Hindustan Lever Ltd vs Ashok Vishnu Kate & Ors on 15 September, 1995

Equivalent citations: 1996 AIR 285, 1995 SCC (6) 326, AIR 1996 SUPREME COURT 285, 1995 AIR SCW 4065, 1995 LAB. I. C. 2714, 1995 (6) SCC 326, 1995 ( ) LAB LR 953, (1995) 6 JT 625 (SC), (1995) 71 FACLR 1040, (1996) 88 FJR 75, (1995) 2 CURLR 823, (1996) 1 LABLJ 899, (1995) 4 SCT 720, (1996) 1 LAB LN 173, 1995 SCC (L&S) 1385

Author: S.B Majmudar

Bench: S.B Majmudar, G.N. Ray

PETITIONER:
HINDUSTAN LEVER LTD.

Vs.

RESPONDENT:
ASHOK VISHNU KATE & ORS.

DATE OF JUDGMENT15/09/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
RAY, G.N. (J)

CITATION:
1996 AIR 285 1995 SCC (6) 326
JT 1995 (6) 625 1995 SCALE (5)400

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T MAJMUDAR. J:

Leave granted.

By consent of learned advocates of the parties, the appeal is finally heard and is being disposed of by this judgment.

The short question involved in this appeal centers round the jurisdiction of the Labour Court functioning under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as `the Act' for short) regarding entertaining of complaints filed under Section 28(1) of the Maharashtra Act in connection with contemplated discharge or dismissal of the employees alleged to be resorted to by the employer by way of unfair labour practice, as mentioned in Item 1 of Schedule IV of the Maharashtra Act. The Labour Court in which the complaints were filed took the view that such complaints were not maintainable as the actual orders of discharge or dismissal were yet not passed by the employer. The learned Single Judge of the Bombay High Court confirmed that view, but the appellate Bench of the High Court allowed the writ appeal filed by the respondent-workmen and took a contrary view. That is how the employer is before us in this appeal.

BACKGROUND FACTS

A few relevant facts are required to be noted at the outset. The predecessor of the present appellant-company, Hindustan Lever Limited, the Tata Oil Mills Company Limited served chargesheets on Respondent Nos.1 to 9 for certain alleged misconduct. Respondent Nos.1 to 9 instituted Complaint (ULP) Nos. 90 to 98 of 1989 before the Presiding Officer, First Labour Court, Bombay, alleging therein, inter alia, that the appellant's predecessor company had engaged in commission of unfair labour practices referred to in Item 1 of Schedule IV of the Maharashtra Act. It was the case of the respondents in the said complaints that in pursuance of the show-cause notices, inquiry was being conducted and they apprehended that their services would be terminated. The respondents also filed applications for interim relief under Section 30(2) of the Maharashtra Act seeking interim injuction restraining the employer-company from continuing the unfair labour practices complained of and from terminating the services of the respondents. The Labour Court passed an ex parte injunction restraining the employer-company from terminating the services of the respondents.

The employer-company filed its written statements in these complaints and among others it was contended that complaints themselves were not maintainable and were premature and the Labour Court had no jurisdiction to proceed with such complaints as jurisdiction of the Labour Court could not be invoked under Item 1 of Schedule IV of the Maharashtra Act as long as the proceedings commenced by the employer-company were not terminated by orders of discharge or dismissal of the concerned respondents. The employer-company also resisted the complaints on merits.

The Labour Court by its order dated August 10, 1989, upheld the preliminary objection of the employer-company and held that the complaints were not maintainable at that stage. The Labour Court followed the decision of the learned Single Judge of the High Court sitting at Nagpur in the case of Divisional Commissioner, M.S.R.T.C. vs. Presiding Officer Industrial Court of Maharashtra, Nagpur & Anr. (1989 Mah. L.J. 798), which had taken a similar view.

The respondent-workmen filed Writ Petition No. 2286 of 1989 under Article 226 of the Constitution of India. The learned Single Judge of the High Court summarily dismissed the same on August 21, 1989.

The respondents carried the matter before the Division Bench of the High Court in appeal, being Appeal No. 952 of 1989. The Division Bench consisting of M.C. Pendse and S.N. Kapadia, JJ. allowed the said appeal by its decision dated March 6, 1992, wherein Pendse, J. speaking for the Division Bench, took the view that the respondents' complaints were not premature and the Labour Court had jurisdiction to entertain such complaints filed before the actual orders of dismissal or termination were passed by the employer. The order dated August 10, 1989, passed by the Presiding Officer, First Labour Court, Bombay, was set aside and the proceedings were remitted back to the First Labour Court, Bombay for disposal of the complaints on merits.

The employer-company filed Special Leave Petition (C) No. 9740 of 1992 in this Court challenging the aforesaid decision of the Division Bench of the High Court. During the pendency of this special leave petition, by I.A. No. 4 of 1995, the present appellant-company i.e. the Hindustan Lever Limited, applied to be substituted in place of the original petitioner, the Tata Oil Mills Company Limited, on the ground that the original petitioner had merged with M/s Hindustan Lever Limited. The said I.A. was allowed and that is how the present appellant-company has prosecuted this appeal by special leave. The Employer's Federation of India accompanied by M/s Blue Star Limited, also filed I.A. No. 3 of 1992 seeking permission of this Court for intervention as they were interested in supporting the petitioner-company in the special leave petition. That application for intervention was also allowed. The intervenors have filed their written submission in support of this appeal. They have also appeared through their learned counsel who was heard in this appeal.

RIVAL CONTENTIONS

Shri Pai, learned Senior Counsel, appearing for the appellant-company and the learned counsel for the intervenors contended that the Division Bench of the High Court was in error in taking the view that the complaints filed by the respondent-workmen were maintainable even prior to the passing of the dismissal or discharge orders, as the case may be, and that the Labour Court had no jurisdiction under the Maharashtra Act to proceed with such premature complaints. In this connection, the learned counsel submitted that a mere look at Item 1 of Schedule IV shows that the complaints of unfair labour practice in connection with the activities mentioned therein on the part of the employer necessarily contemplated final discharge or dismissal orders. They submitted that Section 28(1) lays down the period of limitation for filing complaints before the Labour Court. The said

period has to run from the date of alleged occurrence and, therefore, the alleged unfair labour practice must occur by way of dismissal or discharge before such complaint can be filed. It was next contended that though the Act deals with prevention of unfair labour practices, nowhere in the body of the Act in any of the sections the word `Prevention' is mentioned. According to the learned counsel, the Division Bench of the High Court was in error in taking the view that unfair labour practice is not a penal offence under the Act. Section 48 of the Maharashtra Act made such unfair labour practice penal. That the Labour Court under Section 30(2) could pass appropriate interim order restraining the employer from enforcing on calling upon the employer to withdraw temporarily the alleged unfair labour practice of dismissal or discharge of employee and it was not as if after discharge or dismissal, such interim relief could not be granted in an appropriate case by the Labour Court. Reliance was also placed on the decision of this Court in the case of Chanan Singh vs. Registrar, Co-operative Societies, Punjab & Ors. (1976 (3) SCR 685) for submitting that even though a chargesheet is served by the employer on the concerned employee, there is still a possibility that it may not actually culminate into any discharge or dismissal and, therefore, complaint against proposed dismissal or discharge would be premature.

