# Bhargav Keru Tamondkar Vs Jam Manufacturing Mills (UC) N.T.C. (S.M.) Ltd. and others

**Court:** Bombay High Court

**Date of Decision:** Sept. 30, 1997

**Acts Referred:** Bombay Industrial Relations Act, 1946 â€" Section 42(4), 78, 79
Constitution of India, 1950 â€" Article 227
Sick Industrial Companies (Special Provisions) Act, 1985 â€" Section 22

**Citation:** (1998) 2 ALLMR 504 : (1998) 2 BomCR 60 : (1998) 1 MhLj 523

**Hon'ble Judges:** S.S. Nijjar, J

**Bench:** Single Bench

**Advocate:** R.J. Kochar, for the Appellant; Mrs. Meena H. Doshi, for the Respondent

## Judgement

@JUDGMENTTAG-ORDER

S.S. Nijjar, J.
This petition under Article 226/227 of the Constitution of India has been fifed with a prayer for issuance of writ of certiorari

or any other appropriate writ, order or direction for quashing and setting aside the impugned judgement and order dated 29th July, 1986 passed

by the Industrial Court, Bombay.

2. The petitioner states that initially he was employed with the respondent No. 2, the Jam Manufacturing Co. Ltd., Bombay. The management of

the respondent No. 2 has been taken over by the National Textile Corporation Ltd. (South Maharashtra), the respondent No. 3. The respondent

No. 1 Jam Manufacturing Mills (UC) Bombay is said to have been under the control and management of the respondent No. 3 with effect from

18th October, 1983. The Presiding Officer of the Labour Court is impleaded as a respondent No. 4, whereas the member of the Industrial Court,

Maharashtra, at Bombay, constituted under the B.I.R. Act, 1946, is impleaded as a respondent No. 5.

3. It is stated that the petitioner was in employment of the second respondent from 1974 in the Weaving General Department. He was working as

a carpenter. He has been continuously working from 1974. Thus, he claims that he is deemed to be a permanent employee. However, he was

illegally labelled as badli employee. Since, the petitioner was not working against the place of any permanent operative, it was misnomer to call him

as a badli employee. Thus, he described himself as a permanent employee of the second respondent. The petitioner claims that on 27th June, 1981

he sustained employment injury while on the duty. He was, therefore, sanctioned medical leave from 28th June, 1981. An accident report was duly

filled and sent by the petitioner. The leave was sanctioned under the E.S.I. Scheme. He was under the treatment of the panel doctor under the

E.S.I. Act. After recovery from the injury, he reported for duty on 9th July, 1981 in the second shift. He presented himself before the Labour

Officer one Shri. Tawde on 9th July, 1981 along with a medical fitness certificate. Tawde told the petitioner that he would not be allowed to

resume his duties and his services stood terminated. The petitioner, therefore, requested Tawde for the order in writing, which was not given.

Tawde also refused to see the medical certificate or to hear anything from the petitioner. Thus, the petitioner left the place, but again reported for

work on 10th July, 1981. Again Tawde did not allow him to join the duty. The request for joining the duty was repeated by the petitioner on which

Tawde told him that he would be given a fresh badli card. Since the petitioner was not at any fault, there was no question of issuing a fresh badli

card. To accept a fresh badli card would mean that the petitioner will become the Junior most badli employee. This would mean that he would lose

the benefit of service from 1974 until 1981. The petitioner, however, continued to report for work till 14th July, 1981, but he was not allowed to

join the duty. Admittedly, no charge-sheet was given to the petitioner before 9th July, 1981. The petitioner sent a letter dated 20th July, 1981

stating therein that he had proceeded on sanctioned medical leave as he sustained employment injury on 27th June, 1981. He reported for duty on

9th July, 1981. He met Tawde, who told him that his services have been terminated. He requested Tawde to give an order in writing. On 10th

