Bank Karmachari Sangh Vs The Cosmos Co-operative Urban Bank Ltd. and others

Court: Bombay High Court

Date of Decision: Sept. 12, 1997

Acts Referred: Bombay Industrial Relations Act, 1946 â€" Section 101(2A)
Constitution of India, 1950 â€" Article 226, 227
Industrial Disputes Act, 1947 â€" Section 11
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 â€" Section 17, 30(2), 4

Citation: (1998) 1 ALLMR 255 : (1998) 2 BomCR 692 : (1998) 1 MhLj 297

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

Bench: Single Bench

Advocate: K.K. Singhvi and Mrs. Meena H. Doshi, for the Appellant; V.P. Shintre and K.Y. Mandlik, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.S. Nijjar, J.
This petition under Articles 226 and 227 of the Constitution of India has been filed for the issuance of a writ of certiorari or

any other appropriate writ, order or direction to call (or the record and proceedings of Complaint (ULP) No. 296 of 1983 quashing the impugned

order dated 11th July, 1988 passed by the fourth respondent. A declaration is prayed for to the effect that the first respondent has engaged in

unfair labour practices. A direction is sought to the first respondent to reinstate M/s. A.M. Shingre, G.M. Joshi, S.L. Godbole and M.G. Shaligram

with full back wages and continuity of service from the dates on which their services were respectively terminated.

2. The petitioner is a Trade Union registered under the Trade Unions Act, 1926 and also registered as the representative and approved union

under the Bombay Industrial Relations Act, 1946 in respect of employees employed in the Co-operative Bank Industry in the local area of Pune

Cantonment and Pune Municipal Corporation limits. The first respondent is a Co-operative society registered under the provisions of the

Maharashtra Co-operative Societies Act, 1960, carrying on the business of banking in its establishment in Pune. Second respondent at the relevant

time was appointed as the Administrator in charge of management of the first respondent society, hereinafter referred to as ""the Bank"". The third

respondent at the relevant time was the Manager of the Bank. The fourth respondent is the Member, Industrial Court, Maharashtra, constituted u/s

4 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter referred to as ""the MRTU &

PULP Act"", at Pune. In the writ petition filed by the Board of Directors of the Bank, this Court on 24th November, 1982 confirmed the election to

the Board of Directors of the Bank held on 16th March, 1982. The second respondent was appointed as Administrator of the Bank u/s 78(1)(a)

(ii) of the Maharashtra Co-operative Societies Act, 1960 to manage the affairs of the Bank. Some of the employees of the Bank are also the

shareholders of the Bank. Number of such employee shareholders is about 130. The last election of the Bank took place in the year 1982. At that

time only agents and Peons were called upon to do election duty. In the previous elections, apart from agents and Peons only about 40 to 45

members of the clerical staff were required to do election duty. In the last week of March, 1983 fresh elections to the Board of Directors of the

Bank were notified to be held on 1st May, 1983. The second respondent had, therefore, requisitioned the services of 39 permanent employees in

the clerical cadre, 13 peons and 25 Probationary employees for election work. Total number of clerical employees requisitioned for election work

were 64, who in fact attended the election work on 1st May, 1983. By a cyclostyled circular/leaflet the petitioners had called a meeting of its

activists at Congress House, Pune on 1st May, 1983 which was a public holiday under the Negotiable Instruments Act on account of Maharashtra

Day and May day. The cyclostyled leaflet was distributed to the members of the petitioner Union and a copy of the same was displayed on the

Notice Board at the Head office of the Bank. On 26th April, 1983 the third respondent circulated a notice to about 40 activists of the petitioner

Union informing that they would have to perform election duties on 1st May, 1983. Duties were assigned to these people by a circular dated 29th

April, 1983. This circular was to be signed by the persons mentioned therein. It was not signed by M/s. G.M. Joshi and M.G. Shaligram. These

circulars, according to the petitioner, were issued mala fide with the object of disrupting the meeting of the employees which were to be held on 1st

May, 1983. The election was to be held at the New English School, Tilak Road, Pune. The petitioner, therefore, states that it wag not open to the

first respondent to force any employee to carry out any work in connection with the election at any premises other than its own establishment and

that too on a public holiday. This action of the respondents caused resentment amongst the members of the petitioner. Before the petitioner could

take any steps, late in the evening on 28th April, 1993, the third respondent issued a back dated circular threatening the employees of the Bank

against exercising their constitutional and legal right as shareholders of the Bank. By their letter dated 29th April, 1983, the petitioner protested

against the contents of the circular dated 26th April, 1983. It was pointed out that every employee apart from his character as employee of the

