Workmen

Vs

Bharat Fritz Werner (P) Ltd. and Another

With

Bharat Fritz Werner (P) Ltd.

Vs

Workmen of Bharat Fritz Werner (P) Ltd. and Another

Civil Appeal Nos. 4780-4783(NL) and 4784-4785(NL) of 1984

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

16.02.1990

JUDGMENT

S. C. AGRAWAL, J. -

1. These appeals, by special leave, are directed against the judgment of the High Court of Karnataka dated July 27, 1984 in Writ Appeals Nos. 2383 and 2384 of 1982 and Writ Appeals Nos. 4660 and 4661 of 1982 arising out of Writ Petitions Nos. 866 and 12959 of 1982. Civil Appeals Nos. 4784-4785 (NL) of 1984 have been filed by the workmen of Bharat Fritz Werner (P) Ltd. (hereinafter referred to as the 'workmen') whereas Civil Appeals Nos. 4780-4783 (NL) of 1984 have been filed by the Management of Bharat Fritz Werner (P) Ltd. (hereinafter referred to as the 'management').

2. Bharat Fritz Werner (P) Ltd. (hereinafter referred to as the 'Company') has a factory at Peenya, Bangalore. On March 8, 1978, the Management issued a notice in connection with the recruitment of "Supervisors" for machine shop, from internal candidates, whereby it was indicated that persons who have passed SSLC and have at least 7 years of experience in machine shop would be eligible for recruitment. The said notice created resentment amongst the workmen. On March 10, 1978 a number of workers entered the office of the President of the Company. The case of the management is that the workers terrorised the President and wrongfully confined him in his office and compelled him to withdraw the notice dated March 8, 1978. On March 11, 1978 charge sheet-cum-enquiry notices containing the following charges were issued to 19 workmen :

> "Whereas you ... along with 18 others at about 2.30 p.m. on Friday, 10th March, 1978, trespassed into my office without my permission and there terrorised me and wrongfully confined me refusing to allow me to go and compelled me to withdraw the Notice No. BFW/PERS/1 A 78, dated 8th March, 1978 regarding recruitment of Supervisors, and thereby you have committed a misconduct within the meaning of sub-clauses (2), (5), (6) and (12) of clause 26 of the Standing Orders of the Company."

3. By the said notice the concerned workmen were informed that an enquiry would be held into the above misconduct and the Enquiry Officer was appointed for that purpose. The workmen did not appear before the Enquiry Officer and he conducted the proceedings ex parte. He recorded the statements of seven witnesses (MWs 1 to 7). The Management also produced documentary evidence (Exs. M-1 to M-128). The Enquiry Officer submitted his report on April 7, 1978, wherein he found 15 out of the 19 workmen guilty of the charge of misconduct. On the basis of the report of the Enquiry Officer, the management passed orders dated April 7, 1978 whereby the 15 workmen who were found guilty of misconduct by the Enquiry Officer were dismissed from service. As an industrial dispute between the Management and the workmen was pending before the Industrial Tribunal, Bangalore, the management made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') for approval of the action taken against these 15 workmen. During the pendency of that application, the Government of Karnataka, by order dated 15th May, 1978, referred for adjudication, the dispute between the Workmen and the management with regard to dismissal of the 15 workmen to the Additional Industrial Tribunal, Bangalore (hereinafter referred to as the 'Tribunal'). Before the Tribunal the case of the workmen was that the domestic enquiry held ex parte against them is illegal and is neither fair not proper. The Tribunal framed the following issue which was taken up as preliminary issue :

> Whether the domestic enquiry conducted against the 15 workmen named in the order of reference has been fair and proper and in accordance with the standing orders of the second party and principles of natural justice ?

4. The workmen examined 16 witnesses and produced a document marked Ex. W-1. The management examined three witnesses and produced documents marked Exs. M-1 to M-66.

