M/S. Lokmat Newspapers Pvt. Ltd vs Shankarprasad on 19 July, 1999

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Author: S.B.Majmudar

Bench: Syed Shah Mohammed Quadri, S.B.Majmudar

PETITIONER:
M/S. LOKMAT NEWSPAPERS PVT. LTD.

Vs.

RESPONDENT:
SHANKARPRASAD

DATE OF JUDGMENT: 19/07/1999

BENCH:
S.B.Majumdar, Syed Shah Mohammed Quadri

JUDGMENT:

S.B.Majmudar, J.

Leave granted.

L.....I.....T.....T.....T.....T.....T.....T..A We have heard learned counsel for the parties finally in this appeal. It is being disposed of by this judgment.

The question involved in this appeal at the instance of the appellant-management pertains to the legality and validity of the discharge of the respondent-employee and also calls for the decision as to whether the said discharge order amounted to `unfair labour practice' on the part of the management. A few relevant facts are required to be noted at the outset. Introductory facts: The respondent was working in the composing department of the appellant at Nagpur in Maharashtra State when his services were terminated. He was a foreman in the composing department of the appellant. The appellant is a company engaged in the publication of a Marathi daily named `Lokmat'. The appellant has its registered office at Nagpur and Lokmat is being published therefrom. In the year 1976, the appellant-company decided to start publication of Jalgaon Edition of the said paper and for that purpose set up an establishment at Jalgaon in the eastern district of Maharashtra State. The Jalgaon Edition was composed and printed at Nagpur and was taken to Jalgaon. The composing of both the Editions was done by hand composing and printing was done on rotary printing machine. In 1978, the appellant decided to have composed and printed part of the Jalgaon Edition at Jalgaon. Since then the Jalgaon Edition was composed and printed partly at Jalgaon and partly at Nagpur. Then in 1981, the appellant installed two photo type composing machines at Nagpur. According to the appellant, it was a new technique of rationalisation, standardisation and improvement of plant or technique. It appears that the said machine was operated on experimental basis for sometime but by October 1981 it became fully operative. Consequently, the respondent along with 24 other employees, who were working in the hand composing department became redundant. Therefore, they were sought to be transferred to Jalgaon District in the State of Maharashtra where another establishment of the appellant was located. The said orders of transfer were challenged by the respodent and other employees before the Industrial Court under the provisions of The Maharashtra [Recognition of Trade Unions & Prevention of Unfair Labour Practices] Act, 1971 (hereinafter referred to as `the Maharashtra Act'). The Industrial Court, after hearing the parties, took the view that the said transfer orders amounted to change in the conditions of service of the complainants which resulted into `unfair labour practice' on the part of the appellant. The said decision of the Industrial Court was rendered on 12th February, 1982.

The order of the Industrial Court was challenged by the appellant before the High Court by filing Writ Petition No. 630/82. It appears that subsequently the said Writ Petition was withdrawn. Consequently, the order of the Industrial Tribunal calling upon the appellant to withdraw the illegal transfers of the respondent and others remained a final order. Having realised that the respondent and other workmen could not be transferred out of Nagpur even though they had become surplus on account of introduction of the aforesaid photo composing machine, the appellant issued a notice on 25th March, 1982 under Section 9-A of the Industrial Disputes Act, 1947 (for short the `I.D. Act') to the respondent inter alia, stating that as a result of the installation of photo composing machine, there was no work available with the appellant so as to provide the same to the respondent and other employees.

The respondent and other employees opposed the said notice and consequently the Conciliation Officer held conciliation proceedings under Section 12 of the I.D. Act. Parties were heard and efforts were made in conciliation to enable them to amicably settle the dispute but those proceedings ultimately failed. The Conciliation Officer closed the proceedings on 22.6.1982 and subsequently sent failure report to the State Government. The said report reached the State Government on 13th

August, 1982. In the meantime, once the conciliation proceedings were closed, the appellant issued the impugned discharge order dated 22nd June,1982 terminating the services of the respondent. As a consequence thereof, the services of the respondent and other employees were terminated by following the provisions of Section 25-F of the I.D. Act.

Immediately after the discharge order was served on the respondent, he filed a complaint on 25.6.1982 before the Labour Court under Section 28 of the Maharashtra Act alleging that the respondent indulged in `unfair labour practice' which falls within the provisions of Schedule -IV item no. 1 (a), (b), (d) and (f) of the Maharashtra Act. The appellant resisted the said proceedings and contended that it has not resorted to any `unfair labour practice' against the respondent. During the pendency of this complaint, the State Government, acting on the failure report of the Conciliation Officer, made a reference of the Industrial dispute under Section 10 of the I.D. Act. The appellant raised an objection before the Industrial Court, Nagpur, that the reference proceedings under Section 10 of the I.D. Act were incompetent and barred by Section 59 of the Maharashtra Act. As the respondent had already filed complaint under the Maharashtra Act challenging the very same discharge order, these objections were upheld by the Industrial Court, Nagpur and reference under Section 10 of the I.D. Act was disposed of.

The complaint filed by the respondent was dismissed by the Labour Court by its order dated 30.1.1990. It was held that the impugned retrenchment order did not attract any of the provisions of Schedule IV, item no.1 of the Maharashtra Act and that the respondent was not guilty of any `unfair labour practice' when it passed the impugned retrenchment order against the respondent.

The respondent filed a Revision Petition before the Industrial Tribunal, Nagpur. The said Revision Petition was dismissed by the Tribunal on 22nd November, 1990 upholding the findings of the Labour Court that the respondent had not engaged in any `unfair labour practice'.

The respondent then filed Writ Petition No. 70 of 1991 under Articles 226 and 227 of the Constitution of India challenging the decision rendered by both the Courts below. The said Writ Petition was also rejected by the learned Single Judge on 25th April, 1991. Respondent thereafter preferred Letters Patent Appeal No. 24 of 1991 before the Division Bench of the High Court at Nagpur under Clause 15 of the Letters Patent. The said appeal was heard by the Division Bench on merits. The Division Bench, by its orders dated 6.11.1996, held that the appellant had engaged in `unfair labour practice' under item 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Act and hence it was directed to pay back-wages and other benefits to the respondent from the date of the order of retrenchment i.e. 22.6.1982 till the date of his retirement as he had also got superannuated in the meantime. This order of the Division Bench of the High Court has been brought in challenge by the appellant- management by way of present appeal on special leave under Article 136 of the Constitution of India.

Learned counsel appearing for the appellant, at the outset, submitted that the Writ Petition filed by the respondent before the High Court was in substance under Article 227 of the Constitution of India and hence was not maintainable under Clause 15 of the Letters Patent Appeal. In order to support this contention, he took us to the relevant averments in the Writ Petition as well as the

order of the learned Single Judge. He also relied on judgments of this Court to which we will refer hereinafter. His submission was that the learned Single Judge had exercised his jurisdiction under Article 227 of the Constitution only and, therefore, the Letters Patent Appeal was not maintainable. On merits, it was submitted that even if the appeal was maintainable the Division Bench had patently erred in taking the view that notice under Section 9-A of the I.D. Act was illegal and inoperative. It was also contended that the decision of the Division Bench that respondent's complaint was maintainable and that by passing the impugned order of the retrenchment, the appellant had resorted to `unfair labour practice', was erroneous. It was further submitted that the Division Bench had erred in holding that the impugned discharge order was violative of Section 33 of the I.D. Act and that in any case pure finding of fact of courts below that the appellant was not guilty of any `unfair labour practice' ought not to have been interfered with by the Division Bench in the Letters Patent Appeal.

On the other hand, learned counsel for the respondent tried to support the decision rendered by the Division Bench of the High Court on the points on which the Bench decided in favour of the respondent. He also submitted that the appeal under Clause 15 of the Letters Patent was maintainable before the Division Bench.

Learned Counsel for the respondent invited our attention to a number of decisions of this Court in support of the respondent's case on merits. We shall refer to them in latter part of this judgment when we shall consider these contentions on merits.

In the light of the aforesaid rival contentions, the following points arise for our consideration : 1. Whether the respondent's Letters Patent Appeal was maintainable; 2. If yes, whether the Division Bench was right in taking the view that the impugned retrenchment order was violative of Section 33 (1) of the I.D. Act; 3. Whether the appellant, in issuing the said order, had violated the provisions of Section 9-A of the I.D. Act; 4. Whether the impugned retrenchment order amounted to the commission of `unfair labour practice' by the appellant as per Schedule IV items 1

(a), (b), (d) and (f) of the Maharashtra Act; 5. Whether the Division Bench was justified in interfering with the findings of fact arrived at by the authorities below and as confirmed by the learned Single Judge while deciding the aforesaid question of `unfair labour practice'; and 6. What final order ? We shall deal with these points seriatim. Point No.1: So far as the question of maintainability of Letters Patent appeal is concerned, it has to be noted that the Revisional Order was passed by the Labour Court on respondent's complaint under Section 28 of the Maharashtra Act. The said order was confirmed by the Industrial Tribunal under Section 44 of the same Act. Both the courts held that retrenchment of the respondent does not amount to any `unfair labour practice' on the part of the appellant. These orders were challenged by the respondent by filing Writ Petition under Articles 226 and 227 of the Constitution of India before the High Court of Judicature at Bombay, Nagpur Bench. The learned Single Judge dismissed the said Writ Petition, but his order itself shows that he was considering the Writ Petition of the respondent which was moved before him invoking the High Court's Jurisdiction under Articles 226 and 227 of the Constitution of India. In the said Writ Petition under Articles 226 and 227 of the Constitution, the respondent requested the High Court to call for the record and proceedings of Revision Petition No. 70 of 1990 and after

perusal thereof to be further pleased to quash and set aside the Order dated 30.1.1990 passed by the Second Labour Court, Nagpur in Complaint No. 262 of 1982 and order dated 20.11.1990 passed in Revision by the Industrial Court.