July, 1981, Tawde informed the petitioner that he can join as a fresh badli worker. He refused to join as a fresh badli worker as he was not at

fault. He reiterates that he was on sick leave on account of the injury suffered by him, for which a medical certificate has been issued by a panel

doctor of the E.S.I. Therefore, it is stated that the action of Tawde is illegal, improper, unjust and mala fide. He states that he is entitled to continue

as a permanent employee and entitled to get full back wages. He, therefore, demands to be reinstated with full back wages and continuity of

service with effect from 1981 failing which he shall be constrained to proceed further in the matter. This letter was received by the second

respondent on 21st July, 1981. The second respondent sent a printed post-card dated 21st July, 1981 to the petitioner, which was actually posted

on 22nd July, 1981. In this it was alleged that the petitioner was absent since 9th July, 1981 without any intimation to the company and without

taking leave. This letter further states that the Manager of the Mill will hold an enquiry in his office on 5th August, 1981 at 2.30 p.m. He was

directed to remain present before the Enquiry Officer and submit his explanation. The petitioner was also informed that if he fails to remain present

for the enquiry, the same will be proceeded with in his absence and that the decision taken will be binding upon. After receipt of the post-card, the

petitioner addressed another letter dated 3rd August, 1981 to the Manager of the second respondent narrating the whole story. The petitioner

further requested the Manager to allow him to be defended by a union representative. It was also requested that enquiry should be conducted in

Marathi. The petitioner also requested for the names of the witnesses to be examined on behalf of the company. At the end of the letter, it is again

stated that the petitioner has not committed any fault whatsoever. Demand for reinstatement is again made. It is further stated ""You are likely to

guess also that there is somebody''s revengeful attitude and ill-will in treating me in such manner."" This letter was carried by the petitioner by way of

his written explanation given to the Manager on 5th August, 1981. The petitioner handed over the aforesaid letter to the Enquiry Officer and

requested the Manager, who had been appointed as Enquiry Officer to give acknowledgement on the said letter. The Enquiry Officer refused to

acknowledge the receipt of the letter. Thereafter the Manager simply told the petitioner to give an apology. The petitioner, however, stated that

since he has not committed any misconduct, there was no question of giving any apology. The Manager was insisting on apology, otherwise the

petitioner will not be kept in service. Thereafter the petitioner was told to leave the premises. The petitioner further submits that in his presence no

evidence of any nature was recorded and he was only asked to give apology and thereafter he was directed to leave. Since the letter dated 3rd

August, 1981 was not accepted, the petitioner sent the same by Regd. A.D. also. Thereafter the petitioner again sent a letter dated 19th August,

1981 requesting the second respondent to reinstate. There was no reply to this letter. Thereafter the petitioner filed an application before the

Labour Court praying for reinstatement with full back wages and continuity of service u/s 79 read with section 78 and 42(4) of the Bombay

Industrial Relations Act, 1946 (hereinafter referred to as ''the Act). In the application the facts narrated above have been reiterated. The written

statement to this application was filed by the respondent company. In this written statement, it was stated that the application was not maintainable.

The petitioner''s name was discontinued from Badli Register with effect from 6th August, 1981. The petitioner had not approached the respondent

as required u/s 42(4) of the Act, before filing the application which was a condition precedent. It is admitted that the petitioner was employed in

the company as a badli since 9th June, 1975. It was denied that the petitioner was a permanent employee. It is also denied that the petitioner had a

good record of service. It is further stated that the petitioner had applied for leave from 28th June, 1981 till 7th July, 1981, which was sanctioned.