5. The Tribunal, by order dated December 3, 1981, decided the preliminary issue against the management and held that the enquiry was not fair and proper. The management sought permission to adduce evidence and prove the alleged misconduct of the workmen before the Tribunal. The said permission was granted by the Tribunal. The order of the Tribunal dated December 3, 1981 was assailed by the management in Writ Petition No. 866 of 1982 before the High Court of Karnataka. During the pendency of the said writ petition, the Tribunal, on January 25, 1982, made an interim award and, by way of interim relief, the management was directed to pay to each of the concerned workmen three-fourths of the total emoluments which they were drawing at the time of their dismissal with effect from January 1, 1982 till the final disposal of the reference. The said interim award was challenged by the management in Writ Petition No. 12952 of 1982 before the High Court of Karnataka.

6. Both the writ petitions were heard together and disposed of by a learned Single Judge by a common order dated July 22, 1982. The learned Single Judge did not agree with the findings of the Tribunal that the ex parte enquiry held by the Enquiry Officer was in violation of the principles of natural justice and held that the workmen have to blame themselves for their defiant attitude and it was not open to them to contend that the enquiry was violative of the principles of natural justice. The learned Single Judge, however, held that the enquiry was bad in law because although in the charge-sheets it is alleged that the Workmen had committed misconduct within the meaning of sub-clauses (2), (5), (6) and (12) of clause 26 of the Standing Orders, the charge-sheets do not disclose the specific acts of misconduct, alleged against these workmen under these specific items of misconduct and that it is a jumbled up charge-sheet. The learned Single Judge also observed that the witnesses for the Management who deposed on behalf of the Management did not also speak to any specific acts of misconduct against each of these workmen which would reasonably come within the

ambit of these standing orders and they generally spoke to the events that occurred prior to the incident in the President's chamber on March 10, 1978 and to the incidents that occurred in the President's chamber in his presence and further that the Enquiry Officer had made no effort to discuss the evidence and satisfy himself as to which part of the evidence of the management's witnesses would fall within the purview of the Standing Orders mentioned in the charge-sheet. The learned Single Judge, therefore, felt that the validity of the domestic enquiry could not be sustained for the reason that the charge-sheet itself was as vague as it could be in view of the fact that no specific particulars of the various items of misconduct falling under the respective clauses of the Standing Orders were mentioned in the charge-sheet and the finding of the Enquiry Officer in respect of each of these workmen is not supported either by discussion of the evidence on record or by reasons in support of those findings. After having found that the enquiry was bad in law, the learned Single Judge considered the question as to whether this was a fit matter for remand to the Tribunal for recording fresh evidence on the merits of misconduct. The learned Single Judge noticed that the main management witness, i.e. the President, who could speak about this incident is no more in the services of the management and it is not known whether he would be available and Eapen, who had testified on behalf of the management, is no more and in the circumstances, there would be considerable difficulty for the management to sustain the allegations against the workmen if the matter were to be remitted to the Tribunal for a decision on merits. The learned Single Judge was of the view that the workmen were partly responsible for the present state of affairs and that ends of justice would be met by making an award in these proceedings which would take care of the interests of the management and the workmen and would also put an end to the prolonged litigation between the parties. Taking into consideration the facts and circumstances the learned Single Judge directed the management to compensate the workmen for loss of employment caused by the orders of dismissal passed against them by paying to each of the workmen a sum of Rs. 60,000 in full and final settlement of their claims for compensation for loss of employment.

7. Both the parties felt aggrieved by the judgment of the learned Single Judge and filed appeals. Write Appeals Nos. 2383 and 2394 of 1982 were filed by the workmen, whereas Writ Appeals Nos. 4660 and 4661 of 1982 were filed by the management. The appeals were heard by a Division Bench of the High Court and were disposed by the judgment dated July 27, 1984. By the time these appeals came up for hearing before the Division Bench of the High Court two out of the 15 workmen, whose dismissal was under consideration before the tribunal and the learned Single Judge, had resigned and one had died and the dispute was confined to the dismissal of 12 workmen.

