Colour-Chem Limited vs A.L. Alaspurkar & Ors on 5 February, 1998

Equivalent citations: AIR 1998 SUPREME COURT 948, 1998 (3) SCC 192, 1998 AIR SCW 709, 1998 LAB. I. C. 974, 1998 (1) MAH LR 685, 1998 (92) FJR 581, 1998 (1) SCALE 432, 1998 (1) ADSC 741, 1998 ( ) LAB LR 289, (1998) 1 JT 455 (SC), (1998) 2 ALLMR 73 (SC), 1998 ADSC 1 741, (1998) 2 SERVLJ 87, 1998 (1) JT 455, 1998 (78) FACLR 625, 1998 (1) LABLJ 694, (1998) 1 SCR 663 (SC), 1998 (1) SCT 757, 1998 SCC (L&S) 771, (1998) 2 LAB LN 84, (1998) 1 SERVLR 757, (1998) 2 SUPREME 127, (1998) 1 SCALE 432, (1998) 1 CURLR 638, (1998) 3 BOM CR 644, 1998 (1) BOM LR 721, 1998 BOM LR 1 721

Author: S.B. Majmudar

Bench: S.B. Majmudar, M. Jagannadha Rao, A.P. Misra

PETITIONER:
COLOUR-CHEM LIMITED

Vs.

RESPONDENT:
A.L. ALASPURKAR & ORS.

DATE OF JUDGMENT: 05/02/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar.J. The appellant-management by obtaining special leave to appeal under Article 136 of the Constitution of India has brought in challenge the order of High Court of Bombay dated 13th September 1991 dismissing the writ petition of the appellant and confirming the

order of the Labour Court as further confirmed in revision by the Industrial Court, Bombay. By the impugned order respondent nos.3 and 4 herein who were workmen in the concern of the appellant were ordered to be reinstated in service with 40% and 50% back wages respectively till the date of the award of the Labour Court and thereafter with cent per cent back wages till reinstatement.

A few relevant facts leading to these proceedings are required to be noted to highlight the grievance of the appellant-management against the impugned order. Background Facts Respondent nos.3 and 4 were working the plant of the appellant as Plant Operators. On the night between 5th and 6th May 1982 when they were on duty in the night shift, at about 03.30 a.m. when the Plant In-charge one Shri Chandrahasan made a surprise visit, he found respondent nos.3 and 4 and 10 mazdoors as well as the Shift Supervisor sleeping though the machine was kept working. The Shift Supervisor was found sleeping in the cabin while respondent nos.3 and 4 operators and 10 mazdoors were found sleeping on the terrace of the factory. For the said misconduct a domestic enquiry was held, after chargesheeting respondent nos.3 and 4 charge-sheets of even date were issued on 18th May 1982. After the domestic enquiry both these respondents by order dated 04th June 1983 were dismissed from service. Respondent nos.3 and 4 field complaints before respondent no 2-authority under the provisions of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act. 1971 [hereinafter referred to as 'the act']. The connection of these complainants was that they were victimised and the appellant-management had committed diverse unfair practices as contemplated under Clauses (a),

(b), (d), (f) and (g) of Item 1 of Schedule IV of the Act. The appellant contested these complaints. The Labour Court in the light of the evidence recorded came to the conclusion that the appellant-company had proved that the complainants had committed misconducts alleged against them as per the charge-sheets dated 18th May 1982. It also held that the complainants failed to prove that they were dismissed by way of unfair labour practices covered by Clauses (a), (b), (d) and (f) of Item 1 of Schedule IV of the Act. However, it held that the appellant had committed unfair labour practice as per Clause (g) of Item 1 of the said Schedule. Contention of the complainants that they were discriminated against was rejected. It was also found that the appellant failed to prove that the complainants were gainfully employed since their dismissals on 04th June 1983. The Labour Court in short found that looking to the nature of the misconduct alleged and proved against the complainants the punishment of dismissal was grossly disproportionate and, therefore, it amounted to unfair labour practice on the part of the appellant as covered by Clause (g) of Item 1 of Schedule IV of the Act. As a result, the Labour Court passed an order of reinstatement with appropriate back wages as seem earlier. The said order of the Labour Court resulted in two revisions. one on behalf of the workmen and another on behalf of the management. The revisional court namely the Industrial Court dismissed both the revision applications and confirmed the order of the Labour Court. The appellant carried the matter in writ petition before the High Court which as noted earlier came to be dismissed. That is how the appellant is before us.

