious and had grabbed K.S. Bhambra, flung his turban, had caught him by the hair and had given beating to him. The petitioner etc. had extended threat of dire consequences to K.S. Bhambra, in case the matter was reported by him to the higher management.

(32) Charge No. III states that on 19th June, 1989, the petitioner was caught tampering with the number punching machine rendering it useless for work and thereby stopping the conveyor line for 25 minutes. When Mr. James, Head of the Department had

objected to the above act, the petitioner had abused Mr. James and had said :—

"GAAND MARWA LE MAINE JO KARNA THA KAR DIYA TUJHSE JO HOTA HAI KAR LE".

(33) Mr. James had warned the petitioner of strict action but the petitioner had left the department exhibiting impertinence.

(34) Charge No. IV states that on 19th July, 1989, the petitioner had held a gate meeting at the main factory gate, which was addressed by him (petitioner) and by some other persons. The petitioner had delivered inflammatory speech, preaching violence and use of force against the management executives and such workmen who were willing to work. The petitioner, togetherwith his colleagues, had man-handled staff members mentioned in the charge sheet. The petitioner and his co-workers had instigated other workers to resort to strike. As a result of which most of the workmen had not reproted for duty w.e.f. 24th July, 1989 and were still absenting themselves when the petitioner was dismissed from service on 8th August, 1989. The production of the management was reduced and financial loss to the tune of Rs. 50 lacs per day had been caused. The petitioner had also forcibly stopped the other willing workers by threatening them with dire consequences.

(35) Charge No. V states that the petitioner and his other colleagues had wilfully violated settlement dated 22nd August, 1987 under Section 12(3) of the Act, 1947, by absenting from work, indulging in indiscipline, stoppage and disruption of work, resorting to violence and inciting other workmen to violate the said binding settlement.

(36) All these charges have been proved before the Tribunal by oral as well as documentary evidence. Mr. Mittal, however, submits that all these findings are of no avail to the management as the Tribunal has wrongly differed with the findings returned by the expert to the effect that the signatures of Mr. James on the two complaints dated 15th July 1987 and 19th July, 87 are forged. As noticed earlier, this Court will not reappreciate the evidence to come to a conclusion different from the one arrived at by the Tribunal on the basis of the evidence. Even otherwise, it is on the record that complaints signed by K.R. Thomas, are also signed by K.D. Sharma. He has appeared as MW3. He has given eye-witness account of the

entire episode. In any event, there is independent evidence in the form of a complaint made by Mr. K.S. Bhambra. This relates to a totally independent incident. He has also appeared as MW1 and narrated the entire episode. The evidence of these witnesses has been appreciated by the Tribunal. Only, thereafter findings of fact have been recorded. A finding of fact can only be termed as an error of law when it is based on no evidence. But this is not a case of no evidence. If that be so, then the findings cannot be challenged on the ground that relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings.

(37) Mr. Sarin has submitted that the removal of the petitioner and 14 other workmen from service was in fact accepted by the Union in a settlement arrived at between the management and the workers' Union on 11th September, 1989. The settlement had been challenged by way of a writ petition. The same has been upheld. Therefore, the dismissal of these workmen cannot be challenged in this writ petition. A perusal of paragraph 18 of the Award shows that the Tribunal has held the settelment to be binding in view of the law laid down by the Supreme Court in the case of *P. Virudhachalam* v. *The Management of Lotus Mills (15).* In my view Mr. Sarin is correct in the submission made by him that the petitioner had accepted the legality of the order of dismissal by virtue of clause 6. It is, however, not necessary to nonsuite the petitioner on this point, as the Tribunal has given independent findings of fact, holding the action of the Management to be justified. As noticed earlier, the findings having been arrived at on the basis of evidence, this Court would not be justified in interfering with the same whilst exercising the jurisdiction under Article 226. The learned Sr. Counsel has rightly relied on the judgment of the Supreme Court in the case of *Indian Overseas Bank* vs. *I.O.B. Staff Canteen Workers Union & Anr.(16).* In that case, the Supreme Court has reiterated the well-settled law on the parameters within which the High Court can interfere in findings of fact rendered by the Tribunals/Laobur Courts. The relevant observations made in paragraph 17 are as under :—

> "17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ

(15) 1998(78) FLR 107
(16) JT 2000 (4) SC 503

jurisdiction, by literally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though awarefully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken . . . ."

(38) Keeping the aforesaid observations in view, I am of the considered opinion that the present award cannot be termed as suffering from error of law apparent on the face of the record. Mr. Sarin also reiterated that even if the complaint made by Mr. James is ignored, the findings of facts recorded by the Tribunal can be justified as the complaint need not even be in writing. For this proposition, the learned Sr. counsel has relied on the judgment of the Supreme Court in the case of *Shri J.D. Jain* v. *The Management of State Bank of India and another (Supra)*. In that case, the Supreme Court again reiterated that in an application for writ of certiorari under Article 226 of the Constitution for quashing the award of Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, *inter alia*, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In paragraph 11 of the judgment it is clearly noticed that no rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal. In the present case, even if one ignores the complaint made by Mr. James, there is independent, oral and documentary evidence to justify the findings recorded by the Tribunal. Mr. Mittal

has also argued that there was hostile discrimination as large number of workers who had participated in the strike had been permitted to continue. Mr. Sarin has, however, pointed out that the petitioner is admittedly not an officer of the Union. The Tribunal has come to a conclusion that the petitioner has failed to make out a case of victimisation. This conclusion has been supported by the evidence of one of the witnesses-WW2 Bijender Pal. A perusal of paragraph 19 of the award clearly shows that the petitioner admitted that he has never been an office bearer of the Union. His own witness WW2 Bijender Pal stated before the Tribunal that although he is an active member of the Trade Union, he was not removed from service by the Management because of his Trade Union activities. It is only thereafter, the Tribunal came to the conclusion that workers participating in the Trade Union activities were not being victimised by the management. Thus the question of his victimisation on account of union activities does not arise. He has been dismissed on account of proven acts of mis-conduct. Earlier having given up as not pressed the argument that the petitioner had been victimised, Mr. Mittal has, however, re-introduced the same by re-christening it as hostile discrimination. Having earlier abandoned the argument, it would not be proper to permit the pertitioner to reopen the same under a different heading. The Tribunal having given categoric findings of fact based on evidence, this Court would be wholly unjustified in interfering with the same. A perusal of the concluding part of the award shows that even after upholding the action of the Management and holding that the dismissal order is justified, the Tribunal proceeded to award compensation to the petitioner in the sum of Rs. 50,000. This finding is not challenged before me by the Management. Therefore, the court need not examine the propriety of the same.

(39) For the reasons stated above, the writ petition is dismissed. No costs.

R.N.R.