The injury"" sustained by the petitioner on 27th June, 1981 is admitted. The accident report having been filed is also admitted. It is further stated

that the petitioner was supposed to resume duty on 8th July, 1981. However, he reported for work on 9th July, 1981 along with the medical

certificate, issued to him by E.S.I. panel doctor. Thereafter it is stated that ""the Opponent further submits that after submitting the fitness certificate

instead of reporting for work he went away."" The other allegations made by the petitioner are denied. It is stated that the petitioner was not told

that he will not be allowed to resume on duty or that his services have been terminated. It is reiterated that ""The applicant presented himself on 9-

7-81 with a fitness medical certificate but he went away without resuming duties."" Thereafter it is the claim of the respondent that the applicant did

not turn up to join duty. The allegations made against Tawde are all stated to be baseless and false. It is also denied that the Labour Officer told

the petitioner that he would be given a fresh badli card. It is stated that the allegations have been made only in order to cover up his absence from

9th July, 1981. His services were not terminated on that date. Therefore, the question of issuing a charge-sheet before 9th July, 1981 did not arise.

Receipt of the letter dated 20th July, 1981 is admitted. This letter is stated to be premature as on that day the applicant was still in service.

Therefore, he was informed by letter dated 21st July, 1981 that he is absent from 9th July, 1981 without any prior intimation or without any leave

and as such an enquiry into his absence will be hold on 5th August, 1981 in the office of the Mill Manager. Inspite of above notice, the petitioner

remained absent on 5th August, 1981. The receipt of the written explanation dated 3rd August, 1981 is also denied. In view of the fact that the

petitioner did not attend the enquiry, his name was removed from the Register of badli workers with effect from 6th August, 1981. This fact was

conveyed to the petitioner by the Company''s letter dated 15th September, 1981. The receipt of the letter dated 19th August, 1981 is admitted. It

is, however, stated that what is stated in the said letter is absolutely false. In view of his absence, the enquiry was held ex-parte. As a result of the

enquiry, the applicant was removed from the Badli Register. It is further case of the respondent that the petitioner had been engaged as a badli and

therefore, cannot claim right of employment. A badli is employed only when work is available for him whenever any permanent workmen or

probationer is away from duty due to leave or absence. Thus, the prayer for reinstatement with full back wages and continuity of service is

baseless. Thus, it was stated that even if the applicant succeeded he will not be entitled for back wages and continuity of service. It is further the

case of the respondents that the petitioner was absent for duty from 9th July, 1981. Therefore, the Standing Order 11 is applicable to the case,

which states that an operative who remains absent beyond the period of leave originally granted or subsequently extended shall lose his lien of his

employment unless he returns within 8 days of the expiry and give satisfactory explanation to the authority of his inability to return before the expiry

of leave. The Standing Order also mentions that in case the operative loses his lien, he is entitled to be kept on badli list. It is, however, also open

to the company to take action for misconduct of absence as provided under the Standing Order 22 instead of taking recourse to Standing Order

11.

4. Before the Labour Court both the parties produced oral as well as documentary evidence. On the basis of the pleadings of the parties, the

Labour Court framed four points for determination which are as under :

POINTS FINDINGS

1. Does the applicant prove that he was not allowed to resume the No.

duty on 9-7-1981 though he had gone along with his certificates

and fitness certificate etc.?

2. Does the Opponent prove that the services of the applicant were yes.

terminated w.e.f. 6-8-1981 after the enquiry by giving the chance

to the applicant to remain present?

3. Whether the order of termination dated 6-8-1981 is illegal and No.

mala fide ?

4. Whether the applicant is entitled to reinstatement with full back No.

wages.

5. Giving its reasons for the aforesaid findings it is held that the name of the petitioner has been removed from the Muster Roll of the company on

6th August, 1981. The letter dated 21st July, 1981 and the acknowledgement of the letter is at Ex. U-13. The petitioner appeared as a witness in

support of his case. The letter dated 20th July, 1981 has been exhibited at Ex. U-6. The letter dated 19th August, 1981 has been exhibited at Ex.

U-9. He reiterated in the oral testimony that on 9th July, 1981 Tawde told him that he did not want to keep him on work. He denied that he could

not go to the company on 6th August, 1981. He reiterated that he had put on record the events of 19th July, 1981 in the letter dated 20th July,

1981. He reiterated the stand taken earlier to the effect that he had received the post-card dated 21st July, 1981 asking him to attend the enquiry

on 51h August, 1981. He reiterates that he had submitted a written explanation dated 3rd August, 1981, which was not accepted by the Enquiry

Officer. He also reiterates that the Enquiry Officer did not give acknowledgement to the receipt. Therefore, he had sent it by the registered post.

