

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2674 OF 2005

Mr.Daman Chetandas Meghani,
Flat No.A-201, Building No.2,
"Shub Labh", Near Mahavir Nursing
Home, M.B.Estate Road,
Virar (West), Dist.Thane-401 303. ...Petitioner

V/s.

M/s.Moulds & Dies Pvt.Ltd.,
Sunder Baug Estate,
L.B.Shastrri Marg,
Kurla, Mumbai-400 070 ...Respondents

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Mr.S.C.Naidu i/b M/s.C.R.Naidu & Co. for
Petitioner.

Mr.V.P.Vaidya for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 12, 2009.

JUDGMENT :

1. This Writ Petition under Article 226 of the Constitution of India is directed against the Judgment and Award passed by the Presiding Officer 11th Labour Court, Mumbai dated 30th November 2004 in Reference (IDA) No.238/1999. The terms of reference is articulated in the Schedule which reads thus:

"Shri Daman Chetandas Meghani should be reinstated with full back wages and continuity of service w.e.f. 21/5/1994."

2. The background in which reference under Section 39 r/w Section 10(1) and 12(5) of the Industrial Disputes Act, 1947 came to be made by the appropriate Government of Maharashtra in respect of the industrial dispute, is that, the Petitioner, who was working as turner in the factory establishment of Respondent Company at Kurla, was dismissed on the ground of proved misconduct. The said action was taken in the context of the report submitted by one of the Director of the Respondent Company Mr. Nikhil Pasricha dated 18th December 1993. By the said communication addressed to the Managing Director of the Respondent Company, the said Director placed on record his experience about the humiliating behaviour of the Petitioner on 17th December 1993 in the following words:

"Dear Sir,

Sub : Complaint of mis-behaviour with me
against Mr. Dhaman Meghani.

With reference to above I wish to inform you that on 17.12.1993 at about 5.00 P.M.

when I was in the workshop, I noticed that Mr.Dhaman Meghani, Lathe Operator was standing idle and doing no work. His Machine was also stopped.

I enquired from Mr.Dhaman Meghani as to why he was not working on the Machine, in reply he told me in a very rude and indisciplined manner that I have no tool to operate my Machine.

I told him that the tool was provided to him on 11.12.1993 and there after you remained absent for 2 days eg; 13th & 14th December, 1993 and what happened to that tool to which he replied that the tool was broken and he had informed the Supervisor, where as in fact the Supervisor himself is not reporting for work since 12.12.1993.

When he was talking to me in a rude and indisciplined manner I told him to talk to me properly and behave in a disciplined manner.

I cautioned him for mis behaviour and language used towards me as he was all along addressing me as "TU" and further said "what can you do to me".

When I told him to keep quiet and mind his work he picked up an Iron Rod and threatened to assault me and started hurling filthy abuses at me.

The above incident was witnessed by other workmen in the workshop.

I being Director in the Company take serious note of such humiliating behaviour of Shri.Dhaman Meghani towards me and request you to take suitable action in this matter.

Thanking You,

Yours faithfully,

Sd/-
(NIKHIL PASRICHA)
DIRECTOR"

3. On the basis of said report, charge-sheet was prepared and served on the Petitioner dated 21st December 1993 which reads as follows :

"This is to inform you that a complaint has been received by me from Shri.Nikhil Pasricha, a Director of the Company that on 17.12.1993 you behaved in a rude and insubordinate manner towards by threatening to assault and also hurling filthy abuses at him.

A copy of the complaint is attached for your information.

Even earlier you have behaved in similar manner towards even the Managing Director, that is myself. However since you tendered your apology, no serious action was taken against you.

It seems, inspite the apology earlier given, you have not improved your conduct and behaviour towards your Superiors.

We also find that you are very irregular in your attendance and remain absent without prior permission. The details of your Absentism during the period from 1.1.1993 to 20.12.1993 is enclosed herewith.

Your production record also is much below the normal production given by other Machine Operators.

You are therefore charged with the following misconducts:-

1. Wilful insubordination and indisciplined behaviour towards Shri.Nikhil Pasricha, the Director of the Company on 17.12.93 at about 5. P.M. on the floor of the workshop.

2. For riotous behaviour when you pick up an iron rod threatening to assault, the Director Shri.Nikhil Pasricha during the incidence on 17.12.1993 at about 5. P.M. in the workshop.

3. For remaining absent of work without permission of 10, 13 & 14 of December, 1993.

4. For wilfully giving less production compared to other Machine men on your own Machine. The Management takes a serious view of your above acts of misconduct and you are called upon to explain as to why disciplinary action should not be taken against you.

Your explanation should be submitted within 48 hrs. on receipt of this chargesheet.

Further action in this matter will be considered on receipt of your explanation.

In view of the seriousness of the misconducts levelled against you, you are suspended from work, pending Managements final decision in this matter."

4. It is the Respondent's case that when the said charge-sheet was attempted to be served on the Petitioner on 22nd December 1993, he refused to accept the same and created scene which became

independent cause for proceeding against the Petitioner on the ground of misconduct. Accordingly, second charge-sheet was prepared on

27th December 1993, which was later on served on the Petitioner. The same reads as follows:

"IInd Charge Sheet

It is further reported to the undersigned that on 22.12.93 at about 3.15 p.m. when you were served with the chargesheet dtd. 21.12.1993 by the Supervisor Shri.Ramesh Chuttani, you refused to accept the same and threw it on the Table.

You also started shouting filthy abuses against the Directors threatening with physical assault etc.

On hearing the commotion created by you, the undersigned came to the office and asked to keep quiet and accept the charge sheet and submit your explanation, but instead of listening to the undersigned you also started threatening the undersigned saying that you will set us both (i.e.: undersigned and another Director Mr.Nikhil Pasricha) for issuing the charge sheet.

The charge sheet however was subsequently accepted by you but you refused to acknowledge the receipt of the same which also you subsequently signed by you on 22.12.1993 but delivered in the office on 24.12.1993.

