The Workmen of M/S. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.

Vs

The Management and Others

The Dy. General Manager, Larsen and Toubro Ltd.

Vs

Sheikh Ismail Mohamed

The Manager, Larsen and Toubro Ltd., Bombay

Vs

K. P. Ganghare

M/S. Godfrey Phillips India Ltd.

Vs

Manik Vasudeo and Others

Civil Appeals Nos. 1461

(C.A. Vaidialingam, I.D. Dua JJ)

06.03.1973

JUDGMENT

VAIDIALINGAM, J. -

1. In these appeals, by special leave, two common question arise for consideration -

(1) proper interpretation of Section 11-A of the Industrial Disputes Act; and

(2) whether the above section applies to industrial disputes which have already been referred to for adjudication and were pending as on December 15, 1971.

2. Section 11-A was incorporated in the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) by Section 3 of the Industrial Disputes (Amendment) Act, 1971 (hereinafter referred to as the Amendment Act). The Amendment Act passed by Parliament received the assent of the President on December 8, 1971. Sub-section (2) of Section 1 provided for its coming into force on such date as the Central Government by notification in the official Gazette appoints. The Central Government by Notification No. F.S.110-13/1/71-LRI, dated December 14, 1971, appointed the 15th day of December 1971, as the date on which the said Act would come intoforce. Accordingly, the Amendment Act came into force with effect from December 15, 1971. The Amendment Act introduced various amendments to the Act. In particular by Section 3, it inserted the new Section

11-A in the Act. The new Section 11-A so inserted runs as follows :

> "11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :
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> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

3. Regarding Section 11-A, in the statement of objects and reasons it is stated as follows :

> "In Indian Iron and Steel Company Limited and Another v. Their Workmen (AIR 1958 SC 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.
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> The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.
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> In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947 ....."

4. There is no controversy that in all the four appeals, the reference had been made long before the date of coming into force of Section 11-A and the Industrial Disputes were pending adjudication at the hands of the concerned authorities on December 15, 1971. In respect of such disputes the concerned Labour Court or Tribunal had to consider the question whether Section 11-A applies to those proceedings and also the further question as to the powers to be exercised by them in respect of such disputes. On behalf of the companies, it appears to have been urged that the section does not apply to the disputes which had already been referred to for adjudication and that the management had a right to adduce evidence to justify the action taken against the workmen even though no enquiry had been held before the order of discharge or dismissal had been passed and also in cases where the enquiry held is found to be defective. This claim was resisted on behalf of the Labour on the ground that the section applies to all proceedings which were pending as on December 15, 1971 and that the management, if it had not held any enquiry or if the enquiry conducted by it was found to be defective, has no right to adduce evidence before the authority to justify its action. Different views have been expressed by the Tribunals concerned as will be seen from what is stated below.

5. In Civil Appeal No. 1461 of 1972, the Reference (I.T.) No. 307 of 1968, related to the question of reinstatement of a number of workmen, who had been dismissed. The Industrial Tribunal, Maharashtra, Bombay considered the question whether Section 11-A applies to the reference, which had been made as early as August 12, 1968. The Industrial Tribunal by its order, dated April 21, 1972, has held that the restrictions imposed upon the powers of the Labour Court or Tribunal to interfere with orders of dismissal passed by the management, have been removed by Section 11-A, which has the effect of affecting the substantive part of the law of master and servant and, therefore, the said section has no retrospective effect. The Tribunal has held that the concerned reference will have to be disposed of as though Section 11-A was not in the statute. The workmen have come up in appeal.

6. Civil Appeal No. 1995 of 1972 arises out of the order, dated June 28, 1972 of the Fifth Labour Court at Bombay in Reference (I.D.A.) No. 268 of 1970. The Labour Court has held that Section 11-A applies even to all proceedings pending adjudication as on December 15, 1971, as it only deals with matters of procedure. The said Court has further held that the new section makes it clear that there must be a proper enquiry by an employer before dismissing or discharging a workman and that if no enquiry has been held or if the enquiry held is found to be defective, there is no option but to reinstate the employee. In this view, the Labour Court has further held that an employer under those circumstances has no right to adduce evidence in the adjudication proceedings to justify his action. In Civil Appeal No. 1996 of 1972 [arising out of Reference (I.D.A.) No. 207 of 1970] and in Civil Appeal No. 2386 of 1972 [arising out of Reference (I.D.A.) No. 213 of 1970], the same Labour Court has expressed similar views in its orders, dated June 27, 1972. Against all these three orders the company has filed appeals.

7-8. The management and the workmen concerned in certain other disputes have also intervened in these appeals and they have placed before us copies of the orders passed by other authorities. It will be useful to refer to the views expressed by some of those authorities. In Reference (I.D.A.) No. 79 of 1971, the Second Labour Court in its order, dated April 13, 1972, has held as follows :

Section 11-A gives power to the Labour Court to scrutinise domestic enquiries similar to that of an appellate court. The said section comes into play only after the court has come to a conclusion that the enquiry held by an employer was proper. Both parties have still a right to adduce evidence to prove the legality or otherwise of the domestic enquiry. Even if no enquiry has been held by an employer or if the enquiry is held to be defective, reinstatement cannot be ordered straightaway as

urged by the labour. On the other hand, an employer has got a right to adduce evidence to justify the action taken by him. But Section 11-A deals only with procedural matters and, therefore, it operates retrospectively.

9. Similarly in Reference (I.D.A.) No. 41 of 1966, the First Labour Court Bombay in its order, dated January 3, 1973, has held that the section is retrospective in its operation and that the employer has got a right to lead evidence before the Labour Court, if the domestic enquiry has not been held or is found to be defective.