We have heard learned senior counsel for the appellant as well as learned senior counsel for respondent nos.3 and 4 who are the only contesting parties, respondent nos.1 and 2 being the authorities under the Act who have adjudicated the dispute are only formal parties.

Rival Contentions Learned senior counsel Shri Narayan B. Shetye, for the appellant submitted that the Labour Court as well as the Industrial Court and also the High Court have patently erred in applying the provisions of Item 1 Clause (g) of Schedule IV of the Act in the present case. It was submitted that on a proper construction of the said provision the said clause would apply only if the misconduct committed by the respondents was a minor misconduct or is of technical nature. That the Labour Court had found that the misconduct of respondent nos.3 and 4 was major misconduct and the said finding was to disturbed or dissented from by the revisional authority or by the High Court. Under these circumstances the Labour Court was not justified in taking the view that the appellant was guilty of unfair labour practice covered by the said clause and when the Labour Court held that on other alleged unfair labour practices the complainants had made out no case, the complaints filed by the respondents were liable to be dismissed. He alternatively submitted that even assuming that the said clause was attracted looking to the nature of the misconduct and the past service record of the respondents it could not be said that the punishment of dismissal was shockingly disproportionate. Even on that ground the complaints were liable to be dismissed. It was lastly contended that in any view of the matter this was not a fit case where reinstatement could have been ordered and instead compensation could have been awarded to the respondents in lieu of reinstatement as their misconduct laid created a situation in which the machine was kept working and the respondents had gone to sleep while on duty. The result was that apart from lesser production the unattended machine in working state had created a hazardous situation wherein the plant would have been blown off and an explosion would have resulted, as the chemical industry of the appellant where the respondents were working is a hazardous industry.

Refuting these contentions learned senior counsel. Smt, Indira Jaising, for respondent nos. 3 and 4 contended that on a proper construction of Clause (g) of Item I of Schedule IV of the Act it is rightly held by the High Court that the said clause is squarely attracted to the facts of the present case as it covered apart from misconduct of minor or technical character all other misconducts where looking to the nature of the misconduct or the past record of service it appeared to the Court that the punishment imposed was shockingly disproportionate to the charges held proved against the delinquent workmen. She further contended that in any case shockingly disproportionate punishment in the light of the nature of the misconduct alleged and proved would itself amount to unfair labour practice or victimisation as held by this Court in the case of Hind Construction & Engineering Co Ltd. v. Their Workmen [(1965) 2 SCR 85]. She also submitted that while considering Clause

(g) of Item 1 of Schedule IV of the Act the Court should adopt beneficial rule of construction as this is a labour welfare legislation. In this connection she pressed in service two decisions of this Court to which we will make a reference hereinafter. She also submitted that proportionality of the punishment could always be considered by courts dealing with labour legislations and the court had ample jurisdiction in appropriate cases to set aside such disproportionate punishment in the light of the charges held proved against the delinquents concerned. She next submitted that as the Labour Court had found that the respondent - complainants were not shown to have been gainfully employed in the meantime there was no reason for not awarding full back wages at least from the date of the award of the Labour Court as the award of 40% and 50% back wages to respondent nos.3 and 4 respectively till the date of the award had remained final as the complainants had not

challenged the said award of back wages before the High Court. She also submitted that once the punishment is found to be grossly disproportionate to the charges levelled and proved against the delinquents, the order of reinstatement was perfectly justified and there was no question of appellant losing confidence in the respondent-complainants and consequently this is not a fit case in which compensation can be awarded in lieu of reinstatement as that would spell economic disaster to these workmen who are already out of job since 1983 that is, for more than 14 years.

In rejoinder it was contended by learned senior counsel for the appellant that the same learned Judge of the High Court who decided the present case had subsequently taken the view of the construction of Clause (g) of Item 1 of Schedule IV of the Act that the same would cover only minor misconducts. He also relied upon another judgment of the High Court on the same lines. He also contended that the Labour Court had repelled the contention on behalf of the respondent-complainants that the management had committed unfair labour practice of victimisation covered by Clause

(a) of Item 1 of Schedule IV of the Act and if Clause (g) thereof did not apply to such major misconducts complaints were required to be dismissed.

Points for Determination In view of the aforesaid rival contentions the following points arise for our determination.

