M/s. Lakshmiratan Cotton Mills Co. Ltd.

Vs

Its Workmen

Civil Appeal No. 1868 of 1973

(A. Alagiriswami, P. N. Bhagwati, P. K. Goswami JJ)

02.05.1975

JUDGMENT

BHAGWATI, J. –

1. The appellant is a limited liability company carrying on business of running a cotton textile mill in Kanpur. The workmen employed by the appellant are affiliated to two unions, some to Lakshmi Rattan Mazdoor Panchayat others to Lakshmi Rattan Shramik Union. We are concerned in this appeal with Lakshmi Rattan Mazdoor Panchayat (hereinafter referred to as the Mazdoor Panchayat) as that is the union which has the membership of the workmen.

2. It appears that there were disputes between the appellant its workmen in regard to various industrial matters and these disputes were settled by an agreement dated November 25, 1971 made between the appellant and the Mazdoor Panchayat under Section 6-B of the U.P. Industrial Disputes Act, 1947 hereinafter referred to as the U.P. Act. Clause (2) of the agreement provided that "the Union will not give notice for strike for one year from today's date." There were other clauses in the agreement which imposed on the appellant, but in the view we are taking, it is not necessary to spend any time in referring to them. Suffice it to state that the dispute between the parties in regard to bonus for the years 1963-64, 1964-65 and 1965-66 was left to the decision of Mohd. Ahsan, Deputy Labour Commissioner, Kanpur. But then dispute again arose between the parties as regards payment of bonus for the years 1967-68, 1968-69 and 1969-70 and this dispute was referred for adjudication to the Industrial tribunal under section 6(3) of the U.P. Act by an order dated June 8, 1971. The reference was numbered Adjudication Case No. 82 of 1971. On or about June 29, 1972, it seems, there were negotiations between parties at the intervention of labour Minister and a formula was evolved for payment of bonus for the years 1967-68, 1968-69, 1969-70. In view of this arrangement, the Mazdoor Panchayat made an application to the Industrial Tribunal on July 25, 1972 stating that the Union did not want to proceed with the dispute because the matter had been discussed between the parties in the presence of the State Minister on June 29, 1972 and during these discussions the State Minister had advised the management to pay four percent bonus to the workmen for each of the three years. Since the workmen were not prepared to pursue the reference, the Industrial Tribunal made an award dated August 14, 1972 holding that the workmen were not entitled to any bonus for the years in question. Though the award was signed on August 14, 1972, it was not published in the Gazette until October 7, 1972.

3. Even so, the Mazdoor Panchayat gave a notice dated August 18, 1972 stating that the workmen would go on strike from September 11, 1972 unless their demands were satisfied. The appellant repeatedly explained to the President and the Secretary of the Mazdoor Panchayat that the contemplated strike would be illegal and advised them to refrain from it, but that had no effect and

as threatened in the notice, the workmen commenced the strike on September 11, 1972. The modus operandi followed by the workmen was that they came to the mill and entered the working shed every day during their shift hours, but did not do any work and instead, held meetings and demonstrations, shouted slogans and threatened the supervisory and management staff. The strike was, according to the appellant, illegal for two reasons. One was that the strike was commenced during the pendency of adjudicate - on Case No. 82 of 1971 before the industrial Tribunal and the other was that the strike was in breach of clause (2) of the agreement dated November 25, 1971 which was still in operation. All the workmen participated in the illegal strike, but out of them, there were fifty-three who, according to the appellant, led and incited the illegal strike and some out of these fiftythree, held meetings inside the mill previous written permission of the appellant and also should slogans and made demonstrations inside the mill premises These acts amounted to misconduct within the meaning of clauses (ii), (xx) of Standing Order 25(1)(A).