10. From what is stated above, it is clear that there is a very wide divergence of views expressed by the various authorities both regarding the applicability of the section to pending proceedings as well as the interpretation to be placed on the said section.

11. We will first take up the question regarding the proper interpretation to be placed on Section 11-A. The contention of Mr. Deshmukh, learned counsel, who advanced the main arguments in this regard on behalf of the workmen are as follows.

12. Originally limitations had been placed by Judicial decisions in respect of the jurisdiction of the Labour Tribunals when considering the action of an employer in the matter of discharge or dismissal of a workman. If a domestic enquiry had been held by an employer on the basis of which a workman is dismissed or discharged, the Labour Courts can interfere with the decision of the management only if the domestic enquiry is vitiated by the circumstances mentioned by this Court in Indian Iron and Steel Co. Ltd. and Another v. Their Workmen (1958 SCR 667 : AIR 1958 SC 130 : (1958) 1 Lab LJ 260). Once the Tribunals hold that the domestic enquiry has been conducted properly and the action of an employer is bona fide and the conclusion arrived at therein are plausible, they had no jurisdiction to substitute their own judgment. In cases where the misconduct is found to be proved by a valid and proper domestic enquiry, the Tribunal had no power to alter the punishment imposed by an employer. Even in cases where the domestic enquiry is held to be defective or even if no domestic enquiry had been conducted by an employer before passing an order of termination or discharge, the employer was given an opportunity to adduce evidence before the Tribunal to justify his action. Once the Tribunal accepts that evidence and holds that the misconduct is proved, it had no power to interfere with the discretion of the management regarding the quantum of punishment.

13. The above position has been completely changed by Section 11-A. It is now obligatory on an employer to hold a proper domestic enquiry in which all material evidence will have to be adduced. When a dispute is referred for adjudication and it is found that the domestic enquiry conducted by the management is defective or if it is found that no domestic enquiry at all had been conducted, the order of discharge or termination passed by the employer becomes, without anything more, unjustified and the Labour Tribunals have no option but to direct the reinstatement of the workman concerned, as his discharge or dismissal is illegal. Even in cases where a domestic enquiry has been held and finding of misconduct recorded, the Labour Tribunals have now full power and jurisdiction to reappraise the evidence and to satisfy themselves whether the evidence justifies the finding of misconduct. Even if the enquiry proceedings are held to be proper and the finding of misconduct is also accepted, the Tribunal has now power to consider whether the punishment of dismissal or discharge was necessary for the type of misconduct of which the workman is found guilty. In such circumstances, the Tribunal can also give any other relief to the workman, including the imposing of a lesser punishment. In cases where an employer had not conducted any enquiry or when the enquiry conducted by him is held to be defective, the employer will not be given any opportunity to

adduce evidence before the Labour Tribunal for justifying his action. Various decisions of this Court have emphasised that there is an obligation on the part of an employer to hold a proper enquiry before dismissing or discharging a workman. And it has also been stated that the enquiry should conform to certain well defined principles and that it should not be an empty formality. If the management, being fully aware of this position in law, does not conduct an enquiry or conducts a defective enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or wrong committed by it and seek a further opportunity before the Tribunal of adducing evidence for the first time. Generally, the Standing Orders also provide for the conduct of an enquiry before imposing a punishment. The Standing Orders have been held to be statutory terms of conditions of service. If an employer does not conform to the provisions of the Standing Orders, he commits an illegality and an order passed, which is illegal, has only to be straightaway set aside by the Tribunal. Decisions of this Court, while recognising that an opportunity has to be given to an employer to adduce evidence before the Tribunal for the first time, have not given due importance to the effect of a breach of a statutory obligation committed by an employer in not conducting a proper and valid enquiry as per the Standing Orders. This anomaly has now been removed by the Legislature.

14. The above is the line of argument adopted by Mr. Deshmukh. He referred us to certain decisions of this Court in support of his contentions that the opportunity that was so far directed to be given to an employer to adduce evidence for the first time before the Tribunal was not by way of recognising a right in an employer but really for the benefit of the workman, who will otherwise be jeopardised by a further enquiry being conducted by the employer after filling up the lacunae that are found in the original enquiry. He pointed out that when the Tribunals have now been clothed with full power to reappraise the evidence adduced in the domestic enquiry, which an employer is under obligation to conduct, and when they have been clothed with powers to hold as unjustified an order of termination because of the enquiry proceedings being defective or on the ground that no enquiry at all was conducted, the basis for giving an employer an opportunity to adduce evidence before the Tribunal no longer survives. Mr. Deshmukh was prepared to accept that even now it is open to the parties to adduce evidence before the Tribunal, strictly limited to the validity or otherwise of a domestic enquiry conducted by an employer. The counsel relied very heavily on the proviso to Section 11-A in support of his contention that it is obligatory now for an employer to conduct a proper and valid enquiry before passing an order of dismissal of discharge.

15. The above contentions of Mr. Deshmukh have been adopted by Miss. Indra Jai Singh, Mr. Madan Mohan and Mr. Bhandare, counsel appearing for certain other workmen. Mr. Bhandare, however, was prepared to take a slightly different stand regarding the proviso to Section 11-A. According to him only such evidence, which could and should have been produced by the parties in the domestic enquiry, is not allowed to be adduced before the Tribunal.

