Supreme Court of India
Municipal Corporation Of Greater ... vs The B.E.S.T. Workers' Union on 12 January, 1973
Equivalent citations: 1973 AIR 883, 1973 SCR (3) 285
Author: C Vaidyialingam
Bench: Vaidyialingam, C.A.

PETITIONER:
MUNICIPAL CORPORATION OF GREATER BOMBAY

Vs.

RESPONDENT:
THE B.E.S.T. WORKERS' UNION

DATE OF JUDGMENT12/01/1973

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
ALAGIRISWAMI, A.
DUA, I.D.

CITATION:
1973 AIR 883 1973 SCR (3) 285
1973 SCC (3) 546
CITATOR INFO :
R 1983 SC 494 (8)

ACT:
Bombay Industrial Relations Act, 1946, s. 78(1)(d)(i)-Scope of.

HEADNOTE:
The appellant, the Municipal Corporation of Greater Bombay, established the Bombay Electric Supply and Transport Undertaking for the purpose of providing and operating motor transport and supplying electricity to the consumers in the city of Bombay.
Workman Shri Naik, employed as Assistant Fitter in the Transportation Engineering Department at the Appellant's Workshop and another employee employed under the Appellant as a mechanic were found by the S.I. of Police with gunny bags in their hands and each bag contained 22 brass bearings. On investigation it was found that Naik was an employee under the Appellant and that the brass bearings had been removed from the Appellant's Workshops with the help and cooperation of the mechanic. A complaint of theft against the two workmen was launched.
An inquiry was held by an officer of the appellant and after

evidence by the police officers and others, the Enquiry Officer found Shri Naik guilty and an order of dismissal was passed on February 11, 1970. Appeals to the Executive Engineer and Assistant General Manager of the appellant were all dismissed.

Naik and the mechanic thereafter, filed applications before the 5th Labour Court at Bombay challenging the order of dismissal on various grounds. The Labour Court, after considering all the facts and evidence held that as the orders of dismissal were not passed within six months of the misconduct coming to the notice of the employer, they were illegal and have to be set aside under s.78(1)(d)(i) of the Act. The Labour Court further ordered the appellant to pay each of the workmen his back wages from the date of dismissal till the date, of order and also in addition to pay compensation of Rs. 15001-.

The main point that arose for consideration was the interpretation of the provisions of s.78(1)(d) of the Act etc.

Held : (i) The word "shall" in s. 78(1) should not be strictly construed and when the relevant provisions are read in the context in which they appear, it cannot be doubted that the Labour Court will have to consider the circumstances of a particular case and the- nature of the misconduct and also the nature of contravention of any provisions of law or standing order. The fact that s. 78(1) of the Act has conferred certain powers on the Labour Court does not mean that the Labour Court must necessarily and under all circumstances grant the reliefs which it has the power to grant. It is well established proposition that the power to grant certain reliefs includes the power of refusing the relief. If an employer in a particular case has passed an order of punishment beyond the period of six months and if it is found that he has no satisfactory explanation for the delay. the Labour Court may be justified in straightaway setting aside the orders

286

on the ground that they have been passed beyond the period of six months. If, on the other hand, as in the present case, an employer has been vigilant in initiating disciplinary proceedings and the Labour Court is satisfied about the reasons for the delay in passing the orders of punishment, the Labour Court is not justified in setting aside the orders solely on the ground that the period of six months had expired. [296E-H; 297A-C, E-H]

(ii)Provisions contained in s.78(1)(d)(i) are not mandatory, but only directory. Therefore, the interpretation based by the Labour Court on s.78(1)(d)(i) is erroneous. Accordingly, the two orders granting reliefs to the workmen are set aside. [298D-E; 302B]

Raipur Co-operative Central Batik Ltd. and Anr. v. Stale industrial Court, Indore & Ors., [1963] 1 L.L.J. 790, M/s. Chotabhai Jethabhai Patel & Co. v. The industrial Court

Nagpur & Ors., A.J.R. 1972 S.C. 1268, Ibrahim Abbobaker & Anr. v. Custodian-General of Evacuee Property, [1962] S.C.R. 696, State of U.P. & Ors. v. Baburam Upadhya, [1961] 2 S.C.R. 679, Remington Rand of India Ltd. V. The Workmen, [1968] 1 S.C.R. 164 and Drisroll v. Church Commissioner for England, [1957] 1 Q.B. 330, referred to.-

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1774 & 1775 of 1971.