When we turn to the relevant paragraph of the Writ Petition, we find averments to the effect that the Courts below, while interpreting the provisions contained in Sections 9-A, 20 and 33 and other provisions of the I.D. Act, 1947 and the rules framed thereunder, had totally lost sight of the object and purpose of these provisions and had put an interpretation alien to industrial jurisprudence and had thus committed serious error of law apparent on the face of the record which resulted in serious miscarriage of justice and also in failure to exercise the jurisdiction vested in the courts below under the provisions of the Maharashtra Act. In para 9 of the Writ Petition, it was averred that the impugned orders of the Courts below had further resulted in infraction of his fundamental rights guaranteed to him under Articles 14, 21 and other Articles as enshrined in the Constitution of India.

It is, therefore, obvious that the Writ Petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for High Court's interference seeking issuance of an appropriate Writ of Certiorari under Article 226 of the Constitution of India. Basic averments for invoking such jurisdiction were already pleaded in the Writ Petition for High Court's consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the Writ Petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the Writ Petition by observing that the Courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge did not inclined to interfere under article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, that he was considering the aforesaid Writ Petition moved under Articles 226 as well as 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the Writ Petition of the respondent. In this connection, it is profitable to have a look at the decision of this Court in the case of Umaji Keshao Meshram and Others vs. Radhikabai, widow of Anandrao Banapurkar and Anr., [(1986) Supp SCC 401]. In that case O.Chinnappa Reddy and D.P.Madon, JJ., considered the very same question in the light of clause 15 of the Letters Patent Appeal of the Bombay High Court. Madon J., speaking for the Court in para 107 of the Report at page 473, made the following pertinent observations :

> "Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the

> Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High court in Aidal Singh v. Karan Singh and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass and Barham Dutt v. Peoples' Co-operative Transport Society Ltd., New Delhi and we are in agreement with it."

The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such jurisdiction was invoked and when his Writ Petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 of the Constitution of India. This conclusion directly flows from the relevant averments made in the Writ Petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his Judgment, as seen earlier. Consequently, it could not be said that Clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of learned Single Judge. It is also necessary to note that the appellant being respondent in Letters Patent Appeal joined issues on merits and did not take up the contention that Letters Patent Appeal was not maintainable. For all these reasons, therefore, the primary objection to the maintainability of the Letters Patent Appeal as canvassed by learned counsel for the appellant, has to be repelled. Point no.1 is, therefore, answered in affirmative against the appellant and in favour of the respondent. It takes us to the consideration of points arising for our decision on merits.

Point No.2: The question of violation of Section 33(1) of the I.D. Act requires to be considered in the light of the relevant statutory provisions. Section 33 as found in Chapter VII of the I.D. Act, sub-section (1) thereof, which is relevant for our present discussion, reads as under : "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- (1) During the pendency of any conciliation proceeding before [an arbitrator or] a conciliation officer or a Board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute;

save with the express permission in writing of the authority before which the proceeding is pending."

Now it must be stated that the impugned termination order was passed against the respondent-workman on 22nd June, 1982. Within three days thereof, the respondent raised an industrial dispute by filing a complaint under Section 28 of the Maharashtra Act alleging that the impugned termination order amounted to `unfair labour practice'. Before the impugned termination order was passed by the management, it had already served a notice under Section 9-A of the I.D. Act to the respondents union to the effect that it proposed to introduce a change in the conditions of service of the respondent and other members of the union on the ground that it was proposing to rationalise the printing work at the appellant's concern at Nagpur by setting up photo-type machine for carrying out the work of composing, resulting in substantial reduction in the work of composing by hand. It may be stated that the respondent was employed as a foreman in the hand-composing department of the appellant at the relevant time. The respondent's union objected to the said notice of change and approached the Conciliation Officer under Section 12(1) of the I.D. Act which reads as under :- "12. Duties of Conciliation Officers.- (1) Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under Section 22 has been given shall, hold conciliation proceedings in the prescribed manner."

The Conciliation Officer took the dispute in conciliation within his discretion even though as appellant's concern was not a public utility service it was not mandatory for the Conciliation Officer to start conciliation proceedings. As the report of the Conciliation Officer submitted to the State Government shows, he invited the management and the respondent's union for preliminary discussions on 14.4.1982 in his office and thereafter the matter was adjourned during conciliation from time to time.

It can, therefore, be said that by 14th April, 1982 the matter was taken up for investigation and thus the conciliation proceedings had commenced. It is also well established on the record of the case that the parties could not come to any settlement with the result that on 22nd June, 1982 the investigation was closed by the Conciliation Officer at 4.35 p.m. at Nagpur. Immediately thereafter the appellant passed the impugned order of termination against the respondent and others on the very same day i.e. on 22.6.1982 at 5.00 p.m. The said order was placed on the notice board of the appellant's office at Nagpur on the evening of that day. It is not in dispute between the parties that thereafter the Conciliation Officer submitted his report to the Government which reached the State Government on 13.8.1982.

On the aforesaid facts, the question arises whether the impugned termination order dated 22.6.1982 was passed during the pendency of the conciliation proceedings. It is not in dispute between the parties that before passing such an order no express permission in writing was obtained by the appellant from the Conciliation Officer. The Labour Court, the Industrial Court and the learned Single Judge of the High Court have taken the view that because investigation was closed by the conciliator by 4.35 p.m. on 22.6.1982, immediately thereafter the conciliation proceedings could be said to have ended and were not pending before him. Consequently at 5.00 p.m. on that very day when the appellant issued the impugned order, it did not violate Section 33 of the I.D. Act. While, on the other hand, the Division Bench of the High Court in the impugned judgment has taken the view that merely because the conciliator closed the investigation in the evening of 22.6.1982 till he

prepared his report as per Section 12(4) of the I.D. Act and till that report reached the Government, conciliation proceedings were deemed to have continued and had not got terminated till 13th August, 1982 and as in the meantime on 22.6.1982, the impugned termination order was passed without following the procedure of Section 33(1) of the I.D. Act it got vitiated in law.

Under these circumstances, a moot question arises whether the impugned retrenchment order was passed on 22.6.1982 during the pendency of conciliation proceedings. It cannot be disputed that the impugned order was directly connected with the matter in dispute before the Conciliation Officer wherein the question of legality of notice under Section 9-A of the I.D. Act was under consideration for the purpose of arriving at any settlement between the parties in this connection. The impugned order had definitely altered to the prejudice of the respondent his conditions of service. It was not a case of retrenchment simpliciter but was a consequential retrenchment on the introduction of the scheme of rationalisation as contemplated by Section 9-A read with Schedule IV item no.1 of the I.D. Act.

We shall refer to these provisions in greater detail later on while considering the question of legality of notice under Section 9-A of the I.D. Act. For the time being, it is sufficient to note that the question of violation of Section 33(1) of the I.D. Act has a direct nexus with the further question whether on 22.6.1982 when the impugned termination order was passed, conciliation proceedings were pending before the authority or not.

In order to answer these questions, it is necessary to note sub- section (4) of Section 12 of the I.D. Act which reads as under : "(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at."

A mere look at this provision shows that if the Conciliation Officer finds during conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation he has, as soon as practicable, to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and has also to mention all other details as required to be mentioned in the report under Section 12(4) of the I.D.Act.

The aforesaid statutory requirements leave no room for doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report about failure of consideration for information and necessary action by the State Government. In the very nature of things, therefore, such requirement will take at least a couple of days, if not more, for the conciliator after closing the investigation to enable him to send an appropriate report to the State Government. It is, therefore, obvious that on 22.6.1982 when by 4.35 p.m. the Conciliation Officer declared that settlement was not possible between the parties and he closed the

investigation, neither his statutory function did not come to an end nor did he become functus officio. His jurisdiction had to continue till he submitted his report as per Section 12(4) to the appropriate Government. Even such preparation of the report and sending of the same from his end to the appropriate Government would obviously have taken at least a few days after 22.6.1982. It must, therefore, be held that the conciliator remained in charge of the conciliation proceedings at least for a couple of days after 22.6.1982. It is, therefore, difficult to appreciate how within half an hour after the closing of investigation by the conciliator and before his getting even a breathing time to prepare his detailed written report about failure of conciliation to be sent to the Government as per Section 12(4), the appellant could persuade itself to presume that conciliation proceedings had ended and, therefore, it was not required to follow the procedure of Section 33(1) and straightaway could pass the impugned order of retrenchment within 25 minutes of the closing of the investigation by the conciliator on the very same day. It is difficult to appreciate the reasoning of the Labour Court that after the closer of investigation the conciliator became functus officio and the management could not have approached him for express written permission to pass the impugned order. It is easy to visualise that even on the same day i.e. on 22.6.1982 or even on the next day, before the conciliator had time even to start writing his report, such an express permission could have been asked for by the appellant as the conciliator by then could not be said to have washed his hand off the conciliation proceedings. He remained very much seized of these proceedings till at least the time the report left his end apart from the further question whether conciliation proceedings could be said to have continued till the report reached the State Government. Thus, on the express language of Section 12(4) the conclusion is inevitable that closer of investigation by 4.35 p.m. on 22.6.1982 did not amount to termination of conciliation proceedings by that very time. The argument of learned counsel for the appellant was that closer of investigation automatically amounted to termination of conciliation proceedings. This argument proceeds on a wrong premise that closer of investigation by the conciliator is the same as closer of conciliation proceedings. The legislature while enacting Section 12(4) has deliberately not used the words `closer of conciliation' but, on the contrary, provided that after closer of investigation something more was required to be done by the conciliator as laid down under Section 12(4) before he can be said to have done away with conciliation proceedings earlier initiated by him. On this conclusion alone the decision rendered by the Division Bench of the High Court that the impugned order of termination dated 22.6.1982 was issued by the appellant without following the procedure of Section 33(1) of the I.D. Act has to be sustained.