4. The appellant, therefore, issued charge-sheets against these fifty-three workmen charging all of them with misconduct under clause (ii) of Standing Order 25(1)(A) and some of them also with misconduct under clauses (xv) and (xx) of that standing order and calling upon them to appear on October 3, 1972 to offer their explanation as to why they should not be punished. These charge-sheets were issued on September 25, 1972 and they were sought to be served personally, but since these fifty-three workman refused them, they had to be served by registered post and copies were pasted on the notice board of the mill. None of these fifty-three workmen submitted individual explanation in answer to the charge-sheets issued against him, but a common explanation was furnished by the President and the Secretary of the Mazdoor Panchayat and it was signed by all the fifty-three workmen. It appears that before this common explanation was submitted by the President and the Secretary of the Mazdoor Panchayat, the Labour Commissioner had already filed criminal cases against some of the workmen in the Court of the City Magistrate, Kanpur charging them with the offence of going on illegal strike. The President and the Secretary of the Mazdoor Panchayat, therefor, in the common explanation submitted by them on behalf of these fifty three workmen, requested the appellant that the domestic enquiry instituted by the service of the charge-sheets should be kept in abeyance until the Court gave its decision on the question whether the strike was illegal. The charges levelled against these fifty-three workmen were also denied in the common explanation furnished by the President and the Secretary of the Mazdoor Panchayat. The appellant, however, declined to adjourn the hearing of the domestic enquiry and by an endorsement dated October 14, 1972, appointed the Labour Officer to hold the domestic enquiry and requested him to submit his report as early as possible. The illegal strike and these fifty-three work men who had struck work were sitting inside the working sheds throughout their hours of shifts. The Labour Officer, therefore, sent for them in order to inform them that he had tentatively fixed the hearing of the domestic enquiry on October 18, 1972, but they refused to come. The Labour Officer consequently on October 19, 1972 fixed another date for the domestic enquiry, namely, October 21, 1972 and again sent a word to these fifty-three workmen to come and "know the date and timings fixed for each of them". They, however, refused to come, though they were inside the working sheds. The Labour Officer was ultimately constrained to put up a notice on the notice board of the mill on October 19, 1972 intimating the different timings at which the domestic enquiry would be held against different groups of persons on October 21, 1972. This notice was also published in the daily newspaper Dainik Jagran on October 20, 1972. The management of the appellant also passed orders on the same day suspending these fifty-three workmen with effect from October 20, 1972 pending the domestic enquiry. The domestic enquiry was thereafter commenced by the Labour Officer at the appointed timings on October 21, 1972, but none of these fifty-three workmen attended for the purpose of the domestic enquiry and the domestic enquiry was accordingly held ex

parte. Whilst the domestic enquiry against one of the groups of workmen was in progress, at about 11.30 a.m. three workmen attended the office of the Labour Officer and gave him a letter of the Secretary of the Mazdoor Panchayat and at about 12.30 p.m. one other workman also came and handed over another letter addressed by the Secretary of the Mazdoor Panchayat to the Labour Officer. On the view we are taking, it is not necessary to refer to the contents of these two letters. Suffice it state that the principle complaint made in these two letters was that the charge-sheets issued by the appellant did not mention the names of the witness proposed to be examined on behalf of the appellant, nor did they set out the statements of the witnesses of the appellant and the charge-sheets were, therefore, illegal and invalid. The management of the appellant took the view that the complaint in these two letters was unfounded and passed appropriate orders. The domestic enquiry continued and ultimately, after the conclusion of the domestic enquiry, the Labour Officer submitted to the management seperate reports in respect of each group of workmen finding them guilty of the misconduct charged against them. The management agreed with the findings recorded in the reports of the Labour Officer and on the same day, that is October 21, 1972 issued notices to these fifty-three workmen calling upon them to show cause by 10 a.m. on October 23, 1972 as to why they should not be dismissed from service. These notices along with the relevant reports of the domestic enquiry were pasted on the notice board of the mill on the same day, namely, October 21, 1972. None of these fifty-three workmen submitted an explanation showing cause against the proposed punished of dismissal and the appellant accordingly passed orders on October 23, 1972 dismissing these fifty-three workmen from service.

5. It appears that in evening of October 23, 1972 a meeting took place between the representatives of the Mazdoor Panchayat and the appellant in the presence of the Chief Minister of Utter Pradesh and in the course of this meeting, it was decided by way of settlement that the workmen should withdraw the strike unconditionally from October 24, 1972 and the appellant should pay to the workmen eight days' deducted wages and one year's old bonus before Diwali, that is November 4, 1972, and regards other matters of dispute including dismissal of these fifty-three workmen, the Chief Minister should give his decision which would be binding on the parties. The strike was accordingly withdrawn on October 24, 1972. On November 1, 1972 the Chief Minister gave his decision directions that thirty-one out of these fifty-three workmen who had been dismissed from service should be reinstated and that so far as the remaining twenty-two workmen were concerned, their case should be referred to the Industrial Tribunal for adjudication. One of these twenty-two workmen, however, settled the dispute and accepted his dues in full and final settlement of his claim against the appellant. That left only twenty-one workmen and with regard to them, a reference was made to the Industrial Tribunal on November 28, 1972 for adjudication of the dispute whether the appellant had terminated their services in an improper of illegal way from October 24, 1972 and if so, to what benefit compensation they were entitled.