He maintained that his services were orally terminated on 9th July, 1981. On the other hand, Tawde in the oral testimony had admitted that the

petitioner came to his office on 9th July, 1981. He further states that the petitioner had come to join duty with all medical certificates and fitness

certificate. He further states that the petitioner was asked to join after verification of the certificate by going to the Time Office. However, the

petitioner did not go to the Time Office and from that day, he did not turn up again. In the cross-examination Tawde admitted that the badli card

can only be collected from the Time Office after the certificate is sanctioned. He also admitted that he did not intimate the Time Office in writing as

it was not the practice to give in writing. He also admitted that the letter dated 20th July, 1981 which was sent by the petitioner was not replied. He

denied that he had told the petitioner on 5th August, 1981 to the effect that there was no enquiry. After discussing all this, the Labour Court holds

that it seems that it is an admitted fact that the applicant has gone to the Labour Officer on 9th July, 1981. Thereafter the Labour Court turns his

attention to the letter dated 19th August, 1981 and holds that the petitioner did not allege that the explanation given by the applicant to the Labour

Officer was rejected. The Labour Court also notices the improvement made by the petitioner in the oral evidence to the effect that Tawde had told

him that there was no enquiry at all and that he had met the Labour Officer on 5th August, 1981. Thus, it is held that if one compares the statement

made in the letter dated 19th August, 1981 to the oral deposition, it can be seen that it is not stated in the letter dated 19th August, 1981 that the

applicant met the Labour Officer on 5th August, 1981. The Labour Court also notices that there is no statement made in the letter dated 19th

August, 1981 to the effect that he attended the Mill on 5th August, 1981. Under these circumstances, the evidence of the petitioner has been

disbelieved. The Labour Court further observes that if the petitioner had attended the enquiry on 5th August, 1981, he would have stated it in the

letter dated 19th August, 1981. That letter according to the Labour Court was sent after consulting the Legal Advisor. Thus, it is held that the

petitioner has made improvements in the oral evidence. Therefore, it is held that the petitioner must not have attended the enquiry on 5th August,

1981. On the other hand, the evidence of Tawde has been believed on the ground that he must be honest. This is so because according to the

Labour Court, Tawde had admitted that the applicant came on 9th July, 1981. Thus, he would certainly have admitted if he had prohibited the

applicant from joining the duty. He had, however, admitted that he had asked the petitioner to go to the Time Office and thereafter to join the duty.

Thus, it is held that the plea put forward by the petitioner to the effect that his services were terminated by the Labour Officer orally on 9th July,

1981 is not proved. Hence, a negative finding is recorded against the point No. 1.

6. With regard to the point No. 2, the Labour Court has held that the services of the petitioner were terminated on 6th August, 1981. The Enquiry

Officer had been examined by the respondents as one of its witnesses. He had stated that he had held the enquiry. He made enquiries with the

Assistant Manager. He recorded the statement of the Assistant Manager. Thereafter he had given his findings. Further it is stated that thereafter he

has cancelled the badli pass of the petitioner. He denied the suggestion that the explanation was given to him by the petitioner. He was unable to

state as to whether the letter dated 20th July, 1981 had been received by him or not. He also admits that he did not give charge-sheet to the

workmen according to the Standing Orders. He further admits that no reply was given to the letter dated 20th July, 1981 and 19th August, 1981.

The enquiry being held ex-parte has been admitted.

