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Raja Ram Jaiswal v. State of Bihar

Raghubar Dayal J.

The conduct of the Excise Inspector in tampering with the seizure memo is such as to affect his *bona fides* and therefore there is a lot of doubt about the alleged confession by the appallant being voluntary. I am not satisfied about the confession being voluntary and would therefore not use it in support of the unsatisfactory statements of the prosecution witnesses about the recovery of the ganja from his possession and would not sustain the conviction even though the High Court has recorded a finding of fact that Ganja was recovered from the appellant's possession. The High Court did not consider the tampering of the seizure memo in all its aspects or its effect on the alleged voluntariness of the confession and, consequently, on the case.

Appeal allowed.

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April 4

M/s. KESORAM COTTON MILLS LTD.

v.

GANGADHAR AND OTHERS

(K. N. WANCHOO and K. C. DAS GUPTA JJ.)

Industrial Dispute—Go slow and strike—Agreement—Suspension of Workmen pending inquiry—No inquiry held—Reference to adjudication—If workmen entitled to wages for period of suspension—Inquiry—Natural Justice—No examination-in-chief of witnesses—Previous statement read—Copy of statement not given to workmen—Propriety of procedure.

The appellant suspended 1600 workmen as they resorted to go slow and illegal strikes. On December 23, 1957, an

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agreement was arrived at between the workers Union and the management under which the workmen resumed work. Clause 7 of the agreement provided that the suspended workmen shall not be entitled to any wages or compensation for the suspension period. Clause 9 provided that 29 of the workmen shall remain suspended pending inquiry and disciplinary action by the management. The management did not hold any inquiry and had the matter referred for adjudication. With respect to another 5 workmen the management held an inquiry on various charges and dismissed them. In the inquiry, the management did not examine their witnesses but had their previous statements read out, and without giving copies of those statements to the workmen asked them to cross-examine the witnesses. The dispute arising out of the dismissal of these 5 workmen was also referred to adjudication. With respect to the 29 workmen the Tribunal permitted the dismissal of 9 and ordered reinstatement of the remaining and awarded 12 months' wages to the dismissed workmen and 15 months' wages to the reinstated workmen for the period during which they remained suspended. With respect to the 5 workmen dismissed the Tribunal held that the inquiry was not held in accordance with the principles of natural justice but that the evidence produced before the Tribunal justified the dismissal of 4 of the workmen. The appellant contended that in view of cl. 7 of the agreement none of the 29 workmen were entitled to any compensation or wages for the period of suspension and that the inquiry with respect to the 5 workmen was in accordance with principles of natural justice. The workmen contended that all the 29 workmen were entitled to full wages for the period of suspension.

Held that cl. 7 of the agreement referred to the period of suspension up to the date of the agreement and not to the suspension thereafter. Ordinarily, the law is that a workman may be suspended pending inquiry and disciplinary action; and if after the inquiry he is dismissed he is not entitled to any wages for the suspension period, but if he is reinstated he is entitled to full wages for the period of suspension. Clause (9) envisaged suspension pending inquiry and also envisaged the legal consequences. The Tribunal was accordingly justified in awarding wages for the suspension period subsequent to the date of the agreement.

The Straw Board Mfg. Co. v. *Govind*, [1962] Supp. 3 S. C. R. 618 referred to.

Held further that all the 29 suspended workmen were entitled to full wages from the date of the agreement up to the

date of the award. There was no provision in the standing orders, nor was there any term of service, which entitled the management to suspend a workman without payment of wages. In these circumstances there was no justification for depriving the workmen who had been ordered to be re-instated and to whom the Tribunal had awarded 15 months wages for any period of their suspension. The 9 workmen who had been allowed to be dismissed were also entitled to full wages for the entire period of suspension. Under cl. (9) of the agreement they were to remain suspended pending inquiry and disciplinary action, but the management held no inquiry and took no disciplinary action, but applied for the dispute to be referred to adjudication. As the management wanted to dismiss these workmen without holding an inquiry, the workmen were entitled to their full wages up to the date of the enforcement of the award.

The Management of Hotel Imperial New Delhi v. *Hotel Workers' Union*, [1960] 1 S. C. R. 476 and *M/s. Sasa Musa Sugar Works (P) Ltd.* v. *Shobrati Khan*, [1959] Supp. 2 S. C. R. 836, releid on.

Held further, that the inquiry with respect to the five workmen violated principles of natural justice. The rules of natural justice do not change from tribunal to tribunal; but since their purpose is to safeguard the position of the person against whom an inquiry is being conducted so as to enable him to meet the charges against him, the nature of the inquiry and the status of the person charged will have a bearing on what should be the minimum requirements of the rules of natural justice. In a domestic inquiry in an industrial matter the proper course for the management is to examine the witnesses from beginning to end in the presence of the workman at the inquiry itself. In exceptional cases, a witness may be asked merely to confirm his previously recorded statement and then tendered for cross-examination by the workman, but in such cases the previous prepared statement of the witness should be given to the workman well in advance before the inquiry begins at least two days before.