Bank was also a free citizen and shareholder of the society. As such they were entitled to exercise their legal right in connection with the election

and the respondents had no right to attempt to curb or interfere with the exercise of such rights by the shareholder employees. It was pointed out

that participation in the election or canvassing for any candidate, was not a misconduct under the Standing Orders as applicable to the

establishment of the Bank. It is asserted that the circulars were issued mala fide to prevent the members of the petitioner union from canvassing at

the elections. A large number of employee shareholder who had earlier been requisitioned for election duty were not permitted to caste their votes.

Out of the 40 activists who had been subsequently called for election duties about 31 were shareholders. Some of the activists did not go for

election duty who attended the meeting at Congress House. After the meeting was over they went to the polling booth to caste their votes. The

second respondent out of ill-will filed a totally false complaint with the police making false allegations against 7 of the petitioner"s activists. He also

caused an inspired report to be published in a local newspaper to denigrate the activities of the petitioner making false and disparaging remarks

about their conduct. Some probationary employees were forced to make allegations against the petitioner. Even one permanent employee Shri

Shingre made the statement which he subsequently retracted. He also filed a complaint with the police alleging that he had been coerced to sign the

writing. On 2nd May, 1983 the Bank terminated the services of S.L. Godbole and J,B. Hejib, two activists of the petitioner Union. It was alleged

in the order of termination that in view of the conduct of the employees the bank had lost confidence in them. In view of the fact that they were

both protected workmen they were suspended and an application was to be made to the Labour Court for permission to terminate their services.

The employees were informed that they would not be entitled to any wages or allowances during the period of suspension. On 16th May, 1983,

the services of A.M. Shingre were terminated. An application was made by the Bank to the Labour Court for permission to discharge or terminate

services of M/s. M.G. Shaligram, G.M. Joshi and S.L Goodble being the protected workmen. On 6-2-1984 the Bank terminated the services of

the three persons. This termination is said to be illegal as on 6-2-1984 there was no written permission of the Labour Court which came to be

granted on 1st Sept. 1984. The petitioner filed Complaint (ULP) No. 296 of 1983 before the fourth respondent alleging therein that the termination

of services of M/s. A.M. Shingre, S.L. Godbole, M.G. Shaligram and B.N. Joshi amounted to unfair labour practice under Items 1, 2 and 4 of

Schedule II and Items 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. A prayer was made for reinstatement of the employees with

continuity of service and back wages. Respondent Nos. 1 to 3 contested the plaint by filing written statement on 20th July, 1983. It was contended

that the respondent Nos. 1 to 3 had not indulged in any unfair labour practices. It was also stated that 1st May, 1983 was not a holiday under the

Negotiable Instruments Act because of May day. Termination of services of M/s. Godbole and Hejib was admitted. It was, however, pleaded that

they were offered retrenchment compensation. The amount of compensation had been credited to the respective accounts of the employees. It was

admitted that no enquiry was held before the order of termination was passed. It was contended that in the cases of M/s. S.L. Godbole, J.B.

Hejib, A.S. Kulkarni and A.N. Shingre the termination of service was complete and, therefore, no relief could be sought in the proceedings filed in

the Labour Court. Further, it was stated that M/s. Naphad, A.S. Walimbe and M.B. Shaligram were only suspended pending receipt of

permission from the Labour Court u/s 101(2-A) of the Bombay Industrial Relations Act as they were protected employees. Thus there was no

cause of action in their respective complaints. Additional written statement was filed on 19th Sept. 1983. It was pointed out that some of the

employees mentioned in Annexure-H to the complaint had already either accepted their misconduct or had apologised. They have, therefore, been

given lesser punishment short of removal from service. By an application dated 15th April, 1988 respondent Nos. 1 to 3 sought leave to amend the

written statement. Paragraphs 7-A and 11-A were sought to be added to the written statement. In these two paragraphs it was stated that if the