7. After taking into consideration the above factual position, the Labour Court proceeds to decide the legal issues. It was submitted on behalf of

the petitioner that even though he is badli worker, he is an operative. Leave had been sanctioned. He has presented himself for the duty. Yet he

was not permitted to join. Thus, there was no misconduct on the part of the petitioner. It was submitted that the enquiry held in the absence of the

petitioner was arbitrary and against the principles of natural justice, as admittedly no charge-sheet has been given to the petitioner. It was also

submitted that the findings of the Enquiry Officer are perverse. The Counsel had cited a case of the Supreme Court in L. Robert D"souza Vs.

Executive Engineer, Southern Railway and Another, . It was submitted that once the name of the petitioner had been struck off the Muster Roll, it

would constitute retrenchment. This judgment had been distinguished by the Labour Court on the ground that in the present case the name of the

petitioner had been struck off the Muster Roll by way of punishment. Inspite of the specific charge having been labelled against the Enquiry Officer,

yet it has been held by the Labour Court that the enquiry has not been challenged. After noticing that the principles of natural justice warrant that

the opportunity should be given to the petitioner, it has been held that the enquiry was fair and proper. This is so according to the Labour Court in

view of the fact that the petitioner remained absent. The Labour Court again holds ""It is pertinent to note no personal allegations have been made

either against the Manager who was the Enquiry Officer or no case of victimisation has been made out and, therefore, I am of the opinion that the

enquiry is proper and it is not against the principles of natural justice."" It was thereafter held that the services of the petitioner has been legally

terminated on 6th August, 1981. The Labour Court further held that in view of the fact that the services of the petitioner have been terminated by

way of misconduct, it would not fall within the definition of retrenchment. It has also been held that in view of the fact that the petitioner was only

badli, he cannot claim the status of a permanent employee. Therefore, it has been held that the petitioner has no right to be reinstated. It is further

held that in view of the nature of the badli employment, it is not necessary to terminate the services of such a worker. Thereafter the Labour Court

notices the arguments of the Counsel for the respondents that the approach should be made within a period of 90 days i.e. from 6th August, 1981.

Since the applicant had approached on 19th August, 1981, there was no cause of action. There was no approach made after the order of

termination. It was further submitted by the Counsel for the respondents company that under the Standing Order 19(b), the probationer, badli and

temporary operatives may leave or be discharged from services without notice. Thus, the Company had got a right of terminating the services even

without notice. However, the Labour Court has held that since the enquiry has not been challenged, the petitioner being only badli worker was not

entitled to reinstatement. It is held that he had no lien over the service and he cannot ask for back wages also. Thus, the issues No. 3 and 4 were

decided against the petitioner.

8. Aggrieved by the order of the Labour Court, the petitioner filed Appeal (IC) No. 128 of 1983 before the Industrial Court. The Appellate Court

notices the case put forward by the parties before the Labour Court. All the arguments before the Labour Court were reiterated before the

Industrial Court by the Counsel for the petitioner. The Appellate Court, however, observes that in case it is held that the appellant was orally

discharged from the services from 9th July, 1981, it would have to be concluded that the said discharge was illegal and unjustified and even though

the appellant was badli carpenter, he would have been granted back wages on the basis of his earnings for the earlier period. Thereafter the

Appellate Court has examined the findings given by the Labour Court. The Appellate Court has affirmed the findings given by the Labour Court.

The Industrial Court disbelieved the petitioner because in the application he has described himself as a permanent employee. In the oral evidence,

he has admitted to be a badli carpenter. In his deposition the petitioner has stated that on 9th July, 1981, he approached Mr. Tawde along with

fitness certificate and Mr. Tawde told him that he would not take him on work. It was, however, not stated that he had again approached Mr.