The Union of India v. *T. R. Verma*, [1958] S. C. R. 499, *State of Mysore* v. *S. S. Makapur*, [1963] 2 S. C. R. 943, and *New Prakash Transport Co.* v. *New Suwarna Transport Co.* [1957] S. C. R. 98, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 425 and 426 of 1962.

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Kesoram Cotton Mills Ltd. v. Gangadhar

M. C. Setalvad and *B. P. Maheshwari*, for the appellants (in C. A. No. 425 of 1962) and the respondents (in C. A. No. 426 of 1962).

Y. Kumar, for the respondents (in C. A. No. 425 of 1962) and the appellants (in C.A. No. 426 of 1962).

1963. April 4. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—These are two appeals by special leave against the same award of the First Industrial Tribunal, West Bengal and will be dealt with together. Appeal No. 425 is by the employers and Appeal No. 426 is by the workmen. The employers will be referred to as the appellant throughout this judgment while the workmen will be referred to as the respondents. There was a dispute between the appellant and the respondents with respect to two matters, which were referred to the tribunal for adjudication by the Government of West Bengal in the following terms:—

(1) To what relief the suspended workmen whose names are mentioned in list 'A' are entitled ?

(2) Whether the termination of employment of the workmen whose names are mentioned in list 'B' was justified ? Are they entitled to reinstatement and/or compensation ?

List 'A' consisted of 29 workmen while list 'B' consisted of 12 workmen.

The genesis of the dispute as to the suspended workmen was this according to the case of the

appellant. The workmen of the weaving department of the appellant commenced slow down from October 28, 1957 in spite of the warning given by the appellant. On November 3, 1957, doffers of carding refused to work on new machines. The workmen of loose godown and folding section started slow down from October 27, 1957 and November 4, 1957 respectively. On November 23, 1957, the workmen of the spinning department adopted slow down tactics and indulged in other subversive activities and left their respective machines in groups rendering the work in backward and forward processes idle. As a result of this conduct of the workmen for a period of about four weeks, the appellant had to lay-off a large number of workmen without compensation. Then on December 3, 1957, the workmen of dye house and printing department went on an illegal stay-in-strike. In the first week of December, 1957, the workmen of blow room and carding went on strike. On December 9, the strike was commenced in the engineering department, cotton godown, bale godown, canteen, high speed winding and old stores department. In the circumstances the appellant had to suspend 1600 workmen on charges of slow down and various other charges. Thereafter negotiations were started between the union of the workmen and the management and an agreement was arrived at on December 23, 1957. The interpretation of some of the terms of the agreements is in dispute and we shall refer to them in due course. Suffice it to say here that by this agreement the workmen resumed work and undertook not to take recourse to go-slow activities either individually or jointly and not to take recourse to illegal methods and means for the achievement of their demands or for getting their grievances redressed. It was also agreed that maintenance of discipline was of paramount importance and the workmen as also the union at all times would co-operate with the management in taking appropriate disciplinary

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action against the workmen for the maintenance of discipline in the factory. The agreement however provided that thirty workmen named in annexure 'A' thereof would remain suspended pending inquiry and disciplinary action by the appellant. The first term of reference with respect to suspended workmen is about the thirty workmen who were to remain suspended under the terms of the agreement of December 23, 1957.

The twelve workmen with which the second term of reference is concerned, were claimed by the appellant to have been guilty of various acts of misconduct for which they were liable to dismissal under the standing orders. They were duly charge-sheeted and inquiries were held against them and thereafter they were dismissed according to the provisions of law. As however the dismissals had taken place during the pendency of a dispute before the first industrial tribunal in which the appellant was a party, applications were made under s. 33 (2) (b) of the Industrial Disputes Act, 1947 (14 of 1947), (hereinafter referred to as the Act) for approval of the action taken by the appellant in regard to these twelve workmen. It seems, however, that before these applications could be disposed of, the dispute before the tribunal was decided, with the result that no orders were passed by the tribunals on these applications. The appellant, however, claimed that the dismissal of these workmen was justified and therefore no case for reinstatement or compensation arose. This claim of the appellant was disputed by the respondents and therefore we find this dispute being referred for adjudication in the second term of reference.