16. Mr. Damania, learned counsel, who advanced the leading arguments on behalf of the employers broadly contended as follows :

The restrictions imposed upon the jurisdiction exercised by the Labour Tribunals in respect of disputes arising out of orders passed by way of dismissal or discharge, as laid down by this Court in a number of decisions over a period of years, have not been altered by the new section. The right of an employer to manage his affairs in his own way, provided he does not act arbitrarily, is kept intact. The common law relationship of master and servant was recognised, except to the extent that it was modified by the decision of this Court in Indian Iron and Steel Co. Ltd. and Another v. Their Workmen (supra). An employer is expected to hold a domestic enquiry before an order of dismissal or termination is passed. He is also bound to follow, in such cases, the principles of natural justice

and the procedure laid down by the relevant Standing Orders. The Tribunal will not interfere with the finding recorded by an employer in a proper enquiry merely on the ground that it would have come to a different conclusion. The punishment to be meted out was entirely within the powers and jurisdiction of an employer and it was no part of the jurisdiction of a Tribunal to decide whether the said punishment was justified except in very rare cases where the punishment imposed is so grossly out of proportion, so as to suggest victimisation or unfair labour practices. This was the position vis-a-vis the management as on December 15, 1971. But under Section 11-A, after the Tribunal holds that the enquiry has been conducted properly by an employer and that the finding about misconduct is correct, it has jurisdiction to consider whether the punishment requires modification. If it holds that the punishment has to be modified, it has power to do so and award a lesser punishment. Section 11-A comes into effect only at the time when the Tribunal considers about the punishment to be imposed. While previously the Tribunal had no power to interfere with the punishment, it is now clothed with such a power. This is the only modification regarding the powers of the management that has been introduced by Section 11-A. Neither the fact that no enquiry at all has been held by an employer nor the circumstances that the enquiry, if any held, is found to be defective, stands in the way of an employer adducing evidence before the Tribunal for the first time to justify his action taken against a workman.

17. Mr. Setalvad, learned counsel, appearing for Larsen and Toubro Ltd. adopted these contentions of Mr. Damania. He, however, referred us to the provisions of Section 33 of the Act. According to him when the previous permission or an approval for dismissing or discharging a workman has been obtained under Section 33, the Tribunal concerned would have applied its mind and satisfied itself at least prima facie that the proposed action of the employer was justified. Such satisfaction may be arrived at on perusal of the records of domestic enquiry, if one had been conducted or on the basis of evidence placed before the Tribunal by an employer for the first time. The said order of dismissal or discharge can nevertheless be the subject of an industrial dispute. When such dispute is being adjudicated by the Tribunal, the records pertaining to the proceedings under Section 33 will be relied on by an employer as material on record. It will lead to an anomaly if it is held that the Tribunal can straightaway order reinstatement merely because no domestic enquiry has been held or the domestic enquiry conducted is defective for one reason or other. Therefore, he pointed out that the proper way of interpreting Section 11-A would be to hold that it comes into play after a Tribunal has held the enquiry proceedings conducted by the management to be proper and the finding of guilt justified. It is then that the Tribunal can consider whether the punishment imposed is justiced. If it is of the opinion that the punishment is not justified, it can alter the same.

18. We have broadly indicated above the stand taken on behalf of the workmen and the employers regarding the interpretation of Section 11-A.

19. Before we proceed to consider the contents of the section, having due regard to the arguments advanced before us, it is necessary to indicate the legal position, as on December 15, 1971, regarding the powers of a Labour Court or Tribunal when deciding a dispute arising out of dismissal or discharge of a workman. There are several decisions of this Court, as also of the Labour Appellate Tribunal laying down the principles in this regard, but we will refer only to a few of them.

20. In its very early decision in Buckingham and Carnatic Company Ltd., by its Managing Agents, Binny and Co., Madras v. Workers of the Company, represented by the Madras Labour Union and Madras Textile Workers Union (1952 Lab AC 490), the Labour Appellate Tribunal held that the decision of the management in relation to the charges against the employee will not prevail - if -

(a) there is want of bona fides, or

(b) it is a case of Victimistion or unfair labour practice or violation of the principles of natural justice, or

(c) there is a basic error of facts or,

(d) there has been a perverse finding on the materials.

It was further laid down that an employer ought to have the right to decide what the appropriate punishment for a misconduct should be and its exercise of the discretion in this regard should not be interfered with by a Tribunal unless the punishment is unjust. In Shri Ram Swarath Sinha, Righa, Muzaffarpur v. The Management of the Belsund Sugar Company Limited, Righa, Muzaffarpur (1954 Lab AC 697), the Labour Appellate Tribunal has recognised the right of a management to ask for permission to adduce evidence for the first time before the Tribunal to justify its action though no domestic enquiry had been held by it. It has been emphasised that the permission asked for cannot be thrown out in limine on the ground that the management had not made any previous enquiry into the charge. We may say that this decision was in respect of a proceeding under Section 33 of the Act, but, as held by this Court, there is no difference in such matters whether the Tribunal was deciding a dispute referred to it under Section 10 or an application filed before it under Section 33 of the Act.

21. In discussing the nature of the jurisdiction exercised by an Industrial Tribunal when adjudicating a dispute relating to dismissal or discharge, it has been emphasised by this Court in Indian Iron Steel and Co. Ltd. (supra), as follows :

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

22. This is the decision which has been referred to in the Statement of Objects and Reasons already adverted to. It may be noted that the four circumstances pointed out by this Court justifying interference at the hands of the Tribunal are substantially the same as laid down by the Labour Appellate Tribunal in Buckingham and Carnatic Company case (supra).