6. Whilst this reference was pending before the Industrial Tribunal and before the recording of the evidence commenced, an application dated March 12, 1973 was made by the appellant to the Industrial Tribunal that if for any reason the Industrial Tribunal came to the conclusion that the domestic enquiry culminating in the dismissal of these twenty-one workmen was improper or was not in accordance with law, the appellant should be given an opportunity to prove its case on merits before the Industrial Tribunal and in that event it may be allowed to file and prove additional documents. The Industrial Tribunal passed on the same day the following order on this application :

> Both the parties present. They filed their documents. An application was presented by the Employers on which orders would be passed at appropriate time. 10.4.73 is fixed for final hearing on which date both parties would produce their witnesses.

Both the parties thereafter led evidence on the question whether the strike was illegal and the domestic enquiry held by the Labour Officer was in compliance with the principles of natural justice and in conformity with the requirements of the Standing Orders. Since it was stated by the Industrial Tribunal that an order would be passed on the application dated March, 12, 1973 at the appropriate time, the appellant preferred to wait until the passing of the order on that application and did not lead any evidence to show that, in any event, these twenty-one workmen were guity of the misconduct charged against them and their dismissal was, therefore, justified. The Industrial Tribunal, however, failed to pass any other on this application and pro ceeded to make its award dated September 8, 1973 disposing of the reference.

7. The Industrial Tribunal by its award, held that the strike of the workmen was not illegal on either of the two grounds on which it was claimed to be so. It was not illegal under clause (e) of Section 65 of the U.P. Act because it was commenced after the proceeding in Adjudication Case No. 82 of 1971 had concluded by the making of the award on August 14, 1972, nor was it illegal under clause (f) of that section because, though clause (2) of the agreement dated November 25, 1971 provided that the union will not give any notice for strike for one year, the workmen could not be held to this clause, when the appellant itself had committed breaches of its obligations under that agreement. So far as the domestic enquiry leading to the dismissal of these twenty-one workmen was concerned, the Industrial Tribunal held that it was invalid, first, because it did not afford a proper and adequate opportunity to these twenty-one workmen to repel the charges of misconduct levelled against them; secondly because the charge-sheets issued against these twenty-one workmen were not in conformity with the requirements of clause (a) of Standing Order 26 and thirdly, because the notices issued to these twenty-one workmen after receipt of reports of the enquiry from the Labour Officer were not served upon them, nor were they given a reasonable opportunity to show cause against the proposed punishment of dismissal. The Industrial Tribunal also observed that when out of fifty-three workmen, who were dismissed from service, thirty one were reinstated by the appellant pursuant to the decision of the Chief Minister, there was no reason for discriminating against these twenty-one workmen and they were also, therefore, entitled to be reinstated. The Industrial Tribunal accordingly held that the action of the appellant in terminating the services of these twenty-one workmen was improper and illegal and directed that these twenty-one workmen should be reinstated with effect from the date of their suspension and should "be paid full wages for the period of suspension and from the date of dismissal to the date of their resuming duty". The appellant thereupon brought the present appeal against the award of the Industrial Tribunal by special leave obtained from this Court.

8. The first question that arises for consideration is whether the strike which was commenced by the workmen from September 11, 1972 and in which the twenty-one workmen concerned in this appeal admittedly participated was an illegal strike. Section 6T of the U.P. Act declares inter alia that a strike shall be illegal if it is commenced in contravention of Section 6S. Section 6S in its various clauses sets out the circumstances in which a workmen is prohibited from going on strike. Clauses (e) and (f) of Section 6S are material as these are the clause on which reliance was placed on behalf of the appellant in support of its contention that the strike was illegal. We will first refer to clause (e). That clause, so far as material, provides that no person employed in an industrial establishment shall go on strike between the commencement and conclusion of the proceeding before a tribunal, if he is concerned in the dispute which is the subject-matter of such proceeding. The workmen went on strike from September 11, 1972 and therefore, in order to attract the inhibition of clause (e) it would have to be shown by the appellant that on September 11, 1972 and subsequent dates on which the strike continued, a proceeding was pending before the Industrial Tribunal in respect of a dispute

