BOMBAY HIGH COURT

Vithoba Maruti Chavan

Vs.

S. Taki Bilgrami

Special Civil Appln. No. 804 of 1963

(Palekar and Gokhale, JJ.)

28.11.1963

JUDGMENT

Gokhale, J.

1. A rather interesting question relating to the scope and ambit of the powers of the Labor Court under Section 78 of the Bombay Industrial Relations Act, 1946, arises in this petition. The petitioner was employed as a head jobber in the respondent No. 2 Mills and had put in about 20 years of continuous service. He was charge-sheeted by the respondent No. 2 Mills on the allegation that he had slapped one Shivappa Hombal on the 24th of April 1960. On account of this alleged behavior of the petitioner it was contended by the Mills that this conduct amounted to misconduct under the standing orders which were applicable and which were determinative of the relations between the Mills and their employees. It is common ground that the standing orders were settled by the Commissioner of Labor under Section 35(2) of the Bombay Industrial Relations Act, 1946 (hereinafter referred to as 'the Bombay Act'). Standing order 23 enumerates "acts of omissions constituting misconduct", Clause (1) of standing order 23 contemplates "the commission of any act, subversive of discipline or good behavior on the premises of the undertaking." It was alleged by the Mills that the petitioner was guilty of the commission of the act, viz., that of slapping Shivappa Hombal, which was subversive of discipline or good behavior on the premises of the undertaking. An enquiry was held on this charge-sheet under the standing orders. The petitioner denied that he had committed any misconduct or that he had been guilty of any at subversive of discipline or good behavior on the premises of the undertaking. Before the Labor Court the petitioner had also stated that the enquiry was held by one Shri Joshi, who was a provident fund clerk in the Mills and who was not superior to him. The petitioner also said that the enquiry alleged to have been held by the respondent No. 2 Mills was not an enquiry as contemplated by the standing orders. He had not been present at the time of the so called enquiry and he was not given an opportunity to lead evidence in his defence, nor was he allowed to cross-examine the witness examined in support of the charges levelled against him. The substance of

the defence of the petitioner was that the enquiry was vitiated by failure on the part of the respondent No. 2 Mills to observe the principles of natural justice. In the alternative, he also said that the evidence brought on the record did not establish his guilt and the finding that he was guilty was perverse and baseless. It is not necessary to state elaborately the various contentions raised by the petitioner challenging the validity of the enquiry. As a result of the finding made by the manager, who held the enquiry, the petitioner was dismissed from service. It was this order of dismissal that was challenged by the petitioner before the Labor Court.

2. Section 42 of the Bombay Act provides for a notice of change to be given either by an employer or an employee in respect of certain changes. Sub-Section (4) of Section 42 provides that any employee or a representative union desiring a change in respect of (i) any order passed by the employer under the standing orders, or (ii) any industrial matter arising out of the application or interpretation of the standing orders, or (iii) an industrial matter specified in Schedule III, shall make an application to the Labor Court. This right to make an application to the Labor Court given to an employee desiring a change in respect of any of the matters specified in that Sub-Section is subject to the proviso to that Sub-Section. That proviso requires that no such application shall be unless the employee or a representative union has in the prescribed manner approached the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period. It was not distorted before as that the petitioner in this case had approached the employer in the prescribed manner before making the application to the Labor Court. Section 78 of the Bombay Act prescribes the cower of the Labor Court. Section 78 to the extent to which it is material, is as follows :

> "78. (1) A Labor Court shall have power to - A, decide
> (a) disputes regarding -
> (i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders;
> (ii) the application and interpretation of standing orders;
> (iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in schedule III and matters arising out of such change."

Under clause (a) the Labor Court has the power to decide dilutes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders. It has also the power to decide dispute regarding any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III and matters arising out of, such change. For the purposes of this petition it is not necessary to refer to the other powers of the Labor Court which are also laid down in Section 78(1). The petitioner, after having approached respondent No. 2 Mills as required by the proviso to Sub-Section (4) of Section 42, made an application to the Labor Court by which he wanted the order of dismissal passed by respondent No. 2 to be set aside. He applied for an order that he should be reinstated in the employment of respondent No. 2 Mills from the date of his dismissal. He alleged that the enquiry

was vitiated as the respondent No. 2 Mills had not observed the principles of natural justice in conducting the enquiry. It was also stated by bun that even if the enquiry was Held to be a proper enquiry, there was no evidence to know that he had been guilty of any misconduct and the finding of the enquiry officer that he was guilty of misconduct was perverse and baseless. The respondent No. 2 Mills disputed these allegations made by the petitioner and contended that the enquiry was a proper enquiry and was held in accordance with the standing orders and principles of natural Justice were fully observed in conducting the said enquiry. It was denied by the Mills that the petitioner was not allowed to cross-examine the witnesses who were examined in support of the charges leveled against him and contended that the conclusion of the enquiry officer that the petitioner had been guilty of misconduct under the standing orders was completely in consonance with the evidence which was adduced in the enquiry. In the written statement which respondent No. 2 Mills filed before the Labor Court it was stated that the record of the petitioner was pot blameless and there were occasions in the past when the petitioner was censured, fined or suspended for indecent behavior such as abusing, threatening or beating other workers. Respondent No. 2 stated that a serious view had to be taken of the misconduct in view of the petitioner's unsatisfactory previous record. The Labor Court, on these rival contentions of the parties before it, raised the necessary issues and came to the conclusion that the dismissal of the petitioner was illegal and improper, and that the petitioner was entitled to the relief of reinstatement although it negatived the petitioner's claim for back wages. Incidentally the Labor Court also held that it was not necessary to decide the allegation made by the petitioner that the respondent No. 2 Mills had abolished the post of the head jobber by keeping it vacant and that this action amounted to an illegal change. The Labor Court has discussed elaborately the material brought before it on the question as to whether the enquiry was proper enquiry. The learned Judge of the Labor Court was, however, of the view that the petitioner had admitted that he had slapped another employee. He, therefore, found that the allegation that the petitioner had slapped the concerned employee was fully substantiated and the finding of the enquiry officer about this fact was a proper finding. On a construction of Clauses (k) and (1) of standing order 23, however, he thought that this act, even though proved, did not amount to disorderly or indecent behavior and, therefore, the petitioner could not be held guilty of misconduct contemplated by clause (k). While so holding, the learned judge observed that the act which was proved was subversive of discipline or good behavior on the premises of the undertaking and, therefore, the only misconduct which could be held proved was under clause (1) of standing order 23, viz., the commission of any act subversive of discipline or good behavior on the premises of the undertaking. It appears that during the enquiry the petitioner was held guilty of misconduct both under clause (k) and clause (1) of standing order 23, and, therefore, it was the view of the Labor Court that the order of dismissal was based also on the finding that the petitioner was guilty under cl (k). The Labor Court, therefore, thought it necessary to decide the question as to whether only for the misconduct under clause (1), which was proved against the petitioner, the order of dismissal should be maintained. The learned Judge of the Labor Court thought that the manager who held the enquiry had not applied his mind to certain extenuating circumstances which were on the record and which mitigated the guilt of the petitioner. On a consideration of