Tawde on 10th July, 1981 and that Mr. Tawde had told him to resume the duty as a fresh badli worker. This so called improvement is then

weighed up against the evidence of Mr. Tawde. The evidence of the petitioner has been disbelieved on the basis that in normal circumstances, if a

person have been not permitted to join duty, he would have complained to his superiors. The petitioner has also been disbelieved on account of the

fact that his deposition did not state that he has attended the office of the Manager for enquiry on 5th August, 1981 or that he had given his written

explanation to the Manager and that the Manager had refused to give acknowledgement or that the Manager has threatened him that unless he

tender apology, he would not be continued in service. Thus, the allegations in the letter dated 19th August, 1981 have been disbelieved. The

evidence of the Labour Officer has been believed on the ground that there is no good reason as to why the Enquiry Officer would state false-hood

against the petitioner. Thus, it has been held that it is difficult to reconcile the pleadings of the petitioner and his deposition in the Labour Court. It

has been held that on the basis of the evidence of Tawde it is clear that after showing the medical certificate, the petitioner was not interested to

join the duty. The Industrial Court further holds that the petitioner was informed about removal of his name from the Muster Roll by the letter dated

15th September, 1981. Thus, it is held that there is no valid approach as regard the illegal termination of services. It is further held that there was

no valid approach letter on the basis of the removal of the appellant''s name from the Badli Register on 9th July, 1981, in the absence of which the

Labour Court could not have gone into the question as to whether the enquiry held against the petitioner on 5th August, 1981 was merely a farce

or not. In view of the above, the appeal was dismissed.

9. I have heard the Counsel for the parties at length and have perused the record including the judgement of the Labour Court and the Appellate

Court. It has to be seen whether or not the Labour Court as well as the Industrial Court were correct in returning the findings that the services of

the petitioner were not orally terminated on 9th July, 1981. Admitted facts are that the petitioner was working as a badli in the respondent

company since 1974. He was on sanctioned leave from 27th June, 1981 till 7th July, 1981. He did report for duty on 9th July, 1981. He had

produced the requisite medical certificate to enable him to join the duty. According to the petitioner, the Labour Officer Mr. Tawde did not permit

him to join. He presented himself in the company on the two following days also. He was not permitted to join. Rather he was told that he will be

permitted to join if he is prepared to accept a fresh badli card. Since he was not permitted to join, the petitioner wrote the first letter on 20th July,

1981. The receipt of this letter is admitted. On the other hand Tawde has stated that when the petitioner presented himself on 9th July, 1981, he

was directed to get the certificates verified from the Time Office and thereafter to join the duty. Tawde has also stated in his deposition that

thereafter the petitioner simply vanished from the factory not to be seen again. Interestingly, a very detailed written statement was filed by the

respondent company. In the written statement, the story put forward that Tawde had told the petitioner to report to the Time Office is not

mentioned. In the written statement, it is simply stated that the applicant reported further on 9th July, 1981 along with the fitness medical certificate

issued to him E.S.I. panel doctor. After submitting the fitness certificate, instead of reporting for work, he went away. This statement is reiterated in

the written statement on number of occasions which has been extracted above. In this state of the evidence, the Labour Court as well as the

Industrial Court have found it fit to discard the evidence of the petitioner and to brand Tawde as an honest witness. I am constrained to observe

that both the courts have used double standards when appreciating the evidence of both the sides. Either both the sides have made improvement

and therefore, the whole evidence have to be discarded or the evidence of both the sides have to be accepted as given in the deposition. In any

event, I find the reasoning of the Labour Court as also of the Industrial Court not acceptable. If the petitioner was not going to join the duty, there

was no question of taking so much trouble of turning up before the Labour Officer along with the medical certificate. Tawde in his deposition has

accepted that the petitioner was directed to report to the Time Office without any written order. He has admitted that there is no such practice. Yet

both the courts have decided to believe the said practice. Thereafter both the Labour Court and the Industrial Court have proceeded to disregard

the letter dated 20th July, 1981. They have failed to notice that the whole story as narrated by the petitioner is stated in the letter dated 20th July,