8. During the course of hearing of these appeals, five of these workmen viz. K. R. Thirumalapad, V. Raju, B. Ramaiah, V. K. Hariharan and K. P. Sadanandan expressed their desire to accept monetary compensation. In view of the said desire of these workmen, the appellate bench dealt with their case separately and by way of compensation for loss of employment for 52 months these workmen have been awarded the wages and benefits like bonus, ex gratia payment, gratuity and the like which they could have got if they had continued in service till the date of the order of the learned Single Judge. After hearing the learned counsel of both the sides, the learned Judges determined the amount payable to these five workmen under the heads of wages, bonus and ex gratia payment and gratuity, leave salary and compensation for future employment. Since these five workmen had not accepted the amount of Rs. 60,000 which had been awarded by the learned Single Judge, it was also directed that the management would pay interest at the rate of 10% on the sum of Rs. 60,000 for the period from the date of the order of the learned Judge till payment. It was, however, directed that the sum of Rs. 12,000 which had been paid to each of the workmen by way of interim relief during the pendency of the appeals in the High Court, would be deductible from the sum payable to these workmen. After the arguments were concluded, two more workmen, viz., Shivarudraiah and Nesan,

filed memos expressing their willingness to accept monetary compensation in similar terms and it was directed that these two workmen shall also be paid compensation in the above terms in full and final settlement of their claims for loss of employment.

9. The remaining five workmen viz., V. Manoharan, M. Anandaraj, M. K. Mathew, C. L. Rajanna and F. Arokyaswamy were not willing to settle their claim by taking monetary compensation, but they did not also want to have a trial before the Tribunal and the management also was not particular to have the matter adjudicated by the Tribunal. Both the parties expressed their desire before the writ appeal court to dispose of the matter once for all on the basis of the material on record by taking into consideration all the contentions urged and filed a joint memo dated June 22, 1984 requesting that the court may decide the entire matter in the appeals without remitting the matter to the Tribunal and grant appropriate reliefs finally in accordance with law. In view of the said request of the parties, the learned Judges considered the matter on the basis of the record of the domestic enquiry as well as the statements of the witnesses examined before the Tribunal on the preliminary question as to the validity of the domestic enquiry. On the question whether the domestic enquiry was valid and proper the learned Judges agreed with the findings of the learned Single Judge, that if anybody was to be blamed in this case it would be the workmen and their Union for the stubborn and indifferent attitude in boycotting the enquiry. While dealing with the criticism about the charges being vague and unintelligible, the learned Judges have held that the charge memo specifies the acts of misconduct in sufficient particulars which clearly fall within the Standing Order 26(5) and 26(12) and the acts of misconduct alleged against the workmen could not be said to be in any manner vague or jumbled up. As to the validity of the report of the Enquiry Officer, the learned Judges agreed with the finding recorded by the learned Single Judge that the said report is not in accordance with law, since the Enquiry Officer did not consider the evidence of the witnesses as to the specific charges and he did not discuss the incriminating evidence against each worker in respect of each of the acts of misconduct alleged against him. After going through the report of the Enquiry Officer, the learned Judges have observed that there is no proper analysis of the evidence of the witnesses against each workmen in respect of each of the acts of misconduct and since there were four specific charges alleged against each workman it was incumbent on the Enquiry Officer to critically discuss the evidence produced by the management in relation to each charges against each worker and then record his separate findings and that the report of the Enquiry Officer obviously falls short of these requirements and it cannot be said to be valid. The learned Judges after considering the evidence recorded ex parte in the domestic enquiry and the evidence recorded before the Tribunal on the preliminary issue have found that the workmen were guilty of wrongfully confining the President and compelling him to withdraw the notice. The learned Judges were of the view that for these two acts of misconduct, the said five workmen do not deserve extreme penalty of dismissal. The learned Judges have directed that they should be taken back on duty, out with payment of one half of the back wages and that the interim payment of Rs. 12,000 paid each of the workmen should be adjusted against the amount of back wages paid to them.