some of these circumstances, which appealed to the learned Judge of the Labor Court, he held that certain circumstances mitigated the seriousness of the guilt and therefore, though the petitioner would be entitled to reinstatement, the relief of back wages should not be awarded to him. He took the view that the refusal to award back wages would be adequate punishment "which will bring him to his senses and make him behave properly in the future". On this view, the Labor Court directed that the petitioner should be reinstated without back wages within 30 days from the date of the order of the Labor Court.

3. Aggrieved by this direction made by the Labor Court, respondent No. 2 Mills preferred an appeal to the Industrial Court, Maharashtra, Bombay. On the question as to whether the enquiry was a proper enquiry the Industrial Court thought that the said question did not arise and was of no importance because the petitioner himself had admitted at the time of the enquiry that he had slapped the storekeeper. The Industrial Court also held that on the evidence which was brought before the Labor Court no prejudice was caused to the petitioner as a result of the enquiry being improper. We may point out that even before us, Mr. Nargolkar, who appeared for the petitioner, did not contend that the order of dismissal should be set aside on the ground that the enquiry was vitiated because of the failure on the part of respondent No. 2 Mills to observe the principles of natural justice nor was it contended before in that the finding that the petitioner was guilty of misconduct was based, on no evidence or that it was perverse. Even before the Industrial Court substantial reliance seems to have been placed on behalf of the petitioner on the question of punishment meted out to the petitioner. The anxiety of the petitioner before the Industrial Court was to support the Labor Court in the view which it took relating to punishment. The respondent No. 2 Mills, however, contended that once the Labor Court came to the conclusion that the misconduct was proved and that the finding as to misconduct was the result of a proper enquiry, the Labor Court had no jurisdiction to interfere with the order of punishment made by the employer under the standing orders. The contention of respondent No., 2 Company was that the adequacy or inadequacy of punishment was a matter entirely within the scope of managerial functions and it was for the employer to determine what punishment would be adequate in the interest of discipline in the Mills. This argument prevailed with the industrial Court. The learned Member of the Industrial Court observed as follows.

> "In my opinion, misconduct under the standing order under which dismissal can be ordered is proved, the Court should not on the ground that it considers it too severe, alter punishment. I am supported in this view by the dictum of the Supreme Court and the recent decision of the Calcutta High Court ....."

After quoting a portion from the judgment of the Calcutta High Court, the learned Member observed that there was no evidence of victimization in this case, nor were there any circumstances on the record on the basis of which victimization could be inferred. He, therefore, set aside the order of reinstatement made by the Labor Court and held that the order of dismissal made by the 2nd Respondent-Mills will have to be maintained. It is to challenge this order made

by the Industrial Court that the petitioner has come to this Court under Article 227 of the Constitution.

4. Mr. Nargolkar contends that the Industrial Court has not correctly construed the scope of the powers of the Labor Court under Section 78 of the Bombay Act. According to him, the powers of the Labor Court to decide disputes regarding an order passed by an employer acting under the standing orders are very wide. He says that the Labor Court is called upon not only to consider the legality of an order made under the standing orders but also its propriety. According to his contention even if the Labor Court came to the conclusion that the order under the standing orders was a legal order, the Labor Court could still consider whether it was a proper order; and if the Labor Court came to the conclusion that it was not a proper order, despite its being a legal order, it was open to the Labor Court to set aside such an order on the ground of its impropriety. In this case, says Mr. Nargolkar, even if the finding that the enquiry was proper or that there was no victimization or further that it was based on evidence were to be sustained, the Labor Court should have considered the propriety of the order of dismissal in the background of various circumstances which were brought to the notice of the Labor Court. Mr. Nargolkar says that it was these circumstances which were held to be mitigating circumstances by the Labor Court and the Labor Court, therefore, rightly took the view that the punishment of dismissal was far too severe and that refusal to make a direction to pay back wages was, under the circumstances, adequate punishment. Mr. Nargolkar makes a grievance that the learned Member of the Industrial Court did not consider the question of the severity of punishment because of the limitation which, he felt, existed relating to the powers of the Labor Court under Section 78 of the Bombay Act. There is no doubt that the Industrial Court was of the view that it was not open to it to consider the question of the seventy of punishment when once misconduct Was proved. Since no victimization could be inferred and since the finding as to the guilt of the petitioner was supported by evidence, the Industrial Court took the view that the question of punishment was a matter within the discretion of the employer and the Labor Court or the Industrial Court in appeal could not interfere with the order of punishment made by the employer. Reliance is places on sub-cls. (i) and (iii) of Section 78(1)A. It was pointed out that apart from the competence of the Labor Court to examine the legality or propriety of the order passed under the standing orders, it had also the power to decide a dispute regarding a change desired by an employee in respect of an industrial matter specified in schedule III and matters arising out of such change. Mr. Nargolkar says that by giving a notice of change under Sub-Section (4) of Section 42, the employee it this case had desired a change in respect of a matter specified in schedule III. The change desired by the petitioner was the setting aside the order of dismissal and an order of reinstatement of the employee. Schedule III enumerates the Items in respect of which an application can be to the Labor Court whenever an employee or a representative union desired a change in respect of any of these matters. Item (6) in Schedule III is.