F. S. Nariman, Addl. Solicitor-General of India, Y. S. Chitale, D. C. Shroff, O. C. Mathur, Bhuvanesh Kumari and Ravinder Narain, for the appellant.

S.V. Gupte, S. B. Naik and K. Rajendra Choudhury, for the respondent.

The Judgment of the Court was delivered by VAIDIALINGAM, J.-In these two appeals, by special leave the common question that arises for consideration is the proper interpretation to be placed on section 78(1)(D) of the Bombay Industrial Relations Act 1946 (Bombay Act No. XI of 1947) hereinafter referred to as the Act.

The appellant in both the appeals, the Municipal Corporation of Greater Bombay, is a body corporate constituted under the Bombay Municipal Corporation Act 1888. For the purposes of providing and operating motor transport and for supplying electricity to the consumers in the city of Bombay, the appellant has established under the provisions of the Bombay Municipal Corporation Act, an undertaking called the Bombay Electric Supply and Transport Undertaking. The affairs of the said Undertaking are managed by a committee called the Bombay Electric Supply and Transport Committee, as per the provisions of the Bombay Municipal Corporation Act. The workman, Shri U. R. Naik, was employed as assistant fitter in the Transportation Engineering Department at Dadar workshop of the appellant. Similarly, Shri E. Menezes was employed under the appellant as Line Mechanic. It is common ground that on July 18, 1969, when the sub-inspector of police attached to the V.P. Road Police Station, was on petrol duty with his other staff, at about 9.30 P.M., he came across Shri U.R. Naik along with another person, Kundaikar, and found each of them carrying a gunny bag in their hands. As the bags appeared to be rather very heavy, the movement of the said persons arose the suspicion of the police officials, who stopped the said persons and searched the bags. On a search of the bags, it was found that each bag contained 22 'brass bearings. As Shri U. R. Naik and his companion, Kundaikar, were not able to offer any satisfactory explanation as to how they came to be in possession of the articles found in the bags,_ they were taken into custody. On further investigation and from the statement given by Shri Naik, it was found that the latter was an employee under the appellant as Assistant Fitter and that the brass bearings found in his possession had been removed from the appellant's workshop with the active help and cooperation of another employee, E. Menezes, who was at the material time employed under the appellant as a Line Mechanic. In consequence, Shri E. Menezes was also arrested shortly thereafter. After further enquiries, the brass bearings were identified by the concerned officers as properties belonging to the

appellant. Ultimately on July 20, 1969, the appellant lodged a complained of theft against the two workmen, U. R. Naik and E. Menezes.

The appellant also charge-sheeted the two workmen on 18/' 19th August, 1969. Shri U. R Naik was charge-sheeted under Standing Order 20(C) for 'fraud or dishonesty in connection with the business of the Undertaking'. Shri E. Menezes was charge sheeted under Standing Order 20(C) and Standing Order 20(1) for having committed an act 'subversive of discipline'. An enquiry was conducted by Shri Talpade, Assistant Labour Officer (Transportation) of the appellant. At first it was a common enquiry against both the workmen in which the evidence of the police officers and certain officers of the appellant were examined. Later on, the enquiry was separated against each employee and further witnesses, both on behalf of the appellant as well as the workmen concerned, were examined. The Enquiry Officer found Shri Naik guilty of the offence with which he was charged; and it was found that the offence proved against this workman was, of a very grave and serious nature and as such the workman was not a fit person 'to be retained in service. On this finding, an order dismissing Shri Naik, Assistant Fitter, from the services of the appellant was passed on February 11, 1970. An appeal by Shri Naik to the Executive Engineer and a further appeal to the Assistant General Manager were all dismissed. Similarly, Shri E. Menezes was also ,found guilty of the offences with which he was charged. It was further found that as the offences proved against the workman were of a grave and serious nature, he was not a fit person to be retained in the service of the appellant. Accordingly, an order dismissing Shri E. Menezcs from service was passed on March 18, 1970. The appeals filed-by this workman to the Executive Engineer and the Assistant General Manager proved of no avail.