Court came to the conclusion that the orders of termination issued to the concerned employees were by way of punishment, then they may be

permitted to lead evidence to justify the said orders on merits. It was further stated that M/s. S.L. Godbole, M.B. Shaligram and G.M. Joshi had

ceased to be protected employees w.e.f. 1-10-1983. Therefore, their services were terminated by order dated 6-2-1984 although they were

under suspension from 2nd May, 1983. Since their services had already terminated it was stated that the Industrial Court had no jurisdiction to

entertain the complaint under the MRTU & PULP Act. The amendment with regard to paragraph 7-A was rejected but the amendment by

paragraph 11-A was permitted. By an order dated 15th April, 1985 the Industrial Court, Pune framed 16 issues which are as under:

1. Has this Court jurisdiction to try and decide all the matters involved in this proceeding ?

(2) Was the termination of any of the four employees concerned, by way of punishment ?

(3) Was the termination of each of these four employees concerned, by way of victimization ?

(4) Were these four employees concerned office bearers of the complainant Union or active members of the said Union ?

(5) Was the termination of each one of these four employees concerned on account of their Union activities as Union Office bearers or Union

activists?

(6) Was the termination of any or all of these four employees amounting to discrimination, with intent to discourage membership of the complainant

Union?

(7) If the termination of each one or all of these four employees is only a discharge simpliciter, amounting to retrenchment, have the requirements of

the relevant provisions of law, like those of section 25-F of the Industrial Disputes Act, 1947, been duly complied with ?

(8) Was there adequate and reasonable cause, which could justify loss of confidence, on the part of the employer, in respect of any or all of these

four employees ?

(9) Was the termination of each or any of these four employees concerned an act of force, attracting Item 10 in Schedule IV of the MRTU &

PULP Act, 1971?

(10) Had the person, who has signed the complaint, due authority and competence to sign the complaint ?

(11) Has the Industrial Court jurisdiction to entertain this complaint

(12) Is the present complaint not maintainable in so far as it relates to Joshi, Godbole and Shaligram, due to the orders, passed in Application

(BIR/ LCP) No. 355 of 1983, by the Labour Court, Pune ?

(13) Did the respondents have the authority under the Standing Orders, to terminate the four employees concerned, in the manner, in which they

are terminated ?

(14) Does the complaint prove that the respondents engaged in unfair labour practices as specified in Items 1, 2 and 4 of Schedule II of MRTU &

PULP Act, 1971?

(15) Does the Complainant prove that the respondents engaged in unfair labour practices, as mentioned in Items 5, 9 and 10 of Schedule IV of

MRTU & PULP Act, 1971 ?

(16) What relief, if any ?

Findings

1. In the affirmative.

2. In the negative.

3. In the negative.

4. In the negative.

5. In the negative.

6. In the negative.

7. In the affirmative.

8. In the affirmative.

9. In the negative.

10. In the affirmative.

11. In the affirmative.

12. In the affirmative.

13. In the affirmative.

14. In the negative.

15. In the negative.

16. Does not arise.

The parties led both oral and documentary evidence. The Industrial Court by consent of the parties permitted the examination-in-chief of the

petitioner to be recorded by way of affidavits subject to cross-examination by the other side. Oral evidence on behalf of the petitioner consisted of

the depositions of M/s. A.N. Shingre, G.M. Joshi M.G. Shaligram, S.L. Godbole, S.L. Ogale and E.M. D''Souza. On behalf of respondent NOS.

1 to 3 M/s. S.V. Bughade, S.D. Thakare, D.S. Bafna and V.N. Joshi were examined. It is stated by the petitioner that the entire oral evidence of

the witnesses had been recorded and completed before the 4th respondent took charge of the case. Thus no witness was examined before the

fourth respondent. Evidence was recorded over a period of 2 years between 1985 and 1987. Arguments were actually heard and concluded

before the fourth respondent on 7-1-1988. Thereafter the matter was posted for orders on 21-1-1988. Criminal Case No. 662 of 1983 was also

pending before the Judicial Magistrate, First Class, Pune on the basis of the complaints filed by the second respondent. The Court of J.M.F.C. had

requested for certain original documents from the record of the complaint pending before the fourth respondent. Instead of concluding the order on