23. Following the decision in India Iron and Steel Co. Ltd. case (supra), this Court in The Punjab National Bank Ltd. v. Its Workmen ((1960) 1 SCR 806 : AIR 1960 SC 160 : (1959) 2 Lab LJ 666), held :

> "In cases where an industrial dispute is raised on the ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a proper enquiry or not. Where such a proper enquiry has been held in accordance with the provisions of the relevant

> standing orders and it does not appear that the employer was guilty of victimisation or any unfair labour practice, that tribunal is generally reluctant to interfere with the impugned order."

It was further emphasised that :

> "There is another principle which has to be borne in mind when the tribunal deals with an industrial dispute arising from the dismissal of an employee. We have already pointed out that before an employer can dismiss his employee he has to hold a proper enquiry into the alleged misconduct of the employee and that such an enquiry must always begin with the supply of a specific charge-sheet to the employee."

The effect of an employer not holding an enquiry has been stated as follows :

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

24. In M/s. Bharat Sugar Mills Ltd. v. Shri Jai Singh and Others ((1962) 3 SCR 684, 690 : (1961) 3 FLR 371 : (1961) 1 Lab LJ 644), the question arose regarding the powers of an Industrial Tribunal to permit an employer to adduce evidence before it justifying its action after the domestic enquiry was held to be defective. It was contended on behalf of the workmen that when once the domestic enquiry was found to be defective, the tribunal had no option but to dismiss the application filed by an employer for approval and that it cannot allow an employer to adduce evidence before it justifying its action. This Court rejected this contention as follows :

> "When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment the Tribunal has to satisfy itself than there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decision of this Court, has to accept the finding arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way of performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management

> to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct."

25. In the above decision, this Court quoted with approval the decision of the Labour Appellate Tribunal in Buckingham and Carnatic Company Ltd. case (supra), holding that the materials on which a Tribunal acts may consist of -

> "(1) entirely the evidence taken by the management at the enquiry and the proceedings of the enquiry, or
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> (2) that evidence and in addition thereto further evidence led before the Tribunal, or
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> (3) evidence placed before the Tribunal for the first time in support of the charges."

It was further emphasised that :

> "For a long time now, it has been settled law that in the case of an adjudication of a dispute arising out of a dismissal of a workman by the management (as distinct from an application for permission to dismiss under Section 33), evidence can be adduced for the first time before the Industrial Tribunal. The important effect of the omission to hold an enquiry is merely this, that the Tribunal would not have to consider only whether was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made."

The observation made by this Court in The Punjab National Bank Ltd. case (supra), were quoted with approval. It was further held that the reasons for which it is proper for a Tribunal to take evidence itself as regards the alleged misconduct when adjudicating upon a dispute arising out of an order of dismissal are equally present in a case where the management makes an application for permission to dismiss an employee without holding a proper enquiry. Ultimately, this Court upheld the order of the Tribunal allowing the employer to adduce evidence before it in support of its application for permission to dismiss an employee even though the domestic enquiry held by it was held to be highly defective.

26. The powers of a Tribunal when a proper enquiry has been held by an employer as well as the procedure to be adopted when no enquiry at all has been held or an enquiry held was found to be defective, again came up for consideration in Management of Ritz Theatre (P) Ltd. v. Its Workmen ((1963) 3 SCR 461 : AIR 1963 SC 295 : (1962) 2 Lab LJ 498). Regarding the powers of a Tribunal when there has been a proper and fair enquiry, it was held :

> "It is well settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the enquiry officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusion reached at the departmental enquiry were perverse or the impugned dismissal is vindicative or mala fide, and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the enquiry officer holding

> the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion."

Again regarding the procedure to be adopted when there has been no enquiry or when there has been a defective enquiry, it was stated :

> "It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In order words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the Tribunal. This position also is well settled."

It was further held that it is only where a Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded is perverse that the Tribunal derives jurisdiction to deal with merits of the dispute, when permission has to be given to an employer to adduce additional evidence.

27. The right of an employer to lead evidence before the Tribunal to justify his action was again reiterated in Khardah Co. Ltd. v. Their Workmen ((1964) 3 SCR 506 : AIR 1964 SC 719 : (1963) 2 Lab LJ 452), as follows :

> "It is well settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the Tribunal and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee."

28. In Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory ((1965) 3 SCR 588 : AIR 1956 SC 1803 : (1965) 2 Lab LJ 162), the employer had charge-sheeted certain workmen and without conducting any enquiry, as required by the standing orders, passed orders discharging the workmen. Before the Tribunal, the employer adduced evidence justifying the action taken against the workmen. The workmen were also given an opportunity to adduce evidence in rebuttal. After a consideration of such evidence, the Tribunal held that the workmen were guilty of misconduct alleged against them and that the orders of discharge passed by the employer were fully justified. Before this Court it was contended on behalf of the workmen that when no enquiry whatsoever had been conducted by the employer, as required by the standing orders, before passing an order of dismissal or discharge, the Tribunal had no jurisdiction to hold an enquiry itself by permitting the employer to adduce evidence before it for the first time. In rejecting this contention, it was held :

> "It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before

it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited question open to a tribunal where domestic enquiry has been properly held .... but also to satisfy itself on the facts adduced it by the employer whether the dismissal or discharge was justified ..... If the enquiry is defective or if no enquiry has been held as required by standing orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper ..... A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order or dismissal or discharge was proper."

28-A. The reasons for allowing an employer to lead evidence before the Tribunal justifying his action have been stated thus :

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that ground, it would inevitable mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the domestic enquiry is invalid and those where the enquiry has in fact been held."