We shall first deal with the matter relating to suspension of the twenty-nine workmen in list 'A' to the order of reference. It may be mentioned that though in annexure 'A' to the agreement there were

thirty workmen, the reference was made only with respect to twenty-nine, as it is said that one of the workmen out of 30 had died by the time the reference came to be made. Further out of the 29 workmen with which the first term of reference was concerned, the respondents gave up the case of five of the workmen. The tribunal therefore dealt with the case of the remaining 24. These 24 workmen were divided by the tribunal into five groups. The first group consisted of two workmen, the second group of five workmen, the third group of 13 workmen, the fourth group of two workmen and the fifth group of two workmen. Learned counsel for the appellant has not pressed the appeal with respect to six workmen in groups I, IV and V, and we need not therefore consider the order of the tribunal with respect to these workmen, who are Govindo (No. 1), Bholanath (No. 8), Khageswar (No. 7), Ramjatan (No. 27), Rampujan (No. 26) and Khetrabasi (No. 28) of list 'A' attached to the order of reference.

As to the five workmen in group II, namely, Gangadhar (No. 2). Ramchandra (No. 3), Babaji Nayak (No. 4), Pahraj (No. 5) and Shankdardas (No. 6) of list 'A' attached to the order of reference, the tribunal ordered that they should be reinstated in their jobs with effect from the date the award came into force and should be paid compensation amounting to fifteen months' wages in all for the period during which they remained suspended. The appellant has challenged this order of the tribunal.

As to group III, the tribunal decided that nine of the thirteen workmen should be dismissed. As to the remaining four the tribunal held that they should be reinstated. It may be mentioned that the reason why the tribunal proceeded to consider whether any of the workmen in list 'A' to the order of reference should be dismissed was on account of the appellant's filing an application under s. 33 (1) (b) of the Act

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before the tribunal for permission to dismiss the twenty nine workmen. The order of the tribunal with respect to the reinstatement of four workmen, namely, Gulzarali (No. 18), Farid (No. 16), Din Mohd. (No. 17) and Mohd. Islam (No. 24) of list 'A' attached to the order of reference is being challenged by the appellant on the ground that there was no reason for the tribunal to treat these four workmen out of this group of 13 differently from the other nine as the evidence was the same in all these cases. Finally, the tribunal also ordered with respect to all the 24 workmen on an interpretation of the agreement of December 23, 1957, that they should be paid 12 months' wages for the period of their suspension irrespective of whether it was permitting them to be dismissed or not. This order of the tribunal is also being attacked by the appellant.

We shall first take the case of the five workmen in group II. The contention of the appellant in that behalf is two-fold. In the first place it is urged that these workmen were charged with adopting go-slow tactics by causing spindle stoppage unnecessarily and there was clear documentary evidence to support this charge and the tribunal's decision that there was no proof of go-slow tactics in the circumstances was perverse. In the second place, it is urged that all these five workmen were charged with other misconduct also and the tribunal did not consider the evidence with respect to other misconduct at all and gave no finding thereon and so the case of these five workmen at any rate should be remanded to the tribunal for considering the evidence on the other charges against them.

Now the appellant relied on an extract from two registers, Exs. AA and AA-1, which had been produced before the tribunal in this connection and this extract was set out in the special leave petition. The respondents, however, contended that what was

set out in the special leave petition was not an extract at all from Exs. AA and AA-1. On the other hand it was said to be a spurious document prepared to mislead this Court at the time of the admission of the appeal and so it was urged that the leave should be revoked. This extract related to four workmen, namely, Paharaj, Shankdardas, Gangadhar and Babaji, and was with respect to spindle stoppage from November 10 to 23, 1957. In view of the charge made by the respondents, the original registers were sent for and have been examined by us and we have come to the conclusion that the extract given in the special leave petition was not a true copy of Exs. AA and AA-1 as it should have been, if it was merely an extract from those registers. The figures of spindle stoppage given in the extract certainly tally with the figures in the two registers but the registers do not show the names of the persons who were manning the four machines, the spindle stoppage of which was given in this extract. It is however urged that the names of the four workmen were given in the extract though they were not to be found in the registers because these workmen actually manned the machines on the dates mentioned in the extract and reference was made to some evidence in that connection. Even assuming that these workmen manned these machines we find another serious misrepresentation in this extract. Paharaj was charge-sheeted on November 17 and was suspended forthwith. Therefore he could not have worked after November 17, but this extract shows as if he continued working even after November 17 upto November 23. It is remarkable that serious spindle stoppage occurred on the machine which Paharaj was said to be manning mainly after November 17 when it must have been manned by somebody else. Similarly Shankdardas was charge-sheeted on November 17 and suspended forthwith and could not have worked thereafter. But in his case also the extract shows as if he continued to