> "employment including (i) reinstatement and recruitment; and (ii) unemployment of person previously employed in the industry concerned".

Mr. Nargolkar contends that reinstatement is an industrial matter enumerated in schedule III and the petitioner had approached the 2nd respondent-Mills desiring a change in respect of this industrial matter, viz., his reinstatement after setting aside the order of dismissal. According to him, therefore, the Labor Court could pass an order under sub-cls. (i) and (iii) of Section 78(1)A.

5. On a plain reading of sub-Clause (e) of Section 78(1)A, it appears that the powers of the Labor Court to decide dispute regarding an order passed by an employer under the standing orders are wide powers. The use of the expression "propriety or legality" would show that the powers of the Labor Court are not confined merely to examining the legality of an order passed by the employer under the standing orders. The argument of Mr. Nargolkar, therefore, that apart from its legality, the Labor Court could also examine the propriety of an order under the standing orders, is prima facie attractive. It must, however, be borne in mind that an enquiry by a domestic tribunal has already preceded the enquiry to be held by the Labor Court under Section 78. If the domestic enquiry has not been shown to suffer from any defect on the ground of its being mala fide or on the ground that principles of natural justice were not observed, or if it is not shown that the act complained of by the employer under the standing orders was a result of the employer's desire to victimize the employee concerned, could be said that the power to examine the propriety of fin order would be so wide as to include the power to hold a de-novo enquiry irrespective of the result of the enquiry held in the domestic forum ? Mr. Nargolkar would suggest that the trend of the decisions of the Industrial Courts to restrict the scope of the enquiry under this section in respect of orders passed by the employer under the standing orders is because of their erroneous view that the powers of the Labor Court are in the nature of revisional powers and that in exercise of such revisional powers, the Labor Court could not pass an order, as if sitting in appeal, against an order passed by an employer, under the standing orders. The powers of the Labor Court under this section, says Mr. Nargolkar, are so wide that, in the interest of industrial peace and harmony an individual employee has been enabled under this Act to approach the Labor Court and to request the Labor Court to consider the propriety of the order passed by the employer and, in doing so, there are no limitations on the Labor Court so as to restrict the scope of the enquiry before it. If the Labor Court, on the facts brought before it, came to the conclusion that the order passed by the employer under the standing orders was unsustainable either because of its illegality or because of its impropriety, Mr. Nargolkar says that the Labor Court had the jurisdiction to set aside that order, it is true that the Industrial Court, Bombay has treated the powers of the Labor Court under Section 78, more or less, as revisional powers. In *Murlidhar Balkrishna v. General Manager B.E. S.T. Undertaking, Bombay Municipality, Bombay*[1], the Industrial Court negatived an argument that the Labor Court should take into consideration only the evidence led before it and' should not consider the record of the departmental enquiry. The contention made on behalf of the employee was the same as made before us by Mr. Nargolkar that Section 78 contemplates an independent enquiry into the alleged misconduct and the Labor Court should have allowed evidence to be led before it and should not have relied on the papers of the departmental enquiry. The Industrial Court observed and, in our

view, rightly, that no useful purpose of an enquiry by the management would be served if all the evidence that had been led in the departmental enquiry had again to be led before the Labor Court so that there should be a re-hearing of the entire case before the Labor Court. Section 40(1) of the Bombay Act provides that standing orders in respect of an employer and his employees, settled under Chapter VIII and in operation or where there are no such standing orders, model standing orders, if any applicable under the provisions of Sub-Section (5) of Section 35 shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in schedule I. Schedule I has enumerated the matters in respect of which standing orders could be settled under the Act. Elaborate procedure is provided in the Act itself as to the manner in which standing orders are to be settled. Both the employer and employees have an opportunity of putting forth their respective views before the standing orders are settled toy the Commissioner of Labor. Such standing orders are made determinative of the relations between the employer and his employees under Section 40(1) of the Act. The standing orders themselves lay down the procedure to be followed before disciplinary action can be taken against an employee for misconduct. The standing orders also enumerate the misconduct which, if proved, would entail the one or the other of the punishment prescribed for misconduct. So long as the enquiry held by the employer is in accordance with the standing orders and 80 long as it did not suffer from mala fides or want of good faith or from failure to observe principles of neutral justice, it is difficult to hold that any such enquiry properly held under the standing orders should be of no avail and the Labor Court should hold a de novo enquiry, ignoring what has already been done properly under the standing orders. We think, with respect, that in the case just referred to, the Industrial

[1]1957 I.C.R. (Bom) 381

Court was right in saying that the enquiry before the Labor Court is not contemplated to be a de novo or a fresh enquiry. The Industrial Court, however, further construed the powers of the Labor Court in the light of the expression used in sub-Clause (i) of Section 78(1)(A) viz., "propriety or legality" and took the view that the use of this expression indicates that the powers of the Labor Court were of a revisional character. For taking this view the Industrial Court placed reliance on a decision of this Court *Chhugomal Jasharam v. Dist Judge Thana*[2], The learned Chief Justice had, in that case, observed as follows : -

> "It is difficult to dispute the proposition that a revisional jurisdiction conferred upon the authority to satisfy itself as to the legality or propriety of any order cannot include the right or the jurisdiction to set aside a finding of fact or interfere with a question of fact. The expression 'legality or propriety' occurs in various statutes, it has been judicially considered, and the authorities have clearly laid down that the jurisdiction conferred by this expression is a revisional jurisdiction and not an appellate jurisdiction to interfere with findings of fact."