29. The rights of an employer to avail itself of an opportunity to satisfy the Tribunal by adducing evidence, when an enquiry held by it was found to be defective or when no enquiry at all has been held, have been stated in State Bank of India v. R. K. Jain and Others ((1972) 1 SCR 755) as follows :

"It should be remembered that when an order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the

> domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduce evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

30. This Court in its recent decision in Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh ((1972) 1 LLJ 180 : (1972) 1 SCC 595), after a review of all the earlier cases, has summarised the principles flowing out of those decision. It has been emphasied that when no enquiry has been held by an employer or when the enquiry held has been found to be defective, the employer has got a right to adduce evidence before the Tribunal justifying its action. The stage at which the employer should invoke the jurisdiction of the Tribunal to allow him to adduce evidence before it, has also been discussed in the said decision.

31. We have exhaustively referred to the various decision of this Court, as they give a clear picture of the principles governing the jurisdiction of the Tribunals when adjudicating disputes relating to dismissal or discharge.

32. From those decisions, the following principles broadly emerge :

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in

the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen ((1971) 1 SCC 742), within the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

33. The question is whether Section 11-A has made any changes in the legal position mentioned above and if so, to what extent ? The Statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the legislature wanted to achieve. At the time of introducing Section 11-A in the Act, the legislature must have been aware of the several principles laid down in the various decision of this Court referred to above. The object is stated to be that the Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of Objects and Reasons has specifically referred to the

limitations on the powers of an Industrial Tribunal, as laid down by this Court in Indian Iron and Steel Co. Ltd. case (supra).

34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication. In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set order and direct reinstatement of the workman on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does indicate that a change in the law, as laid down by this Court has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has been effected giving power to the Tribunal only to alter the punishment, after having held that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has been re-written.

35. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislaton, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. case (supra), existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the

Tribunal by the decision in Indian Iron & Steel Co. Ltd. case (supra), can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly, there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. Ltd. case (supra). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years.

38. All parties are agreed that even after Section 11-A, the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer.

39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A.

41-A. Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A.

42. Mr. Deshmukh, rather strenuously urged that in all its previous decisions, this Court had not considered a breach - or an illegality, as he calls it - committed by an employer is not holding a domestic enquiry. The learned counsel urged that this Court has consistently held in several decisions that there is an obligation on the part of an employer to conduct a proper domestic enquiry in accordance with the Standing Orders before passing an order of discharge or dismissal. Hence an order passed without such an enquiry is, on the face of it, illegal. The effect of such an illegal order deprives the employer of an opportunity being given to him to adduce evidence for the first time before the Tribunal to justify his action. These aspects, according to the learned counsel, have not been considered by this Court when it recognised an opportunity to be given to an employer to adduce evidence before the Tribunal.

43. The above aspect was stressed before us by Mr. Deshmukh in support of the contention that Section 11-A has taken note of such an illegality committed by employers and has now made it obligatory to conduct a domestic enquiry. According to him, if no such proper and valid domestic enquiry precedes the order imposing punishment, the Tribunal now has no alternative but to order reinstatement on that ground alone.

44. We have already indicated our views regarding the scope of Section 11-A and held that the right of an employer to adduce such evidence before the Tribunal has not been taken away. Mr.

Deshmukh referred us to Section 23 of the Act prohibiting a workman from going on strike in the circumstances mentioned therein and further pointed out that if a strike is illegal, it cannot be lawful. Similarly, an illegal act of an employer in not holding a domestic enquiry cannot be made legal.

45-46. In our opinion, the analogy placed before us by the counsel cannot stand scrutiny. It is no doubt true that Standing Orders, which have been certified under the Industrial Employment (Standing Orders) Act, 1946, become part of the statutory terms and conditions of service between the employer and his employee and that they govern the relationship between the parties. But there is no provision either in this statute or in the the Act which states that an order of dismissal or discharge is illegal if it is not preceded by a proper and valid domestic enquiry. No doubt it has been emphasised in the various decisions of this Court that an employer is expected to hold a proper enquiry before dismissing or discharging a workman. If that requirement is satisfied, an employer will by and large escape the attack that he has acted arbitrarily or mala fide or by way of victimisation. If he has held a proper enquiry, normally his bona fides will be established. But it is not correct to say that this Court, when it laid down that an employer has a right to adduce evidence for the Court, when it laid down that an employer has a right to adduce evidence for the first time before the Tribunal, was not aware of a breach committed by an employer of the provisions of the Standing Orders. A similar contention, though in a different form, advanced on behalf of the workmen was rejected by this Court in Workmen of Motipur Sugar Factory (Private) Limited case (supra). It was specifically contended before this Court by the workmen therein that when an employer had held no enquiry, as required by the Standing Orders, it was not open to him to adduce evidence before the Tribunal for the first time and justify the order of discharge. This contention was rejected by this Court and it was held that if the enquiry was defective or no enquiry had been held, as required by the Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify, on evidence as well that its order of dismissal or discharge was proper. Therefore, this contention cannot be accepted. We may also state that the Industrial Employment (Standing Orders) Act, 1946, applies only to those industrial establishments which are covered by Section 1(3). But the field of operation of the Act is such wider and it applies to employers who may have no Standing Orders at all. If the contention of Mr. Deshmukh, regarding Standing Orders is accepted, then the Act will have to be applied in a different manner to employers, who have no Standing Orders, and employers who are obliged to have Standing Orders. That is certainly not the scheme of the Act.