21-1-1988 the fourth respondent postponed the announcement of the order and sent some of the original documents to the J.M.F.C. Court. The

petitioners were constrained to file Writ Petition No. 3334 of 1988 before this Court on 28th June, 1988 praying that the fourth respondent be

directed to pass final orders in the complaint on or before 1st Aug. 1988. This Court on 29th June, 1988 orally directed the petitioner to move an

application before the President of the Industrial Court for an administrative order to be issued to the fourth respondent for deciding the matter by

a specified date. The writ petition was adjourned to 8th July, 1988. This application was filed by the petitioner on 1st July, 1988 before the

President of Industrial Court. On the same date the President of the Industrial Court directed respondent No. 4 to dispose of the complaint as

early as possible, at any rate before 12th July, 1988. The fourth respondent, therefore, made an order dated 11th July, 1988 and held that the

complaint itself was not maintainable and also that the petitioner had failed to prove the unfair labour practices alleged against respondent Nos. 1 to

3. This order has been impugned in the present writ petition. Earlier writ petition was withdrawn by the petitioner.

3. It is submitted by Mr. Singhvi, learned Counsel appearing for the petitioner, that the impugned order is perverse, vitiated by misdirection in law

and amounts to failure of exercise of jurisdiction. It is submitted that the Industrial Court has held that the services of Shaligram, Godbole, Joshi

and Shingre were terminated for the misconduct of disobeying the orders of the third respondent to do election work. It has also been held that

canvassing by the employees amounted to misconduct. Having held so, the Industrial Court committed an error of law in holding that no unfair

labour practice has been committed. It is further submitted that the award has been given by the fourth respondent maliciously as the petitioner had

complained to this Court and the President of the Industrial Court. Having refused the permission to amend the written statement by adding

paragraph 7-A the Industrial Court wrongly permitted the first respondent to adduce evidence to justify the order of termination on the ground of

misconduct. The Industrial Court also erred while appreciating the evidence on the plea that the respondent Nos. 1 and 3 had lost confidence in

the employees. The findings of the Industrial Court are perverse as the same are not supported by any evidence. Having held that the services of

the employees have been terminated on account of misconduct, the Industrial Court could not have held that no unfair labour practice had been

committed. Referring to the Award, Mr. Singhvi has pointed out the finding in paragraph 34 wherein it is categorically held that Mr. Shaligram has

twisted the facts to suppress his act of misconduct of taking part in canvassing for the candidates. Again in paragraph 43 and 44 it is clearly held

that the record shows that the four persons have disobeyed the lawful order issued by respondent No. 3 and committed misconduct. It has also

been held that the services had been terminated by following the necessary provisions of law. Again in paragraph 50 it is held as follows:-

An employer is within his right to issue legal directions to his employees to do and perform their legitimate duties. Vague averments were

advanced that even though on 1st of May, 1983, it was declared holiday, under the Negotiable Instruments Act, the respondents were not legally

entitled to invite their employees to attend to the election duty. The submission advanced, does not hold water, for the simple reason that the duties

assigned to employees were pertaining to the business of the Bank i.e. electing the members on the Board of Directors, who, ultimately, have to

manage the entire affairs of the Bank, as per the provisions of Maharashtra Co-operative Societies Act, 1960. There is nothing on record to

suggest that the above named four persons have sought permission, in writing to remain absent from their election-duty, on the ground that they

were required to attend the meeting, arranged by their Union, on the same day, at Congress House, Shivajinagar, Pune-5. The refusal, on the part

of an employee, to do the legitimate duty, assigned to him, amounts to misconduct.

Mr. Singhvi then pointed out the findings recorded in paragraph 12 and 13 wherein Issue No. 2 was answered in the negative. Thus it is submitted

by Mr. Singhvi that clearly the award is perverse and has been passed without due application of mind. Having held that the services of the four

employees had been terminated on account of misconduct the Industrial Court could not have held that the orders have not been passed by way of

punishment. Issue No. 2 could not have answered in the negative. It is further submitted that the misconduct could not be permitted to be proved in

the Industrial Court for the first time unless the order of punishment was preceded at least by the issue of a charge sheet. For this proposition Mr.

Singhvi relies 1992 (1) C.L.R. 474, Theatre Employees'' Union and others v. S.V. Kotnis and others. In paragraph 4 thereof it is clearly held that :

the Labour Court was completely wrong in permitting the employer to lead evidence to establish the misconduct of the employees even when

admittedly the employees were never served with any chargesheet or any enquiry was held. It was not open for the Labour Court to permit the

employer to establish the misconduct for the first time by leading evidence before the Labour Court.