Relying on this observation, the Industrial Court in that case observed that in the context and scheme of the Bombay Industrial Relations Act which aims at promoting industrial peace and

industrial harmony, and in view of sub-Clause (d) of clause 18 of Section 3 of the Bombay Industrial Relations Act, it may be conceded that the words "propriety or legality of the order" may be construed more widely but it was not possible to hold that the intention is to make a Labor Court a Court of Appeal to sit in judgment over the decisions of the management. The Industrial Court observed that the intention rather was to have a Court with powers which would protect the employees from illegal, arbitrary or mala fide exercise of powers by the employers. The same view has been reiterated by the Industrial Court in later cases. In the case to which we have just referred the Industrial Court has not in terms, said that the powers of the Labor Court were of a revisional nature. In fact it was observed that in the context and scheme of the Act, the words "propriety or legality of the order" may be construed more widely. In fact, at one place, the industrial Court also said that it was not desirable to lay down hard and fast rules as to the circumstances in which the Labor Court can interfere with an order of the management punishing an employee. But this view, which left sufficient scope for the Labor Court to interfere with an order of punishment in appropriate cases, was, to a certain extent, narrowed down by a subsequent decision of the same Court. In *Balkrishna Tukaram Jadhav v. Brihan Maharashtra Sugar Syndicate Ltd., Sholapur*[3], the same grievance was made on behalf of the employee and it was contended that the Labor Court should have examined the evidence independently and should not have confined merely to the record of the enquiry before the domestic forum. While negativing this contention, the Industrial Court observed as follows :

> "Under Section 78(1)A(a)(i) a Labor Court, while dealing with an application against an order of dismissal, has to decide the dispute regarding the - "propriety or legality" of the order. The issue before the Court is therefore not whether the alleged misconduct is proved but whether the impugned order has been passed in accordance with law after a proper inquiry and whether on the materials produced

[2]58 Bom. LR 545

[3]1958, I.C.R. (Bom) 589

> at the inquiry, the findings of the management as to the misconduct and the sentence was proper. In this view of the duties of the Labor Court, its jurisdiction necessarily becomes more or less of a revisional nature and though it may have wide powers to revise the order of the management, the Court will be justified la confining itself to considering the question whether the impugned order was legal and proper. The issue about the misconduct of the employee itself not being before the Court. It will not be justified in trying the question of the misconduct independently of the main question of the legality or propriety of the order."

Once again the Industrial Court referred to its earlier decision and to the decision of this Court in 58 Bom LR 545 and held that these authorities sufficiently laid down the scope of an inquiry before a Labor Court under Section 78(1)A(a)(i). The description of the powers of the Labor Court as of a revisional nature when exercising its functions under Section 78(1)A(a)(i), therefore, first came to be mentioned in this decision of the Industrial Court. We may point out that despite the fact that the Industrial Court said that the powers of the Labor Court were of a

revisional character, it did observe that the scope of Section 78 would have to be construed more widely and no hard and fast rules could be laid down as to the circumstances in which a Labor Court should interfere with an order passed by the management under the standing orders. Mr. Nargolkar pointed out that the earlier decision of the Industrial Court did not take such a restricted view of the powers of the Labor Court under Section 78. For example, in *Shri Ambica Mills Ltd. No. 2 Ahmedabad v. Textile Labor Association, Ahmedabad*[4], the Industrial Court although it did not uphold the view of the learned Judge of the Labor Court that the order of discharge was illegal, refused to interfere with the finding of the Labor Court that the order was improper. It would indicate that although the Industrial Court was of the view that the order passed under the standing orders was legal, the Labor Court could interfere with that order If it was found that it was an Improper order. Mr. Nargolkar contends that the later view of the Industrial Court was largely influenced by the observations of the learned Chief Justice in 58 Bom L.R. 545. We think that there is considerable substance in this contention. In 58 Bom. L.R. 545, referred to earlier, the learned Chief Justice was considering the scope and effect of the powers of this Court to examine the legality and propriety of an order by a Court which under the law was given revisional powers. This Court was concerned with a reference made to this Court by the Deputy Custodian General of India under Section 27(2) of the Administration of Evacuee Property Act. In the reference an attempt was made to attack certain findings of fact made by the District Judge. Section 27(1) of the Administration of Evacuee Property Act conferred revisional jurisdiction upon the Custodian General and that jurisdiction was confined to his satisfying himself as to the legality or propriety of any order passed by an authority mentioned in the Act. It was conceded before this Court that the question which was referred by the Custodian General was a question of fact and what was argued was that the finding of fact made by the District Judge was not correct. It was in dealing with this argument that the learned Chief Justice observed that a revisional jurisdiction conferred upon the authority to satisfy itself as to the legality or propriety of any order cannot include the right or the jurisdiction to set aside a finding of fact or interfere with a question of fact. The learned Chief Justice was, therefore, considering the scope of the powers of a Court exercising revisional Jurisdiction to examine and to satisfy itself as to the legality or propriety of an order." In fact the learned Chief Justice made this clear by

[4]1951 I.C.R. (Bom) 471

observing as follows : -

> "Apart from anything else, the very fact that the Legislature has conferred revisional jurisdiction upon the Custodian General and not appellate jurisdiction must mean that revisional jurisdiction is different from appellate jurisdiction, it cannot possibly be suggested that when the Custodian General makes this reference to us, appellate jurisdiction is conferred upon us and we become entitled to interfere with findings of fact arrived at by the Custodian General. The jurisdiction that we can exercise in a reference under Section 27(2) can only be the jurisdiction which the Custodian General himself can exercise under Section 27(1)."