On the other hand, the learned counsel for the respondent-employees vehemently submitted that the Maharashtra Act itself is enacted for prevention of unfair labour practices, as enumerated in the Schedules and such labour practices on the part of the employers or the trade unions of employees, as mentioned in Schedules II, III and IV, could be prevented in appropriate cases by the concerned Courts functioning under the Maharashtra Act, which would necessarily mean that such complaints could be filed prior to the actual commission of the final act of the unfair labour practice complained of. The submission of the appellant's counsel would make the very scheme of preventing unfair labour practice inoperative and otios. That the relevant provisions of the Maharashtra Act clearly contemplate filing of complaints not only against the final act of discharge or dismissal of employees by way of unfair labour practice, but even at stages prior to the final stage where the employer completes such an exercise. That such was the view taken years back by the Full Bench of the Maharashtra Industrial Court and which was followed by all Courts in Maharashtra functioning under the Maharashtra Act. That the view taken by the Division Bench of the High Court was in consonance with the scheme of the Act and fructified the said scheme. That it is a social legislation hence a liberal interpretation should be placed on the scheme of the Act, with a view to subserve the purpose for which Maharashtra Act was enacted. That the provisions of the Industrial Disputes Act fell short of the achievement of goal of prevention of unfair labour practices. This was sought to be achieved by the Maharashtra Legislature by enacting the provisions of the Maharashtra Act and consequently the interpretation placed by the Division Bench of the High Court on the relevant provisions of the Act and the final conclusion to which it reached deserve to be upheld.

OUR CONCLUSIONS AND THE REASONS FOR THE SAME

Having given our anxious consideration to the rival contentions, we have reached the conclusion that the decision of the Division Bench of the Bombay High Court taking the view that complaints could be filed by the workmen apprehending discharge or dismissal by way of unfair labour practice

as contemplated by the relevant clauses of Item 1 of Schedule IV of the Maharashtra Act, even prior to the actual passing of orders of discharge or dismissal is well sustained on the scheme of the Act. We now proceed to elaborate our reasons for the aforesaid conclusion.

Before we deal with the relevant provisions of the Maharashtra Act, it would be necessary to note that in the State of Maharashtra, prior to the passing of the Maharashtra Act, two Acts governing the relations between the employers and the employees in industries were already holding the field. One Act was the Bombay Industrial Relations Act, 1946 (`B.I.R. Act' for short) which applied to certain notified industries under the Act. Various protections were given under the B.I.R. Act to the workmen covered by the said Act. But there was no provision regarding prevention of unfair labour practices either on the part of the employers or on the part of the unions of employees. There was also a Central Act, Industrial Disputes Act, 1947 (`I.D. Act' for short) applicable to industries which were not covered by the B.I.R Act. The Maharashtra Act was passed by the legislature on February 1, 1972, being Maharashtra Act 1 of 1972. By that time industries which were covered by the I.D. Act, which was a Central Act, also did not have the benefit of any provision regarding prevention of unfair labour practices. Under the I.D. Act provision was made for reference by an appropriate Government of any industrial dispute between the employers and the employees for adjudication of competent Industrial or Labour Court, as the case may be. The "Industrial Dispute" as defined by Section 2(k) of the I.D. Act could be referred for adjudication to the competent authority as per Section 10, if the persons applying for reference represented majority of each party as laid down by Section 10(2). "Industrial Dispute" as defined by Section 2(k) of the I.D. Act, 1947 provides as under :-

> " `Industrial Dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; "

Only with effect from 1.12.1965, Section 2(A) was inserted in the I.D. Act wherein even an individual workman could raise an industrial dispute in connection with his discharge or dismissal or otherwise termination of service. For all other types of industrial disputes, a majority of workmen had to support the dispute before the appropriate Government could refer it for adjudication of competent Court. However, in either case, reference of such industrial dispute had to be made by the appropriate Government under Section 10 of the I.D. Act. There was no provision for reference of any industrial dispute under the Central Act, for preventing any unfair labour practice, by the time the Maharashtra Act saw the light of the day. It is, of course, true that by an amendment to the Industrial Disputes Act Chapter V(c) was added w.e.f. August 2, 1984, which deals with unfair labour practice. The "Unfair Labour Practice" as defined by the I.D. Act in Section 2(ra) means `any of the practices specified in the Fifth Schedule'. When we turn to the Fifth Schedule to the I.D. Act, we find the cataloguing of unfair labour practices on the part of the employers, the trade unions of the employers and on the part of the workmen and trade unions of workmen, which are almost parimateria with lists of unfair labour practices on the part of the employers, on the part of the trade unions and general unfair labour practices on the part of the employers as found in Schedules II, III and IV of the Maharashtra Act. However, even the aforesaid amended provisions of the I.D. Act

concerning unfair labour practice nowhere provide for any reference of industrial dispute in connection with such unfair labour practice on the part of the employers which can entitle the workmen or a body of workmen to seek a reference for adjudication or for its prevention by any competent court under the I.D. Act, and all that a workman can do is to wait till the order of discharge or dismissal is passed and then he can raise a dispute under Section 2(A) in connection with his dismissal or discharge and if such dispute is referred by the appropriate Government for adjudication of the Labour Court which is entitled to adjudicate upon such dispute as per the residuary Item 6 of Schedule II to the I.D. Act, then in such a dispute it can be shown by the workman that his actual dismissal or discharge was a result of unfair labour practice as laid down by clause 5 of part 1 of the Fifth Schedule to the I.D. Act. However, there is no provision for preventing any proposed discharge or dismissal by way of unfair labour practice on the part of the employer as per the statutory scheme of the I.D. Act, even after the insertion of Chapter V(c) in that Act. On the other hand, more than a decade before the aforesaid amendment was brought in the I.D. Act, which fell short of providing for prevention of unfair labour practice, the Maharashtra Legislature as early as in 1972 enacted the Maharashtra Act providing for such prevention. Similarly as noticed earlier the B.I.R. Act also did not offer any remedy to the workmen to raise a dispute regarding prevention of any unfair labour practice on the part of the employer who had set in motion machinery for discharging or dismissing workmen by way of alleged unfair labour practice. Thus, in the background of the then existing lacuna both under the Central Act, i.e. the I.D. Act and the B.I.R. Act regarding any provision for prevention of unfair labour practice, we will have to examine the scheme of the Maharashtra Act which seeks to provide a remedy for prevention of such unfair labour practices and to find out how it supplies the lacuna and tries to achieve its goal.

