Supreme Court of India
The Workmen Of Sudder Office, ... vs Management Of Sudder Office And ... on 22 September, 1971
Equivalent citations: (1971) IILLJ 620 SC, (1972) 4 SCC 746
Author: C Vaidialingam
Bench: C Vaidialingam, P J Reddy
JUDGMENT C.A. Vaidialingam, J.

1. This appeal, by special leave, is directed against the judgment and order dated January 17, 1966 of the High Court of Assam and Nagaland, in Civil Rule No. 201 of 1965 quashing the award dated March 3, 1965 of the Labour Court of Assam in Reference No. 98 of 1961, in and by which the Labour Court had set aside the order dated April 19, 1960 of the management terminating the services of the workman B.N. Thakur.

2. The workman was employed as the head godown clerk in the first respondent's engineering godown in Sadar office. He was mainly responsible for receipts and issue of stores from the engineering godown of the company; and, according to the management, he was holding a position of trust and responsibility. On March 12, 1960 the manager of Rungagora Tea Estate had sent a lorry to Sadar office to collect certain stores for the garden. The said lorry was being driven by a garden lorry driver Jamiruddin. When the driver was collecting stores from the engineering godown, the workman who was at that time the head godown clerk instructed the former to take three used pulleys belonging to the company in the lorry and to drop them at M/s. Sharma and Company at Jorhat. The driver was also informed that the pulleys were being returned to M/s. Sharma and Company as they belonged to the latter. The lorry driver loaded the pulleys in the garden lorry as directed by the workman. But as he forgot to drop them at the depot of M/s. Sharma and Company, the pulleys were taken to Rungagora Tea Estate. On March 16, 1960 the driver of the lorry informed the manager of Rungagora Tea Estate that the three pulleys had been brought to the garden godown by mistake instead of delivering them to M/s. Sharma and Company, as directed by the workman. As there was no challan produced by the driver for clearing the goods from the engineering office, the manager informed the assistant manager of Sadar office on March 18, 1960. On instructions from the Sadar office, the pulleys were returned to the garden office.

3. A preliminary investigation was held by the management regarding the circumstances under which the three pulleys came to be removed from the engineering godown. As the workman was not able to give any satisfactory explanation for the removal of the goods from the engineering godown, a charge-sheet was served on him by the management on March 21, 1960. In the charge-sheet it was alleged that the workman' Bhola Nath Thakur had removed three pulleys on March 12, 1960 from the company godown and loaded them in the garden lorry without authority and had instructed the lorry driver to drop them at the godown of M/s. Sharma and Company at Jorhat. It was further stated that the allegations, if proved, would constitute an offence under the standing orders of the company.

4. The workman was called upon within the time specified therein to offer his explanation and also to state why he should not be dismissed or otherwise punished. He was also informed that he would be given a personal hearing on March 22, 1960. The workman sent a reply on March 22, 1960,

stating that the pulleys which had been received in the workshop in February, 1960, were found to be unsuitable and had been returned to him by the foreman of the workshop. As the garden lorry was collecting the stores on March 12, 1960 and as the pulleys had to be taken back and kept in the American hospital godown, from where they had been received, they were loaded in the lorry by the workman with instructions to the driver to deliver them at the American hospital godown. The despatch of the pulleys was duly intimated to the assistant company manager. Thereafter a challan was issued to the manager, Rungagora Tea Garden, to return the pulleys. The workman further stated that he did not ask the driver of the garden lorry to deliver the pulleys in the godown of M/s. Sharma and Company, Jorhat, and if the driver got any such idea, it must be due to his misunderstanding the instructions given by the workman. The workman finally pleaded that he was not guilty of any of the allegations mentioned in the charge-sheet.

5. An enquiry appears to have been made by the Sadar office manager and ultimately on April 19, 1960, an order was passed that the charges have been proved to the satisfaction of the management and that the latter has lost confidence in the workman. As such, it was stated that the management considers it unsafe to retain Bhola Nath Thakur in the post of trust and responsibility occupied by him at that time. The order proceeds to state that in the interest of the company, it has been decided to terminate his services with effect from the date of the notice in accordance with Clause 9 of the standing orders of the company. The workman was also informed that he will be paid one month's pay in lieu of notice and the wages due to him as mentioned in the statement attached to the letter. The workman was further informed that he will receive in full not only his provident fund contributions but also the contributions made by the employer together with interest due thereon. The workman was instructed to collect his dues on April 20, 1960. In the statement attached to the order of termination, the workman was informed that the following items will also be paid to him;