But even that apart, sub-sections (1) and (2) of Section 20 of the I.D. Act also become relevant in this connection. They read as under :- "Commencement and conclusion of proceedings- (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded- (a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute; (b) where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under Section 17, as the case may be ; or (c) when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] under

Section 10 during the pendency of conciliation proceedings.

(Emphasis supplied) A mere look at the aforesaid provisions shows that in cases of public utility services referred to in Section 22 (2) of the I.D. Act, the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lockout under Section 22 is received by the Conciliation Officer. That deals with commencement of mandatory conciliation proceedings as laid down by Section 12(1) read with Section 20(1). But when we come to Section 20(2), it becomes obvious that the legislature has introduced by way of legal fiction an irrebutable presumption as per sub-clause (b) of Section 20(2) that when during conciliation proceedings no settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated under Section 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government. As noted earlier, it is not in dispute between the parties that after the closer of investigation on 22.6.1982 when the conciliator sent the failure report, it reached the State Government only on 13.8.1982. Therefore, it has to be held that the conciliation proceedings in the present case had not got terminated and got concluded only on 13.8.1982 as per the aforesaid statutory presumption created by the legal fiction provided in Section 20(2)(b). Therefore, as a necessary corollary, it must be held that these conciliation proceedings were pending till 13.8.1982. It is axiomatic that conciliation proceedings which are deemed not to have concluded must be deemed to have continued or remained pending. That which is not concluded is pending, equally that which is pending cannot be said to be concluded.

Learned counsel for the appellant tried to salvage the situation by submitting that the deeming fiction created by Section 20(2) of the I.D. Act referred to only deemed conclusion of the proceedings, but had nothing to do with the pendency of the proceedings. To highlight this submission, he invited our attention to Section 22(1)(d) and Section 22(2)(d) as well as Section 23(b) of the I.D. Act. We fail to appreciate how these provisions can be of any avail to him. Section 22(1)(d) reads as under:

> "during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings."

Similar is the wording of Section 22(2)(d). Section 23(b) contains similar phrase in connection with pending proceedings before the Labour Court or the Tribunal. All these provisions show that even after the pending proceedings are concluded for further period of time no strikes or lock- outs can be permitted to take place between the parties. But the said provisions do not indicate that pendency of proceedings is a concept which is different from the conclusion of such proceedings. On the contrary, the conclusion of proceedings puts an end to the pendency of such proceedings. Learned counsel for the appellant in support of his contention seeking a dichotomy between the concept of pendency and concept of deemed conclusion of proceedings placed strong reliance on a decision of this Court in Chemicals & Fibres of India Ltd. vs. D.G. Bhoir & Ors. [(1975) (4) SCC 332]. In that case this Court was concerned with entirely a different situation under Section 2A of the I.D. Act

after it was brought on the Statute Book. As per this provision, an individual dispute raised by workman who had suffered dismissal from service was to be considered as an `industrial dispute' within the meaning of the relevant provisions of the Act so that such a dispute could be conciliated upon, arbitrated or could be referred for adjudication before competent authorities under the Act. For that limited purpose, an individual workman could be said to have raised an industrial dispute. The question before this Court was whether raising of such a dispute by an individual workman which was not sponsored by a large body of workmen could attract Section 33 of the I.D. Act even qua other workmen who had nothing to do with this individual dispute. Answering the question in negative, it was held by this Court that the fiction created by Section 2A had a limited effect and could not be pressed in service for applicability of Section 33(1) in connection with lock-out qua other workmen who were not the parties to the said industrial dispute. In that case during the pendency of such individual dispute the appellant company before this Court discharged about 312 of its employees and filed 12 applications before the Industrial Tribunal for approval of such a discharge on the ground that a reference was pending before it. The question was whether these applications were maintainable for approval under Section 33(1) when the dispute which was pending before the Industrial Tribunal was one under Section 2A of the I.D. Act. In this connection, it was held by this Court that the legal fiction created by Section 2A had a limited effect and those workmen who were not parties to such a dispute, if had gone on strike, it could not be said that their strike was necessarily illegal.

In para-5 of the report, it was observed that:

> "..While there is justification for preventing a strike when a dispute between the employer and the general body of workmen is pending adjudication or resolution, it would be too much to expect that the Legislature intended that a lid should be put on all strikes just because the case of a single workman was pending.." We fail to appreciate how this decision can be pressed in service by learned counsel for the appellant while construing Section 20(2) of the I.D. Act. That Section, as noted earlier, has created an irrebutable presumption by way of legal fiction and that presumption covers the very question as to when conciliation proceedings once commenced can be said to have concluded. In other words, when they can be said to have not remained in pending. As seen earlier, the legal fiction which is created for that purpose by Section 20(2) has to be given its full effect. As it is well- settled while giving effect to the legal fiction for the purpose for which it is created by Legislature it has to be given full play for fructifying the said legislative intention. We cannot allow our imagination to boggle on that score. It is, of course, true as laid down by the Constitutional Bench of this Court in the case of Bengal Immunity Co. Ltd., vs. State of Bihar and Others (AIR 1955 SC 661 at 680). Das, Actg. C.J. speaking for the Court in Para 31 of the report, made the following pertinent observations : ".Legal fictions are created only for some definite purpose. Xxxxxx xxxxx xxxxxx a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.."

However, as noted earlier, legal fiction created by Section 20(2) is for the purpose of laying down as to till what stage conciliation proceedings can be said to be pending and when they can be said to have concluded. On that basis if it is held that conciliation proceedings once validly started under Section 12(1) of the I.D. Act can by way of an irrevocable presumption be treated to have continued till the failure report reached the appropriate Government, during the interregnum of necessity such conciliation proceedings have to be treated as pending before the conciliation officer. In fact, on these aspects of the matter, we have a decision of this Court in Andheri Marol Kurla Bus Service & Anr. vs. The State of Bombay [AIR 1959 SC 841]. In that case a Bench of two judges of this Court had to consider the question as to when conciliation proceedings can be said to have concluded under the relevant provisions of this very Act. In that case during the admitted pendency of conciliation proceedings the management had dismissed the workman bus conductor. However, the submission on the part of the management was that such dismissal was after the expiry of statutory period of 14 days within which the conciliation proceedings once started had to be concluded and as 14 days were already over the dismissal did not attract Section 33(1) and consequently the management could not be penalised under Section 31(1) of the I.D. Act which lays down as under: "Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both."

In the aforesaid factual matrix of the case, this Court in Andheri Marol Kurla Bus Service & Anr vs. The State of Bombay, (supra) had to consider the scope of Section 33(1) read with Section 20(2)(b). On a conjoint reading of these relevant provisions at page 841, paragraphs 4 & 5 of the report, J.L. Kapur J., speaking for the Court, made the following pertinent observations : "..The provisions of sub-s. 20(2) apply to all conciliation proceedings whether in regard to utility services or otherwise. All conciliation proceedings under this sub-section shall be deemed to have concluded in the case where no settlement is reached, when the report of the Conciliation Officer is received by the appropriate Government. The conciliation proceedings therefore do not end when the report under S.12(6) is made by the Conciliation Officer but when that report is received by the appropriate Government. It was contended that the conciliation proceedings should be held to terminate when the Conciliation Officer is required under S.12(6) of the Act to submit his report but the provisions of the Act above quoted do not support this contention as the termination of the conciliation proceedings is deemed to take place when the report is received by the appropriate Government. That is how S.20(2)(b) was interpreted in Workers of the Industry Colliery Dhanbad v. Management of the Industry Colliery, 1953 SCR 428: (AIR 1953 SC 88).

It was next contended that on this interpretation the conciliation proceedings could be prolonged much beyond what was contemplated by the Act and the termination would depend upon how soon a report is received by the appropriate Government. It is true that S.12(6) of the Act contemplates the submission of the report by the Conciliation Officer within 14 days but that does not affect the pendency of the conciliation proceedings and if for some reason the Conciliation Officer delays the submission of his report his action may be reprehensible but that will not affect the interpretation to be put on S.20(2)(b) of the Act. Section 12 lays down the duties of the Conciliation Officer. He is required to bring about settlement between the parties and must begin his investigation without delay and if no settlement is arrived at he is to submit his report to the appropriate Government. No doubt S.12 contemplates that the report should be made and the proceedings closed within a

fortnight and if proceedings are not closed but are carried on, as they were in the present case, or if the Conciliation Officer does not make his report within 14 days he may be guilty of a breach of duty but in law the proceedings do not automatically come to an end after 14 days but only terminate as provided in S.20(2)(b) of the Act. (Colliery Mazdoor Congress Asansol v. New Beerbhoom Coal Co., Ltd., 1952 Lab AC 219 (222)"

The aforesaid decision, therefore, has settled the controversy on this aspect by holding that conciliation proceedings would terminate only as provided by Section 20(2)(b) of the Act. Meaning thereby, till the failure report reaches the appropriate State Government, conciliation proceedings cannot be said to have terminated. Hence, breach of Section 33(1) during the pendency of such proceedings could attract penal liability of the employer under Section 31(1) of the Act. Learned counsel for the appellant tried to submit that the aforesaid decision had not considered the legal effect of the fiction created by Section 20(2)(b) and its limited scope regarding deemed conclusion of the conciliation proceedings which was different from actual pendency of the proceedings as required by Section 33(1). It is difficult to appreciate this contention for the simple reason that the relevant provisions of the Act to which our attention was drawn by learned counsel for the appellant for submitting that there was a difference between pendency and conclusion of proceedings do not advance the case of the appellant, as we have seen earlier, nor can it be said that any relevant provisions of the Act were not noticed by the Division Bench of this Court which decided the case referred in Andheri Marol Kurla Bus Service & Anr. vs. The State of Bombay (supra). On the contrary, we find that the aforesaid decision has taken a correct view on the question posed for our consideration in the present case. In view of the aforesaid discussion, therefore, there was no escape from the conclusion to which the Division Bench in the impugned judgment reached that on 22.6.1982 when the order of retrenchment was passed against the respondent, the appellant-management had committed breach of Section 33(1) of the Act by not passing the said order after obtaining express previous permission in writing of the Conciliation Officer before whom the conciliation proceedings must be held to be pending in the evening of 22.6.1982. The impugned retrenchment order must be held to be illegal being contrary to the aforesaid provision of the I.D. Act. Point No.2 is, therefore, answered in affirmative against the appellant and in favour of the respondent. Point No.3: So far as this point is concerned, we have to turn to Section 9- A of the I.D. Act. The relevant provision thereof reads as under : "Notice of change.-No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,- (a) without giving to the workman likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected ; or (b) within twenty-one days of giving such notice" A mere look at the aforesaid provision shows that if an employer proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, such change has to be preceded by the procedure laid down in the said section.