1. Whether Clause (g) of Item 1 of Schedule IV of the Act is applicable to the facts of the present case.

2. If not, whether the appellant can be said to have been guilty of having committed unfair labour practice as per Clause (a) of Item 1 of Schedule IV of the Act of the basis of which the order of the order Court as confirmed by the higher courts can be supported.

3. Whether the order of reinstatement with back wages as passed by the Labour Court and as confirmed by the higher courts is justified on the facts and circumstances of the court.

We shall deal with these points seriatim, Point No.I For resolving the controversy centering round this point it is necessary to have a look at the relevant statutory provisions of the Act. The Act was passed by the Maharashtra Legislature in 1971 as Act No. 1 of 1972. Amongst its diverse objects and reasons one of the reasons for enacting the said Act was for defining and providing for prevention of certain unfair labour practices to constitute courts (as independent machinery) for carrying out the purposes mentioned therein one of which being enforcing provisions relating to unfair labour practices. Unfair labour practices is defined by Section 3 sub-section (16) of the Act to mean, unfair labour practices ad defined in section 26'. Section 26 of the Act lays down that, "unless the context required otherwise, `unfair labour practices mean any of the practices listed in Schedules II, III and IV". We are not concerned with Schedules II and III which deal with unfair labour practices on the part of the employer and trade unions. We are directly concerned with Schedule IV which deals with general unfair labour practices on the part of the employers. The relevant provisions of Item 1 of Schedule IV of the Act read as under:

"1. To discharge or dismiss employees

(a) by way of victimisation:

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) for misconduct of a minor or technical character without having any regard to the nature of the particular misconduct or the past record of service of the employee so as to amount to a shockingly disproportionate punishment."

So far as the aforesaid Clause (g) is concerned the Labour Court has held that the misconduct alleged against the respondent and held proved before it was not a misconduct of minor or technical character as they were found sleeping on duty and were also guilty of negligence in keeping the machine in working state without putting necessary raw material therein. As the aforesaid finding of the Labour Court about the nature of misconduct of respondent nos. 3 and 4 was confirmed by the revisional court and a that finding was not challenged by the respondents before the High Court we shall proceed for the present discussion on the basis that respondent nos. 3 and 4 were guilty of major misconduct. The moot question therefore, which falls for consideration is whether on the express language of Clause

(g) the said provision gets attracted or not. A conjoint reading of different sub-parts of the aforesaid provision, in our view, leaves no room for doubt that it deals with an unfair labour practice said to have been committed by an employer who discharges or dismisses an employee for misconduct of a minor or technical character and while doing so no regard is kept to the nature of the misconduct alleged and proved against the delinquent or without having regard to the past service record of the employee so that under these circumstances the ultimate punishment imposed on the delinquent would be found by the Court be a shockingly disproportionate punishment. It is not possible to agree with the contention of learned senior counsel for the respondent-workmen that the said clause would also cover even major misconducts if for such misconducts the order of discharge or dismissal are passed by the employer without having regard to the nature of the misconduct or the past record of the employees and if under these circumstances it is found by the court that the punishment imposed is shockingly disproportionate one. It is true that after the words `for misconduct of a minor or technical character' there is found a comma in Clause (g), but if the contention of learned senior counsel is to be accepted the comma will have to be replaced by `or'. That cannot be done in the context and setting s of the said clause as the said exercise apart from being impermissible would not make a harmonious reading of the provision. Even that apart, in the said Clause (g) the