SCHEME OF THE MAHARASHTRA ACT

The preamble of the Act lays down as under :-

> "An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid.
>
> WHEREAS, by Government Resolution, Industries and Labour Department, No. IDA. 1367-LAB-II, dated the 14th February 1968, the Government of Maharashtra appointed a Committee called "the Committee on Unfair Labour Practices" for defining certain activities of employers and workers and their organisations which should be treated as unfair labour practices and for suggesting action which should be taken against employers or workers, or their organisations, for engaging in such

unfair labour practices;

AND WHEREAS, after taking into consideration the report of the Committee Government is of opinion that it is expedient to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes or according recognition to trade unions and for enforcing provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid; It is hereby enacted in the Twenty-second Year of the Republic of India as follows:-

....."

The preamble of the Act clearly indicates that the Maharashtra Act is brought on the statute book with the avowed purpose of regulating the activities of trade unions and for preventing certain unfair labour practices both on the part of unions of employees as well as the employers. As laid down by Section 2(3) of the Act, the Act has to apply to the industries to which B.I.R. Act, for the time being applies and also to any industry as defined in clause (j) of Section 2 of the I.D. Act and also to the State Government which in relation to any industrial dispute concerning such industry is the appropriate Government under that Act. Thus, the Act sought to supplement and cover the field for which the concerned industries governed by the then I.D. Act and B.I.R. Act did not get any coverage and that field was obviously amongst others the field pertaining to prevention of unfair labour practices as defined by the Act.

"Unfair labour practices" as per Section 3(16) mean unfair labour practices as defined in Section 26. When we turn to Section 26, we find that it occurs in chapter VI dealing with unfair labour practices. It provides that in this Act, unless the context requires otherwise, "unfair labour practices" mean any of the practices listed in Schedules II, III and IV. That takes us to the concerned Schedules.

Schedule II of the Act deals with unfair labour practices on the part of the employers. Schedule III of the Act deals with unfair labour practices of trade unions of employees and then comes Schedule IV which deals with general unfair labour practices on the part of the employers. As we are directly concerned with Item 1 of Schedule IV of the Act, it is necessary to reproduce the said item with all its clauses at this stage.

SCHEDULE IV General Unfair Labour Practices on the Part of employers

1. To discharge or dismiss employees-

(a) by way of victimisation ;

(b) not in good faith, but in 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."

A mere look at Item 1 of Schedule IV shows that it would be a general unfair labour practice on the part of the employer to discharge or dismiss employees on any of the grounds mentioned in clauses (a) to (g) of this Item. On this aspect there is no dispute between the parties. The moot question is whether the sweep of the item can cover any of the alleged general unfair labour practices on the part of the employer, before the employer concerned actually discharges or dismisses the employee on any of the grounds enumerated in clauses (a) to (g). Let us take an illustration to see how this item operates. If an employer discharges or dismisses an employee by way of victimisation it would be a complete unfair labour practice on his part as contemplated by clause (a) of Item 1 of Schedule IV. As we have seen above, the Act is enacted with a view to prevent such unfair labour practice. Therefore, the question squarely arises as to how such an unfair labour practice of discharge or dismissal of an employee by way of victimisation can be prevented. If it is to be prevented, it has to be prevented from taking effect or getting completed. Therefore, the intervention of the Labour Court can be sought where the concerned general unfair labour practice on the part of the employer to discharge or dismiss an employee by way of victimisation has not resulted into its culmination but it is in pipeline or process. Under the standing orders governing the concerned industries, before an employee can be discharged or dismissed on the ground of any misconduct, departmental enquiry has to be held. Consequently, taking the initial step towards the direction of discharging or dismissing of any employee on the ground of any misconduct by issuing a chargesheet can be said to be the first action taken by the employer towards such ultimate discharge or dismissal of an employee. It can then be said that the process of alleged unfair labour practice on the part of the employer to discharge or dismiss an employee on ground (a) mentioned in Item 1 of Schedule IV is started or has got initiated or is triggered off by the employer. If an employee can make out a strong prime facie case for interdiction of such a process, he can legitimately invoke the jurisdiction of the Labour Court for preventing such an unfair labour practice from getting fructified or completed. In his connection, it is necessary to note that the general unfair labour practice on the part of the employers as mentioned in Item 1 of Schedule IV pertains to different types of objectionable actions based on grounds which are indicative of unfair labour practices and any action based on such grounds with a view to discharge or dismiss an employee is considered by the Act to be an unfair

labour practice on the part of the employer.

The Division Bench of the High Court for coming to its conclusion has heavily relied upon the words "to discharge or dismiss employees" as found in Item 1 of Schedule IV. We find that the term "to discharge or dismiss" does indicate even attempted action towards such discharge or dismissal. In this connection, we may profitably refer to the meaning of the term "to" as found in various dictionaries as the said term is not defined by the Maharashtra Act.

In Concise Oxford Dictionary, New Seventh Edition, Oxford University Press, at page 1124, one of the meanings of the word "to" is mentioned as under:-

> "In the direction of (place, person, thing, condition, quality, etc.; with or without implication of intention or of arrival..."

In Collins English Dictionary, at page 1525, one of the meanings of the word "to" is as under:-

> "used to indicate the destination of the subject or object of an action: he climbed to the top."

In Words and Phrases, Permanent Edition, Volume 41A, at page 418, one of the meanings of the word "to" is amplified as under:-

> "The word "to" means indicating anything regarded as a terminal point or limit in the direction of which there is movement and at which there is arrival or in the direction of which there is movement or tendency without arrival."

In Stroud's Judicial Dictionary, 5th Edition, volume 5, at page 2646, one of the meanings of the word "to" is mentioned as under:-

> "(3) "To" wills often mean "towards."

The plaintiff effected a marine policy, subject to rules one of which was that ships were not to sail from any port on the east coast of Great Britain "to" any port in the Belts between December 20 and February 15. The plaintiff's vessel sailed on February 8 for a port in the Belts, and was lost; held, that the rule in question was a warranty and not an exception; and that the word "to" in the rule meant "towards" and not "arriving at" (Colledge v. Harty 6 Ex. 205) (4) "To or towards": see R. v. M'Carthy [1903] 2 Ir. R. 156, cited INTIMIDATE."

It becomes, therefore, obvious that general unfair labour practice on the part of the employer to discharge or dismiss the employee on any of the grounds listed in clauses

(a) to (g) of Item 1 of Schedule IV would include any step towards or in the direction of ultimate discharge or dismissal of the employee on that ground and even before such discharge or dismissal is finally arrived at. It is not possible to accept the contention of the learned counsel for the

appellant that discharge or dismissal of any employee would only mean the confirmed act of discharge or dismissal on any of these grounds and not a penultimate step taken by the employer concerned in that direction on that ground. Therefore, on the express language of Item 1 of Schedule IV the general unfair labour practice on the part of the employer "to" discharge or dismiss an employee on any of the listed grounds would include both the final act of discharge or dismissal of employee on any of these grounds as well as any penultimate step taken towards that destination and object by starting the process of disciplinary enquiry on giving the chargesheet to the employee and/or suspending an employee pending or in contemplation of such enquiry and all further steps during such departmental enquiry about which a complaint can be made on permissible grounds.