in which the striking workmen were concerned. The appellant contended that the proceeding in Adjudication Case No. 82 of 1971 commenced on June 8, 1971 when the reference was made and continued until November 6, 1972 when the award disposing it off became enforceable, and therefore, the strike which commenced on September 11, 1972 and continued thereafter was illegal the view taken by the Industrial Tribunal, however, was that since the award was signed on August 14, 1972, the proceeding in adjudication Case No. 82 of 1971 came to an end on that day and thereafter there could be no impediment in the way of the workmen in going on strike on the ground of pendency of proceeding in the Industrial Tribunal. We cannot assent to this view which found favour with the Industrial Tribunal. We think that the contention of the appellant is correct and must be accepted. Section 6S lays down when a proceeding before a tribunal shall be deemed to have commenced and when it shall be deemed to have concluded. It says that a proceeding before tribunal shall be deemed to have commenced on the date of reference of a dispute to adjudication and such proceeding shall be deemed to have concluded on the date on which the award becomes enforceable under Section 6A. Sub-section (1) of Section 6A provides that an award shall become enforceable on the expiry of thirty days from the date of its publication under section 6 Here, the award in Adjudication Case No. 82 of 1971 was published under Section 6 on October 7, 1972 and it, therefore, became enforceable on November 6, 1972. The proceeding in Adjudication Case No. 82 of 1971 must in the circumstances be deemed to have commenced on June 8, 1971 when the reference was made and be deemed to have concluded on November 6, 1972 when the award became enforceable. The strike was commenced and continued between these two dates and the striking workmen were admittedly concerned in the dispute which formed the subject-matter of this proceeding. The strike must, therefore, necessarily be held to be illegal under clause (e) of Section 65 read with Section 6T. Indeed, it must be said in fairness to Mrs. Kapur, learned Counsel on behalf of the workmen, that she right did not dispute this position. On this view, it becomes unnecessary to consider whether the action of the workmen in going on strike was in contravention also of clause (f) of Section 65 and we need not state the facts bearing on that clause nor enter upon a discussion of that question.

9. We must then proceed to consider whether the domestic enquiry held by the appellant culminating in the dismissal of these twenty-one workmen was a proper enquiry conducted in accordance with the principles of natural justice and in conformity with Standing Order 26. If the domestic enquiry was in breach of the requirements of Standing Order 26 or in violation of the principles of natural justice, it would be vitiated and the dismissal of these twenty-one workmen consequent upon it would be invalid. The Industrial Tribunal, as already pointed out, found, in the main, three infirmities in the domestic enquiry. We need not discuss the first two infirmities - whether the view of the Industrial Tribunal in regard to them was correct or not - as we find that the Industrial Tribunal was right in holding that the third infirmity vitiated the domestic enquiry. The view taken by the Industrial was that the domestic enquiry was invalidated because the notices issued by the appellant to these twenty-one workmen after receipt of reports of the Labour Officer finding them guilty of the misconduct charged against them were not served on them, nor were they given a proper and adequate opportunity to show cause why the punishment of dismissal should not be imposed on them. The learned Counsel appearing on behalf of the appellant made a heroic attempt to assail the correctness of this view, but we are afraid this attempt cannot succeed. Clause (e) of Standing Order 26 provides that where it is proposed to inflict the punishment of dismissal for any misconduct, the workman shall be given notice in writing to show cause within a specified period why the proposed punishment may not be awarded and along with such notice. He shall be given a copy of the findings of the enquiring officer on the charge or charges. This clause clearly contemplates a notice to be given to the workman for the purpose of enabling him to show cause

within a specified period as to why the proposed punishment of dismissal should not be inflicted on him the notice is required to be given not as a mere idle formality it has a meaning and a purpose. It is intended to provide opportunity to the workman to show cause against the proposed punishment of dismissal. The workman may show that the findings of the enquiring officer are not justified on the evidence on record or that even if the findings are justified they do not warrant the extreme penalty of dismissal from service having regard to the nature or gravity of the misconduct, the past record of the workman and any other extenuating circumstances. The notice must, therefore, give a reasonable opportunity to the workman. That is a condition precedent which must be satisfied before an order of dismissal can be validly passed by the employer.