It would thus appear that the learned Chief Justice did not lay down that whenever any power to examine the legality or propriety of an order is conferred on an authority, such a power must be construed to be in the nature of a revisional power. The learned Chief Justice was concerned with the exercise of powers which under the statute were revisional powers and the question of satisfying itself as to the legality or propriety of the order arose in exercise of such revisional powers. It was in that context that the learned Chief Justice observed that in exercise of such revisional powers the power to satisfy itself as to the legality or propriety of any order cannot include the cower to interfere with a finding of fact, as if sitting in an appeal. We may also point out that Section 27 of the Administration of Evacuee Property Act confers on the Custodian General the power to call for the record of any proceeding "for the purpose of satisfying himself as to the legality or propriety of any such order". The power to call for the record and to pass such order in relation thereto as he may think fit is to be exercised for the purpose of satisfying himself as to the legality or propriety of the order. The language of this section is very much similar to the language employed by the Legislature in Section 435 of the Code of Criminal Procedure. Under that section of the Code the High Court or any Sessions Judge is empowered to call for and examine the record of any proceeding before any inferior criminal Court "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed". The powers of the High Court to call for the record of an inferior Court under Section 435 of the Cr. P.C. are in the nature of revisional powers and these powers are exercised by the Court for satisfying itself as to the correctness, legality or propriety of a finding, sentence or order recorded or passport by an Inferior Court. The function of the revisional Court in these cases is merely to satisfy itself as to the legality or propriety of the order passed by the Inferior Court, since the powers are in terms revisional powers and not appellate powers so as to examine the correctness of a finding of fact as if sitting in an appeal against the decision of the inferior Court. In fact, the Industrial Court itself, in our view, rightly observed that in the context and scheme of the Act which aims at promoting industrial peace and Industrial harmony and in view of sub-Clause (d) of clause 18 of Section 3 of the Act, it may be conceded that the words "propriety or legality of the order" may be construed more widely. The Industrial Court in fact said that it was not desirable to lay down bard and fast rules as to the circumstances in which a Labor Court can interfere with an order of the management punishing an employee. But in the later case, relying on the observations of this Court In 58 Bom LR 545 it was observed that the powers of the Labor Court were of a revisional character. Looking to the language of Section 78 of the Bombay Act, it would be seen that the powers of the Labor Court are not so circumscribed as to confine its jurisdiction to satisfy itself as to the correctness, propriety or legality of an order passed by the inferior Court. Section 78(1) begins as follows :

> "A Labor Court shall have power to decide disputes regarding the propriety or legality of an order".

The Labor Court is, therefore, empowered to decide disputes regarding the propriety or legality

of an order passed by an employer acting under the standing orders, and is not confined only to satisfy itself as to the propriety or legality of an order passed by the employer. In our view, the language employed by the Legislature in Section 78 does unmistakably show that the powers of the Labor Court are wider than the powers of a Court exercising revisional Jurisdiction, and, with respect, it would not be proper to limit those powers, as the Industrial Court has done in the later case, by describing its jurisdiction as being of the nature of revisional jurisdiction. The fact that the power to decide a dispute regarding the propriety or legality of an order passed by an employer acting under the standing orders is conferred on the Labor Court would mean that the Labor Court could, in the interests of justice, either confirm or set aside an order made by the employer, acting under the standing orders, also on the ground of its propriety or impropriety, with a view to preventing injustice. It is true that the powers are not in the nature of the powers of an appellate Court, but this will not preclude the Labor Court from exercising its wide powers to examine the propriety of an order in appropriate cases where it appears to it that grave injustice will result if such powers are not exercised. We may incidentally mention that even in 1958 I.C.R. (Bom) P. 589, referred to earlier, the Industrial Court in fact considered the circumstances which were pointed out as extenuating circumstances for deciding whether the punishment was proper, and it was after considering these circumstances that the Industrial Court came to the conclusion that the punishment meted out by the employer was proper. It does not even seem to have been suggested that once the misconduct was held proved the Labor Court had not power under Section 78 to consider the question of punishment and to make an appropriate order, if it was found that the punishment was so disproportionate to the nature of the guilt that the Labor Court should alter it to some other appropriate punishment.

6. Mr. Ramaswamy, who appeared for the respondent No. 2 Mills, contended that the powers of the Labor Court, under the Bombay Act are similar to the powers of the Industrial Tribunals constituted under the Industrial Disputes Act, 1947. His contention was that in reference made to the Industrial Tribunals under that Act it has consistently been held that the matter of awarding punishment was a matter of internal discipline and. once it was held that the misconduct was proved the Industrial Tribunal could not interfere with the order of punishment. In *Indian Iron and Steel Co. v. Their Workmen*[5], the Supreme Court observed 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

[5](1953) 1 Lab LJ 260 : AIR 1958 SC 130

> (i) when there is a want of good faith, (ii) when there is victimization or unfair Labor practice, (ill) when the management has been quality 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." Relying on these observations of the Supreme Court, Mr. Ramaswamy says that the powers of the Labor Court under Section 78 of the Bombay Act could not be wider than the powers of the Industrial Tribunal under the Industrial Disputes Act, He contends that even under the Bombay Act when an order of dismissal on misconduct is passed by an employer under the standing orders, the legality or propriety of such order can be examined by the Labor Court only in the light of the criteria laid down by the Supreme Court in this decision. In other words, he contends that even the Labor Court shall not have the power to set aside as order of dismissal unless there is want of good faith or there is victimization or unfair Labor practice or unless the management has been guilty of a basic error or violation of a principle of natural justice or when, on the materials adduced in the inquiry, it is found that the finding is completely baseless or perverse. He says that even when under the Industrial Disputes Act the powers of the Tribunals were not circumscribed under the Act inasmuch as they had full powers to adjudicate on any dispute so long as it was an industrial dispute, certain limitations were thought proper to be imposed on the powers of the Industrial Tribunals, in the context of broad principles of Industrial adjudication. He emphasises that maintenance of discipline in the industry is the responsibility of the management and, in the interests of that discipline, the Supreme Court has accepted these limitations on the powers of the Industrial Tribunals of interfering with the orders of dismissal passed on misconduct. It is true that the Supreme Court has circumscribed the powers of the Industrial Tribunals under the Central Act in dealing with disputes relating to orders of dismissal made toy the employer on the ground of misconduct. Time and again, the Supreme Court has laid down that it is for the management to determine what constitutes major misconduct so as to merit the dismissal of a worker. In *Mckenzie and Co. v. Its workmen*[6] the Supreme Court observed as follows :

"It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motive of vindictiveness, intimidation or resorting to unfair Labor practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct, its judgment cannot be questioned provided the above-mentioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above, its position is untenable,"

Mr. Ramaswamy says that this has been consistently the view taken by the Supreme Court even in later cases and there would be no justification for widening the powers of the Labor Court, while exercising its power under Section 78 of the Bombay Act. He says that even when the powers of the Court were not circumscribed by any specific provision under the statute, these were restrictions recognized as good restrictions in the background of industrial adjudication, and the same restrictions would apply when the

[6](1959) 1 Lab LJ 285 at P. 289 : (AIR 1959 SC 389 at p. 392)