Again on 22nd Dec.1993 at about 3.25 p.m. when you came to collect the advance in the office on the 1st Floor (above the Factory Floor) you, on seeing Shri.Nikhil Pasricha who was sitting in his cabin unprovokedly started shouting filthy abuses at Shri.Nikhil Pasricha, the Director of the Company and the same was witnessed by all the staff in the office.

On hearing commotion created by you in the office, the undersigned came up and asked you to keep quiet and take your advance and go. Even thereafter while leaving the office till the last you were abusing and threatening Mr.Nikhil Pasricha and also the undersigned.

You are therefore charged with the following misconduct:-

1. For insubordinate and indisciplined behaviour when on 22.12.1993 at about 3.25 p.m. you started shouting abuses in most filthy language towards Shri.Nikhil Pasricha 'Director' who was sitting in his cabin across the office hall.

The abuses used by you were

1. Kutte (2) Behanchod (3) Maa-chod etc. etc.

When the undersigned asked to keep quiet and leave the office premises, you also started abusing the undersigned and threatened saying that: "Hum Tum Dono ko sida kar dega aur dekhlega."

Your above misbehaviour constitutes to serious act of misconduct being an act subversive of discipline and good behaviour on the premises of the establishment.

You are already under charge sheet for similar misconduct and you have again

indulged in to the same. The Management therefore takes a very serious view of this matter.

2. For refusing to accept the charge sheet dtd. 21.12.1993, when served you at about 3.15 p.m.

You are directed to submit your explanation in respect of the above charge sheet within 48 hrs. on receipt of this charges sheet.

Further action in this matter will be considered on receipt of your explanation."

5. It is the Respondent's case that after service of the charge-sheet, due enquiry was conducted in which the Petitioner did not participate. As a result, the Enquiry Officer submitted his report and finding, on the basis of which, Director Anita Pasricha issued dismissal order against the Petitioner on 20th May 1994 which reads thus:

"Sir,

This is in continuation of the Show Cause Notice dtd. 6.5.1994 in respect of the Charge Sheets dated 21.12.93 and 27.12.1993 and the subsequent Enquiry conducted by an independent Enquiry Officer and his report and finding wherein he has found you guilty of the charges as specified in his report and findings and the same have been submitted to me as a

Director of the Company for necessary action, as the Managing Director is not capable of taking any decision, since he has been representing the Company in the Enquiry proceedings.

I have gone through the Enquiry proceedings and the report and findings of the Enquiry Officer and find that, inspite of giving you sufficient opportunity to attend the Enquiry and to participate you have failed to avail of the opportunities given to you by the Enquiry Officer and as such the Enquiry is in conformity with the principles of Natural Justice and we are in conformity with the report and finding of the Enquiry Officer.

The proved Acts of misconduct committed by you are of a grave and serious nature and warrant punishment of the dismissal from service. I have also gone through your part records and find no extenuating circumstance to reduce the punishment, as such you are hereby dismissed from service with immediate effect i.e. from 21.5.1994.

You are directed to collect all your legal dues if any from our accounts department on any working day, during working hours with prior appointment.

Yours truly,
For MOULDS & DIES PVT.LTD.

(ANITA PASRICHA)
DIRECTOR"

6. After the service of dismissal order, the Petitioner filed complaint under the provisions of The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.

However, the said complaint was disposed of without examining the merits by the Industrial Court on 3rd April 1998 for want of jurisdiction. It is only thereafter the Petitioner submitted application to the Management on 22nd April 1998 raising dispute. However, as no response was received from the Management, the Petitioner submitted representation to the Commissioner of Labour dated Nil which was received in the Office of the Commissioner of Labour on 13th May 1998. Acting upon the said representation, the Conciliation proceedings were resorted to which, however, failed. On receipt of the failure report, the appropriate Authority in exercise of powers of Government under Section 10(1) and Section 12(5) of the Industrial Disputes Act ordered issuance of Notification making reference to the Labour Court, Mumbai and formulated the issue as referred to earlier. Thereafter statement of claim was filed by the workman on 9th September 1999. The Respondent Company filed written statement contesting the reference proceedings. On analysing the material on record and the stand taken by the rival parties, the Labour Court by Part-I Award passed on 8th May

2002 took the view that the departmental enquiry on the basis of which order of dismissal came to be passed by the Respondent was vitiated by principles of natural justice. The view so taken by the Labour Court came to be confirmed by this Court in its order dated 23rd February 2002 passed in Writ Petition No.104 of 2004 filed by the Respondent Company. As a consequence of order dated 8th May 2002, the Labour Court allowed the parties to lead evidence with regard to the charges in respect of which the Respondent proceeded to take action against the Petitioner. In the said enquiry, the Respondent Management relied on the evidence of its witness Mr.Nikhil Pasricha and of Mr.Ramesh Chuttani. The Petitioner, however, only examined himself. The Labour Court identified the four charges emanating from the first charge sheet as follows:

"1) Willful insubordination and indisciplined behaviour towards Shri Nikhil Pasricha, the Director of the company on 17.12.1993 at about 5.00 p.m. on the floor of the workshop.

2) For riotous behaviour when you pick-up on Iron rod threatening to assault, the Director Shri Nikhil Pasricha during the incidence on 17.12.1993 at 5.00 p.m. in the workshop.

3) For remaining absent of work without permission on 10, 13 and 14 of December 1993.

4) For willful giving less production compared to other machine men, on your own machine."

7. The Labour Court has then adverted to second charge-sheet which framed following two additional charges against the Petitioner, namely:

"1) For insubordinate and indisciplined behaviour when on 22.12.1993 at about 3.25 p.m. started shouting abuses in most filthy language towards Shri Nikhil Pasricha "Director" who was sitting in his cabin across the office hall.

The abuses used by Mr.Meghani were; 1) Kutte, 2) Behan-chod, 3) Maa-chod etc.etc.

When the Managing Director asked to keep quite and leave the office premises Mr.Meghani started abusing and threatening say that, "Hum Tum Dono Ko sida kar dega aur dekhlega".