1. Full pay and allowances for the period From (sic)-4-60 to 60 to 19-4-60 Rs. 229.24 2. One month's pay and allowances in lieu of notice Rs. 361.95 3. Leave pay for 15 days' earned leave A/c 1959 Rs. 180.98 4. Proportionate leave pay for 5 days for earned leave due up to 19-4-1960 A/c 1960 Rs. 60.33 _____ Total Rs. 832.50 _____

6. On April 28, 1960 the union made a representation to the management that the order terminating the services of Bhola Nath Thakur was not justified and requested the management to reconsider his case and reinstate him in service. On May 6, 1960 the management sent a reply to the union that Bhola Nath Thakur, who was occupying a post of trust and responsibility, had acted in such a manner that resulted in the management losing confidence in the workman. The management further stated that the action terminating his services had been taken after having due regard to all the circumstances and that it has acted bona fide and in the best interest of the company. By its letter dated May 24, 1960, the company informed the workman by a statement regarding the provident fund amount standing to his credit which was due to him. The said statement included not only the provident fund contributions made by the workman, but also the contributions made by the management. There appears to have been some further correspondence between the union and the management, the former requesting the latter to cancel the order terminating the services of Bhola Nath Thakur. But the management declined to reconsider its decision.

7. The State Government made a reference on December 18, 1961 for adjudication to the Labour Court, Assam, of the following issues:-

(1) Whether the management of Sudder office, Cinnamara are justified in terminating the services of Shri B.N. Thakur?

(2) If not, is he entitled to reinstatement, or any other relief in lieu thereof?

8. In its written statement dated March 16, 1962, the union alleged that there has been a miscarriage of justice when the management terminated the services of Bhola Nath Thakur. It criticised the proceedings taken by the management in this regard and averred that the allegations made against the workman have not been proved. In particular, the union pleaded that the management has purposely taken recourse to Clause 9 of the standing orders, to make it appear that the termination of the service was one simpliciter and not by way of any punishment. The union further pointed out that the workman who was in charge of stock worth over six lakhs of rupees was not even suspended during the inquiry held by the management. The action taken by the management on the ground that they have lost confidence in the workman is not the real reason and that, on the other hand, the management has terminated the services of the workman with ulterior motive and that the action is not bona fide.

9. The management in its written statement dated March 20, 1962 affirmed that the workman Bhola Nath Thakur was holding a post of trust, and responsibility in the company's engineering godown. After referring to the circumstances leading to the order of termination being passed, the management pleaded that the conduct of the workman was such that the management lost its trust and confidence in him, and as the head godown clerk, who is the custodian of the company's property, Bhola Nath Thakur must enjoy in full the trust and confidence of the employer. When once he has behaved in a manner prejudicial to the interest of the company, the latter having lost its trust and confidence in him was justified in terminating his services. The management further averred that the action has been taken in accordance with Clause 9 of the standing orders and that he was given not only all the wages due to him, but also the provident fund contributions made by him and by the employer and also the leave salary to his credit for earned leave not availed of by the workman. The management controverted the allegation that the action taken by it was in any way prompted by motive of victimisation or unfair labour practice.

10. In the additional written statement dated May 2, 1962, the union again alleged that the management has taken action under Clause 9 of the standing orders merely as a cloak to camouflage what really was an order of dismissal.

11. The management again in its additional written statement dated December 21, 1963 averred that no extraneous matters have been taken into account by it in terminating the services of Bhola Nath Thakur and that his services were dispensed with as the management had lost its confidence in him. Under those circumstances, it was averred that there was no justification for the union asking for either the order of termination being cancelled or for the reinstatement of the workman concerned.

12. The labour Court by its award dated March 3, 1965 after considering the pleas of the management and the union has held that the management has taken action against the workman really under Clause 10(a)(2) of the standing orders after conducting an inquiry in which no report was submitted or made available to the workman. Without recording any finding of guilt against the workman, his services had been terminated by the management under cover of Clause 9 of the standing orders to make it appear that it is a termination simpliciter and not one of dismissal, by way of punishment. The actual finding of the Labour Court is:-

So the termination of services under Clause 9 of the standing orders appears to be a camouflage, and is not a discharge simpliciter but in fact the termination is a dismissal as a measure of punishment.