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work thereafter from November 18 to 23, and the more serious spindle stoppage is during this period when he obviously could not have manned this machine. Babaji was charge-sheeted on November 18 and suspended forthwith. He could not have therefore worked on the machine on which his name is shown in the extract between November 19 and 23 and the more serious spindle stoppage occurred after November 18 when somebody else must have been manning this machine. Gangadhar was charge-sheeted on November 22 and was suspended forthwith. In his case also the extract shows as if he had worked on November 23. We strongly deprecate the manner in which the extract was used in the special leave petition to convey a wrong impression to this Court. But we do not think that we should revoke the special leave granted in this case on this ground alone. However our examination of the extract which we have set out above clearly shows that the contention of the appellant that the tribunal had patently misunderstood Exs. AA and AA-1 cannot be made out. It seems to us that the reasons given by the tribunal for holding that go-slow by these five workmen had not been proved cannot be said to be inadequate for the purpose of coming to the conclusion which it did. We may only note one reason which is given by the tribunal and which shows that everything was not all right in the appellant company in this matter. Though the charge-sheets to these workmen of the spinning department were given on November 17, 18 and 22, it is remarkable that in the written-statement of the appellant before the tribunal the case made out was that the workmen of the spinning department adopted slow down tactics and indulged in other subversive activities from November 23, 1957. This seems to be surprising statement to make in the face of the charges given to these five workmen and can only show that the appellant did not really know what the correct facts were. It is further remarkable that

in the application under s. 33 (1) (b) which was made four months after the written-statement of the appellant had been filed the same thing was repeated and it was said that the workers of the spinning department adopted go-slow tactics on November 23 and indulged in other subversive activities. It is true that in the evidence the appellant tried to prove that slow down tactics had started earlier ; but if in the circumstances the tribunal refused to believe the evidence it cannot be said that it went wrong. The contention of the appellant therefore that the view taken by the tribunal was perverse and clearly against the two registers to which we have referred above must fail.

This brings us to the other contention of the appellant with respect to this group of workmen, namely that the tribunal did not consider the evidence with respect to other charges. It is true that in the last paragraph of the award dealing with these five workmen, the tribunal said that the appellant had failed to prove that these five workmen had adopted go-slow tactics and did not say anything about the other charges. But a perusal of the entire discussion by the tribunal with respect to this group of workmen shows that it considered the oral evidence of all the witnesses with respect to other charges and held that their evidence was not worthy of acceptance, though it did not say so in so many words that that evidence was insufficient to prove the other charges also. On the whole however a reading of the discussion of the tribunal with respect to this group of workmen convinces us that the tribunal had considered the entire evidence including the evidence with respect to other charges and did not consider that evidence worthy of acceptance. The mistake that the tribunal made was that when it recorded its conclusion in the final paragraph dealing with this group of workmen it confined itself only to say that go-slow tactics had not been proved and did not say

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anything about other charges. Even so we are of opinion that the consideration of the entire award of the tribunal with respect to this group of workmen leaves no doubt that the evidence on the other charges was also considered and was found unworthy of acceptance. We may add that the reason why the tribunal seems to have confined itself only to go-slow in the final paragraph is that everybody before the tribunal was concentrating on go-slow and did not worry to see what the other charges were. This will be clear when we consider the case of some other workmen in group III which will show that though there was no charge against those workmen of go-slow, the evidence was given about go-slow and the tribunal also came to the conclusion that those workmen were guilty of go-slow. It seems therefore that nobody worried about any other charges before the tribunal and that is how the tribunal seems to have confined its conclusion only to the charge of go-slow, even where no such charge-sheet was given to the workmen. On the whole, however, we do not think that any case is made out for remand for consideration of other charges against these five workmen, for the tribunal seems to have considered all the evidence and did not think it worthy of acceptance. In the circumstances the appeal with respect to these five workmen in group II must fail.

Then we come to the four workmen in group III whose names we have already mentioned. These workmen were charged with having incited on and from various dates in October 1957 their co-workers to slow down work. The entire evidence against these workmen was considered by the tribunal and it did not place any reliance on it for one main reason. In the case of Gulzarali the tribunal found that there was no written report against him as was the case with respect to others, and in the case of the other three the tribunal found that the written report which had been produced very late

before it did not bear the endorsement of the weaving master as it should have done, as in the case of other such reports made by the Assistant weaving master. In the circumstances when the evidence was considered by the tribunal and for reasons given by it no reliance was placed upon it, we cannot say that it went wrong in not relying on that evidence. The appeal of the appellant with respect to these four workmen of group III must also fail.

We now come to the general attack on the order of the tribunal awarding 12 months wages to all the 24 suspended workmen whose cases were pressed before it by the respondents. We have in this connection to consider four clauses of the agreement dated December 23, 1957, which are as below :—

1. (b)—It is agreed between the parties that the charge-sheets against such workmen who are allowed to resume duty in terms of para (1) herein, however, shall not be withdrawn. It is further agreed that the suspension of workmen whose names are contained in the annexure A herein, shall continue and their respective order of suspension shall remain operative pending enquiry as laid down hereinafter.

7. The suspended workmen shall not be entitled to any wages or compensation for the suspension period. The workmen shall not raise any dispute or make any claim with regard to the suspension period or lay-off period in any shape or form.