10. Against the said decision of the appellate bench of the High Court the Workmen as well as the management have filed these appeals. The appeals of the management relates to the five workmen whose dismissal has been set aside and who have been ordered to be reinstated by the appellate bench of the High Court. The workmen, in their appeals, have challenged the decision of the High Court insofar as it denies 50% of the back wages to the five workmen who have been ordered to be reinstated. In their appeals the workmen have also submitted that the seven workmen who have been awarded monetary compensation should have been given the benefits as claimed by them since they have been not found guilty of misconduct.

11. As noticed earlier the workmen concerned in these appeals are twelve in number and they fall in two groups. The first group consists of the seven workmen who had expressed their desire to accept monetary compensation and to settle the dispute on reasonable terms before the appellate bench of the High Court. Keeping in view the said desire of these workmen the learned Judges have awarded monetary compensation to these workmen by taking into account the wages and benefits like bonus, ex gratia payment for loss of employment for 52 months, gratuity, leave salary and compensation for loss of future employment. The total amount of monetary compensation that has been awarded to each of these workmen is in the range of Rs. 1 lakh. In Civil Appeals Nos. 4784-4785 (NL) of 1984 filed on behalf of the Workmen it was urged by the learned counsel for the workmen that the amount that has been awarded as monetary compensation to these workmen is inadequate, and that they should have been awarded the benefits as claimed by them. In this regard, it may be mentioned that from the judgment of the appellate bench it appears that these workmen were aggrieved by the order of the learned Single Judge only to the extent of the amount awarded by way of compensation for loss of employment. The appellate bench has noticed that, although the order of the learned Single Judge does not give the basis of awarding Rs. 60,000 to each of the workmen, the said amount was computed by taking into consideration the monthly average wages of each worker as on the date of the order of the learned Single Judge and it was multiplied by 52 months, the period covering from the date of dismissal till the date of the order of the learned Single Judge. In the judgment of the appellate bench it has been mentioned that the learned Judges had suggested to the counsel on both sides that the workmen should be paid, by way of compensation for loss of employment for 52 months, the wages and benefits like bonus, ex gratia payment, gratuity and the like which they could have got if they had continued in service till the date of the order of learned Single Judge and both the counsel had filed their respective working sheets computing the benefits as suggested. Since there was great variance between the two computations the appellate bench, after hearing the counsel on the both sides, determined the compensation payable under the different heads, namely, wages, bonus, ex gratia payment, gratuity and leave salary. Taking into consideration the fact that the workmen are skilled and they may not find it difficult to get alternative employment, the learned Judges have awarded a sum equivalent to six months wages payable as on the date of the order of learned Single Judge, towards the loss future employment and have also awarded interest at the rate of 10% on the sum of Rs. 60,000 awarded by the learned Single Judge for the period from the date of the order of learned Single Judge till payment. All the seven workmen who have been awarded monetary compensation by the appellate bench have accepted the same without demur. Moreover we find that during the course of hearing before the appellate bench the objection that was raised on behalf of the workmen was with regard to the computation of the amount payable by way of wages, bonus, ex gratia payment, gratuity etc. The learned counsel for the workmen has not been able to show any infirmity in the determination that has been made by the learned Judges with regard to the amount payable by way of wages, bonus, ex gratia payment, gratuity and leave salary to these workmen. In these circumstances, we do not find any substance in the appeals of the workmen relating to the amount of monetary compensation that has been awarded to this group of seven workmen.

12. The second groups consists of the following five workmen :

1. V. Manoharan

2. M. Anandaraj

3. M. K. Mathew

4. C. L. Rajanna

5. F. Arokyaswamy

V. Manoharan was the General Secretary of the Union viz. Bharat Fritz Werner Karmika Sangh, M. Anandaraj was the Vice-President of the Union, F. Arokyaswamy was the Assistant Secretary of the Union and the other two workmen viz. M. K. Mathew and C. L. Rajanna were the members of the said Union. These workmen were not willing to settle their claims by taking monetary compensation but at the same time they did not want to have the luxury of another trial before the Tribunal and, therefore, a joint request was made before the appellate bench of the High Court by the Management as well as by the Workmen whereby the court was requested to settle the entire matter without remitting it to the Additional Industrial Tribunal, Bangalore and grant appropriate reliefs finally in accordance with law. After considering the entire matter the High Court found that these workmen were guilty of misconduct, namely wrongfully confining the President and compelling him to withdraw the notice. The High Court, however, felt that these workmen did not deserve extreme penalty of dismissal and directed that they shall be taken back to duty with payment of one half of the back wages.