13. The Labour Court further held that the domestic inquiry conducted by the management is not valid and that no evidence was also adduced before it by the management to prove the charges against the workman. On this reasoning the Labour Court ultimately held that the management was not justified in terminating the services of the workman B.N. Thakur and as such set aside the orders dated April 19, 1960. In view of this finding, the Labour Court gave a further direction that B.N. Thakur is entitled to be reinstated with full back wages and continuity of service from the date of termination of his services.

14. The management challenged the award of the Labour Court by a writ petition Civil Rule No. 209 of 1965 filed before the High Court of Assam and Nagaland under Article 226 of the Constitution. In the" writ petition the management, after setting out the circumstances leading to the passing of the order dated April 19, 1960 categorically averred that the services of the workman were terminated under Clause 9 of the standing orders of the company and that it was a termination of service simpliciter under the terms of contract and not an order of dismissal. The management further averred that in view of the conduct of B.N. Thakur, it had lost its trust and confidence in him and hence his services were terminated. The workman was paid all amounts that were due to him, namely, wages including wages for the earned leave not availed of by him and provident fund amount. The management characterised as perverse the finding of the Labour Court that the order of termination is a camouflage adopted by the management to cover up what really is an order of dismissal. It was particularly emphasised that the Labour Court had no jurisdiction to set aside the order of termination, especially when it has not accepted the plea of the union regarding lack of bona fides, unfair labour practice and victimisation.

15. We do not find from the record that any counter-affidavit was filed on the side of the workman before the High Court. Before the High Court, it is seen, the counsel appearing for the union and the workman represented that he was not placing any reliance on the statement contained in the award that the order of termination is a camouflage adopted by the management to cover up what really is an order of dismissal. It is further seen that it was conceded by the same counsel that the use of the expression "camouflage" by the union has no value in the circumstances of the case. But the counsel for the workman appears to have taken up the stand that he will be able to sustain the order of the Labour Court on the ground that the termination of the services is really one by way of dismissal.

16. In view of the concession made on behalf of the union and the workman, quitenaturally, the High Court has eliminated these observations contained in the award regarding any motives that could be attributed to the management. The High Court further noted that the Labour Court has not accepted the allegation of the union that the action of the management was not bona fide or was passed by way of victimisation and amounted to an unfair labour practice. In view of all these circumstances, the issue before the High Court became a quite straight and simple one, namely, whether it is an order terminating the services of the workman simpliciter in terms of the contract of service on the ground that the employer has lost its confidence or whether the order of termination is really one dismissing the employee from service as and by way of punishment. The High Court considered the question from this point of view and ultimately held that the award of the Labour Court that the order is one of dismissal is erroneous. On the other hand, the High Court held that the order dated April 19, 1960 is one of terminating the services simpliciter, which the management was entitled to do under Clause 9 of the standing orders of the company. In this view the High Court allowed the writ petition filed by the management and set aside the award of the Labour Court.

17. Dr. C.B. Agarwala, learned Counsel for the appellant workman, has urged that the view of the High Court that the order dated April 19, 1960 is one terminating the services of the workman simpliciter under Clause 9 of the standing orders is erroneous and that the High Court was not justified in interfering with the findings recorded by the Labour Court in favour of the workman. The counsel pointed out that the specific plea of the management was that it has terminated the services of the workman after framing a charge and holding an inquiry, in which the workman was found guilty. Quite naturally, the learned Counsel relied on the charge framed by the management on March 21, 1960 as well as the order of termination dated April 19, 1960 in support of his contention that the management has itself proceeded on the basis that the workman was charged with misconduct and action was being taken against him on the ground that the misconduct has been proved. Having due regard to the stand taken by the management, the counsel pointed out that the management has purported to act under Clause 9 of the standing orders to make it appear that it is not an order of dismissal for misconduct and hence the Labour Court was justified in holding that the order is only a cloak or a camouflage to cover up the real purport of the order, namely, of dismissal. The counsel further urged that the High Court has exceeded its jurisdiction under Article 226 when it interfered with the direction given in the award by the Labour Court. The counsel finally urged that as the order of termination of service should be held to be one of dismissal for punishment for misconduct, there are no circumstances in this case, not to give effect to the normal rule of reinstatement with full back wages. The fact that the order has been passed in I960 and reinstatement is to be given effect now, after lapse of about 11 years, is by itself no ground for refusing that relief to the workman. For the latter proposition the counsel relied on the recent judgment of this Court reported in The Management of Panitole Tea Estate v. The Workmen 1971-I L.L. J. 233.