Iegislature has used the word `or' while dealing with the topic of non-consideration by the employer while imposing the punishment the relevant factors to be considered, namely, either the non-consideration of the nature of the particular misconduct or the past record of service of the employee, which would make the punishment appear to be shockingly disproportionate to the charge of misconduct held proved against the delinquent. Thus the term `or' as employed by he Legislature in the said clause refers to the same topic, namely non-consideration of relevant aspects by the employer while imposing the punishment. Consequently it cannot be said to have any reference to the nature of the misconduct, whether minor or major. It must, therefore, be held that the comma as found in the clause after providing for the nature of the misconduct only indicated how the same nature of the misconduct referred to in the first part of the clause results in a shockingly disproportionate punishment if certain relevant factors, as mentioned in the subsequent part of the clause, are not considered by the employer. If the contention of learned senior counsel for the respondents was right all the sub- parts of clause (g) have to be read disjunctively and not conjunctively. That would result in a very anomalous situation. In such an eventuality the discharge or dismissal of an employee in case of a major misconduct without regard to the nature of the particular misconduct or past record of service may by itself amount to shockingly disproportionate punishment. Consequently for a proved major misconduct if past service record is not seen the punishment of discharge or dismissal by itself may amount to a shockingly disproportionate punishment. Such an incongruous result is not contemplated by Clause (g) of Item 1 of Schedule IV of the Act. Such type of truncated operation of the said provision is contra-indicated by the very texture and settings of the said clause. One the said clause deals with the topic of misconduct of a minor or technical character it is difficult to appreciated how the said clause can be centured as covering also major misconducts for which there is not even a whisper in the said clause. On a harmonious construction of the said clause with all it sub-parts, therefore, it must be held that the Legislature had contemplated while enacting the said clause punishment of discharge or dismissal for misconduct of minor or technical character which when seen in the light of the nature of the particular minor or technical misconduct or the past record of the employee would amount to inflicting of shockingly disproportionate punishment. In this connection we may mention that the same learned Judge B.N. Srikrishna. J., in a latter decision in the case of Pandurang Kashinath Want v. Divisional Controller, M.S.R.T.C. Dhule & Ors [1995(1) CLR 1052] has taken the view that Clause (g) of Item 1 of Schedule IV of the Act refers to minor or technical misconduct only. The same view was also taken by another learned Judge Jahagirdar. J., in the case of Maharashtra State Road Transport Corporation v. Niranjan Sridhar Gade and another [1985 (50) FLR (Bom.))]. So far as this Court is concerned the same Act came for consideration in the case of Hindustan Lever Ltd. v. Ashok Vishnu Kate and others [(1995) 6 SCC 326]. It is, of course, true that the question with which this Court was concerned was a different one, namely whether before any final discharge or dismissal order is passed, a complaint could be filed under the Act on the ground that the employer was contemplating to commit such unfair labour practice, if ultimately the departmental proceedings were likely to result into final orders of dismissal or discharge attracting any of the clauses of Item 1 of Schedule IV of the Act. However while considering the scheme of the Act especially the very same Item 1 of Schedule IV of the Act a Bench of this Court consisting of G.N. Ray.J. and one of us S.B. Majmudar.J. in paragraph 26 of the Report assumed that the said clause would cover minor misconducts.

Learned senior counsel for the respondents was right when she contended that this being a labour welfare legislation liberal construction should be placed on the relevant provisions of the Act. She rightly invited our attention to paragraph 41 of the Report of the aforesaid case in this connection. She also invited our attention to a decision of this Court in the case of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt) Ltd. etc v. The Management and others etc. [(1973) 1 SCC 813] especially the observations made in paragraph 35 of the Report. It has been observed therein that if two constructions are reasonably possible to be placed on the section, it followed that the construction which furthers the policy and object of the Act and is more beneficial to the employee, has to be preferred. But it is further observed in the very said paragraph that there is another canon of interpretation that a Stature or for that matter even a particular section has to be interpreted according to its plain words and without doing violence to the language used by the legislature. In our view, Clause (g) of Item 1 of Schedule IV of the Act is not reasonably capable of two constructions. Only one reasonable construction is possible on the express language of Clause

(g), namely, that it seeks to cover only those types of unfair labour practices where minor misconducts or technical misconducts have resulted in dismissal or discharge of delinquent workmen and such punishment in the light of the nature of misconduct or past record of the delinquent is found to be shockingly disproportionate to the charges of minor misconduct or charges of technical misconduct held proved against the delinquent. One and only subject-matter of Clause (g) is the misconduct of minor or technical character. The remaining parts of the clause do not indicate any separate subject-matter like the major misconduct. But they are all adjuncts and corollaries or appendages of the principal subject, namely, minor or technical misconduct which in given set of cases may amount to resulting in shockingly disproportionate punishment if they are followed by discharge or dismissal of the delinquent. The first point, therefore, will have to be answered in the negative in favour of the appellant and against the respondent- delinquents.