8. Without prejudice to the other provisions of this agreement or claims relating to the suspension order served on the workmen

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respectively and the lay-off order by the company and/or all claims or issues for the period connected with slowing down of production and disciplinary action taken thereon by the company are hereby finally settled and all workmen are bound by this agreement and no worker shall be entitled to make any demand or claim in this behalf.

9. The workers in annexure 'A' shall remain suspended pending enquiry and disciplinary action by the management. The management will try to reach an amicable settlement with the Union regarding disciplinary action taken or may be taken by them against the said workmen. If the parties fail to reach settlement, the matter will be referred to the tribunal for settlement of the dispute in this behalf.

The tribunal has held that cl. (7) which lays down that the suspended workmen shall not be entitled to any wages or compensation for the suspension period does not apply to workmen who remained suspended under cl. (9), and the reason given by the tribunal for this view is that cl. (7) only applied to those workmen who were allowed to resume duty in the first clause of the agreement. This view of the tribunal has been challenged by the appellant and it is contended that the seventh clause applies even to workmen who remained suspended under cl. (9) and therefore in view of cl. (7) such workmen were not entitled to any compensation whatsoever for the entire period of their suspension whether before December 23, 1957 or thereafter. We agree with the contention of the appellant that cl. (7) applies to all suspended workmen whether they went back to work according

to the first clause of the agreement or remained suspended according to cl. (1) (b) set out above. But as we read this agreement we are of opinion that cl. (7) read along with cl. (8) refers only to suspension upto the date of the agreement and not to suspension thereafter. Clause (7) says that the suspended workmen shall not raise any dispute or make any claim with regard to the suspension period or lay off period in any shape or form. This provision could only refer to suspension or lay-off in the past; it could not be the intention of the agreement, for example, that if any lay-off took place in future cl. (7) would apply to it. Further though under cl. (9) suspension of 30 workmen continued, that suspension was pending enquiry and disciplinary action. We cannot read cl. (7) and cl. (9) together for the future also unless there are clear terms to that effect. Ordinarily, the law is that a workman may be suspended pending enquiry and disciplinary action. If after the enquiry the misconduct is proved the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquiry results in the reinstatement of the workman he is entitled to full wages for the suspension period also along with reinstatement, unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period. In *The Straw Board Mfg. Co.* v. *Govind* (1), this Court was considering what would happen where approval was granted or withheld on an application under s. 33. (2) (b) of the Act, and it was pointed out that "if the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer." It follows therefore that if a workman is fully exonerated after the inquiry, he would remain in the service of the employer and

(1) [1962] Supp. 3 S.C.R. 618.

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would be entitled to his full wages during the period of his suspension also. Therefore when cl. (9) envisages suspension pending inquiry and disciplinary action it also envisaged the consequence, namely, that if the inquiry results in dismissal, the workmen would get no wages for the suspension period while if the inquiry results in the reinstatement of the workman he would be entitled to full wages for the suspension period, if he is fully exonerated or to such less wages as the employer may give in case the exoneration is not complete and some punishment less than dismissal can be inflicted. We see nothing in cl. (7) which clearly takes away this legal consequence following an inquiry and disciplinary action, and it seems to us that cl. (7) must be confined to the period of suspension upto the date of agreement and there is nothing in it which would induce us to hold that it must apply to the future also. So far as the future is concerned it is cl. (9) which must wholly apply and that clause envisaged inquiry and disciplinary action and the consequence thereof depending upon the inquiry going one way or the other must also be envisaged by it in the absence of any provision about the future in this agreement. If the intention was that the workmen who remained suspended under cl. (9) would get no wages for the future, even if they were fully exonerated after an inquiry under that clause we should have found a specific provision that to effect in cl. (9) itself. We are therefore of opinion that cl. (7) refers to the period up to the date of the agreement including the period of grace given to the workmen in cl. (1) in order to join their duties and not to the future. In this view of the matter the tribunal was not unjustified in granting wages for the suspension period after the date of this agreement to those whom it reinstated. The contention of the appellant in this behalf must fail with respect to those reinstated. We shall consider the case of nine workmen permitted to be dismissed when considering the appeal of the workmen.

Coming now to the second term of reference, we find that inquiries were held in the case of the five workmen with whom we are concerned. The respondents however contended that the inquiries were not in accordance with the principles of natural justice inasmuch as the witnesses were not examined-in-chief before the inquiry officer. What actually happened at the inquiries was that when the witnesses were produced, previously prepared signed statements of the witnesses were read over to them and they were asked whether the statements were correct, and they had signed them. Statements were also read over and explained to the workmen charged and they were then asked to cross-examine the witnesses. No copies of statements of witnesses were supplied to the workmen at any time. The tribunal has held that this procedure followed by the inquiry officer was open to objection and was against the principles of natural justice and that the witnesses should have been examined-in-chief in the presence of the workmen against whom the inquiries were going on. The requirements of principles of natural justice were laid down by this Court in *The Union of India* v. *T. R. Verma* (1), where it was observed:—

> "Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied upon against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act was not strictly followed."

