Supreme Court of India
Air India Corporation, Bombay vs V. A. Rebellow & Anr on 24 February, 1972
Equivalent citations: 1972 AIR 1343, 1972 SCR (3) 606
Author: I Dua
Bench: Dua, I.D.

PETITIONER:
AIR INDIA CORPORATION, BOMBAY

Vs.

RESPONDENT:
V. A. REBELLOW & ANR.

DATE OF JUDGMENT24/02/1972

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
VAIDYIALINGAM, C.A.
MITTER, G.K.

CITATION:
1972 AIR 1343 1972 SCR (3) 606
1972 SCC (1) 814
CITATOR INFO :
RF 1973 SC2650 (14)
D 1975 SC 661 (13,17)
RF 1976 SC2062 (30)
D 1991 SC 101 (17,154,170,226,278)

ACT:
Industrial Disputes Act (14 of 1947), ss. 33(1) (b), 33(2) (b) and 33A--Termination of services of employee--Not for misconduct--Approval of Tribunal not obtained--legality.

HEADNOTE:
The respondent had bean employed by the appellant as an Assistant Station Superintendent. An order was passed terminating his services with immediate effect With payment of one month's salary in lieu of notice. He filed a complaint under s. 33A of the Industrial Disputes Act, 1947 before the Labour Court before which, in industrial dispute was pending alleging that the termination of his service was illegal for the reason inter alia that the approval of' the Labour Court for such termination was not obtained. The appellant contended that the respondent was not a workman and that he was not concerned in the industrial dispute pending in the Labour Court. Pursuant to the directions of

the Labour Court, the appellant filed n. written statement in which it was pleaded that without prejudice to the contention that this case should be decided 'an the aforesaid preliminary points raised by the appellant the order of termination of the respondents' services was valid 'because his services were terminated under Regulation 48 of the Air India Employees' Service Regulations framed with previous approval of the Central Government, and under that regulation the services of a permanent employee may be terminated without assigning any reason. it was added that without prejudice to the plea that the appellant was not bound to disclose any reason for terminating the services of the respondent, the latter's services we're terminated be-cause of the appellant's total loss of confidence in the respondent on account of grave suspicions regarding his private conduct and behaviour with the Air Hostesses of the appellant-Corporation.

The Labour Court held one the preliminary question that the respondent was a workman concerned in the industrial dispute pending before it and that his discharge was in breach of s. 33 of the Act.

On the question Whether the action taken by the appellant, was hit by s. 33 of the Act,

HELD: (1) Section 33 (1) (b) bans the discharge or punishment,whether by dismissal or otherwise, of a workman for misconduct nected with a pending dispute without the express permission in writing of the authority dealing with the pending proceeding. Section 33(2)(b) places a similar ban in regard to matters not connected with the pending dispute; but the employer is free to discharge or dismiss a workman by paying wages for one month provided he applies to the authority dealing with the pending proceeding for approval of the action taken. Whether the action is taken under. 33 (1) (b) or s. 33 (2) (b), the ban is imposed only in regard to election taken for misconduct whether connected or unconnected with the dispute. Unlike under s. 33(3) which gives a blanket protection to 'protected workmen', an employer is free to take action against other workmen if it is not based off any misconduct on their part,

[617B-D, C-G]

607

(2) In the present case, on the face of it, the language of the order does not show that the respondent's services were terminated because of any misconduct. Prima facie, therefore, the impugned order was not an order discharging or punishing the respondent for any misconduct. [618A-B]

(3) Action under Reg. 48 can be validly, taken by an employer at his sweet-will without assigning any reason, and he is not bound to disclose why he does not want to continue in service a particular employee. [620D-E]

(4) It is however open to the respondent to urge that reliance on, Reg. 48 was not bona fide and that it was a colourable exercise of the right conferred by the