Point No.2 However this is not the end of the matter. Looking to the nature of the charges levelled against the delinquent- respondents it has to be appreciated that all that was alleged against them was that they were found sleeping in the were hours of the night shift almost near dawn at 03.30 a.m. having kept the machine in a running condition without seeing to it that proper raw material was inserted therein. Even on the basis that it was a major misconduct which was alleged and proved, looking to the past record of the service of the delinquents no reasonable employer could have imposed punishment of dismissal. The past record was to the effect that respondent no.3 was once found allegedly gambling in the factory premises but was in fact found to be playing cards on a Diwah day which was public holiday, whole the only past misconduct alleged against respondent no.4 was that on one occasion he was warned for negligent discharge of duty. Looking to the nature of the charges levelled against them, therefore, and even in the light of their past service record it could not be said that for such misconducts they were liable to be dismissed from service. Such punishments patently appear to be grossly disproportionate to the nature of the charges held proved against them. That finding reached by the Labour Court on facts remains unassailable. Once that conclusion is reached even apart from non-application of Clause (g) of Item 1 of Schedule IV of the Act. Clause (a) of Item 1 of the said Schedule of the Act gets squarely attracted as it would amount to victimisation on the part of the management which can be said to have imposed a most unreasonable punishment on these employees. In this connection learned senior counsel for the

respondent-workmen has rightly pressed in service a decision of a Bench of three learned Judges of this Court in the case of Hind Construction (supra). In that case this Court was considering the jurisdiction and power of the Industrial Court during the time when Section 11-A of the Industrial Disputes Act. 1947 was not on the Statute Book. Considering the nature of the punishment imposed on the workmen, who had gone on strike, because they had not reported for duty on a day which otherwise was a holiday but which was declared by the management to be a working day, this Court speaking through Hidayatullah.J. made the following pertinent observations at page 88 of the Report :

> "...But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice....."

It has to be kept in view that these observations were made by this Court at a time when unfair labour practices were not codified either by the Industrial Disputes Act or even by the present Act. The present Act tried to codify unfair practices on the part of the employer by enacting the Act in 1972 and even the Industrial Disputes Act being the Central Act also followed the Maharashtra Act and taking a leaf from the book of Maharashtra Legislature, Parliament introduced the concept of unfair labour practices by inserting Chapter V-C by Act No, 46 of 1982 w.e.f. 21st August 1984. Sections 25-T and 25-U of the Industrial Disputed Act deal with `Prohibition of unfair labour practice' and `Penalty for committing unfair labour practices' respectively. The term `unfair labour practice' was defined by the Industrial Disputes Act by inserting Section 2(ra) with effect from the very same date i.e. 21st August 1984 by the very same Act, i.e. Act No. 46 of 1982 to mean, `any of the practices specified in the Fifth Schedule'. The Fifth Schedule of the Industrial Dispute Act, which saw the light of the day pursuant the very same Amending Act, deals with `unfair labour practices' which are a mirror image and replica of the unfair labour practices contemplated and codified by the present Maharashtra Act. But apart from these subsequent statutory provisions which tried to codify unfair labour practices on the part of the employers, the basic concept of victimisation as laid down by this Court in Hind Construction's case (supra) holds the field and is not whittled down by any subsequent statutory enactments. Not only it is not given a go-by but it is reiterated by the present Act by enacting Clause (a) of Item 1 of Schedule IV of the Act meaning thereby any discharge or dismissal of an employee by way of victimisation would be unfair labour practice.

The term `victimisation' is not defined by the present Act. Sub-section (18) of Section 3 of the Act which is the Definition Section lays down that, `words and expressions used in this Act and not defined therein, but defined in the Bombay Act, shall, in relation to an industry to which the provisions of the Bombay Act apply, have the meanings assigned to them by the Bombay Act; and in any other case, shall have the meanings assigned to them by the Central Act'. Bombay Act is the Bombay Industrial Relations Act. 1946 and the Central Act is the Industrial Disputes Act, 1947 as laid down by Definition Section 3(1) and 3(2) of the Act. The term `victimisation' is defined neither by the Central Act nor by the Bombay Act. Therefore, the term `victimisation' has to be given general dictionary meaning. In Concise Oxford Dictionary, 7th Edn., the term `victimisation' is defined at Page 1197 as follows :

"make a victim; cheat; make suffer by dismissal or other exceptional treatment"