13. Shri G. L. Sanghi, the learned counsel for the management, has assailed the judgment of the High Court with regard to these five workmen and he has advanced a twofold argument. The first submission of Shri Sanghi is that the learned Judges of the High Court have erred in holding that the report of the Enquiry Officer is not valid and in ignoring the findings recorded by the Enquiry Officer. The other submission of Shri Sanghi is that the High Court, having found that these five workmen are guilty of misconduct, was not justified in setting aside their dismissal and directing their reinstatement. In this regard, Shri Sanghi has urged that the conduct of these workmen involved acts of gross indiscipline and misbehaviour towards the President of the Company and taking into account the nature of the misconduct committed by these workmen this was not a case in which reinstatement should have been directed.

14. Shri M. K. Ramamurthi, the learned counsel appearing for the workmen, on the other hand has submitted that in view of the joint memo submitted on behalf of the management and the workmen, the High Court was entitled to go into the merits and after considering the merits the High Court felt that denial of one half of the back wages was adequate punishment and that this Court should not interfere with the said decision of the High Court. Shri Ramamurthi has also referred to the provisions of Section 11-A of the Act and has submitted that it is now competent for the Industrial Tribunal to go into the question of adequacy of punishment and since the High Court was exercising the same powers as the Tribunal, the High Court was entitled to determine what would be adequate punishment in the facts and circumstances of the case.

15. In the present case we find that after holding that the report of the Enquiry Officer could not be said to be valid, the appellate bench of the High Court has considered the evidence that was produced by the Management before the Enquiry Officer as well as the evidence that was recorded before the Tribunal on the preliminary issue and has found that the five concerned workmen were guilty of misconduct. In view of the said finding of the High Court, we are of the view that the question with regard to the validity of the report of the Enquiry Officer is of little significance and the only question which needs to be examined is whether in view of the findings recorded by the appellate bench of the High Court that these five workmen are guilty of misconduct, the High Court was justified in not awarding the punishment of dismissal and in directing reinstatement of these workmen with one half of the back wages. In this regard, it may be stated that after considering the

evidence the appellate bench of the High Court arrived at the following conclusion :

> "The very fact that a large contingent of police had arrived at the time when the workmen were inside the President's room itself shows that there was a lot of disturbances in the Factory. The workers who went inside the President's room perhaps were responsible for aggravating the situation. They were in an aggressive mood. They threatened the President with dire consequences if the notice was not removed. They with the common intention confined the President to his room. They came very close to him with gesticulations and fisted hands. They did not go out in spite of request. They shouted stating that the President should not go out. They stayed there till the President gave instructions to Mr. Keshy to remove the notice.

Even a little time prayed for by the President and Brachtel for discussion in the matter was not conceded by the workmen. They undoubtedly wrongfully confined him to his room and threatened him with dire consequences.

No recruitment as per the notice was going on at that moment. The Union did not write any letter asking the management to withdraw the notice. That was a right royal way of dealing with such matters. Nothing prevented the Union to issue such a notice and try to bargain with the management. It was wholly unnecessary for the workmen or the office bearers of the Union to storm the President's room and threaten him with dire consequences.

Fortunately, the workers in this case, did not attack any officer of the management, although they did everything short of attacking the President. Perhaps there was a silver lining in the dark clouds. They are, however, guilty of wrongfully confining the President and compelling him to withdraw the notice.