When we turn to the Fourth Schedule of the I.D. Act, we find mentioned therein various conditions of service of workmen. The said schedule with all of its items reads as follows :

> "CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN
>
> 1. Wages, including the period and mode of payment;
>
> 2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force; 3. Compensatory and other allowances; 4. Hours of work and rest intervals; 5. Leave with wages and holidays; 6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders; 7. Classification by grades; 8. Withdrawal of any customary concession or privilege or change in usage; 9. Introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders; 10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; 11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift [not occasioned by circumstances over which the employer has no control]"

So far as item nos.1-9 and 11 are concerned, it becomes obvious that before any such change in conditions of service of the workmen is to be effected, as a pre-condition for such proposed change, notice under Section 9-A has to be issued; without complying with such a pre-condition of notice, proposed change would not legally come into operation. We are directly concerned with item no. 10 of this Schedule. It, therefore, becomes obvious that before any rationalisation, standardisation or improvement of plant or technique is to be resorted to by any management if by such an exercise retrenchment of workmen is likely to result, then before introducing such rationalisation, standardisation or improvement of plant or technique, as the case may be, a prior notice under Section 9-A is to be issued to the workmen who can get an opportunity to show that they may not be retrenched because of the new scheme of rationalisation etc. which is in the offing and can suggest ways and means available to the management to avoid such proposed retrenchment of the workmen despite such introduction of a new scheme. Consequently, it must be held on the very wordings of Section 9-A read with item no.10 of Fourth Schedule "that any management which seeks to introduce a new working pattern for its existing work force by any future scheme of rationalisation, standardisation or improvement of plant or technique which has a tendency to lead to future retrenchment of workmen" has to give prior notice of proposed change. Therefore, it must be held that notice under Section 9-A must precede the introduction of rationalisation concerned, it cannot follow the introduction of such a rationalisation. In the present case, it is not in dispute between the parties that in the composing department of the appellant where the respondent was working, composing work was earlier being done by hand i.e. manually. That was the existing condition of service of the respondent. By substitution of that type of work by mechanical work having resort to photo type composition through machine, the then existing service condition of the respondent was bound to be affected adversely. Consequently, before introducing such a change in the condition of service of the respondent by installing photo type composing machine, introduction of which was

directly likely to lead to retrenchment of the respondent, a notice under Section 9-A was a must before commissioning such a photo type machine at the work place of the appellant. It is not in dispute between the parties that such a photo type machine was already installed by the appellant in January 1981. Learned counsel for the appellant seeks to contend that it was installed on an experimental basis. Even granting that, the evidence on record clearly established that by November, 1981 because of the successful working of the photo type composing machine it was felt by the appellant that respondent and other compositors working in the hand composing department were rendered surplus. Of course, the appellant on humanitarian ground tried to shift them to its another concern at Jalgaon, but those transfer orders were held to amount to `unfair labour practice' on the part of the appellant when the Industrial Court on the complaints of these transferee workmen held that such transfer orders would amount to `unfair labour practice' being illegal at law. Thus the attempt on the part of the appellant to transfer these excess workmen from November, 1981 on the admitted position that they had become surplus in the composition department at Nagpur because of the successful installation and working of the photo type composing machine at the premises, became abortive. Consequently, from November, 1981 the installation of the photo type machine ceased to remain an experimental measure but became a stark reality and this machine had necessarily a tendency to displace the workmen who were earlier working in the hand composing department. Thus, at least from November, 1981 scheme of rationalisation had come to stay in composing department of the appellant. Under these circumstances, even accepting the contention of learned counsel for the appellant that the likelihood of the respondent and other workmen being retrenched because of the aforesaid machine was not a realised possibility from January, 1981 at last became a certainty from November, 1981. In fact the Labour Court has also come to this very conclusion in paragraph 13 of its judgment wherein the Labour Court on the admitted position on record has held as under :

> ".The management had transferred about 11 hand compositors including the complainant to Jalgaon by order dated 4.11.81. It appears that at that time only the management was ready to get the work of composing done exclusively by that photo type setting machine and hence the services of hand compositors were no longer required at Nagpur. In fact at least that time the notice of change ought to have been given by the respondent because the services of hand compositors were not useful and were transferred only in November 1981 obviously because the work of composing was done on the photo type setting machines."

The aforesaid finding of fact which was confirmed by the Revisional Court as well as the learned Single Judge of the High Court leaves no room for doubt that by 4.11.1981 the scheme of rationalisation had already come into force and that scheme had a direct nexus and a realised possibility of making the respondent and other workmen surplus liable to retrenchment as surplus staff. Once that happened, it becomes obvious that there remained no occasion thereafter for the appellant-management to resort to Section 9-A of the Act belatedly by giving notice of change only in February, 1982. The appellant in this connection had missed the bus. It was a futile attempt to lock the stables after horses had bolted.

As noted earlier, on the scheme of Section 9-A read with item 10 of the Fourth Schedule, before introducing such a new scheme of rationalisation which had a likelihood and a tendency to affect the existing service conditions of the workmen, a notice under Section 9-A was required to be issued prior to the installation of the photo composing machine. Such a notice could have been sent before January, 1981 when such a machine was brought in the premises as an experimental measure or at least before 4.11.1981 when the same was continued to be installed as a confirmed necessary component of machinery for printing at the appellant's premises at Nagpur. If such a notice was given to the respondent - workman and other workmen similarly situated they could have persuaded the appellant to resort to any other type of rationalisation or to absorb them on suitable jobs in the same premises in any other department of the appellant at Nagpur. That opportunity was never made available to the respondent. Therefore, notice under Section 9-A issued after installation of the machine and after bringing into force the rationalisation scheme was ex facie a stillborn and incompetent notice and was clearly violative of the provisions of Section 9-A of the Act which amounted to putting the cart before the horse. Such an incompetent and illegal notice under Section 9-A could not legally enable the appellant to terminate the services of the respondent. We may mention at this stage that the impugned termination order dated 22.6.1982 clearly recites as follows :

> "In the notice given on 25th March, 1982, under Section 9-A of the Industrial Disputes Act, 1947, the Management had noted that it may require to reduce 25 workmen from service for the purpose of introducing new technology in the composing section.
>
> The Conciliation Officer has noted in his order dated 22.6.82 that the proceedings started on the basis of this notice have proved unsuccessful and, therefore, the Management has now decided to terminate with immediate effect the following 25 workmen.
>
> Name of Workmen Post 1. Shri Maniram Choudhary Foreman 2. Shri Shankarprasad Pathak Foreman 3. to 25 Xxxxxxxxxxxxxx"

That is how the listed workmen, including the respondent herein, were sought to be discharged from service. Thus the foundation of the impugned order of discharge is the notice under Section 9-A dated 25th March, 1982. Once that foundation is knocked off as incompetent, illegal and uncalled for the entire edifice of retrenchment order against the respondent falls to the ground.

It may also be noted at this stage that by two decisions rendered by Bench of three learned Judges of this Court in connection with the time for issuance of notice under Section 9-A read with item 10 Schedule IV with which we are concerned in the present case it has been clearly ruled that such notice must precede the introduction of rationalisation scheme. We may usefully refer to them at this stage. In the case of M/s. North Brook Jute Co. Ltd. & Anr. vs. Their Workmen (1960 (3) S.C.R. 364), a three Judge Bench of this Court had to consider the question whether in a reference

regarding proposed introduction of rationalisation scheme which was preceded by notice under Section 9-A of the I.D. Act, such a scheme could be actually introduced pending reference proceedings and whether such an act on the part of the management could be treated to be illegal entitling the workmen affected by such an introduction to go on strike and still earn wages for the strike period. Answering this question in affirmative it was held by this Court that after notice under Section 9-A of the I.D. Act when a scheme of rationalisation was said to be introduced but was not actually introduced it could not be introduced till the dispute regarding such proposed introduction was resolved by the competent Court. Dealing with the scheme of proposed rationalisation as envisaged by item no.10 of Schedule IV of the I.D. Act it was observed that :

> "Rationalisation which was introduced had therefore two effects- first that some workers would become surplus and would face discharge; and secondly, the other workmen would have to carry more workload. The introduction of the rationalisation scheme was therefore clearly an alteration of conditions of service to the prejudice of the workmen. The alteration was made on the 16th December, when reference as regards the scheme had already been made and was pending before the Industrial Tribunal. The Tribunal has therefore rightly held that this introduction was a contravention of s. 33."