This matter was further considered in *the State of Mysore* v. *S. S. Makapur* (2), where the

(1) [1958] S.C.R. 459. (2) [1963] 2 S.C.R. 943.

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following obervations were made:—

> "When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

It is urged on behalf of the appellant that rules of natural justice are the same whether they apply to inquries under Art. 311 or to domestic inquiries by managements relating to misconduct by workmen. It may be accepted that rules of natural justice do not change from tribunal to tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and the status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being

held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient: (see *New Prakash Transport Co.* v. *New Suwarna Transport Co.* (1), but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in *Shibavasappa's case* (2). The minimum that we shall expect where witnesses are not examined from the very beginning at the enquiry in the presence of the person charged is that the person charged should be given a copy of the

(1) [1957] S.C.R. 99. (2) [1963] 2 S.C.R. 943.

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statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the tribunal—though for different reasons—that the enquiry did not comply with the principles of natural justice. The order of the tribunal therefore holding that the inquiries were vitiated by the disregard of rules of natural justice is correct. We may add however that inspite of the above finding the tribunal permitted termination of the service of four of these five workmen and reinstated only one. We shall deal with this aspect of the matter further when considering the appeal of the workmen.

Turning now to the appeal by the workmen-respondents, the first contention raised on their behalf is that the tribunal went completely wrong in permitting the dismissal of nine workmen in list 'A' to the order of reference, namely, Hanif (No. 10), Narayan (No. 11), Khalil (No. 12), Abdul Subhan (No. 13), Bhagwan Singh (No. 15), Ram Ekbal (No. 19), Mangroo (No. 20), Satish (No. 21), and Raja Ram (No. 22). The contention in this behalf is that these nine workmen in group III were charged with inciting other workers to slow down work and that was the only charge given to them ; there was

no charge of go-slow by these nine workmen themselves. But the tribunal allowed evidence to be led to the effect that these nine workmen were actually guilty of go-slow themselves and gave a finding to that effect and therefore permitted them to be dismissed. It was also urged that there was no finding by the tribunal and no evidence to the effect that these workmen had incited other workmen to slow down work and therefore there was no proof of the charge given to these workmen. Consequently, they could not be dismissed on a charge which was never made against them completely ignoring the charge which was in fact made against them and which had not been proved. We have therefore to see in the case of each workman whether this contention of the respondents is correct.

Hanif is the first workman in this group of nine. It appears from the discussion in the award with respect to Hanif that though in the finding part there is a suggestion as if this workman was guilty of go-slow himself, it appears that the tribunal knew that the charge against Hanif was for inciting co-workers to slow down work. There was evidence before the tribunal to the effect that Hanif roamed about in the department and incited workers to slow down work and that evidence was considered by the tribunal. It also appears that the tribunal accepted that evidence and the final conclusion at which the tribunal arrived was that Hanif was rightly charge-sheeted by the appellant and the appellant should be permitted to dismiss him. In the circumstances it cannot be said so far as this workman is concerned that there was no evidence to support the charge actually framed against him. It would also be wrong to say that the tribunal did not find that the charge actually framed against him had been proved, though it may be admitted that there is an undercurrent in the discussion as if Hanif was guilty of go-slow himself. Even so the tribunal appears to

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have found him guilty of inciting other workers and this would clearly be misconduct under standing order No. 22 (k), for which a workman could be dismissed. In the circumstances we are of opinion that there is no reason for our interference with the order of the tribunal in the case of Hanif.

The next workman is Narayan. He was also charged with having incited other workers to slow down work. In his case also the tribunal apparently came to the conclusion that he took part in deliberate slow-down, but during the discussion in the award, the tribunal started by saying that he was charged with inciting other workers to slow down work and referred to the evidence which showed that Narayan had gone round in the department and asked the workmen to work two looms instead of four and to give low production. This evidence was apparently accepted by the tribunal, though at the end of the discussion the tribunal did say that Narayan took part in deliberate go-slow tactics. Though therefore the conclusion of the tribunal with respect to Narayan seems to suggest as if he was dismissed for taking part in go-slow himself, the discussion in the award with respect to him shows that the tribunal was apparently satisfied that he had also incited other workers to slow down. In the circumstances we do not think that a case has been made out for interference with the order of the tribunal in the case of Narayan.

Then we come to the case of Khalil. He was also charged with having incited other workers to slow down. In his case also there was evidence that he had incited other workers to slow down which was apparently accepted by the tribunal. Though therefore the discussion in the award was with respect to incitement by this workman, at the end however the tribunal came to the conclusion that the appellant had succeeded in proving that Khalil was

indulging in go-slow tactics, causing fall in production and therefore the tribunal permitted the dismissal of Khalil for the misconduct of slowing-down as shown in the charge-sheet. It seems that tribunal has not expressed its conclusion in this and other cases in proper words and has perhaps taken the incitement of other workmen to slow down work as amounting to the misconduct of go-slow by the workman himself. But the entire discussion in the award shows that the tribunal had accepted the evidence to the effect that Khalil was inciting his co-workers to slow down. In this view of the matter we are of opinion that there is no reason to interfere with the order passed by the tribunal simply because its conclusion was not expressed in appropriate words.