The next judgement relied upon by Mr. Singhvi is 1992 (1) C.L.R. 637, Wai Taluka Sahakari Kharedi Vikri Santh Ltd., Satara v. Bajirao

Mahadeo Mahadik, wherein Justice Srikrishna has clearly held in paragraph 5 as under ;

5. Having heard the Counsel for the petitioner at length, I am satisfied that the Award does not suffer from any infirmities. To start with, there is no

doubt that the respondent was summarily removed from service by the Resolution which, without doubt, casts a stigma upon him. It is also not

disputed that no semblance of charge-sheet was given to him, nor was any enquiry held before the respondent was removed from service. The

petitioner should have failed on this very ground. The Labour Court was, however, persuaded to accept the charge-sheet drafted by the petitioner

as the accusation upon which the petitioner wanted to lead evidence and justify its action against the respondent. In my view, this was wholly

impermissible. It is only if there is a chargesheet in existence, with respect to which a defective enquiry has been held, that the liberty to satisfy the

Tribunal upon material in support of the charge could be exercised. It is no function of the adjudicating tribunal to frame the charges, suo moto or

at the instance of the employer. As if this was not sufficient, the material produced on record by the petitioner is woefully short of establishing any

of the allegations made in the so-called charge-sheet.

In view of the above it is submitted by Mr. Singhvi that the impugned Award deserves to be quashed on this short ground, Mr. Singhvi submits that

once the Industrial Court had come to the conclusion that the services have been terminated on account of misconduct it has to consider as to

whether or not the punishment is disproportionate to the proved misconduct. The Industrial Court ought to have considered whether the order of

dismissal was justified on the principles analogous to section 11-A of the Industrial Disputes Act. Even if the Industrial Court had come to the

conclusion that the services had not been terminated on account of misconduct but they had been terminated on account of loss of confidence the

same principles would apply. Reference in this case is made to Chandu Lal Vs. Management of Pan American World Airways Inc., . Therein,

according to Mr. Singhvi, it has been held that when the services are terminated on account of loss of confidence the order would cause a stigma

on the employee. Therefore, it would be necessary to follow the rules of natural justice before passing such an order. Here again the Industrial

Court should have considered the question as to whether or not the punishment inflicted on the employees were justified or not. Mr. Singhvi has

then referred to judgement of this Court reported in 1994 (2) C.L.R. 453, Mohan Sugan Naik and others v. National Textile Corporation (South

Maharashtra) Ltd. and others. In this case in paragraph 6 it is held as under.

6. Mrs. Doshi, learned Counsel appearing on behalf of the National Textile Corporation, submitted that the provisions of section 11-A of the

Industrial Disputes Act are not available and, therefore, it is not permissible to examine the sufficiency of punishment. It is undoubtedly true that the

provisions of section 11-A of the Industrial Disputes Act are not available to the Labour Court while hearing the complaint but principle analogous

to provisions of section 11-A are always available. The Labour Court, in our judgement, had given justice to the appellants and it was entirely

unnecessary to disturb that order in exercise of writ jurisdiction. Mrs. Doshi also submitted that the appellants should not be granted backwages till

this day. The learned Counsel urged that the appellants were directed to be reinstated in July, 1987 and more than 7 years had lapsed from that

date and payment of back wages would be burden upon the Corporation. The submission cannot be entertained. Merely because, litigation has

remained pending for seven years, that cannot deprive the appellants from claiming backwages from the date of grant of relief by the Labour

Court.

4. It has been submitted by Mr. Shintre that the original complaint is not under Item 1 of Schedule IV of the MRTU & PULP Act. The complaint

is in fact under Items 1, 2 and 4 of Schedule II and 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. The substance of the complaint was

that the petitioner union and its activists were prohibited from carrying out its union activity. No grievance was made to the effect that election work

could not be assigned to the workmen. There is no grievance in the complaint that the charge-sheet was not issued or that the principles of natural

justice were violated. There is no claim in the complaint that the orders are punitive. Therefore, the petitioner must satisfy the Court that the

petitioners were prohibited from doing union work and such act constitutes an unfair labour practice as provided under Item Nos. 1, 2 and 4 of