The aforesaid decision, therefore, has clearly ruled that introduction of rationalised scheme by itself would amount to alteration of conditions of service of the workmen to their prejudice. It, therefore, follows that before effecting such a change, meaning thereby, before introducing such a rationalisation scheme which has a tendency to change the conditions of service of workmen, notice under Section 9-A as a condition precedent becomes a must. If learned counsel for the appellant is right, that machine can be introduced on experimental basis first or even after it has already worked for some time and is required to be continued as a full-fledged machine, as and when the employer decides to terminate the services of the workmen as a direct consequence of such introduction of machine, he can give notice under Section 9-A of the Act at any such time, then the very scheme of Section 9-A read with Schedule IV item no.10 of the I.D. Act would be rendered ineffective and inoperative. The purpose of issuing such a notice prior to the introduction of the scheme of rationalisation would get frustrated and then there would remain no effective opportunity for the conciliator to try to arrive at an amicable settlement regarding the dispute centering round the proposed introduction of the scheme of rationalisation which is likely to result in the retrenchment of workmen. Equally there would remain no opportunity for the State Government on receipt of failure report from the conciliator to make a reference of such live industrial dispute for adjudication by the competent Court on merits. It is obvious that when such dispute regarding the proposed introduction of the rationalisation scheme is referred for adjudication of the competent Court, the said Court after hearing the parties and considering the evidence can come to the conclusion whether the proposed scheme is justified on facts or not and whether any violation of the provisions of Section 9-A had resulted into illegality of the consequential orders of retrenchment. Such competent Court can also accordingly pass appropriate consequential orders directing the management to withdraw such a scheme of rationalisation or in any case, can order reinstatement of workmen with proper back-wages if such retrenchment is found to be illegal on account of failure to comply with the provisions of Section 9-A of the Act. The question regarding the stage at which

notice under Section 9-A can be issued in connection with proposed scheme of rationalisation which has likelihood of rendering existing workmen surplus and liable to retrenchment as mentioned in item no.10 of Schedule IV of the I.D. Act was once again examined by a three judge bench of this Court in Hindustan Lever Ltd. vs. Ram Mohan Ray & Ors. (1973 (4) SCC 141). In that case, this Court was concerned with a scheme of rationalisation and re-organisation which were proposed to be introduced by Hindustan Lever Ltd., appellant before this court, and for which a prior notice under Section 9-A before introducing such re- organisation scheme was issued to the workmen but which had no tendency or likelihood of displacing or retrenching them. It was the contention of the workmen that even for such a scheme a notice under Section 9-A was a must. Examining the scheme of reorganisation in question, it was held that once the scheme was not likely to result in retrenchment of any workman Section 9-A read with item no.10 of Schedule IV did not get attracted on the facts of the case. In this connection the following pertinent observations on the scheme of Section 9-A read with item no.10 of Schedule IV were made by Alagiriswami J., while dealing with the contention of learned counsel for the workmen :

"He also urged that rationalisation and standardisation per se would fall under item 10 even if they were not likely to lead to retrenchment of workmen and only improvement of plant or technique would require that they should lead to retrenchment of workmen in order to fall under item 10. A further submission of his was that standardisation merely meant standardisation of wages. We are not able to accept this argument. It appears to us that the arrangement of words and phrases in that item shows that only rationalisation or standardisation or improvement of plant or technique, which is likely to lead to retrenchment of workmen would fall under that item. In other words, rationalisation or standardisation by itself would not fall under item 10 unless it is likely to lead to retrenchment of workmen. The reference to rationalisation at page 257 of the report of the Labour Commission and the reference to standardisation of wages in it are not very helpful in this connection. Standardisation can be of anything, not necessarily of wages. It may be standardisation of workload, standardisation of product, standardisation of working hours or standardisation of leave privileges. Indeed in one decision in Alembic Chemical Works Co. Ltd. v. The Workmen, there is reference to standardisation of conditions of service, standardisation of hours of work, wage structure. That case itself was concerned with standardisation of leave. The whole question whether this reorganisation falls under item 10 depends upon whether it was likely to lead to retrenchment of workmen."

In view of the aforesaid decision, it becomes obvious that if the proposed scheme of rationalisation has a likelihood of rendering existing workmen surplus and liable to retrenchment, then item no.10 of Schedule IV would squarely get attracted and would require as a condition precedent to introduction of such a scheme a notice to be issued under Section 9-A by the management proposing such an introduction of the scheme of rationalisation, but if the proposed scheme is not likely to displace any existing workmen then mere rationalisation which has no nexus with the possibility of future retrenchment of workmen would not attract item no.10 of Schedule IV and would remain a benign scheme of rationalisation having no pernicious effect on the existing working staff. In view of the aforesaid settled legal position, there is no escape from the conclusion that the impugned notice dated 25th March, 1982 under Section 9-A which was issued long after the actual installation of the photo composing machine had fallen foul on the touchstone of Section 9-A read with Schedule IV

item no.10. Such a notice in order to become valid and legal must have preceded introduction of such a machine and could not have followed the actual installation and effective commission of such a machine. The decision rendered by the Division Bench in this connection is found to be perfectly justified both on facts and in law. It must, therefore, be held that the impugned termination or discharge of the respondent was violative of the provisions of Section 9-A of the I.D. Act and he was discharged from service without the appellant's following the mandatory requirements of Section 9-A of the I.D. Act. Effect of non-compliance of Section 9-A of the I.D. Act renders the change in conditions of service void ab initio. This legal position is well settled in the case of Workmen of the Food Corporation of India vs. Food Corporation of India [(1985) (2) SCC 136], a three Judge Bench of this Court, speaking through Desai J., in para 19 of the report, laid down as under :- "It is at this stage necessary to examine the implication of Section 9-A of the I.D. Act, 1947. As hereinbefore pointed out, Section 9-A makes it obligatory upon an employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give a notice of desired or intended change. It cannot do so without giving to the workman likely to be affected by the change, a notice in the prescribed manner of the nature of the change proposed to be effected and within 21 days of giving such notice. There is a proviso to Section 9-A which has no relevance here.

Xxxxxx xxxxx xxxxx Xxxxxxx xxxxx xxxxx Therefore, obviously a notice of change was a must before introducing the change, otherwise it would be an illegal change. Any such illegal change invites a penalty under Section 31(2) of the I.D. Act, 1947. Such a change which is punishable as a criminal offence would obviously be an illegal change. It must be held that without anything more such an illegal change would be wholly ineffective."

Point No.3, therefore, is answered in affirmative against the appellant and in favour of the respondent.

Point No.4: It has to be kept in view that the present proceedings arise out of a complaint filed by the respondent-workman alleging `unfair labour practice' on the part of the appellant-management when it passed the impugned order of retrenchment against him.

The said complaint was moved under Section 28 of the Maharashtra Act. The topic of `unfair labour practice' is dealt with in Chapter VI of the said Act. Section 26 is the first section in the said chapter which provides as follows : "`unfair labour practices:- In this Act, unless the context requires otherwise, `unfair labour practices' mean any of the practices listed in Schedules II, III and IV."

Section 27 lays down as follows : "Prohibition on engaging in unfair labour practices:- No employer or union and no employee shall engage in any unfair labour practice."

Section 28 lays down the procedure for dealing with complaints relating to `unfair labour practices'. Sub-section (1) thereof provides as follows :- "(1) Where any person has engaged in or is engaging in any unfair labour practice, then any union or any employee or any employer or any Investigating Officer may, within ninety days of the occurrence of such `unfair labour practice', file a complaint before the Court competent to deal with such complaint either under section 5, or as the case may

be, under section 7, of this Act:

> Provided that, the Court may entertain a complaint after the period of ninety days from the date of the alleged occurrence, if good and sufficient reasons are shown by the complainant for the late filing of the complaint."
>
> It is not in dispute in this case that the respondent invoked the jurisdiction of the Labour Court which was competent to deal with his complaint regarding `unfair labour practice', under items 1 (a), (b), (d) and (f) of Schedule IV of the Maharashtra Act. Section 7 of the Act lays down the duties of Labour Court and states as under :-
>
> "It shall be the duty of the Labour Court to decide complaints relating to unfair labour practices described in item 1 of Schedule IV and to try offences punishable under this Act."

When we turn to Schedule IV item no.1, we find therein listed number of heads of `unfair labour practice's which can support any complaint thereunder. The relevant clauses of item no.1 of Schedule IV which were invoked by the respondent for supporting his complaint against the impugned retrenchment order were clauses (a), (b), (d) and (f). Item no.1 with all its sub-clauses reads as under :- "To discharge or dismiss employees - (a) by way of victimisation; (b) not in good faith, but in the colourable exercise of the employer's rights; (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence; (d) for patently false reasons; (e) on untrue or trumped up allegations of absence without leave; (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste; (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."

We have, therefore, to see as to whether in the light of our findings on point nos.2 and 3 the respondent could rely upon any of these clauses of item no.1 of Schedule IV in support of his complaint. Now a mere look at the aforesaid provision shows that an employee who makes a grievance against order of discharge or dismissal passed against him can invoke any of the listed clauses (a) to (g) of item no.1 of Schedule IV. Learned counsel for the appellant was, therefore, right when he contended that first it should be alleged by the complainant-employee that he was discharged or dismissed from service by the employer and then he has to further show whether such an order attracted any of the clauses (a) to (g) of item no.1 of Schedule IV. Learned counsel for the appellant, in this connection, vehemently contended that item no. 1 of Schedule IV of the Maharashtra Act deals with only punitive discharges or dismissals and not any simpliciter discharge order or termination order which is not passed by way of punishment. In order to support this contention, learned counsel for the appellant relied upon principles of interpretation, namely, the principle of noscitur a sociis as well as the principle of ejusdem generis. So far as the first principle of interpretation is concerned, he referred to "Maxwell on The Interpretation of Statutes", 12th Edition at page 289 dealing with the question regarding understanding associated words in common sense. The learned author in connection with this principle has made the aforesaid pertinent

observations : "Where two or more words which are susceptible of analogous meaning are coupled together, noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general being restricted to a sense analogous to that of the less general. (One application of this general principle is the ejusdem generis rule, which is discussed in the next section of this chapter.)"