2) For refusing to accept the charge sheet dated 21.12.1993 at about 3.15 p.m."

8. Respondent Management relied on evidence of its witness Nikhil Pasricha. With a view to substantiate the aforesaid charges in the first charge-sheet, the Respondent's witness Nikhil Pasricha in Paragraphs 6 and 9 of the affidavit in

lieu of examination-in-chief has stated thus :

"6. I say that on 17.12.1993 at about 5 p.m., I went to the workshop. I noticed that the Second Party workman was standing idle and was not doing any work. So much so that the machine on which he was to do the work was also stopped and no production was being done on the said machine. I was surprised at the attitude of the Second Party workman and therefore enquired from the Second Party, the reasons for him as not to work on the machine. Instead of giving him satisfactory explanation, the Second Party workman in a very rude and indiscipline manner shouted at me by saying, "I have no tool to operate my machine". The submissions of the Second Party were not satisfactory and therefore I explained to him that the tool was provided to him on 11.12.1993. There was no work done by him on 13th and 14th December, 1993 because the Second Party workman was absent. Shri Daman Meghani thereafter informed me that the tool so provided was broken and that he had informed the supervisor to this effect. I informed the Second Party workman as not to give any false and bogus reasons because the concerned supervisor had not been reporting for work in the factory since 12.12.1993 and thus, by no way, it is possible for you to report about the tool being broken, to the concerned supervisor. Shri Daman Meghani came to know that the explanation given by him, have been substantially proved to be false and that his act of not doing any work on 17.12.1993, though being provided, has come to be proved as a gross misconduct. Thus, Shri Daman Meghani flared up, and in the most agitative and belligerent manner, started shouting at me. The temper was high and behaviour was rude which was an indiscipline act. Shri Daman Meghani had lost all sense of decency and balance of mind. I told him

to behave properly and not to raise his voice or being indisciplin^m but submit proper explanation for his not doing any work on the lathe machine. Surprisingly, Shri Daman Meghani instead of concealing all his misconducts, again indulged himself by shouting in the most threatening language against me. He lost all norms of discipline and picked up an iron rod with intentions to assault me. He was hurling filthy abuses at me. I thought fit and proper as not to continue to be inside the workshop any further as probably, Shri Daman Meghani may resort to threatenings into a reality and thus, I went up to the office and apprised the Managing Director of my Company of the aforesaid incidents in writing.

9. I say and submit that the act committed by Shri Daman Meghani is disturbing the industrial peace of the factory. It was an act most unbecoming of him. As a matter of policy and principle, we were never averse to the union formation and had the best of relations with the Union so much so that our Company had also entered into a settlement determining the service conditions of the workers with the Union. Shri Daman Meghani however, considered himself to have a privilege of behaving in a rude and indecent manner against the directors and the officials of the Company merely because he was a member of the union. The abuses and the indisciplin^e acts of Shri Daman Meghani upon me being one of the directors of the Company, in the presence of other employees have caused immense humiliation and embarrassment to me. I am certain that if I had continued to remain inside the workshop, Shri Daman Meghani, would not only have further aggravated but in all certainties, would have committed assault upon me. His language, behaviour and temperament were most indecent and unfit to be an employee of our Company. I say that the misconducts committed by Shri

daman Mehgani is grave and serious to warrant a punishment not less than a termination. The termination so effected be letter dated 20.5.1994 by the Company is just, legal, fair and proper. I say that if Shri Daman Meghani is granted reinstatement and/or backwages, it would cause irreparable loss, harm and injury to the First Party Company which cannot be compensated in terms of money."

9. Insofar as the charges arising out of the second charge-sheet, the witness has deposed in Paragraphs 7 and 8. It is, however, not necessary to highlight the evidence regarding second charge-sheet, as the Labour Court has discarded the claim of the Respondent Management in that behalf which finding has not been challenged by the Respondent Management. Be that as it may, the witness was cross-examined by the second party/workman. However, with regard to the material facts in relation to the incident occurred on 17th December 1993, the witness has withstood the cross-examination. As a matter of fact, from the tenor of cross-examination, there was no attempt to allege falsity of the episode deposed by the management witness. The cross-examination proceeded on the lines that the Petitioner was of the age of witness's father and that the witness

was not aware as to when the Petitioner had joined the Respondent Company. Even in the cross-examination, this witness has deposed that on the given day (i.e. 17th December 1993), the workman was in second shift duty and when he was asked why he was standing idle, he replied that he did not have the required tools to operate the machine. He has also deposed that the tools which are supplied to the workman to cut the iron bars were available in the Stores and delivered when the workman reports in that behalf to the Supervisor. The cross-examination then proceeds on the lines that whether such record was maintained in the Stores by way of requisition slip and the contents of the requisition slip. The witness has replied that he was not aware as to whether the requisition slips are placed on record for requisitioning the tools. The witness was then asked whether the life of the tool depends on the length of the steel to be cut and that, after cutting of the iron bar, the sharpness of the tools is reduced. The witness has further asserted that it is for the workman to regrind the tool himself. The witness has also deposed that in exceptional cases, the tools would

break. He has denied the suggestion that the workmen are required to write requisition slips for tools one or two days in advance. The witness has admitted that the workman has demanded tools to the Supervisor on 11th December 1993 and volunteered that the same were supplied to the Petitioner. He has replied that he was not aware as to whether any proof regarding such supply of the tools has been placed on record. The cross-examination then proceeds with the details regarding absence of Supervisor Ramesh Chuttani on 12th and 13th December 1993 and that the Petitioner was also on leave on those days. The suggestion made to this witness that tools were not supplied to the Petitioner on 11th December 1993 as the Supervisor was absent on that day has been denied. This witness has also denied the suggestion that the tools made available to the Petitioner had become useless due to utilisation on 15th and 16th. This witness has also asserted that he had himself ascertained from the Stores and found that tools were already issued to the Petitioner on 11th December 1993 which position was confirmed from the requisition slip. Then suggestion is put to this

witness that he did not like the words of the Petitioner addressing him in Hindi as "TU". He has also denied the suggestion that being addressed as "TU", he got annoyed and abused the workman at the top of his voice and threatened him to slap. In response to the question put during the cross-examination, the witness has denied that the Petitioner retorted that he would also slap if the witness had threatened to slap the Petitioner. This is the only cross-examination relevant on the point in issue with regard to the incident of 17th December 1993 concerning the charges of the first charge-sheet.