Schedule II and Item Nos. 5, 9 and 10 of Schedule IV of the MRTU & PULP Act. Counsel has then submitted that if the petitioners claim breach

of natural justice or that the orders are punitive then the exclusive jurisdiction is conferred u/s 7 read with Item 1 of Schedule IV on the Labour

Court. Therefore, the Industrial Court could not have the jurisdiction to entertain the complaint. Counsel has further submitted that the three

protected workmen viz. Joshi, Godbole and Shaligram have not even challenged the order of termination dated 6-2-1984. Even otherwise it was

permissible for the employer to discharge the employee in case of loss of confidence and permissible to justify the action before the appropriate

authority. With regard to the retrenchment compensation it is submitted that adequacy of the retrenchment compensation has never been disputed

by the petitioners. Counsel further submits that principles of section 11-A would be applicable only if the complaint is under Item 1 of Schedule IV.

According to the Counsel, it is the admitted case of both the parties that the relations between the petitioner and the respondents are strained.

Therefore, even on the basis of principles of section 11-A the Court would not be justified in ordering reinstatement. The purpose of the Industrial

Disputes Act is to promote industrial piece. The reinstatement of these workers would lead to further disruption. With regard to the jurisdiction of

the Industrial Court, Counsel has referred to paras 3.2, 3.3 and 3.4 of the complaint. On 2nd May, 1983 services of 8 employees were

terminated. Show cause notice was also given to another 41 employees. Out of these 8 were protected workers. Orders of their suspension were

issued pending approval u/s 101(2-A) of the Bombay Industrial Relations Act. In order to be treated as a protected workman, the name has to be

sent to the employer on 30th of September every year. In view of this, 8 persons were protected which included Joshi, Godbole and Shalimar.

Out of the 8 protected workers these three workmen and Shingre did not apologise. Others all apologised and were retained in service. In view of

this at the time the complaint was heard the unfair labour practice did not survive. The employees who had apologised and admitted their

misconducts had been given minor punishments. The four employees who did not apologise their services came to be terminated on 6th February,

1984. Their services came to be terminated as they were no longer protected workmen. Their names were not communicated to the employer

before 30th September, 1983. This fact is even admitted by the four employees. If on the other hand the petitioner claims that the cause of action

arose on the termination of the service of the four employees on 16th May, 1983 and 6th February, 1984 then the Industrial Court had no

jurisdiction as the case would fall under Item 1 of Schedule IV. In view of the order of termination an amendment was made in the complaint. It is

submitted that by virtue of section 7 it is the Labour Court which has the exclusive jurisdiction to decide complaints relating to unfair labour

practice described in Item 1 of Schedule IV. Under this section the Labour Court has power only to decide two matters and that is complaints

relating to unfair labour practice described in Item 1 of Schedule IV and secondly to try offences punishable under this Act. Counsel, therefore,

submits that if the Industrial Court is held to have concurrent jurisdiction the Labour Court will become defunct. Counsel further submits that the

duties of the Industrial Court have been given u/s 5(d). This section specifically excludes the power of the Industrial Court to decide complaints

about the unfair labour practice falling in Item 1 of Schedule IV of the Act. Thus after the services of the four employees came to be terminated

they ought to have approached the Labour Court on the ground that their services had been terminated on account of misconduct and sought the

necessary relief. For the proposition that the Industrial Court had no jurisdiction, Counsel has relied on 1996 (72) F.L.R. 166, Dilip v. Industrial

Court, Nagpur and others. Therein it has been clearly held that the complaint with regard to Item 1 of Schedule IV is to be tried by the Labour

Court. Counsel has relied on the following paragraph.

There is no dispute that the jurisdiction to try the dispute as regards the termination is with the Labour Court, having regard to the provisions of

section 7 of the MRTU & PULP Act. This Court has already held and I concur with the same that if the Industrial Court has no jurisdiction to give

any direction in the matter of termination, it cannot have any jurisdiction even to grant interim relief in relation to that. The instant one is a case

where a direction in the matter of termination was sought in the complaint and an interim relief was also sought in relation to that.