47. We will now pass on to consider the Proviso to Section 11-A. Mr. Deshmukh relied on the terms of the Proviso in support of his contention that it is now obligatory to hold a proper domestic enquiry and the Tribunal can only take into account the materials placed at that enquiry. The counsel emphasised that the Proviso places an obligation on the Tribunal 'to rely only on the materials on record' and it also prohibits the Tribunal from taking 'any fresh evidence in relation to the matter'. According to him, the expression 'materials on record' refers to the materials available before the management at the domestic enquiry and the expression 'fresh evidence' refers to the evidence that was being adduced by an employer for the first time before the Tribunal. From the wording of the Proviso he wants us to infer that the right of an employer to adduce evidence for the first time has been taken away, as the Tribunal is obliged to confine its scrutiny only to the materials available at the domestic enquiry.

48-49. We are not inclined to accept the above contention of Mr. Deshmukh. The Proviso specifies matters which the Tribunal shall take into account as also matters which it shall not. The expression 'materials on record', occurring in the Proviso, in our opinion, cannot be confined only to the

materials which were available at the domestic enquiry. On the other hand, the 'materials on record' in the Proviso must be held to refer to materials on record before the Tribunal. They take in -

(1) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) the above evidence and in addition, any further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

The above items by and large should be considered to be the 'materials on record' as specified in the Proviso. We are not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The Proviso only confines the Tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal. It is only on the basis of these materials that the Tribunal is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the Tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment. From the Proviso it is not certainly possible to come to the conclusion that when once it is held that an enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal. The expression 'fresh evidence' has to be read in the context in which it appears namely, as distinguished from the expression 'materials on record. If so read, the Proviso does not present any difficulty at all.

50. The legislature in Section 11-A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal for the purpose referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular stature, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal.

51. It is to be noted that an application made by an employer under Section 33(1) for permission or Section 33(2) for approval has still to be dealt with according to the principles laid down by this Court in its various decisions. No change has been effected in that section by the Amendment Act. It has been held by this Court that even in cases where no enquiry has been held by an employer before passing an order of dismissal or discharge, it is open to him to adduce evidence for the first time before the Tribunal. Though the Tribunal is exercising only a very limited jurisdiction, under this section nevertheless, it would have applied its mind before giving permission or approval. Section 33 only imposes a ban. An order of dismissal or discharge passed even with the permission or approval of the Tribunal can form the subject of a dispute and as such referred for adjudication.

Quite naturally, when the dispute is being adjudicated, the employer will rely upon the proceedings that were already held before a Tribunal under Section 33. They will form part of the materials on record before the Tribunal. The contention of Mr. Deshmukh, that if no enquiry is held, the order of dismissal will have to be set aside, if accepted, will lead to very incongruous results. The Tribunal would have allowed an employer to adduce evidence before it in proceedings under Section 33 for the first time, even though no domestic enquiry had been held. If it is held that another Tribunal, which adjudicates the main dispute, has to ignore those proceedings and straightaway order reinstatement on the ground that no domestic enquiry had been held by an employer, it will lead to very startling results. Therefore, an attempt must be made to construe Section 11-A in a reasonable manner. This is another reason for holding that the right to adduce evidence for the first time recognised in an employer, has not been disturbed by Section 11-A.

52. There may be other instances where an employer with limited number of workmen may himself be a witness to a misconduct committed by a workman. He will be disabled from conducting an enquiry against the workman because he cannot both be an enquiry officer and also a witness in the proceedings. Any enquiry held by him will not be in keeping with the principles of natural justice. But he will certainly be entitled to take disciplinary action for which purpose he can serve a charge-sheet and, after calling for explanation, impose the necessary punishment without holding any enquiry. This will be a case where no enquiry at all has been held by an employer. But the employer will have sufficient material available with him which could be produced before any Tribunal to satisfy it about the justification for the action taken. Quite naturally, the employer will place before the Tribunal, for the first time, in the adjudication proceedings material to support his action. That material will have to be considered by the Tribunal. But if the contention of Mr. Deshmukh is accepted, then the mere fact that no enquiry has been held, will be sufficient to order reinstatement. Such reinstatement, under the circumstances mentioned above, will not be doing justice either to the employer or to the workman and will not be conducive or preserving industrial peace.

53. We have indicated the changes effected in the law by Section 11-A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been holding that an employer is expected to hold a proper enquiry according to the Standing Orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Further by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or mala fide. It cannot be overemphasised that conducting of a proper and valid enquiry by an employer by an employer will conduce to harmonious and healthy relationship between him and the workmen and it will serve the cause of industrial peace. Further it will also enable an employer to persuade the Tribunal to accept the enquiry as proper and the finding also as correct.

54. Having dealt with the proper interpretation to be placed on Section 11-A, we will now proceed to consider the second point regarding the applicability of the section to industrial disputes which had already been referred for adjudication and were pending with the Tribunal on December 15, 1971. We have earlier referred to the fact that the Amendment Act received the assent of the President on December 8, 1971. But the Amendment Act did not come into force immediately. It came into force only with effect from December 15, 1971, as per the Notification issued by the Central Government on December 14, 1971, under Section 1, sub-section (2).