It was next vehemently contended by the learned counsel for the appellant that if the very attempt on the part of the employer by initiating departmental proceedings is tried to be covered by a complaint by the employee on any of the grounds mentioned in clauses (a) to (g) of Item 1 of Schedule IV, then, some of the clauses themselves would contra-indicate such a construction as they can be applied only at the final stage where such discharge or dismissal of the employee takes place. Clause (g) of Item 1 of Schedule IV was pressed in service by way of illustration. It was submitted that before this clause can apply it must be shown that the punishment given is shockingly disproportionate to the charge and that such an eventuality would arise only when the punishment in question has already been inflicted. Now it is obvious that at the stage when such a shockingly disproportionate punishment is given, this clause would certainly get attracted, but that does not mean that it could not be demonstrated even earlier, if there are facts available in a case, that for a trifle or mere minor or negligible misconduct, the employer proposes to discharge or dismiss the employee.

The learned counsel for the respondents has rightly given an example where clause (g) of Item 1 of Schedule IV can apply even prior to the final order of discharge or dismissal of an employee. It was submitted that if the chargesheet itself alleges that the worker-employee did not get up when the Officer entered his office and, therefore, it was proposed to discharge the employee, even mere reading of the chargesheet can be pressed in service for submitting that the proposed enquiry is for imposing a punishment shockingly disproportionate to the misconduct alleged in the chargesheet. Therefore, it is not as if when such a grievance is made, the Labour Court cannot be approached for preventing such an unfair labour practice from getting culminated and that the workman is to wait till such shockingly disproportionate punishment actually comes to be imposed. Then there would be nothing left to be prevented. It would be like bolting the doors of the stable after the horses have fled. We, therefore, hold that on the express language of Item 1 of Schedule IV complaint can be filed for the alleged unfair labour practice which is in the offing and towards which a firm step is taken by the employer. It is in the light of the aforesaid scheme of Item 1 of Schedule IV that we have to turn to the remaining relevant sections of the Act.

Section 27 lays down as under:-

> "No employer or union and no employees shall engage in any unfair labour practice."

Thus there is total embargo on the unions of the employees as well as the employees and also on the employer on engaging in any unfair labour practice. Once it is found that Item 1 of Schedule IV covers general unfair labour practices on the part of the employer consisting of not only final discharge or dismissal of employee on any of the grounds mentioned in Item 1 but also any action taken by initiating the process towards such ultimate discharge or dismissal of the employee, Section 27 of the Maharashtra Act gets attracted even at a prior stage when such unfair labour practice is sought to be resorted to by the employer by engaging himself in such an unfair labour practice. In other words, to take an illustration, if it is alleged in a given case that the employer seeks to discharge or dismiss an employee by way or dismiss an employee by way of victimisation and for that purpose he has initiated the process of departmental enquiry by issuing the chargesheet to the employee concerned, the employee concerned can legitimately urge that the employer is guilty of such unfair labour practice in which he seeks to engage himself and, therefore, the prohibition enshrined in Section 27 gets squarely attracted against him. It is not as if that in such a case the employer can be said to have engaged himself in any unfair labour practice of discharging or dismissing the employee by way of victimisation only after the ultimate stage is reached and the order of discharge or dismissal sees the light of the day. The prohibition against engagement in any unfair labour practice as mentioned in Section 27 will cover all stages from the beginning to the end, when the process which is initiated by the concerned employer or the union in connection with the alleged unfair labour practice starts and ultimately terminates.

The next Section which is relevant is Section 28(1) of the Maharashtra Act. Section 28 was pressed in service by both the sides for supporting their respective contentions. Section 28(1) contemplates types of complaints which can be filed under the Act. So far as Item 1 of Schedule IV is concerned, the competent Court as per Section 7 of the Act will be the Labour Court as the said section provides that 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, and the complaints regarding the rest of the unfair labour practices can be dealt with by the Industrial Court under Section 5.

As per Section 28(1) any complaint regarding the general unfair labour practice on the part of the employer to discharge or dismiss employee on the grounds mentioned in Item 1 of Schedule IV can be filed before the Labour Court. Such a complaint can cover both types of grievances against the employer; (1) that he has engaged in any unfair labour practice and (2) or he is engaging in any unfair labour practice. The learned counsel for the appellant submitted that though the Act is enacted with a view to prevent such unfair labour practices, there is no whisper about such prevention in any of the operative sections of the Act. This submission cannot be accepted in the light of the express language of section 28(1) and the types of complaints contemplated by it, as aforesaid. As per Section 28(1) of the Maharashtra Act an employee can file a complaint against the employer on the ground that the employer has engaged in unfair labour practice to discharge or dismiss employee by way of victimisation etc. For the purpose of illustration, we may take clause 1 of Item 1 of Schedule IV to highlight the scheme of this section. If an employee files a complaint before the Labour Court alleging that the employer has engaged in unfair labour practice to dismiss or discharge him by way of victimisation, it would contemplate a completed act, namely, an order of discharge or dismissal that might have been passed, because the term "has engaged"

> represents a present perfect tense, meaning thereby an action which has got completed in presenting. The learned counsel for the appellant could have submitted with emphasis that the complaint could be filed on the ground of alleged unfair labour practice on the part of employer to discharge or dismiss an employee by way of victimisation only after the action was completed and the discharge or dismissal was effected on that ground if Section 28(1) would have contained only the words "has engaged". But the legislature has conferred jurisdiction on the Labour Court to entertain the complaints also on the additional ground that the employer is engaged in any unfair labour practice. This clearly indicates a present continuous action as it reflects a present continuous tense. That would include a complaint regarding the employer, who at present is engaging in the alleged unfair labour practice by way of victimisation. That would indicate actions which are contemplated and in pipeline but which are still not finally completed. If the learned counsel for the appellant is right that only the final act of discharge or dismissal can be covered by the sweep of Section 28(1), then the terminology used by the Legislation "or is engaging in any unfair labour practice"

would be rendered totally redundant and otios, as such a completed action would already stand covered by the earlier phrase "has engaged in any unfair labour practice". Similar words are found in Section 30(1) which deals with powers of the Courts and provides that where the Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may by its order give relief as mentioned in clauses (a), (b) and (c) of that sub-section. A conjoint reading of Section 28(1) and Section 30(1) clearly shows that complaint can be filed for the alleged unfair labour practice as contemplated in Item 1 of Schedule IV on any of the grounds mentioned therein, both at the stage where such final orders of discharge or dismissal are passed on the concerned alleged grounds and also at the stages prior to such final orders, once the employer is shown to have taken a firm step in that direction by initiating departmental enquiries with a view to ultimately discharge or dismiss the employee on any of the alleged grounds and such enquiries are presently in progress or are presently in offing. Then the employer can be said to be presently engaging in any such unfair labour practice. It becomes obvious that the twin phrases `has engaged' and `is engaging in' indicate not only the finished, complete or continuous action but also an incomplete continuous action.