Shri Naik sent to the appellant an approach notice, as required by the Act, on June 6, 1970, but without any avail. Similarly, Shri Menezes also sent an approach notice on July 31, 1970, but without any avail. Shri Naik filed application No. 553 of 1970 before the Fifth Labour Court at Bombay challenging the order of the appellant dismissing him from service on various grounds. He attacked also the Domestic Enquiry that was held, as illegal and improper and the finding recorded therein as perverse. He prayed for setting aside the order dated February 11, 1970, and for being reinstated in service with full back wages. Shri E. Menezes filed application No. 554 of 1970 before the same court praying for similar reliefs in respect of the order of dismissal passed against him on March 18, 1970. He also attacked the order and the enquiry proceedings on the grounds relied on by Shri Naik-. The two applications were filed under section 78 and 79 of the Act.

Both the applications were heard together by the Labour Court. Evidence also was adduced by the appellant justifying the action taken against the two workmen. One of the grounds of attack against the orders of dismissal was that they were illegal and void. as they have been passed for fault or misconduct committed by the employees, which came to the notice of the employer more than six months prior to the date of the orders. To meet this contention, the appellant adduced evidence before the Labour Court explaining the circumstances that lead to the orders of dismissal being passed beyond the period of six months. The evidence was to the effect that though the enquiry proceedings had commenced within a short time, nevertheless they had to be postponed from time to time because the Union representing the workmen was not ready on certain days and also because of the postponement of the enquiry due to the sickness of the employees concerned.

'Another reason given by the appellant was that the enquiry had to be postponed from time to time as the sub-inspector of police, who investigated the complaint of theft, was not available for giving evidence.

The Labour Court rejected almost all the contentions on facts raised by the workmen regarding the legality and propriety of the enquiry proceedings. The findings of the Labour Court in this regard are That the enquiry has been conducted by 'a compepetent authority and that the workmen were given full and adequate opportunity to place, their evidence and to examine witnesses on their behalf. The Enquiry Officer was justified from the evidence on record in coming to the conclusion that the workmen are guilty of mis- conduct under Standing Order No. 20(c). The findings recorded by the domestic tribunal are based on the evidence on record and that the conclusions arrived at are just, legal and proper. The criticism of the Union that the finding arrived at by the Domestic Tribunal was perverse has to be rejected. The two workmen have failed to establish any case under section 7 8 (1) (A) (a) (i) of the Act, Regarding the contention raised by the Union on behalf of the workmen that the orders of dismissal are illegal, as having been passed after six months from the date of the notice of the misconduct, the Labour Court held that the provisions of section 78 (1) (D) are mandatory and that the time limit of six- months specified in section 7 8 (1) (D)

(i) of the Act cannot 'be enlarged by the Labour Court. The Labour Court found support for this view in the Division Bench judgment of the Madhya Pradesh High Court in Raipur Cooperative Central Bank, Ltd., and another v. State Industrial Court, Indore and others(1). It was pressed by the appellant before the Labour Court that the delay in passing the orders of dismissal was caused due to the adjournments being granted to the Union because of the illness of the workmen concerned or due to the inability, for other reasons, of the workmen to be present. Another reason given by the appellant Was that the sub-inspector of police, who investigated the offence of theft, was not available for some time to give evidence before the Enquiry Officer. In view of these circumstances, the plea of the appellant was, that the relevant provisions will have to be construed not as mandatory but as only enabling and discretionary powers of the Labour Court which have to be exercised having due regard to all the attendant circumstances. The Labour Court in considering this plea of the appellant held that the delay in passing the orders was caused in view of the circumstances relied on by the management; and as the delay had been caused due to circumstances beyond the control of the appellant, this was a fit case for condoning the delay if in law the court had the power to do so. The Labour Court, however, held that the relevant provisions are mandatory and it hence has no power to condone the delay, even though the circumstances warranted such condonation in this case. In this view, the Labour Court held that as the orders of dismissal have not been passed within six months of the misconduct coming (1)[1963] (1) L. L.J. 790.

to the notice of the employer, they are illegal and have to be set ,aside under section 7 8 (1) (D) (i) of the Act. The Labour Court then considered the relief to be granted to the two workmen. It held that as the offence for which the two workmen were dismissed, was of a very serious nature entailing loss of confidence of the, employer in, the employee, reinstatement should not be ordered. The Labour Court, therefore, directed the appellant to pay each of the workmen his back wages from the date of dismissal till the date of the order and also, in addition. to pay compensation in the sum of Rs.