Thus if a person is made to suffer by some exceptional treatment it would amount to victimisation. The term `victimisation' is of comprehensive import. It may be victimisation in fact or in law. Factual victimisation may consist of diverse acts of employers who are out to drive out and punish an employee for no real reasons and for extraneous reasons. As for example a militant trade union leader who is a thorn in the side of the management may be discharged or dismissed for that very reason camouflaged by another ostensibly different reason. Such instances among to unfair labour practices n account of factual victimisation. Once that happens Clause (a) of Item 1 of Schedule IV of the Act would get attracted. even apart from the very same act being covered by unfair labour practices envisaged by Clauses (b), (c), (d) and (e) of the very same Item 1 of Schedule IV. But is cannot be said that Clause (a) of Item 1 which deals with victimisation covers only factual victimisation. There can be in addition legal victimisation and it is this type of victimisation which is contemplated by the decision of this Court in Hind Construction (supra). It must, therefore, be held that if the punishment of dismissal or discharge is found shockingly disproportionate by the Court regard being had to the particular major misconduct and the past service record of the delinquent or is such as no reasonable employer could ever impose in like circumstances, it would be unfair labour practice by itself being an instance of victimisation in law or legal victimisation independent of factual victimisation, if any. Such an unfair labour practice is covered by the present Act by enactment of Clause (a) of Item 1 of Schedule IV of the Act as it would be an act of victimisation in law as clearly ruled by this Court in the aforesaid decision. On the same lines is a latter decision of this Court in the case of Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors. [(1976) 2 SCR 280] wherein a Bench of three learned Judges speaking through Goswami. J. laid down the parameters of the term `victimisation' as understood in labour laws and as contemplated by industrial jurisprudence. It has been observed that ordinarily a person is victimised if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own. If actual fault or guilt meriting punishment is established. Such action will be rid of the taint of victimisation. The aforesaid observations obviously refer to factual victimisation. But then follows further clucidation of the term `victimisation' to the following effect :

> "Victimisation may partake of various types, as for example, pressurising all employee to leave the union or union activities, treating an employee in a discriminatory manner or inflicting a grossly monstrous punishment which no national person would impose upon an employee and the like...."

The aforesaid observations in this decision fall in line with the observations in the earlier decision of this Court in Hind Construction (supra). Consequently it must be held that when looking to the nature of the charge of even major misconduct which is found proved if the punishment of dismissed or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimisation. On the facts of the present case there is a clear finding reached by the Labour Court and as confirmed by the Industrial Court that the charges levelled against the respondent-delinquents which were held proved even though reflecting major

misconducts, were not such in the light of their past service record as would merit imposition of punishment of dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimised the respondent-delinquent. Imposition of such shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimisation apart from not being factual victimisation as on the latter aspect the Labour Court has held against the respondent-workmen and that finding has also remained well sustained on record. Thus it must be held that the management even though not guilty of factual victimisation was guilty of legal victimisation in the light of the proved facts which squarely attracted the ratio of the decisions of this Court in Hind Construction (supra) and Bharat Iron, Works (supra). It is easy to visualise that no reasonable management could have punished a delinquent workman who in the late hours of the night shift by about 03.30 a.m. had gone to sleep keeping the machine in a working condition especially in the absence of any gross misconduct reflected by the past service record, with the extreme penalty of dismissal. It is also interesting to note that this was a peculiar case in which the Plant In-charge found during his surprise visit at 03.30 a.m. in the early hours of the dawn entire work force of 10 mazdoors and 2 operators like the respondents and the supervisor all asleep. It is pertinent to note that so far as 10 mazdoors were concerned they were let off for this very misconduct by mere warning while the respondents were dismissed from service. It is of course, true that the respondents were assigned more responsible duty as compared to mazdoors, but in the background of surrounding circumstances and especially in the light of their past service record there is no escape from the conclusion that the punishment of dismissal imposed on them for such misconduct was grossly and shockingly disproportionate, as rightly held by the Labour Court and as confirmed by the revisional court and the High Court. By imposing such grossly disproportionate punishment on the respondents the appellant-management had tried to kill the fly with a sledge hammer. Consequently it must be held that the appellant was guilty of unfair labour practice. Such an act was squarely covered by Clause (a) of Item 1 of Schedule IV of the Act being legal victimisation, if not factual victimisation. The ultimate finding of the Labour Court about maintainability of the complaint can be supported on this ground. The second point is answered in the affirmative against the appellant and in favour of the respondent-workmen.