In this connection, we may profitably look at what is said in Black's Law Dictionary, 6th Edition, at page 528, about the term "Engage", which reads as under:-

> "To employ or involve one's self; to take part in; to embark on."

In Stroud's Judicial Dictionary, 5th Edition, at page 847, the term "engaged in discharging" has been dealt with as under:-

> "A lighter or craft is "engaged in discharging" ballast or goods, within an exemption from dock dues, if she goes to the place of discharge in the dock with the real intention of discharging there, although, from the place getting too full to take the

ballast or goods, the vessel has to depart without making any discharge (London & India Docks Co. v. Thames Steam Tug, etc., Co. (1909) A.C.

15)"

It becomes, therefore, obvious that if an employer is alleged to be engaged in discharging any employee then even before the actual order of discharge is passed he can be said to be engaged in such discharge if it is shown that an attempt is made towards such a discharge with an intention to ultimately discharge the employee.

We may also refer to Section 28(3), which empowers the concerned Court on receipt of the complaint under Section 28(1) to cause an investigation into the said complaint to be made by the investigating officer, if thought necessary and direct that a report in the matter may be submitted by him to the Court, within the period specified in the direction. Therefore, it is not as if that the moment a complaint is filed the Labour Court can mechanically pass an order intercepting the proceedings of any departmental enquiry. It can in appropriate cases even cause a preliminary enquiry about the correctness of the allegations in the complaint through the investigating officer.

Before parting with Section 28(1) an argument submitted by the learned counsel for the appellant is required to be noted. It was submitted that limitation for filing complaints under Section 28(1) is to start from the date of occurence of unfair labour practice and that date of occurrence of the alleged unfair labour practice could be only the date when the final orders of discharge or dismissal are passed by the employer and are challenged on any of the grounds mentioned in Item 1 of Schedule IV. It is not possible to agree with this contention. As we have already seen earlier, Item 1 of Schedule IV would cover in the sweep of general unfair labour practice on the part of the employer even the initiation of proceedings or taking any other firm step like suspension, towards discharge or dismissal of the employee concerned, which can be challenged on the grounds mentioned in Item 1 of Schedule IV. Such initiation of proceedings or firm steps themselves would be the occurrence of the alleged unfair labour practices and would give a cause of action to the complainant to file the complaint under Section 28(1) within the period of limitation as laid down therein. It is not as if that the occurrence of unfair labour practice can be only of one type, that is, the final order of discharge or dismissal as assumed by the learned counsel for the appellant. The nature of the order which the Court can pass on such complaint is indicated by clauses (a), (b) and (c) of Section 30(1), which read as under:-

"30.(1) Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order -

(a) declare that an unfair practice has been engaged in or is being engaged in by that person, and specify any other person who has engaged in, or is engaging in the unfair labour practice;

(b) direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the

> employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;
>
> (c) where a recognised union has engaged in or is engaging in, any unfair labour practice, direct that its recognition shall be cancelled or that all or any of its rights under sub-section (1) of Section 20 or its right under section 23 shall be suspended."

Even this provision when read with Item 1 of Schedule IV shows that after adjudication the Labour Court can declare that the concerned employer not only has engaged in unfair labour practice, but is being engaged in such unfair labour practice and such engagement in unfair labour practice continues and has not ended. This also clearly indicates that the complaint can be made regarding the alleged actions of the employer which amount to unfair labour practice, but which have not yet finally culminated into ultimate orders but are in the pipeline or are being attempted to be passed and proceedings are initiated for passing such ultimate orders which are alleged to be contrary to Item 1 of Schedule IV of the Maharashtra Act.

Sub-section (2) of Section 30 of the Maharashtra Act lays down:-

> "In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision :
>
> Provided that, the Court may, on an application in that behalf, review any interim order passed by it."

The learned counsel for the appellant submitted that even if the final order of discharge or dismissal is passed by the employer by way of victimisation as alleged by the employee, the Labour Court in the complaint regarding such final order can pass interim orders of temporary relief or restraining order. Still it would not rule out the possibility on the part of the Labour Court of passing an interim order pending the domestic enquiry if any of the grounds mentioned in Item 1 of Schedule IV is effectively pressed in service by the employee against the employer. It is obvious that when the final order of discharge or dismissal is passed and if it is found to be a result of unfair labour practice as mentioned in clauses (a) to (g) of Item 1 of Schedule IV, it is to be quashed and reinstatement is to be ordered by way of mandatory relief. In such a case there would be no occasion of granting interim relief by way of prohibitory order or a restraining order, as contemplated by sub-section (2) of Section 30. Such a restraining order can be passed in a case where the complaint is filed at a stage where the final orders of discharge or dismissal are not passed on any of the grounds mentioned in Item 1 of Schedule IV. If such a complaint is ruled out the provisions of Section 30(2) would be rendered redundant and otios. When we keep in view the fact that as per Section 7 of the Maharashtra Act, all the complaints pertaining to Item 1 of Schedule IV can be filed only before the Labour Court and no other complaint regarding unfair labour practice can be filed before the Labour

Court, and once the Labour Court is given the powers in appropriate cases of passing interim relief of restraining orders as per Section 30(2) it would clearly indicate the legislative intention that complaints regarding the proposed dismissal or discharge on any of the grounds mentioned in Item 1 of Schedule IV could be filed before the Labour Court. In such complaints the Labour Court in appropriate cases, in exercise of its powers under Section 30 (2) can issue interim orders with a view to preventing such alleged unfair practices from getting fructified. Thus Section 30(2) also highlights the legislative intent of providing an effective machinery to prevent the finalisation of the alleged unfair practices which are required to be nipped in the bud. If the orders of the Court whether final on interim are not complied with by the party against whom such orders are passed, it can be prosecuted under sub- section (1) of Section 48, which lays down as under :

> "48.(1) Any person who fails to comply with any order or the Court under clause
>
> (b) of sub-section (1) or sub-section (2) of Section 30 of this Act shall on conviction, be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees."

Having seen the aforesaid relevant provisions, we may now consider the main contentions canvassed by the learned counsel for the appellant. It was vehemently submitted by the learned counsel for the appellant and also by the learned counsel for the intervenors that the High Court was in error when it took the view that unfair labour practice is not punishable under the Maharashtra Act. In this connection, our attention was invited to Section 25-U of the Industrial Disputes Act which reads as under:

> "Penalty for committing unfair labour practices. - Any person who commits any unfair labour practice 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."

Our attention was also invited to Section 25-T of the Industrial Disputes Act which reads as under :

> "Prohibition of unfair labour practice.
>
> - No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice."