55. Miss. Indra Jai Singh, learned counsel for the appellant-workmen, in Civil Appeal No. 1461 of 1972, advanced the main arguments in this regard. Mr. Deshmukh appearing for the workmen in the other appeal, adopted her arguments. According to the learned counsel, Section 11-A applies not only to references, which are made on or after December 15, 1971, but also to all references already made and which were pending adjudication on that date. It is pointed out that Section 11-A has been incorporated in Chapter IV of the Act dealing with procedure, powers and duties of authorities. According to them, Section 11-A deals with matters of procedure. Applying the well known canon of interpretation, procedural laws apply to pending proceedings also. No right, much less any vested right, of the employers has taken away or affected by Section 11-A. Considerable stress has been laid on the use of the expressions 'has been referred' occur in Section 11-A, as conclusively indicating the applicability of section even to disputes already referred. It was stressed that even assuming that an employer has a right to adduce evidence for the first time before the Tribunal, that right enures to him only after the Tribunal had adjudicated upon the validity of the domestic enquiry. It cannot be characterised even as a right, much less a vested right, because it is contingent or dependent upon the Tribunal's adjudication on the domestic enquiry. The Tribunal, when it adjudicates a dispute on or after December 15, 1971, has to exercise the powers conferred on it by Section 11-A, even though the dispute may have been referred prior to that date. Hence it is clear that the section applies even to all proceedings pending adjudication on December 15, 1971.

56. Mr. Damania, learned counsel for the employers, contended that retrospective operation should not be given unless it appears very clearly by the terms of the section or arise by necessary and distinct interpretation. The counsel pointed out that the employers would have moulded their behaviour according to the principles laid down by a series of decisions and if the rights recongnised in an employer are to be taken away, that can be done so only by a clear expression to that effect; or such intention to take away or interfere with those rights must appear by necessary intendment. The words of the section clearly show that it applies only to disputes in respect of which a reference is made after the section has come into force i.e. December 15, 1971. The expressions 'has been referred' in the section only signify that on the happening of a particular event, namely, a reference made in future, the powers given to the Tribunal, whatever they may be, can be exercised. Mr. M. C. Setalvad and Mr. Tarkunde, learned counsel, appearing for other employers, adopted the contentions of Mr. Damania. A faint argument was also advanced that for Section 11-A to apply, even the order of discharge or dismissed should be one passed on or after December 15, 1971. But this was not pursued, quite rightly in our opinion, in view of the wording of the section. But the main contention on the side of the employers is that the the section applies only to disputes which are referred for adjudication on or after December 15, 1971.

57. The learned counsel on both sides have referred us to several decisions where a statute or a section thereof, has been held to be either retrospective or not. They have also referred us to certain passages in text-books on interpretation thereof. It is needless to state that a decision has to be given one way or other having regard to the scheme of the statute and the language used therein. Hence we do not propose to refer to those decisions, nor to the passages in the text-books, as the principle is well established that a retrospective operation is not to be given to a statute so as to impair an existing right. This is the general rule. But the legislature is competent to pass a statute so as to have retrospective operation, either by clearly expressing such intention or by necessary and distinct intendment. The principles regarding the retrospectively or otherwise of a section or a statute have been laid down by this Court in Garikapati Veeraya v. N. Subbiah Ghaudhury (1957 SCR 488 : AIR 1957 SC 540 : 1957 SCJ 439) and Keshavlal Jethalal Shah v. Mohanlal Bhagwandas and Another ((1968) 3 SCR 623 : AIR 1968 SC 1336 : (1969) 1 SCJ 147).

58. Miss. Indra Jai Singh, learned counsel, placed considerable reliance on the use of the expressions 'has been referred' in Section 11-A as indicating that the section applies even to all the references made before December 16, 1971. In our opinion, those words cannot be isolated from the context. The said expressions may have different cannotations when they are used in different context. A reference may be made to Section 7(3) and Section 7-A(3) of the Act, laying down qualifications for being appointed as a Presiding Officer of a Labour Court or a Tribunal retrospectively. Sub-section 3 of Section 7 enumerates the qualifications which a person should possess for appointment as Presiding Officer of a Labour Court. Section 7(3)(a) and (e) is as follows :

> "A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless -
>
> (a) he is, or has been, a Judge of a High Court; or
>
> #* * * *##
>
> (e) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years."

The words 'has been a Judge of a High Court' denote a past event, on the date of his appointment, he must have been a Judge of a High Court. Same is the position under clause (e) regarding the office mentioned therein. A similar interpretation will have to be placed on the expressions 'has been' occurring in sub-section (3) of Section 7-A regarding the qualifications to be possessed by a person for appointment as Presiding Officer of a Tribunal. The words 'has been' occurring in these sub-sections, immediately after the word 'is' or even separately clearly show that they refer to a past event.

59. The words 'has been referred' in Section 11-A are no doubt capable of being interpreted as making the section applicable to references made even prior to December 15, 1971. But is the section so expressed as to plainly make it applicable to such references ? In our opinion, there is no such indication in the section. In the first place, as we have already pointed out, the section itself has been brought into effect only some time after the Act had been passed. The proviso to Section 11-A, which is as much part of the section, refers to "in any proceeding under this section". Those words are very significant. There cannot be a "proceeding under this section", before the section itself has come into force. A proceeding under that section can only be on or after December 15, 1971. That also gives an indication that Section 11-A applies only to disputes which are referred for adjudication after the section has come into force.