Point No.3 So far as this point is concerned it has to be held that when the punishment of dismissal was shockingly disproportionate to the charges held proved against them reinstatement with continuity of service was the least that could have been ordered in their favour. There is no question of appellant losing confidence in them. In this connection learned senior counsel for the appellant tried to submit that apart from going to sleep in the early hours of the morning when the night shift was coming to a close the machine was kept working and that would have created a hazard for the working of the plant and possibility of explosion was likely to arise. So far as this contension is concerned it must be stated that this was not the case of the management while framing the charge-sheets against the workmen. Not only that, there is not a whisper about the said eventuality and possibility in the evidence led by the management before the Labour Court. But that apart no such contention, even though mentioned in the written objections before the Labour Court, was ever pressed in service for consideration before the Labour Court at the stage of arguments, nor any decision was invited on this aspect. No such contention was also canvassed by the appellant in revision before the industrial Court or before the High Court. This contention, therefore, must be treated to be clearly an afterthought and appears to have been rightly given up in subsequent stages

of the trial by the management itself. All that was alleged by its witness before the Court was that because of the respondents going to sleep and allowing the machine to work without pouring raw material therein the production went down to some extent. That has nothing to do with the working of the unattended machine becoming a hazard or inviting possibility of any explosion. Under these circumstances and especially looking to the past service record of the respondents it could not be said that the management would lose confidence nature which an operator has to carry out in the plant. It was a manual work which could be an operator has to carry out in the plant. It was a manual work which could be entrusted to anyone. Consequently the submission of learned senior counsel for the appellant, that in lieu of reinstatement compensation may be awarded to the respondents, cannot be countenanced. It must, therefore, be held that the Labour Court was quite justified in ordering reinstatement of respondent-workmen with continuity of service. However because of the misconduct committed by them, of sleeping while on duty in the night shift the Labour court has imposed the penalty of depriving the workmen, respondent nos. 3 and 4 respectively, of 60% and 50% of the back wages. After the award they have been granted 100% back wages till reinstatement. But, in our view, as respondent nos.3 and 4 went to sleep while on duty and that too not alone but in company of the entire staff of 10 mazdoors, they deserve to be further punished by being deprived of at least some part of back wages even after the award of the Labour Court till actual reinstatement. Interest of justice would be served in our view, if respondent no.3 is directed to be paid only 40% of the back wages even after the award of the Labour Court till actual reinstatement pursuant to our present order. Similarly respondent no.4 will be entitled to only 50% back wages even after the date of the Labour Court's award till actual reinstatement as per the present order. In addition thereto the appellant-management will be entitled to give written warnings to both these respondents when they are reinstated in service not to repeat such misconducts in future. The imposition of this type of additional penalty, in our view, would be sufficient in the facts and circumstances of the case and will operate as suitable corrective for the respondent-employees. They have suffered enough since more than 14 years. They are out of service for all these 14 years. At the time when they went to sleep in the night shift they were pretty young. Now they have naturally grown up in age and with passage of years more maturity must have dawned on them., Under these circumstances the cut in the back wages as imposed by the Labour Court and as further imposed by us would be quite sufficient to act as deterrent for them so that such misconducts may not be committed by them in future. The third point is answered as aforesaid by holding that the order of reinstatement is justified but the order of back wages as ordered by the Labour Court requires to be modified to the aforesaid extent.

In the result this appeal is dismissed subject to the slight modification that respondent nos. 3 and 4 will be entitled to reinstatement and continuity of service but so far as back wages are concerned, even after the order of the Labour Court instead of 100% of back wages, respondent no.3 will be entitled to 40% back wages till reinstatement and respondent no.4 will be entitled to 50% back wages till actual reinstatement pursuant to the present order. They will also be suitably warned in writing by the appellant as aforesaid. We direct the appellant to reinstate the respondents concerned within four weeks from the date of receipt of a copy of this order at its end. The office shall send a copy of this order to the appellant for information and necessary action. Pursuant to the interim order of this Court pending this appeal the appellant was directed to deposit Rs. 78.000/- for being paid to the respondent- workmen towards their claim of back wages as awarded by the Labour Court

and as confirmed by higher courts. Deducting the said amount the balance of back wages as payable to the respondents concerned pursuant to the present order shall be worked out and this amount of back wages with all other consequential monetary benefits flowing from the order of reinstatement shall be made available by the appellant to the respondents concerned within a period of eight weeks from the receipt of a copy of this order at its end. It is also made clear that because of the grant of continuity of service to the respondents all other future benefits like promotion, retiral benefits etc, according to rules and regulations of appellant-management will also be made available to the respondent-workmen. Orders accordingly. In the facts and circumstances of the case there will be no order as to costs.