Labor Court examines the legality or propriety of an order passed by the employer under the standing orders. To appreciate this argument. It is necessary to understand the difference in the scheme of the Central Act and of the Bombay Act. Under the Central Act, any industrial dispute could be the subject-matter of a reference to the Industrial Tribunal constituted under that Act. Under Section 10(1)(d) of the Central Act, where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to the Industrial Tribunal for adjudication. Similarly, under Section 12(4) of the Central Act, if no settlement is arrived at before the conciliation officer, the conciliation officer has to send a full report to the appropriate Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof. Under Sub-Section (5), if on a consideration of the report, the appropriate Government is satisfied that there is a case for reference to the Tribunal, it may make such reference. When once a reference is made either under Section 10 or Section 12 of the Act, the Industrial Tribunal is seized of the industrial dispute and there is no provision in the Act indicating the limits on the powers of the Industrial Tribunal in adjudicating on such an industrial dispute. The powers of the Industrial Tribunal are not defined in the Central Act. The limits of those powers were set by decisions of Courts. Those limits were fixed in consideration of general principles of industrial adjudication. The Industrial Disputes Act has been substantially amended in 1957, and after these amendments were incorporated a very material alteration has been made in the scheme of the Act. Before these amendments, however, the position was that the Industrial Tribunals functioned subject to the amplitude or the limitation of their powers as laid down from time to time by the Tribunals constituted under the Act and by the Courts. The view taken by the Supreme Court in relation to the powers of the Tribunals in dealing with industrial disputes relating to dismissals on misconduct was in the context of the scheme of the Act as it was at that time. "Industrial dispute" has been defined in Section 2(k) of the Act 39 follows :-

> "(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with conditions of Labor, of any person."

It is clear that an Industrial Tribunal constituted under the Central Act cannot adjudicate on a dispute which is not an industrial dispute. It is now settled law that a dispute between an individual workman and the employer is not an industrial dispute under the Central Act, unless such a dispute is taken up as their own, by a body of workmen. The question whether a dispute by an individual workman would be an industrial dispute, as defined in Section 2(k) of the Central Act, had evoked considerable conflict of opinion and three different views had been expressed. Some authorities had taken the view that the dispute which concerned only the rights of individual workers cannot be held to be an industrial dispute. The second view wag that a

dispute between an employer and single employee can be an industrial dispute, as defined in Section 2(k) of the Act. The third view was that a dispute between an employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by a union or a number of workers. In
C.P.T. Service Ltd. Nagpur v. Raghunath Gopal[7], Venkatarama Ayyar, J., who delivered the judgment of the Court, observed that the preponderance of judicial opinion was clearly in favour of the third view and that there was considerable reason behind it. He observed as follows :

> "Notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen."

7. This view was again confirmed in Associated. *Cement Companies Ltd. Coriander v. Their Workmen*[8], Mr. Justice Gajendragadkar who delivered the judgment of the Court observed as follows :

> "The basis of industrial adjudication recognized by the provisions of the Act clearly appears to be that disputes between employers and their employees would be governed by the Act where such dispute has assumed the character of an industrial dispute. An element of collective bargaining which is the essential feature of modern trade union movement is necessarily involved in industrial adjudication. That is why industrial courts deal with disputes in relation to industrial cases only where such disputes assume the character of an industrial dispute by reason of the fact that they are sponsored by the union or have otherwise been taken up by a group or body of employees." The question which the Supreme Court was considering was whether an individual employee bound by an award was entitled to give notice terminating the award. In this connection, they considered the scope of Section 19 of the Act. In view of the fact that the scheme of the Act was to determine industrial disputes in which there was an element of collective bargaining, where such disputes assume the character of an industrial dispute, by reason of the fact that they are sponsored by the union or have otherwise been taken up by a group or body of employees, the Supreme Court observed that although the words "any party bound by the award" may include an individual workman and though such a person, speaking literally, is a party bound by the award, the said expression used in Section 19(6) of the Act could not include an individual workman. There is reasonable ground for taking the view that the provisions of the Industrial Disputes Act were construed from time to time in this background, namely, that the Act was intended to provide a machinery for the adjudication of disputes which were of a collective nature and which were not purely

individual disputes.. Therefore, even though a literal construction could have led to the conclusion that an individual dispute was an industrial dispute, the Courts leaned against that construction and held that adjudication of individual disputes did not fit in within the general scheme of the Act which was to settle collective disputes. In this context, trade unions or a body of workers were not expected to raise a dispute affecting individual unless it was

[7] AIR 1957 SC 104

[8] AIR 1960 SC 777

directly or indirectly an attack on the organization of the trade union as a bargaining agent of the workman. As early as in 1949 in *Western India Automobile Association v. Industrial Tribunal, Bombay*[9] at p. 115, it was observed that the legislation (i.e. The Industrial Disputes Act) substitutes for free bargaining between the parties abiding award by an impartial tribunal, and that in many cases an industrial dispute starts with the making of a number of demands by workmen. If the demands are not acceptable to the employer, it results in a dismissal of the leaders and eventually in a strike. In this context the Federal Court observed as follows :

"No machinery for reconciliation and settlement of such disputes can be considered effective unless it provides within its scope a solution for cases of employees who are dismissed in such conditions and who are usually the first victims in an industrial dispute. If reinstatement of such person cannot be brought about by conciliation or adjudication, it is difficult, if not impossible, in many cases to restore industrial peace which is the object of the legislation."