10. As aforesaid, the Management also examined Ramesh Chuttani as its witness. Essentially, this witness was examined in respect of incident of 22nd December 1993 concerning the second charge-sheet. However, this witness has also deposed on the facts which may be relevant to consider the charges in the first charge-sheet. In the affidavit in lieu of examination-in-chief, this witness has stated that he was working as Supervisor with the Respondent Company for more than 18 years and that

the Petitioner was working in the factory for last several years as turner on the lathe machine. In Paragraph 4 of his evidence, he has deposed that the tools required by the operator are issued on the basis of the requisition slip and that, Petitioner was last issued the tools on 11th December 1993. He has then deposed that he proceeded on leave on 12th December 1993 onwards. The witness then stated in paragraphs 8 and 9 of the examination-in-chief as follows :

"8. I say that I am looking after the production of the Second party workman and I always found that production given by him was extremely low and undesirable. The factum of such low production was reported by me to the Management on several occasions. I have also verbally warned Shri Daman Meghani to improve his production. It is true that I have not given any Memo to the Second Party workman because ours is a very small establishment and much of the work is done orally.

9. I say that I have been maintaining the production register which records the production given by each and every employees. The production record of the Second Party for the period from Jan.1993 to Dec.1993 would reveal the extent of low production given by him."

11. The witness was cross-examined with regard

to the above facts as can be discerned from Paragraphs 12 and 13 which reads thus :

"12. There is a register maintained by the company in respect of production given by the worker, however the production register is not maintained daily since I am the only persons to maintain that record. It is because sometimes I was to go outside and due to that it was not possible for me to maintain production register daily I cannot say that the number of operators working in the company in December 1993. I do not know as to whether the company did not file any record to show that Meghani's production was less than other employees of the company. I have mentioned in my affidavit that the production given by Meghani was less than other workers. It is not correct to say that Meghani has given more production and I am deposing falsely in that regard. It is not correct to say that I did not verbally warned to Meghani about his less production.

It is true that the company used to maintain separate record about supply of tools to the workers. I do not know as to whether the company did not file any document in respect of supply of tools to the concerned workman on 11.12.1993. It is not correct to say that on 11.12.1993 no tools were supplied to the second party workman."

12. On the other hand, the Petitioner examined himself and in his affidavit in lieu of examination-in-chief in relation to the incident of 17th December 1993, the Petitioner has stated thus:

"4. I say that on 17th December 1993, I was in the 2nd shift commenced at 3.30 p.m. I say that I reported my duties at 3.30 p.m. and as usual I cleaned the machine before commencing the work and I was standing in front of the Lathe Machine provided to me for want of tools to commence the work. I say that at that time one of the Directors viz. Mr. Nikhil Pasricha came to me and enquired as to why I was waiting. I replied to him that the tools required for operating the machine was broken and that I had already informed of the same to my supervisor on 11th December 1993 itself but I did not receive it. I say that on hearing me, Mr. Pasricha got annoyed and he threatened to slap me. I say that when I asked for the reason for the said threat, the said Director told that during the course of the conversation, I had uttered the word "Tu" while referring to Mr. Pasricha. I say that as Mr. Pasricha was very much younger to me and that I had even worked with his father and hence I used the word "Tu". I say that when he threatened me to slap, I told him if he slaps me I will also slap him. I say that I have not abused neither Mr. Nikhil Pasricha or other person on that day."

13. The rest of the evidence of the Petitioner is in respect of incident of 22nd December 1993, The Petitioner has been cross-examined on this material aspects. In the cross-examination, he has admitted that in the Office, Directors of the Company used to sit. He has stated that there is a partition in the Office and to the other side of the Office, the Directors used to sit. He has

denied that he was aware that the Directors used to see the staff from their cabin. He has also admitted the presence of other named staff in the Office on the given date. He has admitted that he knows Nikhil Pasricha and that he was Director of the Company, who incidentally is son of Avinash Pasricha, the founder member of the Company. He has denied knowledge about the Nikhil Pasricha's qualification. He has gone to the extent of denying that the knowledge of Engineering Graduate is more than his personal knowledge. He has admitted that Ramesh Chuttani is only Supervisor in the Company and that he was taking work from all category of workers by allocating the work to the workers. He has admitted that said Ramesh Chuttani was responsible to supply raw material and to maintain production record. He has admitted that belts, spare-parts, tools, instruments and delivery challans are to be kept and maintained in the Stores. He has also admitted that the person who sits in the Store Room was responsible to look after the Stores Department and sometimes, Ramesh Chuttani used to sit in the Stores. He has admitted that the Policy of the Company is that the

materials from Stores can be taken out only on submitting requisition slip. He has denied the suggestion that occasionally, tools, instruments etc. were taken out from the Stores. He has admitted that he was working in the second shift in the factory on 17th December 1993 which starts at 3.30 p.m. He has denied the suggestion that Nikhil Pasricha had come to the shop floor on that day at 5.00 p.m. He has admitted that Nikhil Pasricha saw him idle at the lathe machine at about 3.40 p.m. However, he has admitted that when Nikhil Pasricha saw him idle at lathe machine, asked him as to why he was idle at the lathe machine. He has denied the suggestion that he roughly told him (Nikhil Pasricha) that he do not have tools. He has volunteered that he told Nikhil Pasricha the reason of his idleness for want of tools and that, he was making efforts with whatever tools he had with him at that time. He has denied the suggestion that when he told Nikhil Pasricha that he had no tools, he was told to take the tools from the Stores. He has then stated that as soon as he disclosed that he had no tools, Nikhil Pasricha raised his hand to beat him. Significantly, he admits that he had