10. Here in the present case, it is obvious from the various timings notified to the erring workmen at which the domestic enquiry would be held against different groups of workmen, that the domestic enquiry against the first group of workmen must have commenced at 10 a.m. and against the last group of workmen, it must have ended not earlier than 9.15 p.m. on October 21, 1972. The Labour Officer must then have prepared his reports setting out the conclusions reached by him on the evidence recorded at the domestic enquiry and these reports must thereafter have been forwarded by the Labour Officer to the Manager of the appellant. The Manager of the appellant, on receipt, of these reports from the Labour Officer, must have considered the cases of these different groups of workmen in the light of these reports and the evidence recorded at the domestic enquiry for the purpose of satisfying himself prima facie that the workmen were guilty of the misconduct charged against them, before issuing notices calling upon them to show cause why they should not be dismissed from service. This whole procedure must have taken a certain amount of time and the show-cause notice inter alia to the twenty-one workmen concerned in this appeal, could, therefore, have been issued at the earliest not before 10.30 p.m. on October 21, 1972. Now admittedly no attempt was made to serve the show-cause notices on any of these twenty-one workmen and the only mode in which service was purported to be effected was by pasting the show-cause notice board of the mill. We may point out that this mode of service adopted by the appellant was wholly unjustified and that in itself introduces a serious infirmity in the domestic enquiry, unless it can be shown by the appellant that these twenty-one workmen were otherwise aware of the contents of the show-cause notices and no prejudice was occasioned to them by reason of non-service of show-cause notices. Of that, however, there is no evidence as there is nothing to show that these twenty-one workmen read the show-cause notices on the workmen of the appellant, including these twenty-one workmen, were on strike and no presumption can, therefore, be drawn that they would look at the notice board and read the show-cause notices pasted on it. But even if we assume in favour of the appellant that these twenty-one workmen must have looked at the notice board and seen what was pasted there, it is clear from what is stated above that the show-cause notices could not have been pasted on the notice board before 10.30 p.m. on October 21, 1972. If that be so, the earliest that these twenty-one workmen could possibly come to know of the show-cause notices would have been the next day, that is October 22, 1972, but that day happened to be a closed day for the mill and none of these twenty-one workmen could, therefore, be expected to be present and was in fact present at the mill, so that he could come to know about the show-cause notices by looking at the notice board. These twenty-one workmen than October 23, 1972 when the came to the mill in the morning for the purpose or sit in strike. But the time specified in the notices within which these twenty-one workmen were required to show cause against the proposed punishment of dismissal was 10 a.m. on October 23, 1972 and that would mean that they had hardly a couple of hours within which to show cause against the action proposed to be taken against them. It does not need much argument to come to the conclusion that this could hardly be regarded as affording a reasonable opportunity to these twenty-one workmen to show cause against the proposed punishment of

dismissal. There can, therefore, be no doubt that there was not only non-compliance with the requirements of clause (c) of Standing Order 26 but also infraction of the principles of natural justice. The orders of dismissal passed against these twenty-one workmen could not, in the circumstances, be justified on the basis of the domestic enquiry held by the appellant.

11. But that does not mean that the workmen are entitled to succeed in the reference. It is now well settled as a result of several decisions of this Court, of which we may mention only two, namely, Oriental Textile Furnishing mills, Amritsar v. Labour Court, Jullundur ((1972) 1 SCR 490 : (1971) 3 SCc 646) and Delhi Cloth & General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29 : (1972) 1 SCC 595), that even where it is found that the domestic enquiry held by the employer is due to some omission or deficieny, not valid, the employer can nonetheless support the order of dismissal by producing satisfactory evidence and proving misconduct, when the dispute arising out of the order of dismissal is referred for industrial adjudication. This Court pointed out in Oriental Textile Finishing Mills, Amritsar v. Labour Court, Jullunder (supra) that in such cases (SCC p. 652, para 9)

> the evidence which is produced to substantiate and justify the action taken against the workmen is not as stringent as that which is required in a court of law.