When we keep the relevant provisions of the Industrial Disputes Act concerning unfair labour practices in view and compare these provisions with the provisions of the Maharashtra Act, a clear difference becomes obvious. Section 25-T of the Industrial Disputes Act prohibits an employer or workman or a trade union from committing any unfair labour practice. While so far as Section 27 of the Maharashtra Act is concerned, it prohibits an employer or union or employee from engaging in any unfair labour practice. Consequently the prohibition under the Industrial Disputes Act is against the commission of unfair labour practice which may include the final acts of such commission. While Section 27 of the Maharashtra Act prohibits the concerned party even from engaging in any

unfair labour practice. The word `engage' is more comprehensive in nature as compared to the word `commit'. But even that apart, Section 25-U provided for penalty for committing unfair labour practice and mandates that whoever is guilty of any unfair labour practice can be prosecuted before the competent court on a complaint made by or under the authority of an appropriate Government under Section 34(1) read with Section 25-U of the Industrial Disputes Act. So far as the Maharashtra Act is concerned, there is no direct prosecution against a party guilty of having engaged in any unfair labour practice. Such a prosecution has first to be preceded by an adjudication by a competent court regarding such engagement in unfair labour practice. Thereafter, it should culminate into a direction under Section 30(1)(b) or it may be a subject matter of interim relief order under Section 30(2). It is only thereafter that prosecution can be initiated against the concerned party disobeying such orders of the Court as per Section 48(1). Consequently, it cannot be said that the Division Bench of the Bombay High Court was not right when it took the view that the act of engaging in any unfair labour practice by itself is not an offence under the Maharashtra Act while such commission of unfair labour practice itself is an offence under the Industrial Disputes Act. However, this aspect is not much relevant for deciding the controversy with which we are concerned.

As we have discussed above, the legislation intends to prevent commission of unfair labour practices through the intervention of the competent court and for that very purpose, the Act is enacted. This is clearly reflected by the provisions of Section 28(1) and Section 30(1) of the Maharashtra Act.

As already discussed earlier, it is trite to say that if `to discharge or dismiss an employee by way of victimisation' is a general unfair labour practice on the part of the employer as laid down by Item 1(a) of Schedule IV and if such an unfair labour practice is to be prevented then action for such prevention has to be taken prior to the ultimate commission of such unfair labour practice. It is difficult to agree with the contention of the learned counsel for the appellant that such prevention can be made only after the actual order of discharge or dismissal of the employee is passed. At that stage there is no question of preventing the commission of such unfair labour practice, but it would be a case of setting aside or quashing such already committed unfair labour practice. It is difficult to appreciate how a discharge or dismissal of an employee by way of victimisation can be prevented after such discharge or dismissal has already taken place. Once such an unfair labour practice is completed and if final order is to be set aside it would amount to curing the melody rather than preventing it. As the saying goes `prevention is better than cure', and that is the very purpose of the Act. Or in other words, prevention of commission of such unfair labour practice is the heart of the Act. The interpretation tried to be put by the learned counsel for the appellant on the relevant provisions of Item 1 of Schedule IV would result in stultifying the very purpose and scope of the Act.

We may also keep in view the fact that prevention of unfair labour practice, as per the Act, is aimed not only against the employers, but also against the employees and their trade unions, if they are alleged to engage themselves in any of the unfair labour practice mentioned in Schedule III. Let us take illustrations of unfair labour practice on the part of the trade unions as mentioned in Items 5 and 6 of Schedule III which read as under:

> "5. To stage, encourage or instigate such forms of coercive actions as willful "go slow" squatting on the work premises after working hours or "gherao"

of any of the members of the managerial or other staff.

6. To stage demonstrations at the residences of the employers or the managerial staff members."

It becomes obvious that if an employer files a complaint before the Industrial Court under Item 5 or 6 of Schedule III that the Union is seeking to stage, encourage on instigate such forms of coercive actions as willful `go slow' or seeks to demonstrate at the residence of employers and if such an action is to be prevented a complaint has to be filed before the actual demonstration takes place or actual `go slow' policy is resorted to. Once such an action takes place there would remain no occasion to prevent such an action in good time. Consequently, on the same lines it cannot be said that unfair labour practice on the part of the employer also cannot be prevented till the actual unfair labour practice gets committed by him. We have also to keep in view that the Maharashtra Act is a social welfare legislation and in interpreting such a welfare legislation, such a construction should be placed on the relevant provisions which effectuates the purpose for which such legislation is enacted and does not efface its very purpose of prevention of unfair labour practice.

In this connection, we may usefully turn to the decision of this Court in Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation (1985 (4) SCC 71) wherein Chinnappa Reddy,J., in para 4 of the Report has made the following observations:

"The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the `colour', the `content' and the `context' of such statutes (we have borrowed the words from Lord wilberforce's opinion in Prenn v.

Simmonds). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set;

the law is not to be interpreted purely on internal linguistic considerations.

In one of the cases cited before us, that is, Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-

Labour Court we had occasion to say.

Semantic luxuries are misplaced in the interpretation of "bread and butter"

> statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions."

Francis Bennion in its `Statutory Interpretation' Second Edition, has dealt with the Functional Construction Rule in part XV of his book. The nature of purposive construction is dealt with in Part XX at page 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-

literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

At page 661 of the same book, the author has considered the topic of Purposive Construction in contrast with literal construction. The learned author has observed as under:

> "Contrast with literal construction Although the term `purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975:
>
> `If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way-
>
> "... I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it."

Following the aforesaid rule of construction, therefore, we must hold that the interpretation of Item 1 of Schedule IV of the Maharashtra Act as canvassed by the learned counsel for the appellant and the intervenors would frustrate the very scope and ambit of the Maharashtra Act, in effectuating the prevention of the alleged unfair labour practice. While on the other hand, if a wider interpretation is placed on the relevant provisions of Item 1 of Schedule IV, as discussed earlier, apart from not straining the language which even may become permissible on the rule of purposive construction, the said construction would fructify the very purpose for which the Maharashtra Act was enacted.

Before concluding this discussion, we may refer to the judgment of this Court in Chanan Singh's case (supra) on which strong reliance was placed by the learned counsel for the appellant. Sh. Pai submitted that when merely a show cause notice is issued for taking action against an employee, if it is challenged in the Court, it would be a premature challenge. We fail to appreciate how the

aforesaid decision can be pressed in service by the learned counsel for interpreting the relevant provisions of Item 1 of Schedule IV of the Maharashtra Act. In the aforesaid decision, this Court held that when a show cause notice is issued against punishment, a writ petition under Articles 226 and 227 would be premature as there would be no grievance of punitive action which can be ventilated in the Court. This decision was based on the general principle that against mere show cause notice, writ petition would be premature. The ratio of that decision cannot be of any assistance for interpreting the express language of Item 1 of Schedule IV of the Maharashtra Act read with its other relevant provisions, which are meant to prevent the commission of unfair labour practice by arming the appropriate Courts with jurisdiction to look into such complaints. For all these reasons, therefore, it must be held that the Division Bench of the High Court was perfectly justified in taking the view that a contemplated action for dismissal or discharge of an employee on any of the grounds mentioned in Item 1 of Schedule IV of the Maharashtra Act could be made the subject-matter of complaint before the Labour Court under Section 28(1) of the Maharashtra Act. We have to keep in view the fact that the Maharashtra Act is in the field since more than two decades and even a Full Bench of the Industrial Court, Maharashtra by its unanimous decision dated September 28, 1984 had taken the same view and on that basis numerous complaints were entertained by the Labour Courts in Maharashtra over decades. It was only when a learned Single Judge of the High Court sitting at Nagpur, by his decision dated April 27, 1989 struck a discordant note that the present controversy cropped up. In our view, no fault can be found with the reasoning adopted by the Division Bench of the Bombay High Court for overruling the said contrary decision of the learned Single Judge of the Bombay High Court sitting at Nagpur in Writ Petition No. 2607 of 1988.