taken the tools from the Company on 11th December 1993. He has also admitted that if the sharpness of the tools is lost, the operator of the tools has to grind it to make it sharp. He has further added to it that if any tool is broken, it has to be deposited in the Stores. He has denied that on 17th December 1993, in annoyance he had lifted the iron bar in order to assault Mr. Nikhil Pasricha. He has also denied suggestion that if Nikhil Pasricha had continued to remain at that place he would have assaulted him. He has also denied the suggestion that therefore Nikhil Pasricha went to his cabin leaving the place. He has also denied the suggestion that he was shouting at the top of his voice and was dishonouring Nikhil Pasricha by using filthy words. He has also denied the suggestion that Nikhil Pasricha did not threaten to assault him and he was deposing falsely. The other part of the cross-examination is not relevant to the charges which have been held as proved by the Labour Court in relation to first charge-sheet.

14. Analysing the above said evidence, the Labour Court first examined the evidence of the

Respondent. On analysing the said evidence, it has found that the cross-examination of the Respondent's witness or the evidence given by the Petitioner was not relevant to rebut the fact that on 17th December 1993 no incident as claimed by the Respondent's witness had occurred. It has also noted that the evidence clearly establishes that tools as requisitioned were in fact supplied to the Petitioner. The Labour Court has then noted that the claim of the Petitioner was that the tools which were supplied were broken and useless for which, he could not continue with the work on the lathe machine. The Labour Court has also noted that it is not the case of the Petitioner that he requisitioned the tools by filling the requisition slip and that, it was not supplied to him. In other words, the Labour Court proceeded to hold that the tenor of cross-examination by the Petitioner workman was of no consequence and that the Respondent Management through their witness have established that the stated incident had taken place, which evidence has remained unshaken. The Labour Court has positively found that the cross-examination by the Petitioner did not impeach

the credibility of the Management witness. The Labour Court has taken the view that with regard to the main allegation-that the Petitioner was seen standing idle at the lathe machine by Nikhil Pasricha and without any justifiable reason, he behaved in manner alleged by Nikhil Pasricha, was established. That was sufficient to proceed against the Petitioner on the ground of misconduct, as the evidence of Management witness was not rebutted at all. In that, the Petitioner behaved in an indisciplined and rude manner with Nikhil Pasricha when asked about his idleness at the lathe machine. The Labour Court has then adverted to the cross-examination where suggestion was given to the Management's witness that he was annoyed because the Petitioner used the word "TU". While dealing with that aspect, the Labour Court noted that these are not only suggestions but has been pleaded as defence which speaks volumes of insubordination and defying the authority of the employer. The Labour Court has opined that being senior in age, could be no justification to defy the authority of the employer and such defiance disregards the control and supervision on him. The employee commits

misconduct towards his employer. The Labour Court has opined that such conduct of the workman of challenging the employer (Director of the Company) and to abuse and threaten him that he would slap in return was subversive of discipline. The Labour Court has also found that this suggestion does not rebut the fact that incident as claimed by the witness Nikhil Pasricha had not taken place at all. This is the finding recorded by the Labour Court with regard to the incident of 17th December 1993 which is ascribable to the first charge-sheet. I am not burdening this Judgment with the discussion appearing in Paragraphs 11 and 12 concerning the allegations in the second charge-sheet, as the Labour Court has disregarded the claim of the Management in that behalf and held that the stated charges therein have not been proved. The Labour Court in Paragraph 13 onwards has proceeded to discuss the efficacy of the evidence given by the Petitioner. In Paragraph 14, the details of the cross-examination of the Petitioner are spelt out. The Labour Court on analysing the evidence of the Petitioner, proceeded to hold that the Petitioner in his affidavit has claimed that he did not tell

on enquiry made by Nikhil Pasricha that he had already informed his Supervisor about the requirement of production tool on 11th December 1993 and he did not receive it. The Labour Court then found that this clearly shows that Nikhil Pasricha rightly assumed that the Petitioner was giving false reason. The Labour Court has then found that the Petitioner was suppressing material facts and there was justification for Nikhil Pasricha to tell the Petitioner not to give false excuse and to do his work. On analysing the Petitioner's evidence, the Labour Court has found that the Petitioner's attitude was adamant enough to constitute misconduct as alleged.

15. In Paragraph 15, the Court proceeded to record that only two charges have been framed by the management against the Petitioner/second party- of wilful insubordination and indiscipline behaviour towards Shri Nikhil Pasricha the Director of the Company on 17th December 1993 at 5.00 p.m. on the floor of the workshop and that of riotous behaviour when the Petitioner picked up the iron threatening to assault Director Nikhil Pasricha

during the incident on 17th December 1993 at about 5.00 p.m. in the workshop. The Labour Court then went on to hold that even if other charges are not proved only one charge having been proved, the employer would have right to inflict punishment on the workman.

16. It then proceeded to examine the question whether the quantum of punishment of dismissal imposed by the Management was just and proper or shockingly disproportionate. In this context, it has noted that the Petitioner was in the employment for over 34 years of his life with the Respondent Company and it would be inhuman to take the strict view to pass order of dismissal. With this observation, the Labour Court has held that the order of dismissal passed against the Petitioner was extremely harsh punishment. Instead, in its view, the Petitioner should be reinstated to receive his legal dues depriving him of back wages and continuity in service which would meet the ends of justice. Having said thus, it proceeded to pass the following award:

"1. The reference is partly allowed.

2. It is hereby held that, the first party succeeded in proving charge No.1 and 2 as is mentioned in the charge sheet dated 21/12/1993.

3. The rest of the charges in the charge sheet dated 21.12.1993, are not proved before the court.

4. The first party failed to prove the charges mentioned in Charge sheet dated 27.12.1993.

5. The punishment of dismissal needs to be interfered after setting aside dismissal of the second party w.e.f. 21.5.1994.