Regulation, because, the form of the order is not decisive and attending circumstances are open to consideration though the motive for the order, if not malafide is not open to question. [619H; 620B-C]
workmen of sudder office cinnamara v Management [1971] II L.L.J. 620. Chartered Bank, Bombay v. Chartered Bank Employees' Union, [1960] II L.L.J. 222 and Tata Oil Mills Co. Ltd. v. WorKmen [1964] 11 L. L. J. 113, referred to.
(5) But the reason of the employer for the terminating the services of' his employee need not be his misconduct but may, inter-cilia, be want of full satisfaction with the employee's overall suitability in the job assigned to the employee. Such want of satisfaction does not imply misconduct of the employee. [620E-F]
(6) The loss of confidence in the present case cannot be considered to be malafide. Assuming that the reason stated in the appellant's written statement could be taken into account, the bona fides of the appellant in making the impugned order could not be challenged. The respondent had to deal with Air hostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them it could not be said that the loss of confidence was not bona fide. Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, if bona fide is final and not subject to review by industrial adjudication. Such an opinion may legitimately induce the employer to terminate the employee's services, but, such termination can, on no rational grounds, be considered to be for misconduct, and must therefore be held to be permissible and immune from challenge. [620F-H; 621A-B]
Management of U.B. dutt & co. v. Workmen of U. B. Dutt & Co. [1962] Supp. 2 S.C.R. 822, distinguished.
[The question whether the reason stated in the appellant's written statement filed without prejudice and pursuant to the direction of the Labour Court could be taker into account, left open.] [621E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1339 of 1967. Appeal by special leave from the Award dated April 28, 1967' of the Central Government Labour Court, Bombay in Application No. LCB-39 of 1965.

S. D. Vimdalal, S. K. Wadia, D. N. Mishra and O. C. Mathur-, for the appellant.

K. P. V. Menon, S. R. Iyer and M. S. Narasimhan, for respon- dent No. 1.

The Judgment of the Court was delivered by Dua, J. This. is an appeal by special leave and the appellant, the Air-India Corporation, Bombay assails Part I of the Award 'with corrigendum, dated April 28, 1967, given by the Central Government Labour Court, Bombay, on the complaint dated October 16, 1965 made by Shri V. A. Rebellow, respondent no. 1 in this Court (hereinafter referred to as the complainant) under s. 33-A of the Industrial Disputes Act, 1947_hereinafter called the Act). The complaint was originally filed by the complainant before the National Industrial Tribunal, Delhi, (Mr. Justice G. D. Khosla, retired Chief Justice of the Punjab High Court) in the Industrial Dispute Reference No. 1 of 1964 but was later transferred to the Central Government Labour Court and numbered as application no. LCB 39 of 1965. The impugned award merely dealt with the preliminary points .raised by the appellant that the complainant was not a workman concerned in the aforesaid industrial dispute and that there was no breach of s. 33 of the Act with the result that the complaint under s. 33-A of the Act was incompetent. The Labour Court held the complainant to be,, a workman concerned in the aforesaid industrial dispute pending before the National Industrial Tribunal on the date of his dismissal and that the dismissal was not a discharge simpliciter but in breach of the provisions of s. 33. On this finding his complaint was held to be maintainable. The two questions canvassed in the present appeal are (1) whether the complainant was a workman and was as such concerned in the aforesaid dispute (Industrial Dispute Reference No. 1 of 1964) and (2) whether the termination of his service was a dismissal as alleged by him or was a mere termination of service not amounting to dismissal. Broad facts necessary for understanding the controversy may now be stated:

The order which was challenged as amounting to the com- plainant's dismissal reads CONFIDENTIAL Dated June 19, 1965 (Thru : The Commercial Manager, Cargo) Dear sir, It has been decided to terminate your services, which we hereby do with immediate effect. You will be paid ,one month's salary in lieu of notice.

2. Please arrange to return, as early as possible, all items of Corporation's property in your possession to enable us to settle your accounts.

3. Your accounts will be settled after checking your commitments.

Yours faithfully, AIR INDIA Sd/- S. K. KOOKA Commercial Director"

On July, 16, 1965 the complainant acknowledged the above letter terminating his services with immediate effect and requested for reinstatement because according to him there was nothing to warrant such summary termination of his services. This is what he wrote :

> ". . . In this connection I have to state that I have served the Corporation for a period of over nine years and to the date of terminating my services, there is nothing on record which warrants that my services should be terminated summarily. Hence it is requested that I be reinstated and thereafter if the Management is of the opinion that I have done something against the interest and the fair name of the Corporation, I be charged accordingly, given an opportunity to explain my conduct and after everything else if I am found guilty, action taken against me as the management deems fit. With

> the experience I have with the management's policy towards, its employees, I am confident that I will never 'be deprived of the opportunity I have asked for and more so in the light of the faithful service I have rendered....."