Next we come to the case of Abdul Subhan. In his case also the charge was for inciting other workmen to slow-down work. The evidence was that he incited other workers to work two looms instead of four. This evidence was apparently accepted by the tribunal but in the end it said that the appellant had succeeded in proving that Abdul Subhan had indulged in go-slow tactics and therefore permitted his dismissal. Here again it seems to us that the conclusion of the tribunal has been expressed in inappropriate words, though the real finding is that Abdul Subhan had incited other workers and thus brought about go-slow. In his case also therefore we see no reason to interfere with the finding of the tribunal.

Next we come to Bhagwan Singh. He was charged with incitement of other workers to slow down work and evidence was led before the tribunal that Bhagwan Singh went round instigating the weavers not to work more than two looms, though they were expected to work on four looms. This evidence was apparently accepted by the tribunal, though it expressed its conclusion by saying that Bhagwan

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Singh had committed the mis-conduct of deliberate go-slow tacticts. Here again, we are of opinion that the conclusion of the tribunal has been expressed in inappropriate words, though in fact it did find that Bhagwan Singh was guilty of inciting other workers to slow down. We therefore see no reason to interfere with the order of the tribunal with respect to Bhagwan Singh.

Next we come to Ram Ekbal. His case is exactly similar to that of Bhagwan Singh and the evidence is also exactly the same. In the circumstances we see no reason to interfere with the order of the tribunal in his case either.

Next we come to Mangroo. The charge against him was of incitement of other workers to slow down work. In his case also the evidence was that he went round in the weaving-shed asking the weavers to work two looms instead of four looms. This evidence was apparently accepted by the tribunal, though it expressed its conclusion inappropriately to the effect that Mangroo had adopted go-slow tactics as shown in the charge-sheet and therefore his dismissal was permitted. We are of opinion that the conclusion of the tribunal in this case also was expressed inappropriately but in fact the finding was that Mangroo had incited other workers to go-slow. As we have already said, the tribunal seems to think that this incitement of other workers to go-slow amounts to adoption of deliberate go-slow tactics by the person who is guilty of incitement and that is why the tribunal expressed its final conclusion in words which we consider inappropriate. But in substance the finding is that Mangroo was guilty of inciting other workers to go-slow. We therefore see no reason to interfere with the finding of the tribunal with respect to Mangroo.

Next we come to Satish. He was also charged with inciting other workmen to go-slow. There was

evidence before the tribunal that Satish incited other weavers to slow down work and this evidence was apparently accepted by the tribunal. In his case also the tribunal expressed its conclusion in inappropriate words by saying that it held that Satish had indulged in go slow tactics as charged in the charge-sheet. It therefore permitted his dismissal. We are however of opinion that on a consideration of the discussion of the matter in the award the substance of the finding is that Satish was guilty of inciting other workers. In the circumstances we see no reason to interfere with the finding of the tribunal.

Lastly we come to Raja Ram. His case is exactly similar to that of Satish and the evidence was also to the same effect *viz.*, that they were going round together and inciting other workers to slow down work. In the circumstances we see no reason to interfere with the order of the tribunal.

The next contention on behalf of the respondents is that the tribunal should have allowed full wages to the workmen in list 'A' in whose case it had ordered reinstatement, and not merely 15 months' wages as it actually did. It is well settled that "under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract: (see *The management of Hotel Imperial New Delhi* v. *Hotel Workers' Union* (1). No provision in the standing orders has been brought to our notice which entitles the appellant in this case to suspend the workman without payment of wages. But, as held in *The Hotel Imperial's case* (1), where under s. 33 of the Act the right of the employer to dismiss an employee except with the permission of the industrial tribunal, was taken away, it would be

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open to the employer to suspend the workman pending inquiry and permission of the tribunal. In such circumstances such a term in the contract of employment would be implied and the result would be that if the tribunal granted the permission, the suspended contract would come to an end and there would be no further obligation on the part of the employer to pay any wages after the date of suspension. If on the other hand, the permission was refused, the workmen would be entitled to all their wages from the date of suspension. It follows therefore that in the case of those workmen who have been ordered to be reinstated there can be no justification for depriving them of their wages from the date of the suspension which in the case of the workmen in list 'A' to the reference, in view of the agreement of December 23, 1957, must start from Decemder 24, 1957. Therefore, so far as these 15 workmen, out of the 29 workmen, of list 'A' are concerned, who have been ordered to be reinstated we see no reason for depriving them from their full wages for the entire period from December 24, 1957. The appeal of the respondents therefore with reference to these fifteen workmen in list 'A' must be allowed and the order of the tribunal is hereby varied to the effect that they will be paid full wages from December 24, 1957.