> It becomes, therefore, obvious that before this principle of interpretation can be pressed in service, it must be shown that both the words `discharge and dismissal' are employed by the Legislature in Schedule IV item no.1 in the same sense or that they are susceptible of analogous meaning. This rule of construction in other words lays down as follows : "The meaning of a word is to be judged by the company it keeps."

As held by this Court in the case of M.K. Ranganathan & Anr vs. Govt. of Madras & Ors. (AIR 1955 SC 604 at 609) relying upon Privy Council decision in `Angus Robertson v. George Day', [(1879) 5 AC 63 at p 69 (E)]: "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them".

Keeping in view this well settled principle of construction of statutes, let us see whether in the settings of item no.1 clauses (a) to (g) the word `discharge' as employed by the Legislature has meaning analogous to that of the word `dismiss'. When we have a close look at clauses

(a) to (g) of item no.1 of Schedule IV, we find that the word `discharge' is not intended by the Legislature to have the same or analogous meaning as the word `dismiss'. The reason is obvious. The word `dismiss' necessarily connotes an action of the employer who seeks to impose punishment on his mis- conducting employee. Such a punishment cannot be imposed without following the principles of natural justice and the relevant applicable rules of domestic inquiry. But the word `discharge' is not necessarily confined to orders of termination by way of penalty only. The word `discharge' has wider connotations. A mis-conducting employee facing charges in a domestic inquiry may be punished by way of imposing on him an order of dismissal which may make him ineligible for any other employment but if it is found that the charges which are proved are not that serious but the employee would not deserve to be continued in service then an order of discharge by way of lesser penalty can be imposed on him. Such an order would remain a punitive discharge. Thereby the employer wants to punish the employee for his misconduct but does not want him to become ineligible for employment elsewhere considering less serious nature of proved charges of misconduct against him in domestic inquiry. But that is not the end of the matter. In service jurisprudence the term `discharge' has assumed a wider connotation and may include in its fold not only punitive discharge orders but also simpliciter discharge orders where the employer seeks to snap the relationship of employer and employee but without any intention to penalise the employee. He does so because of exigencies of service and employment conditions which may require him to say goodbye to the employee but without any intention to punish him. Such simpliciter discharge orders can be illustrated as under :

An employee, on probation, may not be found to be suitable and may not earn sufficient merit so as to be confirmed in service. Consequently, his probation may be terminated and an order of discharge simpliciter can be passed against him. There may also be other cases of single discharge under the contract of employment for a fixed period where an employee on efflux of time may be terminated. There may also be cases where an employee may become surplus and would no longer be required by the employer. An order of retrenchment, therefore, may be passed against him subject, of course, to following the statutory requirements of Section 25-F and 25-G of the I.D. Act if they are applicable. These illustrations are not exhaustive but they indicate such orders of discharge are passed by an employer who does not want to punish the employees but still is not in a position to continue them in service. Such simpliciter discharge orders are also a category of discharge orders. Therefore, the word `discharge' as employed by the Legislature in item no.1 of Schedule IV cannot necessarily be confined only to punitive discharges as tried to be submitted by learned counsel for the appellant. Once we consider the words `discharge' or `dismissal' as employed in the opening part of item no.1 by the Legislature in the light of various clauses representing different situations under which such discharge or dismissal orders are said to amount to `unfair labour practice' on the part of the employers, it becomes at once clear that the Legislature was not contemplating only punitive discharge orders but was contemplating both types of discharge orders, namely, punitive as well as non-punitive discharge orders.

The very first item (`a') deals with the discharge or dismissal order passed by way of victimisation of the employee. It is easy to visualise that an employer may like to dispense with the services of an employee who, according to him, is a trouble maker. He may not have been involved in any misconduct as such still by way of putting an end to his service on extraneous reasons, if an order of discharge is passed it may remain simpliciter order of discharge but if it is found based on extraneous reasons it would be by way of victimisation. Such a discharge order may not necessarily be a punitive discharge order. The employer would not like to punish the employee for any of his misconduct but would not like him to continue in service as according to the employer he may be an undesirable person not suitable to the management is for example a militant trade union leader who, according to the employer, is any how to be required to be sent out of service. When such type of discharge orders are passed by way of victimisation they would be simpliciter discharge orders when not backed up by relevant reasons. It cannot be said that such simpliciter discharge orders are not covered by item `1' clause (`a') of Schedule IV. Similarly clause (`b') may contemplate a discharge order which is not passed in good faith but in the colourable exercise of employer's rights. Thus, the employer may have merely a pretext to put an end to the service of the employee who may not have misconducted himself at all. Therefore, there will be no occasion to have any departmental inquiry against him as no charge could be framed regarding any misconduct on his part. Still if such an undesirable employee is to be removed from service then even though the simpliciter discharge order is passed if it is shown that it is not in good faith but as a result of

malafide intention of the employer, then such a discharge order can also attract the category of `unfair labour practice' as enacted by the Legislature in item nos. (`a') and (`b'). Similar Legislature scheme is discernible from clause (c) of item no. 1 which deals with an order of discharge or dismissal by falsely implicating an employee in a criminal case on false evidence or on concreted evidence. In such a situation discharge or dismissal order may operate as a penal order. Similarly, clause (d) may cover cases which are orders of discharge or dismissal by way of penalty as well as simpliciter discharge orders based on a patently false reasons. Clause (e) referring to discharge or dismissal may cover both the cases of dismissal by way of penalty on such grounds or discharge by way of penalty on such grounds and equally a discharge order simplicitor on account of false allegations of absence without leave. So far as Clause (f) is concerned, the first part squarely covers a case of dismissal or discharge by way of penalty as it deals with such orders passed after conducting domestic inquiry about the alleged misconduct of the employee but in utter disregard of the principles of natural justice but so far as the second part of clause (f) of item no.1 is concerned, if an employee is dismissed with undue haste it may be by way of penalty as in domestic inquiry apart from following the principles of natural justice, sufficient and reasonable opportunity to defend may be denied to the employee and with undue haste the dismissal order may be passed. That would obviously be a penal order but so far as discharge order is concerned, it may also be passed by way of penalty with undue haste but the said part of clause (f) may equally cover those discharge orders which are simpliciter discharge orders not by way of penalty but still being passed with undue haste on the part of the employer who may not be wishing to punish the employee but wishing to say goodbye to the employee on the ground that he is otherwise an unwanted person. Such discharge orders passed with undue haste may not necessarily be penal and still may amount to `unfair labour practice' if they are passed with undue haste. Clause (g) of item no.1 obviously refers to only discharge or dismissal orders which are penal in nature as they have a direct linkage with misconduct of the employee.

The aforesaid resume of various clauses of item no.1 of Schedule IV leaves no room for doubt that when the Legislature used the words `discharge' or `dismissal' of the employees under circumstances enumerated in clauses (a) to

(g) in item no.1 of Schedule IV it contemplated dismissal orders which obviously are penal in nature but it also contemplated discharge orders which may either be penal or non- penal in nature and still if any of the relevant clauses of item no. 1 got attracted in connection with such discharge orders they would make the employer, author of such discharge orders answerable for the alleged `unfair labour practice' permeating the passing of such simpliciter discharge orders. To recapitulate, in the present case, respondent's complaint is not that his discharge was by way of penalty but his complaint is that the discharge order in his case was a result of victimisation and was not passed in good faith but was passed on patently false reasons and was a result of undue haste on the part of the appellant-employer. Whether the said

complaint was justified on merits or not is a different matter but it can not be said that such a complaint regarding non-penal discharge order was dehors the scope and ambit of item no.1 of Schedule IV of the Maharashtra Act. Before parting with the discussion on this aspect we may mention that learned counsel for the appellant also relied upon the other rule of interpretation, namely, rule of ejusdem generis. The said rule of interpretation provides as follows :

"When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. This rule which is known as the rule of ejusdem generis reflects an attempt "to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous".

It is difficult to appreciate how this principle of interpretation can be invoked by learned counsel for the appellant in connection with item no.1 of Schedule IV. The word `discharge' is a general word. It is followed by the word `dismissal' which contemplates only one category of cases or situations where penalty is imposed by the employer on the workmen concerned. The rule of ejusdem generis would have applied if the word `discharge' represented a particular species belonging to the genus reflected by the general word `dismiss'. This is a converse case where a general word `discharge' is followed by the word `dismiss' which is of a particular nature or pertains to a limited class or category of penal situations. Obviously, therefore, neither of them is a genus and nor of them is a species of the very same genus. The word `discharge' connotes an entirely different category of orders comprising of both simpliciter discharge orders not by way of penalty as well as discharge orders by way of penalty but not involving extremely pernicious results flowing from such orders while the word `dismiss' is purely an order of penalty and that too of an extreme type. Consequently, the aforesaid rule of interpretation cannot be of any avail to learned senior counsel for the appellant. On the contrary, as seen by us earlier, the words `discharge' and `dismissal' as employed by the Legislature in item no.1 of Schedule IV covered different types of situations and circumstances under which they are passed. It is, therefore, not possible to agree with the submission of learned senior counsel for the appellant that unless the respondent shows that he was discharged by way of penalty, he cannot invoke any of the clauses of item no.1 of Schedule IV.