Here again, the need for protecting dismissed Workmen who had to suffer dismissal as a result of then trade union activities was emphasized. All these decisions go to show that it has been settled law that the Industrial Disputes Act, as it stood before the amendment of 1957, was to be looked at and construed as a piece of legislation providing for a machinery for adjudication of disputes of a collective nature arising between the employer and a body of workmen, which, more often than not may be a trade union. A literal construction of the provisions of the Act was discarded, even though possible, in the context of the general scheme of the Act. Since this was the scheme of the Act and since individual disputes could not come before the Tribunal otherwise than being raised by a body of workmen, the question of granting relief in cases of dismissal for misconduct would not arise unless it was a collective dispute. It is reasonable to assume that the view taken by the Supreme Court circumscribing the powers of the Industrial Tribunals to interfere with orders of dismissal on misconduct were in the background and context of the scheme of the Central Act. The principles enunciated by the Supreme Court as indicating the criteria which should guide the Industrial Tribunals in deciding disputes of this nature would show that whenever-some evidence was brought before the Tribunal to show that the action had been taken for ulterior motives such as victimization or unfair Labor practice, or whenever the inquiry conducted, by the employer was not in accordance with principles of natural justice or the action taken was mala fide or not in good faith, then alone the Industrial Tribunal would sit in judgment on such action of the employer and order reinstatement, if found necessary. In cases where such

circumstances were not established and where it was a pure and simple action of a disciplinary nature, the Supreme Court negatived the plea made by employees that the Industrial Tribunals would be entitled to examine-the correctness of such actions independently. Mr. Nargolkar says that the four principles enunciated in, 1058-1 Lab LJ 260 : AIR 1958 Supreme Court 130, referred' to above all indicate that it was in this background of the scheme of the Act that the Supreme Court considered the powers of the Industrial Tribunals-under the Central Act. We think that there is considerable force in this argument. The position, however, which obtains under the Bombay Act is materially different. Unlike the Central Act, the Bombay Act even from the time when it came on the statute book provided for adjudication of disputes raised by an individual worker.

[9] AIR 1949 FC 111

Both the expression "industrial dispute and industrial matter" have been defined in the Bombay Act. "Industrial dispute" is a wider expression since such a dispute must be connected with an industrial matter. The definition of "industrial dispute" in the Bombay Act is part materia with the definition given in the Central Act. But an industrial matter covers a narrower field. An industrial matter can, under certain circumstances, go before the Labor Court even If it is not raised by a body of workmen. "Industrial matter" has been defined in Section 3(18) of the Bombay Act as follows :

> "(18) "Industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment, and includes -
> (a) All matters pertaining to the relationship between employers and employees, or to the dismissal or non-employment of any person;
> (b) all matters pertaining to the demarcation of functions of any employees or classes of employees;
> (c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act.
> (d) All questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole".

Clause (d) of the definition includes all questions of what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of the community as a whole. The word "change" has been defined in Section 3(8) as meaning an alteration in an Industrial matter. Change can be desired by a body of workmen or in certain cases by an individual employee. Section 42 of the Bombay Act provides for giving notice of change desired by employers and employees, Sub-Section (1) provides for a notice by an employer intending to effect any change in respect of an industrial matter specified in schedule II. Sub-Section (2) provides for a notice by an employee desiring a change in respect of an Industrial matter not Specified in Schedule 1 or III. But this notice shall have to be given in the prescribed form to the employer through the representative of employees. Sub-Section (4) refers

to a notice to be given by an employee or a representative union and it could toe in respect of any order passed by the employer under the standing orders, or any industrial matter arising out of the application or Interpretation of standing orders, or an industrial matter specified in schedule III. Such a notice can be given by an individual employee, although a representative union also can give a notice desiring a change contemplated in Sub-Section (4). An employee can individually apply to the Labor Court under Section 78 in respect of any matter referred to in Sub-Section (4) of Section 40. Then Section 78 in terms provides that the Labor Court shall have power to decide disputes referred to in clause (a) of Section 78(1)(A). This would snow that there is an express provision in the Act conferring power on the Labor Court to decide disputes of the nature referred to in clause (a) of Section 78(1)A, even though such disputes may be raised by an individual employee. Prior to the amendment of the Central Act in 1957, a dispute of this nature could not be raised by an individual employee. The Bombay Act, to that extent, materially differs in its scheme from the Central Act and provides for the adjudication of individual disputes in certain cases. We ha/e referred to Section 40 of the Act earlier. Sub-Section (1) of that section provides that standing orders settled under the Act shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. Sub-Section (2), however, provides that notwithstanding anything contained in Sub-Section (1) the State Government may refer, or an employee or a representative union may apply in respect of any dispute of the nature referred to in clause (a) of paragraph A of Section 78, to a Labor Court. Sub-Section (2) therefore provides that an employee individually can apply to the Labor Court notwithstanding Sub-Section (1) which provides that standing orders shall be determinative of the relations between the employer and his employees in regard to all industrial matters specified in Schedule I. There is no doubt, therefore that the scheme of the Act is to provide for the adjudication of certain disputes even though they may be disputes between an individual employee and the employer. Schedule I has enumerated the terms in respect of which standing orders can be settled under Section 35. Item 11 is

> "punishment including warning, censure, fine, suspension, or dismissal for misconduct, suspension pending inquiry into alleged misconduct and the acts of omissions which constitute misconduct".

That is how the standing orders provide for the relations between the employer and the employee la respect of punishment including dismissal for misconduct. Section 78 in terms empowers the Labor Court to decide disputes regarding the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders : Although under Sub-Section (1) of Section 40 the standing orders are made determinative of the relations between the employer and his employees, Sub-Section (2) provides that notwithstanding the standing orders an employee can apply to the Labor Court under Section 78 and call in question the legality or propriety of an order passed by an employer under the standing orders. An employee, therefore, is entitled to approach the Labor Court individually to have an order of dismissal set aside or the punishment Imposed altered or set aside by making an application to the Labor Court under