6. Since the misconduct at Sr.No.1 and 2 as mentioned in the charge sheet dated 21.12.1993 is proved, the moulded punishment shall be deprivation of back wages and continuity of service ordering his reinstatement.

7. The first party employer is hereby directed to pay all the legal dues to the second party which are available to him till 21.5.1994.

8. The first party is directed to pay the legal dues forthwith.

9. The award be sent to the appropriate Government for its publication."

17. The Respondent Management has not challenged the finding recorded by the Labour Court that the punishment was shockingly disproportionate. It has also not challenged the

finding with regard to other charges as not proved. It is the Petitioner/workman who has come by way of present Writ Petition, questioning the finding recorded by the Labour Court with regard to the two charges which have been held to be proved against him and further the order as passed of depriving him of back wages and continuity of service. In the circumstances, the scope of enquiry in the present Judgment would be limited to the issues raised at the instance of the workman.

18. Insofar as the finding recorded by the Labour Court that two charges have been proved against the Petitioner, the argument is that the said finding is manifestly wrong. It is further contended that in any case, the finding recorded with regard to the second charge having been proved regarding riotous behaviour of the Petitioner, is untenable as no reason whatsoever to support the same has been recorded by the lower Court. Instead, the lower Court has straightaway jumped to that conclusion. I shall deal with the former contention first.

19. On analysing the evidence on record and keeping in mind the finding recorded by the Labour Court, as referred to in the earlier part of this Judgment, I have no hesitation in taking the view that the said finding cannot be termed as manifestly wrong or perverse. View taken by the Labour Court is founded on the evidence on record. I am in agreement with the said view. In that, the Management witnesses have spoken about the actual incident as unfolded on 17th December 1993 at 5.00 p.m. The tenor of cross-examination does not discredit the version given by the said witnesses. Moreover, even the evidence of Petitioner also militates against his stand. I have already reproduced the evidence of Petitioner as well as the Management witness in extenso in the earlier part of this Judgment. The analysis done by the Labour Court of the said evidence is unexceptionable and perhaps the only conclusion that could be reached.

20. Thus understood, no interference in exercise of writ jurisdiction under Article 226 of the Constitution of India is warranted. It is well

established legal position that it is not open for this Court to reappreciate the evidence with a view to record a different finding of fact than the one recorded by the lower Court merely because another view was possible on the basis of same evidence. As aforesaid, I have no hesitation in taking the view that the opinion recorded by the Labour Court on the point in issue is neither error apparent on the face of the record, nor manifestly wrong or perverse.

21. Insofar as the latter argument is concerned, that the Labour Court appears to have straightaway jumped to the finding that even charge No.2 of riotous behaviour of the Petitioner has been proved is concerned, the argument though attractive at the first blush, will have to be rejected. Inasmuch as, the sequence in which the evidence has been examined and considered by the Labour Court is not happily worded. The Labour Court could have analysed the matter in a better way. For, the Labour Court has proceeded to examine the evidence with regard to the two charges together. I would have considered to set aside the

finding qua this charge only if I were to be convinced that there is absolutely no legal evidence to support the said conclusion. However, it is seen that the Plaintiff's witness Nikhil Pasricha has deposed about that fact in his affidavit in lieu of examination-in-chief (in Paragraph 6) that during the discussion, the Petitioner indulged in shouting in most threatening tone and language against him and lost all norms of discipline and picked up an iron rod with intention to assault him. That the Petitioner was hurling filthy abuses to him for which he thought it proper to remove himself from the workshop. In the cross-examination, there is absolutely no case put by the Petitioner to challenge this version. There is not even a suggestion during the cross-examination that the case so spoken by the witness is false. The falsity has not been alleged by the Petitioner even in his own evidence. Indeed, the Petitioner has denied the suggestion that had Nikhil Pasricha continued to remain in the place, the Petitioner would have assaulted him. The fact remains that the version of the Management witness has not been challenged at all in the

cross-examination. The argument of the Petitioner that no independent witness was examined though available, clearly overlooks that the Petitioner had not even bothered to allege falsity of the claim of the said witness nor confronted the witness during the cross-examination or even suggested that the said allegation was incorrect. This is what the Labour Court has opined while discussing the entire evidence of Respondent's witness as a whole. Therefore, no fault can be found with the finding reached by the Labour Court that the two allegations of insubordination and indiscipline as also riotous behaviour of the Petitioner have been proved on the basis of the evidence given, including the admission of the Petitioner in his own evidence.

22. In any case, I am in agreement with the opinion recorded by the Labour Court that it is enough for the Management if it were to prove at least one charge against the Petitioner which may justify the action against the Petitioner for having committed misconduct inviting punishment of dismissal from service. In the case of **Sarabhai**

M.Chemicals (S.M.Chemicals & Electronics) Ltd. vs. M.S.Ajmera & Anr. reported in 1980 (1) LLJ 295, the Division Bench of our High Court has expounded as to what amounts to insubordination and indiscipline. It has further opined that it is not as if action cannot be proceeded against the employee of a solitary instance of lawful order and that for sustaining such charge of insubordination several repeated instances of disobedience are necessary. In my opinion, the Labour Court has rightly observed that the allegation of indiscipline behaviour as well as of riotous behaviour of the Petitioner have been proved. Each of them independently would be good enough to dismiss the Petitioner, by way of punishment for the said misconduct. Even for this reason, I see no basis to exercise writ jurisdiction so as to overturn the conclusion reached by the Labour Court to the effect that the Management has proved atleast charge of wilful indiscipline behaviour and also of riotous behaviour of the Petitioner on 17th December 1993 at about 5.00 p.m. in the workshop. Taking overall view of the matter, therefore, the conclusion reached by the Labour Court that the

Management has proved at least two charges is inescapable.