1,500/- In the result, the two applications filed by the workmen were ordered granting them relief of back wages and compensation. Civil Appeal No. 1774 of 1971 is against the, order passed in application No. 553 of 1970 and Civil Appeal No. 1775 of 1971 is against the order passed in application No. 554 of 1970. The learned Additional Solicitor General very strenuous attacked the reasoning of the Labour Court when it held that the provisions of section 7 8 (1) (D) are mandatory. His contentions in this regard are as follows - The subject matter and the extent of jurisdiction of the Labour 'court are provided for under section 78(1) (A) of the Act. Section 78 (1) (D) of the Act merely makes provisions regarding the powers which a Labour Court may exercise in determining the propriety or legality of orders under section 78(1) (A) of the Act. The provisions of section 7 8 (1) (D) are only enabling or discretionary; in that the Labour Court is not bound to exercise the powers contained in that section. They do not compel a Labour Court to pass an order in terms of section 7 8 (1) (D) (a) or (b), even though the _Labour Court is convinced that the reasons for the delay in passing the order of dismissal are entirely beyond the control of an employers Inasmuch as in this case the Labour Court has accepted the reasons given for the delay, the decision of the Labour Court setting aside the order of dismissal is illegal and not justified. The object of section 7 8 (1) (D) (i) is only to emphasise that an employer should act diligently and with all possible speed and without laches in the matter of taking action for misconduct against an employee and passing suitable orders. Mr. S. V. Gupte, learned counsel for the Union supported the view of the Labour Court and urged that the words of section 7 8 (1) (D) (i) are clear and specific. The said sub- clause leaves no room for doubt. The sub-clause is quite clear that once it is found that the orders are passed by a management more than six months from the date when the fault or misconduct committed by an employee came to its notice, the action of the employer is illegal. Without anything more, the counsel urged when once it is found, as in this case, that the orders of dismissal were passed after six months, as provided in the said sub-clause, there,is no other alternative for the Labour Court but to set aside the orders of dismissal. He further pointed out that the legislature has left no discretion in the Labour Court to embark upon an enquiry whether the management in a particular case had sufficient reasons for not complying with the mandatory period of six months as provided in the said sub-clause. The only discretion left to the Labour Court is regarding the nature of the relief to be granted either under (a) or (b) of section 78 (1) (D), In order to appreciate the contentions of counsel on both sides, it is necessary to refer to the material provisions of the Act. The Act, as its preamble shows, has been enacted to provide for the regulation of the relations of employers and employees in certain matters, to consolidate and amend the law relating to the settlement of industrial disputes and to provide for certain other purposes. Chapter XII, in which the group of sections 77 to 86 occur, deals with Labour Courts, their territorial jurisdiction, their powers, commencement of proceedings before the said Courts, etc. Though we are concerned with the interpretation of section 7 8 (1) (D), III order to appreciate the context in which it occurs, it is necessary to refer to the entire section. Section 78 runs as follows :

> 78 (1) A. Labour Court shall have power to decide-
>
> (a) disputes regarding-
>
> (i) the propriety or legality of an order passed by an employer acting or purpoting to act under the standing orders;

(ii)the application and interpretation of standing orders;

(iii)any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III (except item (5) thereof and matters arising out of such change;

(b) industrial disputes-

(i) referred to it under section 71 or 72;

(ii)in respect of which it is appointed as the arbitrator by a submission;

(c) whether a strike, lock-out, closure, stoppage or any change is illegal under this Act;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment;

C. require any employer to-

(a) withdraw any change which is held by it to be illegal, or withdraw temporarily any change the legality of which is a matter of issue in any proceeding pending final decision, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.