The following reply was sent to the complainant on September 8.1965

2. 1 have to inform you that your services were terminated on payment of 30 days' salary in lieu of notice, in accordance with Rule 48 of the Air-India Employees'Service Regulations."

Regulation 48 of the Air-India Employees' Service Regulations which was described as Rule 48 in the letter of September 8, 1965 leads as under CHAPTER VIII Cessation of service

48. Termination : The service of an employee may be terminated without assigning any reason, as under :

(a) of a permanent employee by giving him 30 days' notice in writing or pay in lieu of notice;

(b) of an employee on probation by giving him 7 days' notice in writing or any in lieu of notice;

(c) of a temporary employee by giving him 24 hours' notice in writing or pay in lieu of notice.

Explanation : For the purposes of this Regulation, the word "pay"' shall include all emoluments which would be admissible if he were on privilege leave."

In the complaint under s. 33-A of the Act it was alleged by the complainant that the order dated June 19, 1965 smacked of vindictiveness or unfair labour practice and that his alleged termination was a cloak for punishing him. No facts were, however, stated in support of this averment. According to the averments in this complaint, Regulation 48 postulates the existence of some reason for the termination of service and since the Corporation had not disclosed any reason for the termination of the complainant's service it was requested that the Corporation be directed to disclose the reason, if any, for the termination of his service. The real grievance of the complainant, it appears, was founded on the construction of Regulation 48 as is clear from the following averments in para 7 of the complaint:

> "The complainant submits that on a reasonable construction of the said Rule, the Opposite Party is bound to disclose the reason if any for the said termination in the present proceedings. The complainant submits that any other construction would be unreasonable and make the said rule itself unreasonable, illegal, void as also in contravention of Articles 14, 16, 19 and 311 of the Consti- tution of India and is therefore void and inoperative."

In regard to the question of the complainant being a workman concerned in a pending industrial dispute it was averred that the complainant had been employed by the Opposite Party as an Assistant Station Superintendent (Crew Scheduling) in the grade of Rs. 300-25-500-50-650 and

was confirmed in that post with effect from 1st December, 1963. In para 8 of the complaint it was pleaded that :

> of 1964 were and are pending before this Hon'ble Tribunal and the Complainant is a workman concerned in the said dispute. The Complainant says that under the circumstances aforsaid the Opposite Party ought to have made an application for approval before this Hon'ble Tribunal under Section 3 3 (2) of the Industrial Disputes Act, 1 947 but the Opposite Party has made no such application nor has the Opposite Party intimated that it proposed to make such an application for approval while terminating the services of the Complainant. The Complainant says. that the Opposite Party has not obtained the approval of this Hon'ble Tribunal in writing of the action taken by it against the Complainant."

On these averments reinstatement was claimed by the complainant with full back wages and allowances from the date of the alleged termination of his services. It appears that pursuant to directions from the Labour Court the appellant filed a further written statement dated June 30, 1966 and it was submitted :

> "Without prejudice to the contention of the Opposite Party that this case should be decided on the preliminary points above as raised by the Opposite Party, as the Complainant has repeatedly made a grievance that a written statement on merits has not even been filed and as this Honourable Tribunal also indicated at the preliminary hearing that a written statement on merits should in any event be kept ready and that no further time would be given to the opposite Party for preparing and filing the same-, the Opposite Party herewith begs to submit this further written Statement."