Section 78. The finality or the determinative character of the standing orders is, therefore, subject to the decision of the dispute by the Labor Court when, on application by an employee, the Labor Court has made an order under Section 78. It is, therefore, not possible to accept the contention that under the Bombay Act the power of the Labor Court should be so narrowly construed as to enable the Labor Court to interfere with an order of dismissal on misconduct, only If the circumstances, which are enumerated by the Supreme Court in 1058-1 Lab. LJ 260 : AIR 1958 Supreme Court 130 are established. There may be cases where on account of the individual nature of the dispute there may be no victimization or unfair Labor practice in the accepted sense of the term. It may be that the order passed by the employer under the standing orders is not mala fide or is not an order made in bad faith. It is also possible that the inquiry conducted by the domestic tribunal may not suffer for failure to follow the principles of natural Justice. The legality of the order may not be called in question and yet the propriety of the order could be in dispute. If an order is challenged on the ground of its propriety, in view of the wide language used by the Legislature. It is not possible to say that the Labor Court will not have the power to set aside or alter that order in proper cases, to avoid miscarriage of Justice. This is not to suggest that the Labor Court will sit as a Court of appeal and interfere with a finding made by the domestic tribunal merely because the Labor Court may take a different view of the evidence led before the domestic tribunal. As we have already pointed out, a fresh or de novo inquiry is not contemplated if the inquiry conducted by the domestic tribunal has been fair and has been in accordance with the standing orders. in the light of the well known principles accepted in industrial adjudication, it has to be borne in mind that the inquiry held by the employer is a domestic inquiry and, in the absence of compelling reasons (on the ground either of its unfairness or of its illegality), the Labor Court should not interfere with the findings or the conclusions of the domestic tribunal. The section, however, gives ample powers to the Labor Court to interfere with a finding or with a punishment imposed by the domestic tribunal if such an interference is called for on the ground of its impropriety in order to avoid grave injustice occurring in a particular case. We are unable to accept the contention that even in such cases the Labor Court has no power to interfere with an order passed by the domestic tribunal, if once it is shown that that order is a legal order and did not suffer from infirmities as were indicated in 1958-1 Lab LJ 260 : AIR 1958 Supreme Court 130. We may again point out that even the industrial Court in 1958 I.C.R. (Bom) 589 had in its decision observed that the powers of the Labor Court under Section 78 would nave to be given a wide construction and it would be difficult to lay down hard and fast rules indicating the circumstances in which the Labor Court should interfere with an order made under the standing orders by the employer. Whether or not, under the circumstances of a case, such an interference to avoid grave injustice is necessary will depend on the facts of each case. The Labor Court, however, is not barred from considering these circumstances, as appears to have been the view on a strict interpretation of the section by the Industrial Courts so far. We may incidentally also point out that the scheme of the Bombay Act is very materially different in the matter of the powers of the Labor Court and the Industrial Court in respect of matters which ordinarily would have been managerial functions. The Bombay Act is not applicable generally to all industries. It has to be made applicable by notification by the

Government to all or any other industries in certain local areas or to the whole of the state. It is common ground that so far the Act has been made applicable only to some industries. The major industry to which the Act is made applicable is the textile industry and the object of the scheme underlying the Act seems to be to make special provision for governing the relations between the employers and employees in those industries to which the Act is made applicable. Mr. Nargolkar invited our attention to some items in Schedule III. An application, for example, can be made to a Labor Court by any employee in respect of "assignment of work and transfer of workers within the establishment". One would suppose that ordinarily assignment of work and transfer of workers would have been considered to be a managerial function affecting the internal administration of the industry. In Schedule II, item 2 refers to "permanent or semi-permanent increase in the number of person employed or to be employed in any occupation or process or department or departments". A dispute relating to this matter could be raised under Section 42 by a representative union. The strength of the staff would be a matter which would in the Ordinary sense, be considered as a function of the management. Still these are matters in respect of which a dispute can be taken either to the Labor Court or to the Industrial Court by the employee concerned or by the representative union, as the case may be. The scope and ambit of the powers of the Industrial Court and the Labor Court under the Act is by express provisions in the Act made wider, or at any rate, it now specifically defined under the provisions of this Act. It is, therefore, not possible to accept the contention that in spite of the specific power given to the Labor Court under Section 78 to decide disputes about matters referred to in Clause (a) of Sub-Section (1) A, the Labor Court should refuse to exercise that power unless certain circumstances are established. We have indicated before the scope and powers of the Labor Court under Section 78 end we are of the view that the Labor Court shall be entitled under Section 78 to interfere with an improper order to avoid grave injustice.

8. Mr. Nargolkar said that this dispute can also fall under sub-Clause (iii) of clause (a) of Section 78(1) A. sub-Clause (iii) refers to any change made by an employer or desired by an employee in respect of an industrial matter specified in schedule III and matters arising out of such change. Mr. Nargolkar says that by giving a notice as required by the proviso to Sub-Section (4) of Section 42 the petitioner had desired a change, viz., the setting aside of the order of dismissal and his consequent reinstatement in employment. He says that Schedule III in terms refers to reinstatement as one of the Items in respect of which an application can be made by an employee under Section 78. He also contends that even If an order of dismissal may not be set aside under sub-clause (1) of Clause (a) of Section 78(1) A on the ground of its illegality or impropriety, still the Labor Court would have jurisdiction to decide the dispute under sub-Clause (iii) of clause (a) as a change desired by an employee. sub-Clause (i) in terms refers to the propriety or legality of an order passed under the standing orders; and prima facie it is difficult to accept the argument that if an order is held to be proper by the Labor Court on the ground of its legality or propriety, the Labor Court could still consider the dispute and reinstate the employee whether or not the order of dismissal is set aside. In the view which we have taken as to the interpretation of sub-Clause (i) of Clause (a) of Section 78 (1) A, it is not necessary for us to examine the validity of

this argument.

9. It was not disputed before the Labor Court nor was it disputed before us that the petitioner had been in continuous employment for a period of 20 years. The Labor Court had considered certain circumstances which, according to it, were extenuating circumstances and which reduced the gravity of the guilt of the petitioner. That is why the Labor Court, instead of confirming the order of dismissal, reinstated the petitioner and considered refusal to pay the back wages as adequate punishment under the circumstances of the case. The Industrial Court in appeal, however, was of the view that if once misconduct was proved the Labor Court could not interfere with the order of punishment made in the domestic inquiry. In this view of the powers of the Labor Court, the Industrial Court did not consider whether the punishment for dismissal on the nature of misconduct established in this case was severe and whether the order made by the Labor Court was an appropriate order in the circumstances of the case. If the Industrial Court had not felt that its powers were limited, it would have considered whether on account of the extenuating circumstances pleaded on behalf of the petitioner and in view of the long service which he had out in the respondent No. 2 Mills, the order of dismissal made by the employer under the standing orders should be confirmed. In the view which we have taken, the industrial Court would have the power to take the adequacy or inadequacy of punishment imposed by the employer into consideration and to decide whether interference with the orders made by the employer was necessary to avoid grave injustice. We would, therefore, set aside the order made by the Industrial Court and send this case back to the Industrial Court for disposal according to law. No order as to costs.
Application allowed.