What is required is "that the evidence should be such a should satisfy the Tribunal that the order of termination is proper". It was for this reason that in the present case the appellant made the application dated March 12, 1973 praying that if for any reason the Industrial Tribunal was inclined to take the view that the domestic enquiry held by the appellant was improper or not according to law, the appellant should be given an opportunity to prove its case on merits and for that purpose file and prove additional documents. This was clearly a request to the Industrial Tribunal to try the issue as to the validity of the domestic enquiry as preliminary issue and if the finding on this preliminary issue was against the appellant, to give an opportunity to the appellant to adduce; evidence for the purpose of establishing that the orders of dismissal were justified. Now, the question as to what is the procedure to be followed by the Industrial Tribunal when such a request is made by the employer, came up for consideration before this Court in Delhi Cloth & General Mills Co. Ludh Budh Sing (supra). This Court, after discussing the previous decisions on the subject, culled out certain principles which, according to it, emerged from a consideration of these decisions. Theses principles were formulated in the form of seven propositions and of them, the fourth and fifth propositions are material for our purpose : [SCC pp. 616-617 para]

4. When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding, on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal in the first instance, as preliminary issue the validity of the domestic inquiry. If its finding on the preliminary issue is in favour of the management. But, if the finding on he preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the letter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as prima a facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty

of misconduct and that the action taken by it is proper, It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, 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 not guilty of the alleged misconduct.

> (5) The management has got right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievances that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceeding and it has to decide whether the proceeding have been held properly and the findings recorded therein are also proper.

It will, therefore, be seen that when the application dated March 12, 1973 was made by the appellant, the Industrial Tribunal should have either declined to try the issue as to the validity of the domestic enquiry as a preliminary issue and directed the appellant to lead its evidence simultaneously on the issue as to the validity of the domestic enquiry as also in regard to the misconduct of the workmen so as to justify its action, or divided to deal with the validity of the domestic enquiry as a preliminary issue and if the finding on the preliminary issue went against the appellant, then to give an opportunity to the appellant to adduce additional evidence to justify its action. Strangely enough, however, the Industrial refused to give either of these two directions on the application of the appellant and merely passed an order that on the application "orders would be passed at the appropriate time". We fail to see what "appropriate time" the Industrial Tribunal had in mind. It seems that "appropriate time" never arrived, because in fact no order was made on that application by the Industrial Tribunal at any time and without passing such an order the award was made. It would be perfectly intelligible if the Industrial Tribunal did not pass an order on the application immediately, but there can be little doubt that it should have passed the appropriate order or the application sufficiently before the recording of the evidence commenced. The cryptic remark made by the Industrial Tribunal that it would pass an order on the application at "appropriate time" could well lead the appellant to believe that the Industrial Tribunal would first decide the issue as to the validity of the domestic enquiry and if its finding went against the appellant, it would give an opportunity to the appellant to lead further evidence. The award made by the Industrial Tribunal without giving an opportunity to the appellant to lead addition evidence to establish that the workmen were guilty of misconduct and that the action of the appellant in dismissing them was justified, cannot, therefore, be sustained.

12. It may be pointed out that one of the contentions which appealed to the Industrial Tribunal in setting aside the orders of dismissal against these twenty-one workmen was that originally orders of dismissal were passed against fifty-three workmen, but out of them, thirty-one were reinstated and there was no reason why these twenty-one workmen, whose cases were identical, should be treated differently and denied reinstatement. We do not think there is any force in this contention. Out of fifty-three workmen against whom orders of dismissal were passed. Thirty-one had to be restated by the appellant because of the decision of the Chief Minister which, it was agreed by way of settlement, would be binding on both the parties. But that could not be a ground for reinstatement of these twenty-one workmen whose cases were differentiated by the Chief Minister himself and in regard to whom reference was made for industrial adjudication. There would have been no need for making reference for industrial adjudication in case of these twenty-one workmen, if they were to

treated, straightway, without any further enquiry into their respective cases, on a par with the thirty-one workmen who were directed to be reinstated.

13. We, therefore, allow the appeal, set aside the award made by the Industrial Tribunal and remand the matter to the Industrial Tribunal with a direction to allow the appellant and the workmen to lead such additional evidence as may be relevant on the question whether these twenty-one workmen were guilty of the misconduct charged against them and the orders of dismissal passed against them were justified. Mrs. Kanpur on behalf of the workmen appealed to us that even though the award of the Industrial Tribunal is being set aside by us, we should give a direction to the appellant to continue these twenty-one workmen, who have been reinstated recently pursuant to the award of the Industrial Tribunal. But we are afraid we cannot do so. It would indeed by beyond our jurisdiction to give any such direction when the award under which these twenty-one workmen are reinstated is set aside by us. So far as the question of costs of this appeal is concerned, we think that a fair and proper order of costs would be that each party should bear and pay its own costs of the appeal.

</html