18. On the other hand, Mr. Chagla, learned Counsel for the management has urged that in the various proceedings right from the letter dated March 20, 1960, though called a charge-sheet, the management has consistently taken up the position that it has lost its trust and confidence in the employee who was holding a very responsible post in the company. Even according to the union, the workman was in charge of the company's goods of nearly six lakhs of rupees and the conduct of the

workman in attempting to send away the pulleys which belonged to the company was really a betrayal of the trust and confidence that was absolutely necessary in the case of a person holding such a responsible post. The counsel further pointed out that when once there has been no finding by the Labour Court of any victimisation, unfair labour practice or mala fides, and when the finding regarding the order being a camouflage recorded by the Labour Court was given up by the counsel for the workman, the High Court was justified in considering the question which was a simple one, namely, whether the order is one of termination simpliciter or by way of punishment. If all other circumstances are eliminated, it was quite clear, according to the High Court, that the management was justified in passing the order under Clause 9 of the standing orders of the company. The workman as the order dated April 19, 1960, itself shows was being paid all the amounts mentioned therein which will not be available to him if he was being dismissed by way of punishment for misconduct. The counsel further urged that even assuming that the order is one of dismissal, in the particular circumstances of this case, when the employer has lost his trust and confidence in the workman concerned, reinstatement should not be ordered and relief, if any, could be given to the workman by way of award of compensation. The counsel referred us in this connection to the decision of this Court reported in Assam Oil Co. v. Its Workmen 1960-I L.L. J. 587, Ruby General Insurance Company Ltd. v. Chopra (P.P.) 1970-I L.L. J. 631 and Hindustan Steels Ltd., Rourkela v. Roy (A.K.) and Ors. 1970-I L.L. J. 228, in support of his propositions that on an examination of all the circumstances of this case, if the apprehension of the employer that he has lost trust and confidence in the employee and as such it is not in the interest of the company to retain the workman in its service is accepted as genuine and honest, a case should be considered to have been properly made out by the employer against reinstatement and that it is a case when compensation would meet the ends of justice.

19. Before we consider the contentions of the learned Counsel on both sides, it is necessary to refer to Clause 9 of the standing orders of the company. Clause 9 of the standing orders is as follows:

(9). Termination of employment and notice thereof to be given by the employer and workmen.

Notice of termination of employment, whether by manager or by worker, shall be given equal to the wage-period of the worker concerned.

Provided that

(a) the manager may terminate the employment of a worker forthwith and pay his wages for the wage period (equivalent to his average earnings over the preceding period of three months) in lieu of notice.

(b) Notice of termination of employment shall be necessary only in case of permanent workers and not in the case of outside or temporary workers except in so far as is laid down in any agreement entered into between the manager and such outside or temporary workers.

(c) The manager may dismiss without notice any worker who is guilty of gross misconduct but such worker must be informed in writing of the alleged misconduct and be given an opportunity to

explain the circumstances alleged against him.

(d) Where employment of any worker is terminated the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day on which his employment is terminated.

(e) The manager may, when a worker is charged with misconduct, direct that such worker be suspended pending investigation by the management into the charge of misconduct and during the period of suspension the worker shall be entitled to receive an allowance of not less than one-half of his wages provided that if the charge of misconduct is not proved the worker shall be entitled to receive the full wage for the period of suspension.

20. Clause 10 enumerates the acts or omissions which constitute misconduct. As the Labour Court has held that the misconduct alleged against the workman will come under Clause 10(a)(2), we will refer only to that particular sub-clause:

(10) Acts or omissions which constitute misconduct.

(a) The following acts and omissions shall constitute gross misconduct:-

* * * (2) Theft, fraud or dishonesty in connection with the company's business or property.