D. require an employer, where it finds that the order, of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee made by the employer,-

(i) was for fault or misconduct committed by the employee which came to the notice of, the employer more than six months prior to the date of such order or

(ii)was in contravention of any of the provisions of any law, or of any standing order in force applicable to such employee, or

(iii)was otherwise improper or illegal,

(a) to reinstate the employee forthwith or by a date specified by it in this behalf and pay him wages for the period of beginning on the date of such order of dismissal. discharge, removal, retrenchment, termination of service or suspension, as the case may be and ending on the date on which the Labour Court orders his reinstatement or on

the date of the reinstatement, which ever is later, or

(b) to pay to the employee in addition to wages being wages for the period commencing on the date of his dismissal, discharge, removal, retrenchment or termination of service and ending on the date on which the Labour Court orders such payment, such sum not exceeding four thousand rupees 'by way of compensation, regard being had to loss of employment and possibility of getting suitable employment thereafter.

(2)Every offence punishable under this Act shall be tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanation:-A dispute falling under clause

(a) of paragraph A of sub-section (1). shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

Clause (D) of section 78(1) was introduced in the Act of Maharashtra by Act 22 of 1965. The said amending Act intro- duced not only clause (D) but also made changes in paragraphs, (A) and (C) of section 78. The statement of objects and reasons to the amending Act shows that the additional provisions, which were sought to be incorporated in the Act, were made to enlarge the powers of the Labour Courts under section 78. It is further seen from the statement of objects and reasons that the Labour Court was being empowered 'to require an employer to reinstate an employee with full back wages and compensation not exceeding Rs. 2,500/..... if the employee was dismissed, discharged, etc.'. It may be noted that in the amendment, as now finally made, under clause (b) the maximum compensation has been fixed at Rs. 4,000/-. The statement of objects and reasons amply demonstrates that and by introducing paragraph (D) in section 78(1) the legislature was only seeking to arm the Labour Court with further and more effective powers to grant suitable relief.

A reading of section 78 as a whole leaves the impression in our minds that the legislature wanted the provisions to be a comprehensive one. It contains all the powers of the Labour Court in the matter of all disputes mentioned therein and it also gives jurisdiction to punish certain offences under the Act. The scheme of section 78(1) appears to be that a Labour Court has power to decide all the disputes covered by paragraph (A). Paragraph (B) gives the Labour Court power to try offences punishable under the Act and cognizance of such offences can only be taken under section 82. Paragraph (C) and (D) set out what reliefs the Labour Courts are empowered to give including directions as may be found necessary in that behalf. Another provision, which has to be taken note of, is section 73 of the Employees' State- Insurance Act, 1948, which is as follows Employer not to dismiss or punish employee, during period of sickness, etc.-(1) No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall he, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period he. is in receipt of disablement benefit for temporary disable-

ment or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

(2)No notice of dismissal or discharge or reduction given to an employee during the period specified in subsection (1) shall be valid or operative.

This provision clearly places an embargo, upon the powers of an employer to dismiss, discharge or otherwise punish an employee in the circumstances mentioned therein. For example, if an employee is under medical treatment for sickness or is in receipt of sickness benefit or maternity benefit, no order of dismissal or punishment can be passed against such an employee. That mean.,, even if an employer intends to take disciplinary action for any misconduct, he cannot pass any orders of punishment during the ,periods menti oned in the section. For instance, if an enquiry regarding the misconduct of an employee had been conducted and he had been found guilty even within the period of six months, ,as contemplated under section 78 (1) (D) (i), and if. the employee ,comes under the protection of section 73 of Employees' State Insurance Act, 1948, the employer can pass no orders of punishment. That means the employer will be placed in a dilemma. If he passes an order of dismissal in the circumstances mentioned under section 73 of the Employees' State Insurance Act, that order is invalid and inoperative. But if he postpones as he is bound to do under section 73, and passes the order, after the employee ceases to be under any of the disabilities mentioned in the said section, six months from the date of the misconduct coming to the notice of the employer would have elapsed. In such a case. the order will be struck down under section 7 8 (1) (D) (

i) if the interpretation contended for by the Union is accepted. Therefore. it is necessary that these provisions will have to be read harmoniously so as to avoid a conflict between the two enactments.