Since it is for the Labour Court to entertain the complaint in relation to the termination, the Industrial Court could not have passed any order even

at the time of final disposal of the complaint as regards the termination. Resultantly, it could not have granted any relief by way of the interim order

u/s 30(2) of the MRTU & PULP Act, in relation to the termination of the complainant"s services. The impugned order passed by the Industrial

Court in the instant matter, therefore, has to be held as being without jurisdiction and, therefore, it is liable to be quashed and set aside.

Counsel further submits that section 17 being a special provision the general provisions contained in any other Act would have to give way. To

support this proposition reference has been made to 1992 (64) F.L.R. 898. In view of this the petitioners should have approached the Labour

Court.

5. Even otherwise it is submitted by the Counsel that the Industrial Court was wholly wrong in law in assuming jurisdiction in entertaining the

complaint. The activity complained off by the Union was not a Union activity. The so called meeting was to be held on 1st May, 1983. The

purpose of the meeting did not have anything to do with the Union activities. Rather the meeting had been convened only to avoid the work of

election duty. This work had always been done by the employees and is even now continuing to be done by the employees. All the employees

knew about the schedule of the election in the last week of March, 1983. This is evident from the Union circular dated 24th April, 1983 itself. Thus

the circular has in fact been anti-dated. No function was held. All the Union activists participated fully in canvassing. Though the whole action had

been taken by the members of the Union because the management had issued a circular on 26th April, 1983 forbidding the employees from

canvassing in the election. This circular was objected to by the Union on 29th April, 1983. Thus the meeting was called on 1st May, 1983 to

protest against the circular dated 26th April, 1983. In this letter the Union did not mention about the meeting to be held on 1st May, 1983 nor was

it stated that the employees were interested in canvassing. Thus in the end the employees neither attended the meeting nor attended to their work.

Therefore, this activity will not constitute unfair labour practice under Items 1, 2 and 4 of Schedule II and 5, 9 and 10 of Schedule IV of the

MRTU & PULP Act. In view of the above behaviour of the employees, the employer lost the confidence and, therefore, was compelled to issue

the order of termination. Dwelling on the point of loss of confidence Counsel has further stated that these employees have deliberately published

certain articles in a sponsored newspaper known as ""Satare"". This newspaper has virtually no circulation. It was more or less like a hand bill

circular. Thus it is submitted that these employees were in fact trying to destroy the institution. In these circumstances the management naturally lost

confidence in these employees. Even the employees themselves have admitted that the relations between the parties are strained. If the services of

these employees have been terminated on account of loss of confidence it was not necessary that the termination should have been preceded by a

charge-sheet. Counsel has referred to 1997 (76) F.L.R. 522, Sudhir Vishnu Panvalkar v. Bank of India. In that case an officer in the Bank had

been removed from service on the ground of loss of confidence: No enquiry had been held and yet order terminating his services was passed.

Counsel, therefore, submits that in view of the fact that there has been loss of confidence and the relationship between the employer and employee

are strained even applying principles of section 11-A this Court would not be justified in ordering reinstatement.

6. Countering these submissions Mr. Singhvi submits that Item 9 of Schedule IV of the Act relates to all conditions of service. The conditions of

service of the employees are contained in the Standing Orders. Standing Order 21 describes what acts constitute misconduct. Punishment for

misconduct is provided for in standing Order No. 22. These punishment cannot be given without holding a departmental enquiry. Since the services

of the employees have been terminated without holding an enquiry it would constitute an unfair labour practice as contained in Item 9 of Schedule

IV of the MRTU & PULP Act. That being so, the Industrial Court had the jurisdiction.

7. I have carefully considered the arguments advanced by Counsel for both the sides. The Industrial Court was clearly in error in answering the

Issue Nos. 2 and 3 in the negative. Having held in the body of the judgement as pointed out by Mr. Singhvi that the refusal on the part of the

employees to do the legitimate duty assigned to him amounts to misconduct, it could not be held that the services of the employees have not been

terminated on account of misconduct. If the services have been terminated on account of misconduct then the orders of termination have been

passed by way of punishment. Thus obviously it was necessary for the management to observe the rules of natural justice before terminating the

services of the employees. Admittedly no charge-sheet was issued. Thus it cannot be held that the management had observed the rules of natural

justice when issuing the orders of termination. The service conditions of the employees of the respondent establishment are governed by the

Certified Standing Orders. Standing Order No. 21 describes what acts constitute misconduct. Punishment for misconduct is provided for in