21. From a perusal of Clause 9, it is seen that there is a power in the management to terminate under Sub-clause (a) the employment of a workman forthwith by paying the amount of wages mentioned therein in lieu of notice. Notice of termination is mandatory only in cases of persons enumerated in Sub-clause (b). Sub-clause (d) provides that the employer is bound to pay the wages earned by the work man and any other dues within the period mentioned therein. Sub-clauses (a), (b) and (d) will have to be read together. Sub-clause (c), on the other hand, deals with the power of the management to dismiss without any notice any workman who is guilty of gross misconduct. The said Sub-clause also lays down the procedure to be adopted before an order of dismissal is passed. Sub-clause (e) gives power to the management when a workman is charged with misconduct to place him under suspension pen ding inquiry. It also, provides for payment of allowances during the period of suspension and for payment of full wages, if misconduct is not proved. Sub-clauses (c) and (e) deal with disciplinary action taken against an employee resulting in punishment awarded by way of dismissal. The acts or omissions which constitute misconduct are also enumerated in Clause 10 of the standing orders. According to the Labour Court, in this case, it must be considered that the workman has been found guilty of dishonesty in connection with the company's property, the three pulleys, and it will constitute misconduct under Clause 10(a)(2) of the standing orders. It is on that basis that the Labour Court has come to the conclusion that the order of termination is really one of dismissal for misconduct.

22. Dr. Agarwala referred us to the various decisions regarding the ingredients of a proper domestic inquiry held by the management as well as the jurisdiction of the Industrial Court to consider whether an order which purports to be one of termination of service simpliciter is really such an order or one of dismissal for misconduct. There is no controversy about those principles, namely,

that if a workman is charged for misconduct and a domestic inquiry is held by the management, that inquiry must be bona fide and it should have been held without violating the principles of natural justice and after giving a reasonable opportunity to the workman to defend himself, that is, it must be a proper inquiry without any mala fides or victimisation or unfair labour practice.

23. It is needless to point out that it has been held by this Court in The Chartered Bunk, Bombay v. The Chartered Bank Employees' Union 1960-II L.L. J. 222, 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.

24. Principles to the same effect have also been reiterated in the later decision of this Court in Tata Oil Mills Co. Ltd v. Workmen and Anr. 1964-II L.L. J. 113 or 1963-11 L.L. J. 78, where the Court observed as follows:

The true legal position about the Industrial Court's justification and authority in dealing with 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 fact 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.

25. We will now proceed to consider whether the order of termination in the case before us is one of simpliciter under the provisions of the standing orders or whether it is really an order of dismissal for misconduct. We will be emphasising in due course that even the Labour Court which held in favour of the workman has not recorded any finding that the action of the management in terminating the services of the workman was mala fide or amounted to unfair labour practice or was a case of victimisation. Though prima facie it may appear that the management in this case was charging the workman in respect of a matter which may be a misconduct under the standing orders, ultimately we are satisfied that the management has passed the order of termination simpliciter and

the order docs not amount to one of dismissal as and by way of punishment.

26. It is no doubt true that a charge-sheet was given to the workman wherein it was stated that if the allegations therein are proved, they will constitute an offence under the standing orders. But it must be noted that the said letter itself called upon the workman to explain why he should not be dismissed or otherwise punished. The workman gave his explanation by his letter dated March 22, 1960. Though some sort of investigation has been made by the management, which is loosely called the inquiry, the actual order passed on April 19, 1960 clearly shows that the management has not chosen to dismiss the workman on the ground that he is guilty of one or other of the misconduct enumerated in Clause 10 of the standing orders. On the other hand, the order clearly shows that in view of the conduct of the workman, the management has lost confidence in him and that it considers it unsafe to retain him in his present position of trust and responsibility. At this stage it may be mentioned that even according to the union in its written statement it is stated that the workman is entrusted with stores of the value of six lakhs of rupees and this has also been referred to by the Labour Court. The order finally says that in the interest of the company, it has been decided to terminate the services of the workman under Clause 9 of the standing orders in force. It is rather significant to note that the management did not place the workman under suspension as it is entitled to under Sub-clause (e) of Clause 9. Such an action would have been taken if the management was really inquiring into an allegation of misconduct as enumerated in Clause 10. It has also to be noted that the order dated April 19, 1960 clearly informs the workman that he is entitled to one month's pay in lieu of notice and also the provident fund contributions made by him as well as by the employer together with interest. The same order further gives particulars of the full pay and allowances and other earned leave allowances which are also payable to the workman. If it is really a case of dismissal of an employee for misconduct, he would not be entitled to payment of the various items referred to in the order dated April 20,1960, particularly one month's pay in lieu of notice, the employer's contribution to the provident fund as well as the earned leave salary amount. The fact that the management paid all those amounts clearly shows that the action taken by the management cannot be said to be one by way of dismissal and that it is a case of termination of service simpliciter.