With these; preliminary submissions it was stated as follows in paragraph 7 :

> "With reference to, paragraphs 6 and 7 of the Complaint, Regulation 48 of the Air-India Employees' Service Regulations provides inter alia, that the services of a permanent employee may be terminated, without assigning any reason, by giving him thirty days' notice in writing or pay in lieu of notice. The construction sought to be put upon the said Regulation by the Complainant is not correct. The opposite Party denies that Regulation 48 is unreasonable, illegal or void or in con- travention of Articles 14, 16, 19 and 311 of the Constitution of India. The said Regulations have been framed with the previous approval of the Central Government under section 45 (2)(b) of the Air Corporation Act, 1953. The Opposite Party submits that it was and is not bound to give or disclose any reason for terminating the service of the Complainant. Any contrary view would, it is completely nugatory. However, without prejudice to this, the Opposite Party says that the Complainant's service was terminated because of the total loss of confidence on account of grave, suspicions regarding his private conduct and behaviour with Air Hostesses of the Corporation. The reports and statements from the Air Hostesses concerned cannot be disclosed as they involve the reputation and future of young and unmarried girls. Having regard

> to this, the Opposite Party could not continue the Complainant in its service and it was constrained to terminate his service in accordance with Regulation 48."

The complainant's averment that he was a workman concerned in the proceedings in the industrial dispute was denied by the appellant in the first written statement dated March 15, 1966 in para I which reads :

> "(a) The Complainant was at no relevant time a 'workman' within the meaning of that term as defined in Section 2(s) of the said Act. At the time of the termination of his service, the Complainant was an Assistant Station. Superintendent and was employed in an adminis- trative,/Supervisory capacity, drawing a total salary amounting to Rs. 690 per month. Moreover, it may also be pointed out that in its Staff Notice No. 130 dated 31st March, 1956, the Opposite Party has given a classi- fication of its personnel, wherein the category of Assistant Station Superintendents has been classified as an "Officer" category (vide Entry no. 1/28). A copy of the said Staff Notice is hereto annexed and marked Ex.

No. 1. Further, the said category of A ssistant Superintendents has not been included among the categories of workman in the' dispute in Ref. No. NIT/1 of 1964 pending before the, National Industrial Tribunal composed of Shri G. D. Khosla. Besides, the Class of officers designated as Assistant Station Superintendents has always been, and is, represented by the Air-India Officers Association which is not an association representing any workmen' and which is not a party to the dispute in the above mentioned reference. Further, the said class of Officers has not at any time presented itself before the National Industrial Tribunal nor has, it been represented at the hearing of the said dispute by any of the Unions representing parties nos. 2 to 7 to the said dispute.

(b) Even assuming, without admitting, that the Complainant is held to be a workman (which is denied) sub-sections `1 and 2 of section 33, and consequently section 33A, have, and can have, no application having regard to the circumstances of the present case. The sub- ject matter of the Complaint is not a matter connected with the dispute in the Reference before the National Industrial Tribunal nor is the Complainant concerned in the said dispute. Further subsection (1) (b) and subsection 2(b) of section 33 have application only in the case of dismissal or discharge for misconduct in the circumstances set out therein, and not to a case of termination of service simpliciter. In the present case, the Opposite Party has bona fide terminated the service of the Complainant under the provisions of Regulation 48 of Air India Employees' Service Regulations which are applicable to the Complainant. There has, therefore, been no breach of the provisions of sub-section (1)(b) or sub-section 2(b) of section 33 and unless there is such a breach there can be no invocation of Section 33A. On the contrary, the Opposite 'Party repeats that the said sub-sections are inapplicable." The complainant and the appellant both filed lists of the complainant's duties in proof of their respective contentions, Ex. E-1 being the appellant's list and Ex. W- 13, the complainant's.

The Labour Court held in the impugned award that the com- plainant as Assistant Station Superintendent was a Junior Officer and as such, as determined in the Khosla Tribunal Award, was

a workman concerned in the industrial dispute before that Tribunal and that his discharge was not discharge simpliciter but in breach of s. 33 of the Act. On this view the complaint was directed to be considered on the merits.

In this Court Shri Vimadlal argued that keeping in view the complainant's duties it is not possible to hold that he is a workman. According to the submission the complainant was an officer whose duties were primarily supervisory and, therefore, he could not be described as a workman. The complainant, it was further argued, was at least not a workman concerned in the industrial 11-L1031S sup. CI/72 dispute pending before the Khosla Tribunal. In any event, the action taken by the appellant, not being for misconduct on the part of the appellant but under Regulation 48 was not hit by S. 33 of the Act.