Before leaving the discussion on this aspect, we may refer to a decision of this Court on which strong reliance was placed by learned counsel for the appellant. In the decision of the Constitutional Bench of this Court in State of Rajasthan & Anr. vs. Sripal Jain, (1964 (1) SCR 742), this Court was concerned with the interpretation of Rule 244(2) of the Rajasthan Service Rules read with rule 31(vii)

(a) of the Rules. In the light of the said statutory scheme of these Rules, the Court made the following pertinent observations :

> "Held, that compulsory retirement provided in r. 31(vii)(a) is a compulsory retirement as a penalty and not compulsory retirement of the other two kinds namely (1) Compulsory retirement on attaining the age of superannuation and (2) compulsory retirement under r.244(2), neither of which is a punishment."

It is difficult to appreciate how the said decision rendered on the special scheme considered by this Court in that case can be of any assistance to learned counsel in the present case. The scheme with which we are concerned contraindicates any such conclusion as tried to be pressed in service by learned counsel in support of his contention that the word `discharge' is used synonymously or analogously by the Legislature along with the word `dismissal'. It is also well settled that the word `discharge' may not only be by way of penalty. Discharge of a probationer on unsuitability, as noted earlier, would not be by way of penalty. Similarly, even in case of compulsory retirement as laid down by a catena of decisions of this Court in the context of the relevant statutory rules, this action may not be penal. In this connection, we may refer to a decision of this Court in K.Kandaswamy vs. Union of India & Anr., (JT 1995 (7) S.C. 80), wherein it has been observed that "..Compulsory retirement does not amount to dismissal or removal from service within the meaning of Article 311 of the Constitution. It is neither punishment nor visits with loss of retiral benefits ; nor does it cast stigma."

Consequently, it cannot be held that wherever the word `discharge' is used in any statutory instrument it must necessarily connote a penal discharge as tried to be submitted by learned counsel for the appellant. In the case of High Court of Judicature at Patna vs. Pandey Madan Mohan Prasad Sinha & Ors. [(1997) 10 SCC 409], it has been held by the Bench of this Court that if a probationer is discharged on the ground of unsuitability, the said order can be challenged only on the ground that it is arbitrary or punitive. If it is not punitive then such an order cannot be challenged at all. It is further observed that principles of natural justice have no application in case of termination of services of a probationer during the period of probation since he has no right to hold that post. In such case, it is obvious that discharge of such a probationer on the ground of unsuitability cannot be treated to be a punitive discharge.

Once this ground is cleared, the arena of contest between the parties becomes well defined. It has to be pleaded and proved by the respondent-complainant that though the order of termination or retrenchment was not passed by way of penalty by the appellant, it attracted all or any of the clauses (a),(b),(d) & (f) of item no.1 of Schedule IV as his complaint was based on these clauses only. In the light of the evidence which is on record and on which there is no dispute between the parties, it becomes clear that the appellant wanted to switch over to the process of composing by utilising photo type-setting machine and in the process the hand composing department engaging respondent and other workmen had to be wound up. That naturally resulted in the employees in the erstwhile hand composing department becoming excess and surplus. That is the reason why impugned notice under Section 9-A of the I.D. Act was issued to the respondent and other workmen and ultimately resulted in the impugned retrenchment order. It is difficult to appreciate how such an action on the part of the appellant can be treated to have been the result of victimisation. The respondent was not being victimised for any extraneous reason. On the contrary, it was based on a genuine factual reason. Hence clause (a) of item no.1 of Schedule IV is out of picture. Parameters of

the term `victimisation' have been considered by a three Judge Bench of this Court in the case of Colour-chem Limited vs. A.L. Alaspurkar & Ors. [1998 (1) Scale 432], where one of us, S.B.Majmudar J., speaking for the Bench in para 13 of the report observed that the term `victimisation' is a term of comprehensive import. Thus, if a person is made to suffer by treatment, it would amount to victimisation. On the facts of the present case, therefore, it is not possible to hold that the impugned discharge of the respondent was based on non-germane or extraneous reasons or it was passed with a view to make the respondent suffer for no real reason.

It is, therefore, not possible to agree with the reason of the Division Bench of the High Court in the impugned judgment that the action of the appellant was by way of victimisation of the respondent. Item no.1 clause

(a) of Schedule IV, therefore, does not apply to the facts of the present case.

On a parity of reasoning it has to be held that the discharge of the respondent from service cannot be said to be not in good faith but in the colourable exercise of employer's rights. It cannot be gainsaid that the appellant had good reason to discharge the respondent who was rendered surplus in hand composing department because of the introduction of the machine in question. It is difficult to impute any bad faith to the appellant as the appellant tried its best to provide alternative job to the respondent at Jalgaon but the said offer was not accepted by the respondent and, on the contrary, the transfer order was got declared illegal and an act of `unfair labour practice' in proceedings culminating before the Tribunal. Clause (b) of item no.1 of Schedule IV, therefore, is also not attracted on the facts of the present case. The third prank of respondent's complaint pertains to the applicability of clause (d) of item no.1 of Schedule IV. The said clause can be attracted only if it is shown that the impugned termination was for patently false reasons. It is difficult to appreciate how the Division Bench persuaded itself to hold that the said clause was attracted on the facts of the present case. The appellant had a genuine reason for terminating the services of the respondent as hand composition department had become redundant on account of the introduction of the machine in question. It is true, as submitted by learned counsel for the respondent, that the impugned retrenchment order dated 22.6.1982 showed that the management, as per notice under Section 9-A, had noted that it may require to reduce 25 workmen from service for the purpose of introducing new technology. It is also true that the new technology was already introduced by the management months prior to the day of the termination order dated 22nd June, 1982, to be precise from January, 1981 on an experimental basis as submitted by learned counsel for the appellant and on regular basis at least from November, 1981. Still it cannot be held that the proposed termination was not based on real reason or was effected on patently false reasons. If no such machine was ever introduced and still such a ground was made out for passing the impugned order, then it could have been said that the impugned termination was passed on patently false reasons. The patently false reason would be one which has no existence at all in fact and is a mere pretext or an excuse. Such is not the situation in the present case. It may be that the reason given may not be strictly accurate in the sense machine was already introduced and was not likely to be introduced by the time notice under Section 9-A was given followed by the impugned termination order. That may have effect of non-compliance of the provisions of Section 9-A. The said notice, as we have seen earlier, on that score may become inoperative or illegal. Still the reason for termination cannot be said to be

patently false. We, therefore, disagree with the conclusion of the Division Bench of the High Court in view of our aforesaid findings regarding non-applicability of clauses (a), (b) & (d) of item 1 of Schedule IV. On this conclusion, we would have been required to dismiss the respondent's complaint but for the fact that the fourth leg of the respondent's complaint invoking clause (f) second part of item no.1 cannot be said to be non-existent or unjustified or uncalled for. As we have already discussed, order of discharge whether punitive or non-punitive if found to be the result of undue haste on the part of the employer, the inevitable result will be that the employer would be guilty of `unfair labour practice' as laid down by Schedule IV item no.1 clause (f) second part. In the facts of the present case, the decision rendered by the Division Bench of the High Court on this score cannot be found fault with. It has to be recalled that the proceedings in connection with notice under Section 9-A were pending in conciliation. Efforts were made by the Conciliation Officer for seeing that the parties come to an amicable settlement. Of course, those efforts failed and on 22nd June, 1982 by 4.35 p.m. the Conciliation Officer orally declared that the conciliation had failed and investigation was at an end. However, as seen earlier, that was not the end of the matter. The Conciliation Officer did not become functus officio on that day. As per Section 12 sub-section (4) of the I.D. Act thereafter he had to give a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. That obviously would have taken a few days, if not more, before such report could have been prepared by the Conciliation Officer. It is, therefore, difficult to appreciate how the appellant in hot hurry and within almost half an hour from the close of investigation on the very same day by 5'O clock in the evening could pass the impugned termination order against the respondent. It has to be appreciated that in the report which was to follow, the Conciliation Officer was required to highlight the nature of the dispute between the parties in the light of the notice under Section 9-A given by the appellant to the respondent union. It is easy to visualise that even in such a failure report the conciliator could have given his prima-facie opinion regarding the nature of the dispute and the reasonableness thereof. It is also to be kept in mind that once such report reaches the State Government, in the light of the report if the State Government finds that the dispute is a genuine dispute which requires adjudication, it may make an order of reference or if, on the other hand, the State Government finds from the report that the dispute is frivolous it may not make a reference but that stage could reach only after the report is received and scrutinised by the State Government. Under these circumstances, for passing the impugned retrenchment order within half an hour of the close of investigation by the Conciliation Officer, the appellant could not have presumed that the report would necessarily indicate total frivolousness of the dispute and that would not persuade the State to make a reference of the dispute for adjudication by a competent Court. Without waiting to see as to what will be the nature of the report and the contents, the appellant tried to help itself and in undue hurry passed the impugned order. The result was that by one stroke the appellant pre-empted the report of the conciliator on the one hand and on the other hand even the future objective action of the State Government on such a report. It is also important to note that on the report of the conciliator, the State Government could have thought it fit to refer the dispute for adjudication and in the present case on the basis of the said report, reference was in fact made by the State Government regarding the legality of the scheme of rationalisation resulting in the likelihood of retrenchment of the workmen concerned. The said reference became infructuous only because the appellant, in the meantime, invoked

jurisdiction of the Labour Court under Section 28 of the Maharashtra Act. That resulted in the applicability of Section 59 of the Maharashtra Act which lays down as under : "If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."

It is because of the aforesaid provision of Section 59 of the Maharashtra Act that the referred dispute under Section 10 of the I.D. Act got disposed of. However, the fact remains that on the failure report submitted by the Conciliation Officer the appropriate Government had thought it fit to prima facie hold that the dispute was a real one which required adjudication by the competent Court under the I.D. Act. It is also necessary to note that in such references received by the competent Court under the I.D. Act in appropriate cases, the Court to which such references are made has ample jurisdiction to pass interim orders and if the Court had found that the impugned retrenchment order was required to be stayed even though it had been passed after conciliation proceedings were over and when there was no prohibitory order from any authority such retrenchment order could have been stayed. Further implementation of the impugned change could have been stayed vide The Management Hotel Imperial, New Delhi and others vs. Hotel Workers' Union (AIR 1959 SC 1342) and The Hind Cycles Ltd. and another vs. The Workmen (AIR 1974 SC 588).