1981. This has been ignored on the ground that since the services of the petitioner have been terminated alter 6th August, 1981, it is not an

approach notice. Even here I am constrained to observe that the approach of both the courts is against the provisions of law. A perusal of the letter

dated 20th July, 1981 would clearly show that all the ingredients of the approach notice have been fulfilled. It is categorically stated in the said

letter that it is an application u/s 42(4) of the Act and Rules. It is entitled ""In the matter of reinstatement with full back wages and continuity of

service with effect from 9th July, 1981."" It is clearly stated that the petitioner was sanctioned leave. He reported for duty on 9th July, 1981. It is

stated that Tawde told him that he will not be allowed to resume duty as his services have been terminated. It is stated that the petitioner was not

given an order in writing even when requested. Thereafter the petitioner proceeds to narrate the events of 10th July, 1981 when Tawde had

directed that he can join as a fresh badli worker. The petitioner proceeds to state that he refused to join as a fresh badli as he was not at fault. It is

clearly stated that the action of Tawde is illegal, improper, unjust and mala fide. It is also stated that the petitioner continued to report till 14th July,

1981, but all in vain. Therefore, a demand is made that he be continued in employment as a permanent employee and that he be given full back

wages. If this notice does not fulfil the requirements of an approach notice, I fail to see what else will. In order to get out of this approach notice,

the company immediately sent a letter dated 21st July, 1981. In the evidence it has come that the approach notice dated 20th July, 1981 was

never replied. In the letter dated 21st July, 1981, it has been stated that the petitioner is absent from 9th July, 1981. Therefore, it is proposed to

hold an enquiry against him on 5th August, 1981. I am inclined to agree with the submissions of Mr. Kochar that this so called notice of enquiry

has been sent merely to get out of a defenseless approach notice. I am also inclined to accept the submissions of Mr. Kochar that the whole story

put forward thereafter is wholly concocted. This opinion of mine becomes quite evident from the facts to be narrated hereinbelow.

10. It is a matter on record that the petitioner wrote a letter on 19th August, 1981. In this letter he has narrated his woeful tale. He categorically

states that the enquiry which has been intended to be held was no enquiry at all. He refers to the explanation which he had submitted. He directly

states that the Enquiry Officer refused to acknowledge the explanation. He categorically states that he sent the explanation by registered letter. Yet

the courts proceeded to hold that the ex-parte enquiry held against the petitioner is valid. Interestingly, however, both the courts have failed to

examine the proceedings of the enquiry. A perusal of the proceedings will show that Tawde has never been examined as a witness. The most

relevant witness has not been produced. The findings of the Enquiry Officer do not disclose any reasons as to how it was proved that the petitioner

has been absent since 9th July, 1981. Merely because the enquiry is ex-parte, it does not absolve the management from proving its case before the

Enquiry Officer. Had the enquiry proceedings been examined by the Labour Court and the Tribunal, there could be no other conclusion, but that

the findings of the Enquiry Officer are based on no evidence. The enquiry having been vitiated by non-observance of the principles of natural

justice, no amount of evidence could have been looked at to justify the action of the management, for the first time in the Labour Court or in the

Industrial Court. Yet both the Labour Court and the Industrial Court have given findings that the enquiry proceedings have not been challenged by

the petitioner. A bare perusal of the letter dated 19th August, 1981 shows that the petitioner had clearly stated that the enquiry held was no

enquiry. That the explanation submitted by him was not being considered. The enquiry was not preceded by a proper charge-sheet. The enquiry

has been held mala fide. None of these facts have been considered by the Labour Court or the Tribunal as the evidence of the petitioner has been

disbelieved only on the ground that he has made improvements in his deposition which is given in the Labour Court. The Labour Court as also the

Industrial Court has thereafter proceeded to say that there is no approach notice. This finding is returned by both the courts below on the ground

that the enquiry has been conducted properly, also that the services of the petitioner came to be terminated on 6th August, 1981. Therefore, it has

been held that the Approach notice ought to have been within three months of 6th August, 1981. Assuming that both the Labour Court and the

Industrial Court are correct, can it be said that the letter dated 19th August, 1981 cannot be treated as Approach notice. This would of course be

necessary only in the event that the Labour Court as well as the Industrial Court correctly came to the conclusion that the name of the petitioner

was removed from the Muster Roll on 6th August, 1981. In view of the fact that the enquiry has been conducted in breach of rules of natural

justice and against the provisions of the Standing Orders, it cannot be held that the services of the petitioner has been validly terminated on 6th

August, 1981. Even, the Industrial Court at the beginning of its judgement has held that if it was to be held that the applicant was orally discharged

from the services from 9th July, 1981, then it would have to be held that the discharge was illegal and unjustified.