We should like first to deal with the applicability of ss. 33 and 33A of the Act on the assumption that the complainant was a workman and also as such interested in a pending industrial dispute. These sections read :

> "33. Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings:
>
> (1) During the pendency of any conciliation proceeding before a concilation officer or a Board or of any proceeding before an arbitrator or 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 workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman,-
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman Provided that no such workman shall be discharged or dismissed, unless he has 'been paid wages for owner month and an application has been made by the employer to the authority before which the

proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub section (2)no employer shall, during the pendency of any such proceeding in respect of an industrial dispute,take any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.-For the purposes of this sub- section, a 'protected workman', in relation to an establishment, means a workman who, being an officer of a registered trade union connected with the establishment, is recog- nised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected Workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible such order in relation thereto as it deemed fit.

33A Special provision for adjudication as to whether conditions of service, etc., changed during pendency or proceedings :

Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court, Tribunal or National Tribunal and on receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were, a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

The basic object of these two sections broadly speaking appears to be to protect the workmen concerned in the disputes which form the subject matter of pending conciliation proceedings or proceedings by way of reference under s. 10 of the Act, against victimisation by the employer on account of raising or continuing such pending disputes and to ensure that those pending proceedings are brought to expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. To achieve this objective a ban, subject to certain conditions, has been imposed by s. 33 on the ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment and s. 33A provides for relief against contravention of s. 33, by way of adjudication of the complaints by aggrieved workmen considering them to be disputes referred or pending in accordance with the provi- sions of the Act. This ban, however, is designed to restrict interference with the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the above object. The employer is accordingly left free to deal with the employees when the action concerned is not punitive or mala fide or does not amount to victimisation or unfair labour practice. The anxiety of the legislature to effectively achieve the object of duly protecting the workmen against victimisation or unfair labour practices consistently with the preservation of the employer's bona fide right to maintain discipline and efficiency in the industry for securing the maximum production in a peaceful harmonious atmosphere is obvious from the overall scheme of these sections. Turning, first to s. 33, sub-s.

(1)of this, section deals with the case of a workman concerned n a pending dispute who has been prejudicially affected by an action in regard to a matter connected with such pending dispute and sub-s. (2) similarly deals with workmen concerned in regard to matters unconnected with such pending disputes. Sub-section (1) bans alteration to the prejudice of the workman concerned in he conditions of service applicable to him immediately before the commencement of the proceedings and discharge or punishment whether by dismissal or otherwise of the workman concerned for misconduct connected with the dispute without the express Permission in writing of the authority dealing with the pending proceeding. Sub-section (2) places a similar ban in regard to matters not connected with the pending dispute but the employer is free to discharge or dismiss the workman by paying wages for one month provided he applies to the authority dealing with the pending proceeding for approval of the action taken. In the case before use we are concerned only with the ban imposed against orders of discharge or punishment as contemplated by cl. (b) of the two sub-sections. There are no allegations of alteration of the complainant's terms of service. It is not necessary for us to decide whether the present case is governed by sub-s. (1) or sub-s. (2) because the relevant clause in both the sub-sections is couched in similar language and we do not find any difference in the essential scope and purpose of these two subsections as far as the controversy before us is concerned. It is noteworthy that the ban is imposed only in regard to action taken for misconduct whether connected or unconnected with the dispute. The employer is, therefore, free to take action against his. workmen if it is not based on any misconduct on their part. In this connection reference by way of contrast may be made to sub-s. (3) of s. 33 which imposes an unqualified ban on the employer in regard to action by discharging or punishing the workman whether by dismissal or otherwise. In this subsection we do not find any restriction such as is contained in cl. (b) of sub-ss. (1) and (2). Sub-section (3) protects "protected workman" and the