It is also to be noted that in the facts of the present case, as already held by us on point no.1, the conciliation proceedings had not terminated when the impugned order was passed. The result was that Section 33(1) got violated and the appellant became liable to be punished as per Section 31(1) of the I.D. Act incurring a penalty for being convicted of an offence punishable with imprisonment for a term which may extend to 6 months or with fine or with both. Thus the impugned order cannot, but be held to have been passed with undue haste. The intention behind passing such a hurried order was obviously to cut across and pre-empt the submission of failure report by the conciliator on the one hand and its consideration by the State on the other and even for avoiding the future possibility of a reference under the I.D. Act and also the future possibility of the Court's intervention by way of interim relief against such order. But to crown it all by such undue hurry the appellant made itself liable to be punished and incurred a criminal liability for the same. All these consequences unequivocally project only one picture that the impugned order was passed in a great hurry and with undue haste. This conclusion is inevitable on the aforesaid facts which have remained well established on the record of the present case. Consequently, agreeing with the view of the Division Bench in the impugned judgment it must be held that the respondent's complaint was well sustained at least under clause (f) second part of item 1 of Schedule IV and as the impugned order was passed with undue haste the inevitable result is that by the said act the appellant is liable to be treated as guilty of `unfair labour practice'.

We may also mention in this connection one another facet of this question. As the Conciliation Officer, after hearing the parties, had declared that investigation was over and settlement had not taken place, at least a few days were available after 22nd June, 1982 to the appellant for moving the

Conciliation Officer to give the appellant permission to retrench the respondent. It is not possible to agree with the finding of the Labour Court that the Conciliation Officer could not have entertained such a request. He had not even drafted his report, much less submitted the same to the State Government at least within a few days after 22nd June, 1982. The very fact that the report reached the State Government on 13th August, 1982 shows that the conciliator would have despatched the same at least a couple of days after 22nd June, 1982, having complied with all the statutory requirements under Section 12(6) for preparation of such a report. Even on the next day of 22nd June, 1982 such a request could have been made by the appellant and the conciliator would not have felt any inhibition in recalling both the parties and hearing them on such a request on the part of the appellant to give permission to it to pass the impugned termination order as the conciliation had failed. Even by passing such a legally permissible and factually feasible course, and without waiting even for more than half an hour the impugned order was passed. It is easy to visualise that it was possible that if such a request was made by the appellant it could have been granted or it could have been rejected. If such a request was rejected by the conciliator then, of course, the impugned order could not have seen the light of the day and if thereafter the State Government had made the reference after reading the failure report, then the existing position regarding service condition of the respondent could have been continued by the reference Court pending the adjudication of such a dispute. The appellant with a view to avoid all these uncomfortable situations indulged in self help and passed the impugned order on the very evening of 22nd June, 1982. This is an additional facet of the deliberate undue haste resorted to by the appellant for short circuiting all possible inconvenient situations and to present the respondent with a fait accompli and also to placate the Conciliation Officer on the one hand and the State Government on the other and ultimately the reference Court also. Consequently it must be held that the impugned order was clearly a result of undue haste and, obviously amounted to `unfair labour practice' on the part of the appellant as per Schedule IV item 1 clause (f) second part. Consequently, this point for determination is held against the appellant and in favour of the respondent only to the extent of applicability of the aforesaid provision.

Point No.5: So far as this point is concerned, we have already noted that the Labour Court itself has found that notice under Section 9-A was a belated one and should have been given at least by November, 1981 when the machine in question became fully operative resulting in displacement of workers in hand composing department. Still by curious reasoning, it has been held that there was nothing wrong with the notice though given belatedly and that the termination order was also not offending Section 33(1) of the Act. These findings show patent errors of law and could not be sustained. The Industrial Court, on the other hand, came to an equally erroneous finding on the applicability of item 10 of Schedule IV of the I.D. Act when it held that the said item would apply not at the time when the rationalisation scheme was introduced, but at the time when the employer desired or decided to terminate the services of the employees. This reasoning of the Industrial Court is contrary to the very scheme of item 10 of Schedule IV of I.D. Act and totally ignores the term `likely to lead to retrenchment' as found in the said item. The reasoning of the Industrial Court almost amounts to rewriting the said phrase as "decide to retrench the workmen". These patent errors of law committed by the Labour Court and the Industrial Court were totally bypassed by the learned Single Judge while he dismissed the Writ Petition. These patent errors of law, therefore, were rightly set aside by the Division Bench of the High Court in the Letters Patent Appeal. It could

not, therefore, be said that the impugned judgment had tried to interfere with the pure findings of the fact reached by the authorities below on evidence against the respondent. It was perfectly open to the Appellate Court in the hierarchy of proceedings to interfere with such patent errors of law and to correct them, otherwise it could have been said that it had failed to discharge its duty and that would have also amounted to failure to exercise jurisdiction on its part. The aforesaid point is, therefore, answered in affirmative against the appellant and in favour of the respondent by holding that the Appellate Court had corrected patent errors of law and had not interfered with the pure findings of the facts not connected with the relevant questions of law with which they were intertwined.

Point No.6: Now is the time for us to take stock of the situation in view of our aforesaid findings on the relevant points for determination. The final order passed by the High Court in the impugned judgment has to be sustained. However, one aspect of the matter cannot be lost sight of while closing the present chapter. The respondent's services were terminated on 22nd June, 1982 and that the termination is found to be amounting to `unfair labour practice' as per the provisions of Section 30 of the Maharashtra Act. On this conclusion, the appellant has to be asked to withdraw such `unfair labour practice', meaning thereby, the impugned order has to be set aside and, thereafter, affirmative action including reinstatement of the employee with or without back-wages could be ordered by the Labour Court in these proceedings. However, as the High Court has noted that reinstatement is out of question as respondent has reached the age of superannuation, in the meantime, with effect from 3.5.1995, therefore, at the highest the respondent is entitled to back-wages for 13 years with gratuity and other retirement benefits. That is precisely what is ordered by the High Court in the impugned judgement. However, learned counsel for the appellant is right when he contends that even before the conciliator the respondent's union on behalf of its members including the present respondent who were all facing retrenchment suggested that they were prepared to accept compensation @ 4 months wages per every completed year of service with a view to settle the dispute. This suggestion on behalf of the workmen by their union is noted by the conciliation officer in his report which reached the State Government on 13th August, 1982. It may be seen that by that time the impugned retrenchment order was only two months old as it was passed on 22nd June, 1982. It is also noted by the conciliation officer that this proposal did not find favour with the management. If it had been accepted by the management at that time the respondent-workman would have been satisfied by way of compensation amounting to only one third of the back- wages for each year of service. It is, of course, true that years rolled by thereafter and the compromise did not go through. It is also true that the value of money in 1982 was much higher than what it is today. It is also true that the respondent has been denied not only back-wages but also interest on the said amount which would have been available to him years back. However, one aspect of the matter cannot be lost sight of. There is nothing on record to show that the respondent was gainfully employed or was not employed in any alternative avocation during all these years. It is, of course, true that it was for the appellant to point out as to how grant of back-wages should be reduced on account of the gainful employment of the respondent, in the meantime. Such an effort was not made by the appellant.

However, still one fact which stares in the face of the respondent is well established that the appellant has tried his best to accommodate the respondent in alternative employment at Jalgaon

where hand composing department was working. If the respondent accepted the said offer he would have earned his full wages all throughout till retirement. Thus in a way the respondent also was responsible for the unfortunate situation in which he found himself during all these years. It is also to be noted that the complaint filed as early as on 25th June, 1982 remained dismissed in the hierarchy of proceedings from the Labour Court onwards up to the learned Single Judge's decision in the High Court and it is only in the Letters Patent Appeal that he ultimately succeeded. Considering all these aspects, in our view, interest of the justice will be served if, while confirming the final order of the High Court impugned in this appeal, a modification is made regarding back-wages payable to the respondent. This is required also in view of the further fact that we disagree with the conclusion of the Division Bench of the High Court that the appellant was guilty of `unfair labour practice' under item Nos.1(a), (b) and (d) of Schedule IV of the Maharashtra Act and the decision of the High Court is being confirmed regarding `unfair labour practice' of the appellant only under item 1(f) second part of Schedule IV of the said Act. While considering the grant of appropriate back-wages, we deem it fit to adopt the same yardstick which was suggested by the respondent-workman's union for all its members including the respondent that one third of back wages for each completed year of service would be acceptable to them. We, accordingly, deem it fit to modify the final order of the High Court to the following extent : The appeal of the respondent before the High Court will be treated to be allowed by holding that the appellant management had indulged in `unfair labour practice' only under item 1(f) second part of Schedule IV of the Maharashtra Act with the consequential direction that the appellant was not to indulge into and shall desist from indulging into such unfair labour practice.

The second modification in the impugned judgment of the High Court will be to the extent that the appellant shall pay to the respondent-workman 1/3rd (i.e. 33% approx.) of back-wages with all other consequential benefits from 22nd June, 1982 till the date of his superannuation i.e. 3rd May, 1995. The said amount shall be paid by the appellant to the respondent within a period of 3 months from the date of this judgment and in case of failure to pay the said amount within that time the appellant shall be liable to pay the said amount with running interest of 12% on the expiry of 3 months from today till the date of actual payment. Subject to the aforesaid modifications in the judgment and final order of the High Court impugned in this appeal, the appeal stands dismissed.

In the facts and circumstances of the case, there will be no order as to costs.