Mr. Pai, learned senior counsel for the appellant, also argued that Item 1 of Schedule II refers to the threat given by the employer to discharge or dismiss the employees if they join the union. Thus, even a threat is considered to be an unfair labour practice as per this Item. While, the unfair labour practice mentioned in Item 1 of Schedule IV does not cover any threat but actual order of discharge or dismissal. It is not possible to agree. The reason is obvious. A mere threat to discharge or dismiss an employee if he joins a union by itself may be an unfair labour practice as per Item 1(a) of Schedule II though the threat might not have been translated into any attempt in the direction of discharge or dismissal. Still, such a threat would constitute unfair labour practice, which can be prevented by filing appropriate complaint before the Industrial Court under Section 5 read with Section 28(1). But if the employer takes a concrete step towards discharging or dismissing an employee on any of the grounds contemplated by Item 1 of Schedule IV, then it would not be in the realm of mere threat but would be translated into an actual action of taking a calculated step towards such alleged contemplated unfair labour practice by serving chargesheet and starting departmental enquiry and/or putting the employee under suspension with the ultimate object in view. Act that stage the alleged unfair labour practice of engaging in discharging or dismissing the employee on the grounds contemplated in Item 1 of Schedule IV can be said to have taken place. It is obvious that if an employer merely threatens the employee to discharge him by way of victimisation etc. and such a threat is not followed by any attempt by way of starting departmental enquiry or taking any other concrete step as aforesaid, such a simplicitor threat would not get covered by Item 1 of Schedule IV. It would also not be covered by Item 1(a) of Schedule II, as it is not a threat to discharge or dismiss an employee if he joins a union. For the purpose of attracting Item 1 of Schedule IV, apart from mere threat, some concrete step like starting departmental enquiry has to

be taken by the employer before such an action can be brought in challenge by the concerned employee on any of the grounds mentioned in Item 1 of Schedule IV. Consequently, merely because the legislature has not repeated the terminology of mere threat while enacting Items of Schedule IV it would not mean that before the final order of discharge or dismissal is passed on any of the grounds contemplated by Item 1 of Schedule IV, and only first step is taken in that direction, the unfair labour practice to discharge or dismiss such employee on any of these grounds mentioned in Item 1 of Schedule IV cannot be said to have taken place, or on that basis the complaint would be premature, as submitted by Shri Pai, learned senior counsel for the appellant.

At this stage, we may also briefly note some of the additional contentions found in the written submissions filed on behalf of the appellant and the intervenors. In the written submissions filed on behalf of the intervenors it is contended that the infinitive "to", as mentioned in various clauses of Item 1 of Schedule IV and in other Items of the same Schedule and also in other Items of Schedules II and III, would indicate only completed action done by the concerned party. It is not possible to agree with this contention. As we have discussed earlier, the word "to" would include any action towards the final goal of the action. Schedule IV, as noted earlier, speaks about the general unfair labour practice on the part of employers. Therein barring Item no. 9, everywhere we find the user of the Infinitive. Same is the case with the wording of Schedule II barring Item No. 6 and the wording of Schedule III. While dealing with this aspect, a Full Bench of Industrial Court of Maharashtra, in its decision in Revision Application (ULP) No. 2 of 1983, speaking through its learned Member Gawande, has made the following observations in paras 11 to 13, which we wholly approve:

> "....The Infinitive with or without adjuncts may be used, like a Noun. When the infinitive is thus used, like a Noun, it is called the Simple Infinitive. To discharge or dismiss merely names the action denoted by the Verb discharge or dismiss, and is used without mentioning any subject. The expression is, therefore, not limited by person and number as a Verb that has a subject, and is, therefore, called the Verb Infinite, or simply the Infinitive. The Infinitive is a kind of noun with certain features of the Verb, especially that of taking an object (when the Verb is transitive) and adverbial qualifiers. In short, the Infinitive is a Verb-noun (and is called a Gerund). A Gerund is that form of the Verb which ends in - ing, and has the force of a Noun and a Verb; it is a Verbal Noun. The word to is frequently used with the Infinitive, but is not as essential part or sign of it. The Infinitive may be active or passive. When active, it may have a present and a perfect form, and may merely name the act, or it may represent progressive or continued action. Then comes the question of Tense. Here I wish to elaborate by taking an illustration thus : (1) I speak - The Verb shows that the action is mentioned simply, without anything being said about the completeness or incompleteness of the action. Here the Tense is Present Indefinite. (2) I am speaking - The Verb shows that the action is mentioned as incomplete or continuous, that is, as still going on. Here the Tense is Present Continuous. (3) I have spoken - The Verb shows that the action is mentioned as finished, complete or perfect at the time of speaking. Here the Tense is Present Perfect. (4) I have been speaking - The Verb shows that the action is going on continuously, and not completed at this present moment. Here the Tense is Present Perfect Continuous.

> 12. Against the background of the above when we read Item 1 of Schedule IV to the Act, text of which has been already reproduced, it becomes evident that Item 1 starts with the phrase - To discharge or dismiss employees. Thereafter we get as many as seven sub-items (a) to (g). If we were to put only the Literal Construction on the entire wording of Item 1 of Schedule IV, it becomes clear that in a given case if the alleged unfair labour practice is that of discharge or dismissal of the employee under all the sub-items i.e. from (a) to
>
> (g) or either of them, the Labour Court has jurisdiction to entertain such a complaint under Section 28 of the Act.

In adverting to the Literal Construction and in accepting the interpretation flowing therefrom, it becomes clear that the action contemplated on the part of the employer here is an action complete in itself. In other words, if the employer were to discharge or dismiss an employee under all the aforesaid sub-

items or either of them, the Labour Court has jurisdiction to entertain a complaint. Implicit in this is the fact that the employer-employee relationship is severed by an order of discharge or dismissal, before the lodging of the complaint. That such a complaint will lie, that such a complaint is competent and that the Labour Court has jurisdiction to entertain such a complaint are points in respect of which the contenders before us do not join issue.

13. However, the question posed for the determination of the Full Bench is wide.

After taking into consideration the interpretation-aspect as also the grammer-aspect, I am of the view that it will not be proper to put a mere Literal Construction on the wording of Item 1 of Schedule IV to the Act. I have no doubt in my mind in observing that here the language is not plain. It does not admit of but one meaning. Therefore, one would be justified in adverting to the Mischief Rule also the Golden Rule while interpreting the words appearing in Item 1 of Schedule IV. I may further observe that in doing so, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility. In such a situation we should rather accept the bolder construction based on the view that the legislature would legislate only for the purpose of bringing about an effective result.