reason is obvious for the blanket protection of such a workman. The legislature in his case appears to be anxious for the interest of healthy growth and development of trade union movement to ensure for him complete protection against every kind or order of discharge or punishment because of his special position as an officer of a registered trade union recognised as such in accordance with the rules made in that behalf. This explains the restricted protection in sub-ss. (1) and (2). It is in the background of the purpose and scope of s. 3 3 (1 and (2) that we have to consider whether the action taken against the complainant is hit by either of these two sub- sections. We have seen the form and the language of the impugned order. On its face the language does not show that the complainant's services were terminated because of any misconduct. Prima facie, therefore, the impugned order is not an order discharging or punishing the complainant for any misconduct. But then the complainant's learned counsel Shri Menon argued that the face or the form of the order is not conclusive and that the Court is entitled to and indeed should go behind the form and by looking at the real substance of the matter try to find the real cause and then come to its conclusion whether or not the order is a mere camouflage for an order of dismissal for misconduct.

The true legal position has been stated by this Court more than once and is by now beyond controversy. In one of the most recent decisions in The Workmen of Sudder Office, Cinnamara v The Management(1) this Court approvingly referred to two of its earlier decisions actually reproducing a passage from one of them.

This is what was said in Sudder Office case :

> "It is needless to point out that it has been held by this Court in The Chartered Bank, Bombay v. The Chartered Bank Employees' Union (2) that if the termination of service is a colourable exercise of the power vested in the management or as a result of victimisation or unfair labour practice, the Industrial Tribunal would have jurisdiction to intervene and set aside such a termination. In order to find out whether the order of termination is one of the termination simpliciter under the provisions of contract or of standing orders, the Tribunal has ample jurisdiction to go into all the circumstances which led to the termination simpliciter-. The form of the order of termination, is not conclusive of the true nature of the order, for it is possible that the form may be merely a camouflage for an order of dismissal for misconduct. It is, therefore, open to the Tribunal to go behind the form of the order and look at the substance. If the Tribunal comes to the conclusion that though in form the order amounts to termination simpliciter but in reality cloaks a dismissal for misconduct, it will be open to it to set aside the order as a colourable exercise of power by the management.

Principles to the same effect have also been reiterated in the later decision of this Court in Tata Oil Mill Co. Ltd. v. WorKmen & anr. (3) where the Court observed as follows :

> "The true legal position about the Industrial Court's justification and authority in dealing with (1) [1971]-Il L.L.J. 620. (2) [1960]-Il L.L.J. 222.

(3) [1964]-II L.L.J. 113.

cases of this kind is no longer in doubt. It is true that in several cases, contract of employment or provisions in standing orders authorise an industrial employer to terminate the service of his employees after giving notice for one month or paying salary for one month in lieu of notice, and normally, an employer may, in a proper case, be-

entitled to exercise the said power. But where an order of discharge passed by an employer gives rise to an industrial dispute, the form of the order by which the employee's services are terminated would not be decisive; industrial adjudication would be entitled to examine the substance of the matter and decide whether the termination is in face discharge simpliciter or it amounts to dismissal which has put on the cloak of discharge simpliciter. If the Industrial Court is satisfied that the order of discharge is punitive, that it is mala fide, or that it amounts to victimisation or unfair labour practice, it is competent to the. Industrial Court to set aside the order and, in a proper case, direct the reinstatement of the employee."

Shri Menon on behalf of the complainant, however, contended that ignoring the form and language of the impugned order and looking at the real substance of the matter it is clear as disclosed by the appellant in the further written statement that the complainant's services were terminated because of a suspicion about his private conduct and behaviour with Air Hostesses whose names were considered not proper to be disclosed. This, said the counsel, makes out an allegation of misconduct which induced the appellant to terminate the complainant's services and the case, therefore, clearly falls within the mischief of s. 33. The impugned order, he added, is a colourable exercise of the power under Regulation 48, the real object of the appellant being essentially to punish the complainant for misconduct. No doubt, the position of the industrial workman is different from that of a Government servant because an industrial employer cannot "hire and fire" his Workmen on the basis of an unfettered right under the contract of employment, that right now being subject to industrial adjudication : and there is also on the other hand no provision of the Constitution like Arts. 3 1 0 and 3 1 1 requiring consideration in the case of industrial workmen. We are here only concerned with the question whether the impugned action of termination of the complainant's services is for misconduct as contemplated by s. 3 3 (II) (b) or s. 3 3 (2) (b). While considering this question it is open to the complainant to urge that reliance on Regulation 48 is not bona fide, it being a colourable exercise of the right conferred by that regulation. He has in fact raised this argument and it is this aspect which concerns us in this case. Let us now scrutinies the present record for examining the position from this aspect.' Now, the true position, as it appears to be clear from the record of this case, is that the complainant's services were terminated under Regulation 48 by paying his salary for 30 days in lieu of notice. The order does not suggest any misconduct on the part of the complainant and indeed it is not possible to hold this order to be based on any conceivable misconduct. The form of this order is no doubt not decisive and attending circumstances are open for consideration, though motive for the order, if not mala fide, is not open to question. The further written statement which the appellant was directed to file and which was filed without prejudice discloses the fact that the appellant had lost confidence in the complainant and this loss of confidence was due to a grave suspicion regarding the complainant's private conduct and behaviour with Air- Hostesses employed by the appellant, Regulation 48 which has been set out