11. In view of the above, I find that the judgement of both the Labour Court as also the Industrial Court suffer from error apparent on the face of

the record. Thus, I hold that both the orders have to be quashed and set aside.

12. Mrs. Doshi has submitted that the petitioner being only badli employee cannot be reinstated with full back wages. In support of this statement

the Counsel has relied upon the judgement reported in in case of Som Prakash Rekhi v. Union of India and another. In the aforesaid case, it is held

that ""It is necessary to clarify that the reinstatement in the context can only mean restoration of the employee to the list of badli workers at the said

serial number at which he was placed on the date when the impugned order was passed."" I am unable to agree with the submissions made by the

Counsel as in that case it was a case of retrenchment. The question therein was as to the quantum of compensation which was to be granted in the

facts and circumstances of this case. In my opinion, the facts and circumstances of this case are clearly distinguishable.

13. As the arguments were just being concluded, it has been brought to my notice by Mrs. Doshi that the respondent company has been declared

to be a sick industry by the order passed by the Board of Industrial and Financial Reconstruction by its order dated 27th May, 1993. The

Industrial Development Bank of India has been appointed as the operating agency to prepare the rehabilitation scheme. Whilst preparing the

rehabilitation scheme, it has been recommended that the operating agency should provide for the company to enter into a Labour Agreement with

the workmen for next 3 to 5 years agreeing for the proposed rationalisation of labour, future wages, productivity etc. to ensure harmonious

industrial relations during the rehabilitation period. In accordance with the aforesaid direction, the Industrial Development of Bank of India has

submitted its report on 28th February, 1996. This report and the scheme is yet to be finalised. In para 3.7 of this report, it is noticed that the

respondent company had a work force of 13,896 which is proposed to be pruned down to 9,714 after implementation of the modernisation

scheme. An amount of Rs. 4182 lakhs payable to the outgoing workers has been provided for in the total cost of the scheme. This is to be met out

of the funds from the National Renewal Fund. In view of this, it is submitted by Mrs. Doshi that no decision can be taken in the writ petition as at

present in view of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

14. I have considered the submissions made by the Counsel. A perusal of section 22 will show that where in respect of an industrial company, an

inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation,

then notwithstanding anything contained in the Companies Act or any other law, no proceedings for the winding-up of the industrial company or for

execution, distress or the like against any of the properties of the industrial company or for the appointment of a Receiver in respect thereof shall lie

or be proceeded with further except with the consent of the Board. In my opinion, the provisions of this section would be applicable after the rights

of the petitioner have been adjudicated upon and his rights have crystallized. In the event, it is ordered"" that the petitioner has to be reinstated with

certain financial benefits, the same cannot obviously be enforced without the consent of the B.I.F.R. Thus, I see no impediment in the way of this

Court in deciding the writ petition and issuing the necessary direction. However, the petitioner would only be able to enforce the rights after

obtaining the necessary consent from the B.I.F.R. In my view, the petitioner has been treated unfairly by the company. He, therefore, deserves the

normal relief which is granted in the event it is found that the order of termination is illegal and contrary to the provisions of law.

15. In view of the above, the writ petition is allowed. Rule is made absolute in terms of prayer clause (a) and (b).

16. Needless to say the petitioner will be reinstated in the service on his old seniority as a badli worker. He will not be able to claim the status of

the permanent employee. He is, however, to be reinstated at the same seniority position among the badli workers, where he stood when his

services were illegally terminated on 9th July, 1981.

No costs.

17. Petition allowed.