Further, as observed earlier, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the Statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. Lastly, it cannot be forgotten that the Statute shall have to be read as a whole."

The aforesaid observations in Full Bench judgment of Maharashtra Tribunal are well sustained on the scheme of the Act, which we have discussed earlier. Consequently, it is not possible to agree with the written submission on behalf of the intervenors that only completed actions are contemplated by

the concerned clauses of Item 1 of Schedule IV. They, on the contrary, suggest that complaint can be filed not only when the final act of unfair labour practice is committed, but even at a stage where any firm action is taken towards reaching the final goal of discharging or dismissing an employee on any of the grounds mentioned in clauses (a) to (g) of Item 1 of Schedule IV. So far as the other items of Schedule IV are concerned, it is difficult to appreciate how a complaint cannot be filed if the concerned employer has taken a firm step towards the ultimate object of completing the alleged unfair labour practice as mentioned in Items 2 to 10 of the said Schedule.

Reliance placed on the Whisper University Law Dictionary defining the term "dismiss" also is of no avail as though the word "dismiss" may indicate performance of a completed action, any unfair labour practice to dismiss, as discussed earlier, would include any firm step or attempt made towards the ultimate goal of dismissing the concerned workman.

Submission made on the scheme of Section 30(2) to the effect that interim order can be passed in connection with the practice complained of also cannot advance the case of the appellant for the simple reason that if the practice complained of is of any firm step taken by the employer towards the ultimate object of dismissing or discharging the employee on any of the grounds covered by clauses (a) to (g) of Item 1 of Schedule IV, interim relief can be granted in connection with such practice complained of and would not mean that till the practice gets fructified and translated into final act of dismissal or discharge, the Labour Court cannot pass appropriate interim relief orders under Section 30(2) as submitted in the written submissions.

We may also briefly refer to the summary of arguments by Shri. G.B. Pai on behalf of the appellant as filed on 4.9.1995. Most of the submissions contained therein are already dealt with by us in the earlier part of this judgment. However, some additional aspects mentioned therein are required to be considered. In paragraph IV (i) it is submitted that the term "unfair labour practice" denotes a habitual practice by the employer, and not isolated events. For that purpose, emphasis is placed on the dictionary meaning of the word "practice" which means often, customarily or habitually. It is true that the word "practice" cannotes repeated events but that will not affect the construction to be placed on the words "unfair labour practice to dismiss or discharge" as implied in Item 1 of Schedule IV. When a contemplated action on the part of the employer to dismiss or discharge an employee on any of the grounds mentioned in that item is firmly taken, the employee can as well show that this type of action on the part of the employer is a habitual action or by way of a general practice. But even apart from such a general practice, it can be alleged and demonstrated that the employer is following such a practice at least for the complainant. It is not as if a practice which is not repetitive in character can never amount to an unfair labour practice as contemplated by Schedule IV, Item 1. In fact, whether such an alleged practice should be based on repetitive acts or a single act is strictly not relevant for deciding the question whether an attempt towards commission of such a practice, when the final order of dismissal or discharge has not been passed, can be made subject-matter of the complaint under the Maharashtra Act.

Similarly, contention found in paragraph IV(ii) that the words "discharge or dismissal" mean the final order of sending away or removing a person also cannot be of any assistance to the appellant for the simple reason that we are not concerned with the connotation of the words "dismiss or

discharge". The question is whether an attempt towards ultimate dismissal or discharge by way of taking a firm step towards it can be the subject-matter of a complaint under the Maharashtra Act. For deciding that question the entire scheme of the Act becomes relevant including its preamble, as discussed earlier. No conclusion can be based only on the meaning of the words "discharge or dismissal" as tried to be suggested. Similarly, contention in sub-paragraph (vii) of paragraph IV relying on a decision of this Court in Bharat Iron Works vs. B.B. Patel (1976 (2) SCR 280) is also of no assistance to the appellant as the said decision refers to the nature of proof required for proving the allegation of mala fide or victimisation. That stage would come once the complaint on the ground of victimisation is taken up for consideration on merits at final hearing stage or at stage of interim relief, as the case may be.

The submission made in paragraph V(i) on the construction of the words "is engaging in" as found in Section 28 also cannot be countenanced for the simple reason that even in the said paragraph, it is mentioned that some of the unfair labour practices may be of continuing nature and for that purpose emphasis is placed on some of the items mentioned in Schedules II, III and IV. However, even from the scheme of the schedules it becomes clear that any present continuous act of engaging in the alleged unfair labour practice would be covered by the term "is engaging in". We have already discussed in detail the correct connotation of these words in the earlier part of this judgment. For the reasons recorded by us therein, this submission is found to be devoid of any substance. In sub-paragraph (iii) of paragraph V, it is submitted that the aim of prevention is achieved by :

> (a) directing the employer as an interim measure to withdraw the practice complained of and if the complaint is proved, in the final order of quashing the order of dismissal, and also
>
> (b) by prescribing a penalty which penalty is to act as a deterrent and prevent the commission of unfair labour practice.

We fail to appreciate how this will affect the correct connotation of the word "prevention". If the alleged unfair labour practice of discharge or dismissal of an employee is to be prevented, then as discussed earlier, it must necessarily contemplate an intervention of the competent Labour Court at a stage prior to the actual commission of such unfair labour practice.

Reference made in paragraph VI to the Bombay High Court's judgments also cannot be of any avail as they were based on the view which was accepted by the learned Single Judge of the High Court of Bombay at Nagpur which has rightly been overturned by the Division Bench of the Bombay High Court in the judgment under appeal on a correct interpretation of the relevant provisions of the Act. Therefore, the earlier view taken by the learned Single Judges of the Bombay High Court cannot be said to be well- sustained. For all these reasons, the appellant has made out no case for our interference in this appeal.

Before parting with this case, however, we must strike a note of caution, as has been done by the Division Bench of the Bombay High Court. It could not be gainsaid that the employers have a right to take disciplinary actions and to hold domestic enquiries against their erring employees. But for

doing so, the standing orders governing the field have to be followed by such employers. These standing orders give sufficient protection to the concerned employees against whom such departmental enquiries are proceeded with. If such departmental proceedings initiated by serving of chargesheets are brought in challenge at different stages of such proceedings by the concerned employees invoking the relevant clauses of Item 1 of Schedule IV before the final orders of discharge or dismissal are passed, the Labour Court dealing with such complaint should not lightly interfere with such pending domestic enquiries against the concerned complainants. The Labour Court concerned should meticulously scan the allegations in the complaint and if necessary, get the necessary investigation made in the light of such complaint and only when a very strong prime facie case is made out by the complainant appropriate interim orders intercepting such domestic enquiries in exercise of powers under Section 30(2) can be passed by the Labour Courts. Such orders should not be passed for mere askance by the Labour Courts. Otherwise, the very purpose of holding domestic enquiries as per the standing orders would get frustrated.

In the result, this appeal fails and is dismissed with costs.