60. Reliance has been placed by the learned counsel for the workmen on the decision of this Court in The State of Maharashtra v. Vishnu Ramchandra ((1961) 2 SCR 26 : AIR 1961 SC 307 : (1961) 1 Cri LJ 450). Section 57 of the Bombay Police Act dealt with the the removal of persons convicted ....."; then followed the various types of offences of which that person may have been convicted. The Deputy Commissioner of Police, Bombay, acting under Section 57(1) passed an order externing the respondent from the limits of Greater Bombay. It was contended before the Bombay High Court that Section 57 was prospective and could not be made applicable unless the conviction on which the action of externment was based, took place after the coming into force of that Act. The High Court upheld this contention and acquitted the accused. The High Court had held that as the legislature had used the present participle 'has been' and not the past participle in the opening part of

the section, it should be understood that the section was intended to be used only where a person was convicted of the offences referred to in Section 57, subsequent to the coming into force of the Act. This Court differed from the interpretation placed by the High Court on Section 57 of the Bombay Police Act and held that the section enabled the authorities to take note of the convictions of the accused prior to the Act. It was observed :

> "An offender who has been punished may be restrained in his acts and conduct by some legislation, which takes note of his antecedents; but so long as the action taken against him is after the Act comes into force, the statute cannot be said to be applied retrospectively. The Act in question was thus not applied retrospectively but prospectively ..... The verb 'has been' is in the present perfect tense, and may mean either 'shall have been' or 'shall be'. Looking, however, to the scheme of the enactment as a whole and particularly the other portions of it, it is manifest that the former meaning is intended ....."

61. It is clear from the above observation that the expression 'has been' was interpreted having regard to the scheme of the enactment and it was not construed in isolation. That decision makes it clear that the question whether those expressions relate to past or future events, have to be gathered from the context in which they appear as well as the scheme of the particular legislation.

62. The decision of the Court of appeal in Barber v. Pigden ((1961) 2 SCR 26 : AIR 1961 SC 307 : (1961) 1 Cri LJ 450), is also not of any material assistance to the workmen. Having due regard to the scheme of the "Law Reform (Married Women and Tortfeasors) Act, 1935", it was held therein that the said statute did away with a host of legal fictions, which in origin were inextricably mixed up with the old procedural law. It was further held that the canon against retrospective interpretation does not apply to a statute dealing with the adjective law, i.e. procedure. Similarly the decision of the Calcutta High Court in Birla Brothers Ltd. v. Modak (ILR (1948) 11 Cal 209), (which has been approved in Jahiruddin v. K. D. Rathi, Factory Manager, The Model Mills, Nagpur Ltd. ((1966) 2 SCR 660 : AIR 1966 SC 907 : (1966) 1 Lab LJ 430), and the decision of this Court in Shah Bhojraj Kwerji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha ((1962) 2 SCR 159 : AIR 1961 SC 1596 : (1962) 1 SCJ 377), do not advance the case of the workmen. The decision in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas and Others (supra), relied on by the employers deals with a different problem.

63. It must be stated at this stage that procedural law has always been held to operate even retrospectively, as no party has a vested right in procedure. In our opinion, the principles stated in In re : Athlumney Ex parte Wilson ((1898) 2 QB 547), are more apposite to the case on hand. The question arose regarding the construction to be placed upon Section 23 of the Bankruptcy Act, 1890. The said section was as follows :

> "Where a debt has been proved upon a debtor's estate under the principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full."

64. The point that arose for consideration was whether the above section operates so as to govern the distribution of dividend under a contract made under a scheme which had taken effect before the

Act was passed or came into operation. In holding that the section was not retrospective, it was observed :

> "Then is the section so expressed as to be plainly retrospective ? No doubts the words 'where a debt has been proved under the principal Act' are capable of such a meaning. But this form of words is often used to refer, not to a past time which preceded the enactment, but to a time which is made past by anticipation - a time which will have become a past time only when the event occurs on which the statute is to operate. In former times draftsmen would have used the words 'where a debt shall have been proved', but in modern Acts the past tense is frequently used where no retrospective operation can be intended."

65. We have already expressed our view regarding the interpretation of Section 11-A. We have held that the previous law, according to the decisions of this Court, in cases where a proper domestic enquiry had been held, was that the Tribunal had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years, had recognised certain managerial rights in an employer. We have pointed out that this position has now been changed by Section 11-A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the section applicable even to disputes which had been referred prior to the coming into force of the section, there should be such a clear, express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary intendment. In the case on hand, no such inference can be drawn as the indications are to the contrary. We have already referred to the Proviso to Section 11-A, which states 'in any proceeding under this section. A proceeding under the section can only be after the section has come into force. Further the section itself was brought into force some time after the Amendment Act was passed. These circumstances, as well as the scheme of the section and particularly the wording of the proviso indicate that Section 11-A does not apply to disputes which had been referred prior to December 15, 1971. The section applies only to disputes which are referred for adjudication on or after December 15, 1971. To conclude, in our opinion, Section 11-A has no application to disputes referred prior to December 15, 1971. Such disputes have to be dealt with according to the decisions of this Court already referred to.

66. In Civil Appeal No. 1461 of 1972, the Industrial Tribunal had considered only the question regarding the applicability of the section to disputes which had been referred before the section came into force. The Tribunal has held that the section does not apply to such disputes. This view is in accordance with our decision and as such is correct. This appeal is hence dismissed.

67. In the three other orders, which are the subject of consideration in Civil Appeals Nos. 1995 of 1972, 1996 of 1972 and 2386 of 1972, the Labour Court, Bombay has held that Section 11-A applies even to disputes which had been referred prior to December 15, 1971. This view, according to our judgment, is erroneous. The Labour Court has also expressed some views on the construction

to be placed on Section 11-A. Part of the views expressed therein is correct; but the rest are wrong. To the extent that the decision of the Labour Court in the three orders are contrary to our decision on both the points, they are set aside and the appeals allowed to that extent. The Tribunal and the Labour Courts concerned in all these appeals, will proceed with the adjudication of the disputes in accordance with the views expressed in this judgment. There will be order as to costs in these appeals.

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