For these two acts of misconduct, we do not think that the said five workmen deserve extreme penalty of dismissal. There were other workmen too, who went to the office of the President and participated in the terrorising acts. All of them might have acted at the instigation of somebody or at the spur of the moment without knowing the consequence. They have no doubt acted badly but so bad as to warrant dismissal It seems to us, therefore, that the dismissal is unjustified and they shall be taken back to duty, but with one half of the wages."

The aforesaid findings recorded by the High Court show that :

> (i) these workmen had gone inside the President's room in an aggressive mood;
>
> (ii) they threatened the President with dire consequences if the notice was not removed;
>
> (iii) they confined the President to his room and came very close to him with gesticulations and fisted hands;
>
> (iv) they did not go out in spite of request and shouted stating the President should not go out; and
>
> (v) they stayed there till the President gave instructions to Mr. Keshy to remove the notice.

16. The learned Judges were of the view that the said acts of misconduct were not such as to deserve extreme penalty of dismissal and have directed that these workmen should be taken back to duty but with one half of the back wages. The learned Judges considered denial of one half of the back wages to the workmen as a sufficient punishment for the acts of misconduct committed by them.

17. The aforesaid directions have been given by the High Court exercising the powers which are exercised by the Industrial Tribunal in view of the joint memo dated June 22, 1984 submitted by both the parties, whereby it was requested that the Court may decide the entire matter without remitting it to the Tribunal and grant appropriate relief finally in accordance with law. Moreover, in view of the provisions contained in Section 11-A of the Act, which empowers the Industrial Tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the Tribunal to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed. We do not find any infirmity in the aforesaid view expressed by the appellate bench of the High Court. The question which still remains to be considered is whether, in the facts and circumstances of the case, the appellate bench of the High Court was justified in directing reinstatement of these five workmen.

18. Ever since the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal (1949 FCR 321 : AIR 1949 FC 111), the settled position in law is that the Industrial Tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal was wrongful the workman has been denied reinstatement for the reason that it would not be expedient to direct reinstatement.

19. In Punjab National Bank v. Workmen ((1960) 1 SCR 806 : AIR 1960 SC 160 : (1959) 2 LLJ 666) this Court has approved the following observations of the Full Bench of the Labour Appellate Tribunal in Buckingham & Carnatic Mills Ltd. v. Workmen ((1951) 2 LLJ 314) : (quoted at SCR p. 833)

> ".... in so ordering the tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse and the ground on which the order of the management is set aside are also relevant factors for consideration."

20. In that case this Court has laid down : (SCR pp. 833-34)

> "It is obvious that no hard and fast rule can be laid down in dealing with this problem. Each case must be considered on its own merits, and, in reaching final decision an attempt must be made to reconcile the conflicting claims made by the employee and the employer. The employee is entitled to security of service and should be protected against wrongful dismissals, and so the normal rule would be reinstatement in such cases. Nevertheless in unusual or exceptional cases the tribunal may have to consider whether, in the interest of the industry itself, it would be

> desirable or expedient not to direct reinstatement. As in many other matters arising before the industrial courts for their decision this question also has to be decided after balancing the relevant factors and without adopting any legalistic or doctrinaire approach."

21. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee, had been one of trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interest of the industry (Hindustan Steel Ltd. v. A. K. Roy ((1969) 3 SCC 513 : (1970) 3 SCR 343)). In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment.

22. The misconduct that has been found established against these five workmen involves threatening the highest executive, viz. the President of Company, with dire consequences, wrongfully confining him in his room and compelling him to withdraw the notice. These acts of misconduct involve acts subversive of discipline on the part of these workmen. Three of these workmen were office bearers of the Union. It cannot be said that these workmen had acted at the instigation of somebody. Taking into consideration the facts and the circumstances of the case, we are of the opinion that, keeping in view the interests of the industry, this is a case where it can be said that it is not desirable and expedient to direct reinstatement of these workmen. In our view, therefore, the direction with regard to reinstatement of these workmen cannot be sustained and in lieu of reinstatement they may be paid compensation for loss of future employment.