Standing Order No. 22. These punishments cannot be given without holding a departmental enquiry. Apart from this it has also been held by the

Industrial Court that all the employees who apologised have been retained in service and have been given only minor punishment. Therefore, the

Industrial Court was wrong in holding that the employees have not been subjected to victimisation. I am also of the view that since the services of

the employees have been terminated without holding a departmental enquiry it would constitute an unfair labour practice as contained in Item No. 9

of Schedule IV of the MRTU & PULP Act. Thus the Industrial Court has also erred in answering Issue No. 9 in the negative. In view of the

finding given by the Industrial Court, it has not considered the question as to whether the punishment was disproportionate to the misconduct. In

view of the judgement of this Court given in the case of Mohan Sugan Naik (supra) the Industrial Court ought to have considered as to whether the

punishment was disproportionate to the misconduct. It was incumbent on the Industrial Court to consider the propriety of the punishment given to

the employees. Mr. Singhvi appears to be right in the submission that the Industrial Court fell into error in permitting the management to adduce

evidence in the Court for the first time to establish the charge of misconduct against the employees. It has been held by this Court in the case of

Theatre Employees Union and others (supra) that the Labour Court was completely wrong in permitting the employer to lead evidence to establish

the misconduct of the employees when admittedly the employees were never served with any charge sheet or any enquiry was held. This Court has

further held in the case of Wai Taluka Sahakari Kharedi Vikri Santh Ltd. Satara (supra) that it is only if there is a charge sheet in existence, with

respect to which a defective enquiry has been held, that the liberty to satisfy the Tribunal upon material in support of the charge could be exercised.

It is further held that it is no function of the adjudicating tribunal to frame the charges, suo motu or at the instance of the employer. In view of the

above statement of law, this Court is constrained to hold that the Industrial Court was clearly in error in permitting the management to adduce

evidence for the first time in Court in support of the action of the employer. It is an admitted fact that the employees were never served with the

charge-sheet. They were just simply issued the order of termination. Allegations of misconduct earns to be levelled only in reply to the complaint

filed by the petitioner- Union. I am unable to agree with the Counsel for the respondent when he submits that the Industrial Court had no

jurisdiction to entertain the complaint. I am also unable to accept the submission of the Counsel for the respondent that the employees were not

prohibited from carrying out its union activity. However, I find substance in the submission made by the Counsel that this would not be a case in

which reinstatement ought to be ordered. Counsel has rightly submitted that the purpose of the Industrial Disputes Act is to promote industrial

peace. The reinstatement of these workers would lead to further disruption. It is admitted by both the sides that the relationship between the

employees and the management are strained. In this view of the matter and in the peculiar circumstances of this case it is not in the interest of

anybody to put the clock back. Though strictly speaking, once it has been found that the order of termination are null and void the employees are

entitled to reinstatement with full back wages. Considering the conduct of the employees, I am constrained to observe that part of the blame lies

also with the employees for bringing about a situation in which the employer issued the orders of termination.

8. On the directions of the Court, M/s. M.G. Shaligram, A.N. Shingre and S.L. Godbole filed affidavits to the effect that they have not been

gainfully employed and have been supported by their family members. In the affidavit of Shaligram it is also stated that G.M. Joshi has died during

the pendency of the writ petition. It is also stated that he was also not gainfully employed after the termination of his service till his death. Copies of

these affidavits have been served on the respondents. Due notice has been given to them by the Advocate for the petitioner in her letter dated 8th

September, 1997. They have been informed that the matter is coming up for orders today i.e. 12th Sept. 1997. None is present on behalf of the

respondents.

9. Keeping the aforesaid facts and circumstances in view the relief of reinstatement is declined. The petitioners shall in lieu of reinstatement be

entitled to 50 per cent of the back wages by way of compensation from the date their services were illegally terminated. They shall also be entitled

to 12 per cent simple interest on the amount computed. The aforesaid amount shall be spread over from the date of termination till the date of

payment for the purposes of Income Tax. The compensation which is due to Gopal M. Joshi should be paid to the legal heirs of the said deceased

on the requisite affidavit being filed by the legal heirs before the management.

10. With the aforesaid observations the writ petition is partly allowed and the Rule is made absolute in the aforesaid terms. There shall be no order

as to costs.

11. Petition partly allowed.