23. That takes me to the argument regarding the quantum of punishment. Indeed, the Labour Court has set-aside the order of dismissal and instead, directed reinstatement of the Petitioner with deprivation of back wages and continuity of service but to pay all the legal dues to the Petitioner available till 21st May 1994. It is also true that the Respondent Management has not chosen to challenge this part of the order passed by the Labour Court. The question is: whether the relief granted by the Labour Court can be said to be inappropriate. The argument of the Petitioner is that once the order of dismissal is set-aside, it should necessarily be followed with an order of reinstatement with back wages. In any case, Clauses 6, 7 and 8 of the Award were self-contradictory. In that, the employer is directed to pay all the legal dues to the second party which are payable to him till 21st May 1994, but has wrongly limited it till that day even after having directed reinstatement of the Petitioner-who

in turn would be deemed to be in service till the date of his superannuation.

24. Insofar as the view taken by the Labour Court depriving the Petitioner of relief of back wages and continuity of service is concerned, in the fact situation of the present case, the same is a possible view. Clauses 5 to 8 of the Award will have to be read as a whole- as one complete package. The purport of the said arrangement is that the relief of setting aside of order of dismissal is granted to the Petitioner only by way of indulgence, having rendered long 34 years of service with the Respondent Company. The lower Court has found that setting aside the order of dismissal and instead, directing reinstatement of the Petitioner with deprivation of back wages and continuity of service would meet the ends of justice. Insofar as that view taken by the Labour Court is concerned, I have no difficulty in accepting it as it is. For, having regard to the proved indisciplined behaviour and of riotous behaviour of the Petitioner, that too, with the Director of the Respondent Company, who

incidentally happens to be the son of the founder of the Company, any punishment less than dismissal would be inappropriate. In other words, the Labour Court has already shown indulgence to the Petitioner by setting-aside the order of dismissal and instead, ordering reinstatement of the Petitioner without back wages and continuity of service. That is a "lesser punishment" awarded to the Petitioner.

25. To get over this position, Counsel for the Petitioner would argue that as per the provisions of Standing Order No. 25 of Bombay Industrial Employment (Standing Orders) Rules, 1959, a workman guilty of misconduct may be.- (a) warned or censured, or (b) fined subject to and in accordance with the provisions of the Payment of Wages Act, 1936, or (c) suspended by an order in writing signed by the Manager for a period not exceeding four days, or (d) dismissed without notice. It is argued that the punishment imposed by the Labour Court is not provided for in the said regime. The argument though attractive, is inviting the Court to hold that the order passed by the Labour Court

is not consistent with the provisions of the extant Regulations. If that contention is accepted, it would result in setting aside of the order passed by the Labour Court which inevitably would be restoring the order passed by the Management of dismissal from service. The punishment of dismissal of service could be invoked in terms of Standing Order No.24 in case of wilful insubordination or disobedience, wilful slowing down in performance of work, commission of any act subversive of discipline or good behaviour on the premises of the establishment and also for refusal to accept a charge-sheet. We are not concerned with the last item of refusal to accept the charge-sheet nor it is necessary to address whether the act of commission and omission of the Petitioner resulted in wilful slowing down in performance of the work. However, the wilful acts of commission and omission of the Petitioner which have been proved, were clearly covered by the wilful disobedience and of subversive of discipline or good behaviour of the Petitioner on the premises on the establishment.

26. It was then argued that behaving rudely does not result in any employment misconduct. However, in the fact situation of the present case and in the light of Standing Order No.24, this argument is devoid of merits. Be that as it may, the question is: in the fact situation of the present case, whether deprivation of Petitioner of back wages with continuity of service can be said to be shockingly disproportionate. As observed earlier, the Labour Court has in fact showed indulgence to the Petitioner. That finding would run counter to the claim that the punishment ordered by the Labour Court is shockingly disproportionate. In my opinion, therefore, the order passed by the Labour Court of denying back wages and continuity of service to the Petitioner is just and proper in the fact situation of the present case. The argument of the Petitioner that such punishment cannot be imposed, as it is not embodied in the Standing Order No.25 will have to be stated to be rejected. Inasmuch as, the purport of Section 11-A of the Industrial Disputes Act, 1947, empowers the Tribunal to order reinstatement of the workman on such terms and conditions as it

thinks fit, in the event the order of dismissal was to be set-aside. The said provision expressly provides that it is open to the Tribunal to give such other relief to the workman including the award of any "lesser punishment" in lieu of discharge or dismissal as the circumstance of the case may require. In that sense, it is not a case of lack of authority in the Labour Court to have modified the punishment from dismissal to one of reinstatement without back wages and continuity of service. Moreover, it is well established position that relief of back wages is not a necessary corollary to the order of reinstatement. It is open to the Court to either grant full back wages or slice of a part thereof to be paid to the workman when the workman is not wholly blameless. In the present case, the finding of guilt is recorded against the Petitioner and the charge is a serious one. In such a case, non grant of back wages or continuity of service cannot be said to be shockingly disproportionate or impermissible.

27. Counsel for the Petitioner, however, has placed reliance on the decision of the Apex Court

in the case of **Fakirbhai Fulabhai Solanki v. Presiding Officer, I.T. Gujarat & Ors.** reported in 1986 (52) F.L.R. (S.C.) 688 to contend that principle analogous to the exposition in this decision be applied to the fact situation of the present case. In that case, the observations have been made in the context of proceedings under Section 33 of the Industrial Disputes Act. The question is: whether the principle relevant to the said procedure can be applied to enquiry under Section 10 of the Industrial Disputes Act. This argument has already been considered and rejected as is noted by our High Court in the case of **Bharat Petroleum Corporation Ltd. v. Ramnath Jagdish Tiwari & Anr.** reported in 1995(2) Bom.C.R. 438. In the said decision, after referring to the exposition in the case of *Ahmedmiya Ahmedji v. The Indian Hume Pipe Co.Ltd. & Ors.* reported in 1994(2) C.L.R. 206, in Paragraph 21, the Court proceeded to observe that the order of approval always relates back to the date of order passed by the Management. The same principle is not necessarily applicable to a case where reference is made under Section 10(1)(c) of the Industrial

Disputes Act unless it is held that no enquiry is held by the Management or that the impugned enquiry was held in violation of principles of natural justice. Accordingly, the claim of full back wages and continuity of service of the Petitioner inspite of the finding with regard to the two charges proved against the Petitioner is a tall claim of the Petitioner in the fact situation of the present case. That cannot be countenanced.