23. In O. P. Bhandari v. Indian Tourism Development Corporation Ltd. ((1986) 4 SCC 337 : 1986 SCC (L&S) 769 : (1986) 3 SCR 923) this Court has held that Compensation equivalent to 3.33 years' salary (including allowances) as admissible on the basis of the last pay and allowance should be a reasonable amount to award in lieu of reinstatement. In that case the Court has taken into consideration the fact that the corpus, if invested at the prevailing rate of interest (15%), will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages :

> (i) He will be getting this amount without working.
>
> (ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.
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> (iii) If he had been reinstated he would have earned the salary up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his life time (if he lives longer), but even his heirs would get it in perpetuity after his demise.
>
> (iv) The corpus of lumps sum compensation would remain intact, in any event.

24. In the instant case these five workmen were dismissed from service on April 7, 1978 and since then they are without employment. In view of the judgment of the appellate bench of the High Court they are entitled to half of the back wages for the period from the date of the order of

dismissal, i.e. April 7, 1978 till July 27, 1984, the date of the decision of the appellate bench of the High Court. Under the orders of the appellate bench of the High Court they would have been entitled to full wages for the period subsequent to the said decision on their reinstatement. The operation of the said direction with regard to reinstatement has, however, been stayed during the pendency of the appeals in this Court. From the counter-affidavit of V. Manoharan dated 10 November, 1984 filed in S.L.P. (C) Nos. 10150 to 10153/84 [C.A. Nos. 4780-4783(NL) of 1984] it appears that on the date of the said affidavit, except C. L. Rajanna who was aged 32 years, the age of other four workmen was in the range of 42-43 years and that the age of superannuation in the Company is 58 years. At the time of dismissal, the total salary of these workmen was in the range of Rs. 925 to Rs. 1200 and at the time of filing of the affidavit in 1984 their salary would have been in the range of Rs. 2,125 to Rs. 2,700. On that basis one half of the back wages of these workmen for the period from 1978 to 1984 would be about Rs. 50,000 to Rs. 60,000. Taking into consideration the salary of the workmen at the time of the passing of the order of appellate bench in 1984 and applying the criterion laid down by this Court in O. P. Bhandari case ((1986) 4 SCC 337 : 1986 SCC (L&S) 769 : (1986) 3 SCR 923) the amount of compensation in lieu of reinstatement for the loss of future employment that should be payable to each workmen would be Rs. 1,00,000. If that amount had been paid to the workmen in 1984, they would have earned Rs. 15,000 per year as interest on the same during the period the appeals have been pending in this Court since 1984. These workmen have received Rs. 60,000 awarded to them by the learned Single Judge under the interim order passed by this Court on December 3, 1984 and in addition to that they have received Rs. 12,000 by way of interim relief during the pendency of the appeals before the High Court. In other words these workmen have so far received Rs. 72,000 in all while they have been without employment since 1978. Taking into consideration the aforesaid facts and the circumstances we are of the opinion, that these workmen may be awarded Rs. 1,50,000 each towards back wages and compensation for loss of future employment in lieu of reinstatement in addition to the sum of Rs. 72,000 which has already been received by them.

25. In the result Civil Appeals Nos. 4784-4785(NL) of 1984 filed by the workmen are dismissed and Civil Appeals Nos. 4780-83(NL) of 1984 filed by the management are partly allowed to the extent that the direction given by the appellate bench of the High Court of Karnataka in its judgment dated July 27, 1984 for reinstatement of the five workmen viz. V. Manoharan, M. Anandaraj, M. K. Mathew, C. L. Rajanna and F. Arokyaswamy is set aside and these workmen shall be paid a sum of Rs. 1,50,000 each towards back wages and compensation in lieu of reinstatement for loss of future employment. This amount will be in addition to the sum of Rs. 72,000 which has already been received by these workmen. This amount of Rs. 1,50,000 shall be paid within a period of one month from today failing which these workmen shall be entitled to be paid interest at the rate of 15% per annum on the said amount till payment. No order as to costs.

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