As to the five workmen in list 'B' to the reference, one workman, namely, Hiralal Bhomick, was ordered to be reinstated by the tribunal and he was allowed compensation equivalent to 15 months' wages. His case in our opinion is on a par with the case of the fifteen workmen in list 'A' which we have considered above and he will therefore be entitled to his full wages from the date of his suspension and not only 15 months' wages as ordered by the tribunal.

Then we come to the case of nine workmen from list 'A' whose cases we have already considered

and who were permitted to be dismissed. Further there are four workmen of list 'B' namely, Misra (No. 1), Abdullah (No. 2), Narayan Tewari (No. 5) and Din Mohd. (No. 6), whose services were allowed to be terminated with effect from the date of the enforcement of the award. The first nine workmen were allowed 12 months' wages while the other four workmen were paid wages for a period of one month along with compensation equivalent to 15 days' average pay for each completed year of service or any part thereof in excess of six months. It is contended on behalf of the respondents that these workmen should have been allowed full wages upto the date the award became enforceable, even though the tribunal had eventually permitted their dismissal or allowed their services to be terminated.

So far as the nine workmen in list 'A' are concerned, their case in our opinion is fully covered by the decision of this Court in *Messrs Sasa Musa Sugar Works (P) Ltd.* v. *Shobrati Khan* (1). Clause (9) of the agreement which permitted the continuance of the suspension of these workmen, also provided that they shall remain suspended pending inquiry and disciplinary action by the management. The clause went on to say that the management would try to reach an amicable settlement with the union regarding disciplinary action taken or to be taken by it against the workmen and that if the parties failed to reach a settlement, the matter would be referred for adjudication. The contention on behalf of the respondents is that this clause clearly contemplated inquiry by the management followed by disciplinary action and as the appellant held no inquiry whatsoever and straightaway applied when the dispute was referred for adjudication, for permission to dismiss these workmen they would be entitled to full wages till the date of the enforcement of the award. On the other hand it is contended on behalf of the appellant that though cl. (9) envisaged inquiry and

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disciplinary proceedings against the suspended workmen it also provided that the management would try to reach an amicable settlement with the union, failing which there would be a reference to adjudication. It is said that in view of this the appellant held no inquiry. Particularly, the factory manager stated that he had discussions with the secretary of the union over the matter of these workmen and no settlement could be reached. He also stated that the management wanted to hold inquiries but the Secretary of the union stated that no useful purpose would be served by holding inquiries because before final action was taken by the management, it had to consult the union. This statement was made by the factory manager who appeared as the last witness in the case. The secretary of the union appeared long before as the first witness in the case and he was not questioned on this matter at all. No such case was made out even in the application for permission to dismiss which was filed on June 29, 1959, to the effect that the inquiries were not held because the secretary of the union suggested that it would be useless to do so; nor was any such allegation made in the written-statement of the appellant. In the circumstances it would be difficult to hold that the reason why no inquiry was held was that the respondents did not want the inquiry. In the circumstances therefore this is a case where the management wanted to dismiss the workmen without having held an inquiry and the decision in *Sasa Musa case* (1), would be fully applicable to these nine workmen who have been permitted to be dismissed and they would be entitled to full wages from December 23, 1957 till the date the tribunal's award permitting dismissal becomes enforceable.

Lastly we come to the case of the four workmen whose services have been allowed to be terminated. Nothing was urged before us with respect to the

(1) [1959] Supp. 2 S.C.R. 836.

order permitting termination of service. Nor do we think that the order of the tribunal in this behalf is wrong. In their case the tribunal has said that if the inquiry proceedings had not been defective, these four persons would be liable to dismissal as ordered by the appellant. It is only because there was defect in the inquiry proceedings as stated above that it was held that the dismissal was unjustified. The tribunal therefore went on to permit the termination of service of these four workmen under one of the standing orders and finally ordered payment of wages for a period of one month alongwith compensation at the rate of 15 days average wages for every completed year of service or any part thereof in excess of six months. The circumstances of the case are not exactly similar to those in the *Sasa Musa case* (1), and therefore the principle of that case would not necessarily apply. In the circumstances we do not think that we should interfere with the order of the tribunal.

In the result, the award of the tribunal is affirmed in the light of and subject to the above modifications; and consequently the appeal by the management is dismissed and by the workmen allowed only with respect to the grant of wages in the manner indicated above. In the circumstances parties will bear their own costs in both appeals.

C. A. 425 of 1962 dismissed.
C. A. 426 of 1962 allowed in part.

(1) [1959] Supp 2 S.C.R. 836.