27. Dr. Agarwala referred us to the various averments made by the management in its written statement before the Labour Court that action has been taken against the workman on the basis of the findings arrived at in the inquiry conducted by the management. No doubt there are some averments to that effect, but the sum and substance of the stand taken by the management is that the investigation or inquiry that was conducted by it related to the circumstances under which the pulleys were removed from the engineering godown. It was not conducting any inquiry as it is normally understood when disciplinary proceedings are intended to be taken against a workman for misconduct. On the other hand from the very beginning in the order of termination it has stated that it has lost its confidence in the workman. In the letter to the union, the management has stated that it has lost confidence in the workman. Again in the written statement dated March 20, 1962, before the Labour Court, the management has categorically stated that the termination of the services of the workman was because the management lost its confidence and trust in the workman.

28. It was the stand taken by the management that it has lost confidence in the workman and that action was taken under Clause 9 of the standing orders by terminating the services simpliciter. That was challenged by the union that the order has been so worded as to camouflage the real intention of the management, namely to dismiss the employee for misconduct. The Labour Court, no doubt, held that the action must have been taken under Clause 10(a)(2) of the standing orders for misconduct which resulted in the passing of the order under the cloak of Clause 9 of the standing orders, and that Clause 9 has been invoked only as a camouflage. If this finding of the Labour Court was supported by the union and the workman before the High Court, and accepted by the High Court, the position would have been entirely different. On the other hand, before the High Court, the counsel for the workman quite clearly conceded that he is not placing reliance on the finding of the Labour Court that Clause 9 has been invoked only as a camoullage.

29. Added to this there is the other crucial circumstance, namely, the Labour Court not having accepted the plea of the union that the management was prompted by mala fides, victimisation and unfair labour practice, when it passed the order of termination. Therefore, before the High Court all the other surrounding circumstances, namely, camouflage, victimisation, unfair labour practice and mala fides had to be eschewed from consideration. Then the question was a very simple one whether the order is one of dismissal for misconduct or one by way of termination of the services simpliciter on the basis of the contractual obligation contained in Clause 9 of the standing orders. The High Court having due regard to the various circumstances, referred to by us earlier, has come to the conclusion that the order is not one by way of dismissal but only an order of termination simpliciter on the ground that the management had lost confidence and trust in the workman. No doubt the standing order does not say that the services of a workman can be terminated when the employer loses its trust and confidence, but absence of such a provision, in our opinion, is inconsequential. There is no controversy that the workman Bhola Nath Thakur was the head clerk at the relevant time in the company's engineering godown and he was responsible for the maintenance of stores belonging to the company of the value of about six lakhs of rupees. This has been accepted by the union itself and if that is so, the workman was holding a very responsible post where integrity and honesty are quite essential. The management could have, no doubt, taken disciplinary action against the workman concerned, according to law. But it has not done so in this case. On the other hand, when the circumstances showed that the company can no longer place its trust and confidence in the workman, the management terminated his services by making available to him all amounts that he will be entitled to in case of termination simpliciter under Clause 9 of the standing orders. The entire basis of the Labour Court's award for holding that the order is one of dismissal is its view that the management has invoked Clause 9 to camouflage its action. When that approach has been given up on behalf of the workman before the High Court, the reasoning of the Labour Court falls to the ground and the High Court has acted within its jurisdiction under Article 226 when it set aside the order of the Labour Court especially when there has been no finding of victimisation, unfair labour practice or mala fides recorded against the management. To conclude,, we are satisfied that the High Court was justified in setting aside the order of the Labour Court.

30. As we agree with the view of the High Court that the order is one terminating the services of the workman simpliciter, it is unnecessary for us to refer to the various decisions relating to the circumstances under which the Labour Court or an Industrial Tribunal can interfere with the

findings recorded in a domestic inquiry. Nor is it necessary to consider the decisions referred to us relating to the circumstances under which a reinstatement need not be ordered even if it is held that the order of termination of service or dismissal cannot be justified.

31. Before we conclude we have to record a statement made before us by Mr. Chagla, learned Counsel for the management, that his clients are also prepared to pay as ex gratia six months' salary to the workman concerned. This will be over and above the amount that may have been paid or still remains to be paid on the basis that the order of termination is one of simpliciter as held by us. In the order dated April 19, 1960, it is stated that one month's pay and allowances in lieu of notice are Rs. 361.95P. Six months' wages now agreed to be paid by Mr. Chagla will be worked out on this basis. The amount will be paid to the workman within three months from today.

32. In the result, the judgment and order of the High Court dated January 17, 1966 arc confirmed and this appeal will stand dismissed. There will be no order as to costs.