28. That takes me to the argument that on reading clauses 6 to 8 of the award, it would appear the the same are contradictory. In any case, it results in deprivation of legal dues available to the Petitioner after 21st May 1994 though order of reinstatement is passed and the Petitioner would have remained in service on account of such order till he attained the date of superannuation. This argument, I would consider along with the argument of the Petitioner that the Petitioner in any case was entitled for his legal dues towards subsistence allowance in terms of standing order 25 (5-A) which reads thus:

"(5-A) Subject to the provisions of the Payment of Wages Act, 1936 a workman who is placed under suspension under sub-clause (5) shall, during the period of such suspension, be paid a subsistence allowance at the following rates, be paid a subsistence allowance at the following rates, namely:-

(i) For the first ninety days of the suspension period subsistence allowance to be paid per month shall be equal to one half of basic wages, dearness allowance and other compensatory allowance to which the workman would have been entitled if he were to leave with wages.

(ii) If the enquiry gets prolonged and the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance to be paid per month for a further period of ninety days shall be equal to three fourths of such basic wages, dearness allowance and other compensatory allowances."

29. Indeed, the Petitioner did not ask for relief of subsistence allowance during the pendency of the proceedings before the lower Court nor has that ground been specifically taken in the Writ Petition as filed before this Court. Nevertheless, it is a pure question of law which is canvassed before this Court. The question is: whether the Petitioner can be deprived of even subsistence allowance which is his statutory right on account of Standing Order No.25 (5-A) referred to above.

To consider this aspect, it would be apposite to advert to the exposition in the case of *Bharat Petroleum Corporation Ltd. (supra)*. At least two legal statements of law can be deduced from this decision. Firstly, the extent of back wages to be paid to workmen are dependent on variable factors on a complex of circumstances and the imputation of moral turpitude, etc. is of great importance in the application of principle. Secondly, the employee is entitled for subsistence allowance till the order of dismissal is passed against him were to be confirmed by the Court unless it is shown that it is the workman who was at fault which led to the delay in the decision or enquiry. In such a case, the theory of relation-back will apply. On the other hand, if it is to be found that the Management is not at all to be blamed, then the theory of relation-back will apply, in which case, the date of dismissal will be the date on which the order was passed by the Management. This decision in principle proceeds to uphold the right of the employee workmen to get subsistence allowance during the pendency of the enquiry until the passing of the order of dismissal; and the theory

of relation-back was to be applied in a given case dependent on the fact as to whether the management or the workmen was at fault. It will be useful to refer to the decision of the Apex Court in the case of **Ram Lakhan & Ors. vs. Presiding Officer & Ors.** reported in (2000) 10 SCC 201 (paras 18 and 19) which restates the legal position that it is the right of the employee to claim subsistence allowance for the relevant period. (Also see *B.D.Shetty & Ors. vs. Ceat Ltd. & Ors.* - AIR 2001 SC 2953). In other words, the Petitioner is entitled to his statutory claim of legal dues emanating from provisions of Standing Order No.25(5-A) after he was suspended. The provision is peremptory one requiring the employer to provide subsistence allowance to the workmen during the relevant period unless it was to be found that it is the workman who was at fault in postponing the enquiry or the proceedings. In the present case, after the order of suspension was passed, no subsistence allowance was offered to the Petitioner. No grievance was made by the Petitioner at any time in this behalf. Eventually he came to be dismissed by the Respondent

Management by order dated 21st May 1994. It is noticed that after the order of dismissal was passed, the Petitioner did not pursue proper remedy so as to invite reference under Section 10 of the Act. Instead, the Petitioner resorted to a complaint under provisions of M.R.T.U & P.U.L.P. Act which was eventually dismissed as the Industrial Court had no jurisdiction. In that sense, the Management cannot be blamed. It is failure of the Petitioner to take recourse to proper and correct legal remedy. The mistake in adopting wrong remedy cannot extricate the Petitioner of the said obligation. Thus understood, for non initiating reference proceedings under Section 10 by the Petitioner till 13th May 1998 inspite of the order of dismissal dated 21st May 1994, the Petitioner will have to blame himself. For that reason, the Petitioner would not be entitled for any relief of subsistence allowance during the period from 21st May 1994 till 13th May 1998. However, the Petitioner would be entitled for subsistence allowance for the period from the date of suspension till the date of dismissal i.e. 21st May 1994 and thereafter from

the date of application to the Commissioner of Labour (which was received in the Office of the Commissioner of Labour on 13th May 1998) till the date of his superannuation. The Petitioner is entitled for this limited relief on the finding that the theory of relation-back will not apply in the present case having regard to the finding recorded by the Labour Court in Para I of the Award that the enquiry was held in violation of principles of natural justice and which finding has been already upheld by this Court. On attaining finality of the said finding, it would necessarily follow that the order of dismissal dated 21st May 1994 was void and did not exist in law. The Tribunal could not have for the first time passed an order recording a finding of misconduct and thus breath life into the dead shell of the Management order for want of enquiry or for blatant violation of rules of natural justice as is observed by our Court in the case of *Bharat Petroleum Corpn.Ltd.(supra)* (see Para 26). Accordingly, this Petition succeeds only to the limited extent as mentioned above, for which reason, I proceed to

pass the following order :

1. The Writ Petition partly succeeds with no order as to costs.

2. Clause 7 of the Award dated 30th November 2004 below Reference (IDA) No.238 of 1994 shall stand modified to read that the Petitioner is entitled for "subsistence allowance" for the period during the date of order of suspension till the date of order of dismissal (i.e. 21st May 1994) and for further period from 13th May 1998 when the Application for making reference to the Commissioner of Labour was made till the date of his superannuation, in terms of Standing Order No.25(5-A).

Ordered accordingly.

A.M.KHANWILKAR, J.