earlier as its plain language shows does not lay down or contemplate any defined essential pre-requisite for invoking its operation. Action under this Regulation can be validly taken by the employer at his sweet will without assigning any reason. He is not bound to disclose why he- does not want to continue in service the employee concerned. It may be conceded that an employer must always have some reason for terminating the services of his employee. Such reasons apart from misconduct may, inter, alia, be want of full satisfaction with his overall suitability in the job assigned to the employee concerned. The fact that the employer is not fully satisfied with the overall result of the performance of his duties by his employee does not necessarily imply misconduct on his part. The only thing that remains to be seen is if in this case the impugned order is mala fide. The record merely discloses, that the appellant had suspicion about the complainant's suitability for the job in which he was employed and this led to loss of confidence in him with the result that his services were terminated under Regulation

48. In our view, loss of confidence in such circumstances cannot be considered to be mala fide. We are unable to conceive of any rational challenge to the bona fides of the employer in making the impugned order in the above back- ground. The complainant, it may be remembered had to deal with Air-Hostesses in the performance of his duties and if the appellant was not fully satisfied beyond suspicion about his general conduct and behaviour while dealing with them it cannot be said that loss of confidence was not bona fide. Once bona fide loss of confidence in affirmed the impugned order must be considered to be immune from challenge. The opinion formed by the employer about the suitability of his employee, for the job assigned to him even though erroneous, if bona fide, is in our opinion final and not subject to review by the industrial adjudication. Such opinion may legitimately induce the employer to terminate the employee's services; but such termination can on no rational grounds be considered to be for misconduct and must, therefore be held to be permissible and immune from challenge. The decision in the case of Management of U. B. Dutt & Co. v. Workmen of U. B. Dutt & Co.(1) relied upon by the com- plainant's learned counsel is of no assistance to him. There one employed by the management as a cross cutter in the saw mill was asked to show cause why his services should not be terminated on account of grave indiscipline and misconduct and he denied the allegations of fact. He was thereafter informed about a departmental enquiry to be held against him and was suspended pending enquiry. Purporting to act under r. 18 (a) of the Standing Orders, the appellant terminated the services of S without holding any departmental enquiry. On reference of the dispute to the Industrial Tribunal this action was held not to be bona fide but a colourable exercise of the power conferred under r. 13

(a) of the Standing Order and since no attempt was made before it to defend such action by proving the alleged misconduct, it passed an order for reinstatement of S. Ouite clearly the facts there are not parallel to the facts before us. The facts there are materially different. We have proceeded on the assumption that the reason stated in the further written statement filed without prejudice pursuant to the direction of the Labour Court could be taken into account. We, however, must not be understood to express any opinion on its propriety either way. In our opinion the Central Government Labour Court, Bombay, was, for the reasons foregoing, not right in holding that the complainant was guilty of misconduct and that his services were terminated for that reason. We, therefore, allow this appeal and setting aside the order of the Central Government Labour Court, Bombay, dismiss the complainant's petition under s. 33-A of the Act. In the peculiar circumstances

of the case there would be no order as to costs.

V.P.S. Appeal allowed.

(1) [1962] Supp. 2 S.C.R. 822.