There can be no controversy that an employee is entitled to a fair and reasonable opportunity of pleading to the charge for which he may be tried by the Domestic Tribunal. He must have a right to cross-examine the witnesses produced for the management and also to adduce evidence on his behalf. It may be that on ,certain occasions, the employee himself may seek an adjournment or postponement of the enquiry, either on the ground of his personal inconvenience due to sickness or otherwise or due to the inability of his witnesses to be present. If the employer without any justification refuses such a reasonable request and proceeds with the enquiry, those proceedings will have to be set' aside by the Labour Court or the Industrial Tribunal concerned on the ground that there has been a violation of the principles of natural justice; in that the workman bad no reasonable opportunity to, defend the charge against him. If the employer, as he is bound to do, grants a reasonable adjournment to enable the workman to be present or to produce his witnesses, it may be that in certain cases, at least by the time the enquiry is complete and orders passed, the period of six months would have elapsed. Does it mean that when orders of punishment for misconduct are passed by an employer after holding a proper and fair enquiry, those orders will have to be set aside, only on the ground that on the day when they were passed, the period of six months had already expired ? If the view of the Labour Court is correct, the position will 'be that even though very serious misconduct is held to be proved against an employee and he does not de-serve to be retained

service, nevertheless the order of all will be straightaway Set aside on the sole ground that the period of six months has expired. The employee will then straightaway bet black into service, howsoever undesirable he may be. Again an employee, knowing well that once orders are passed after the expiry of six months, they will be straightaway set aside by the Labour Court, will attempt to protract the proceedings before the Enquiry Officer on some ground or other. Do all these things conduce to the maintaining of a proper relationship between an employer and an employee, as is envisaged under the Act ? We have indicated broadly several aspects which have to be 'borne in mind in considering the question. None of these matters have been either adverted to or taken into consideration by the Lablour Court in the present case. The scheme of the Act has been considered by this Court in another context in M/s. Chhotabhai Jethabhai Patel and Co., v. The Industrial Court Maharashtra, Nagpur Bench, Nagpur and' others (1) and we do not propose to cover the ground over again. But it is to be emphasised that, as mentioned by us earlier, the scheme of section 78 (1) is that a Labour Court is to have power to decide all the disputes covered by paragraph (A). Paragraph (B), as pointed out, gives the Labour Court the power to try offences punishable under the Act. Paragraphs (C) and (D) set out the nature of reliefs which the Labour Courts are empowered to grant including directions, as may be found necessary in that behalf. The material part of section 78 (1) (D) is to be read as, follows :-

> "A Labour Court shall have power to require an employer, there it finds that the orders of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee made by the employer, was (1) A.I.R.1972 S.C. 1268.
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> for fault or misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of such order;.....
>
> (a) to reinstate the employee forthwith or by a date specified by it in. this behalf and pay him wages for the period beginning on the date of such order of dismissal discharge, removal, retrenchment, termination of service or suspension, as the case may be, and ending on the date on which the Labour Court orders his reinstatement; or: on the date of his reinstatement, which ever is later, or
>
> (b) to pay to the employee in addition to wages being wages for the period commencing on the date of his dismissal, discharge, removal, retrenchment or termination of service land ending on the date on which the Labour Court orders such payment, such sum not exceeding four thousand rupees by way of compensation regard being had to loss of employment and possibility of 'getting suitable employment thereafter".

Much emphasis has been laid by Mr.Gupte that the expression used in the opening words of section 7 8 (1) is 'shall' and that there is no indication in sub-clause (i) of clause (D) enabling a Labour Court to take into account any other extraneous matters. According to the learned counsel the use of the expression 'shall' coupled with the clear wording of sub-clause (i) of Clause (D), clearly shows that the, provisions are mandatory and not directory. It must be stated that a very superficial reading of sub-clause (i) of clause (D) may support the contention of Mr. Gupte. , But, in our opinion, that is

not the way to interpret a provision in the statute. On the other hand, the relevant provisions will have to be construed in-the context in which they appear and having due regard to the objects which are sought to be served by the Act in question. It cannot be doubted that for the purpose of deciding whether reinstatement with back wages has to be ordered or whether payment of compensation, in addition to back wages, without reinstatement has to be ordered, the Labour Court will have to consider the circumstances of a particular case and the nature of the misconduct alleged on the part of the employee as also the nature of contravention of any provision of law or ,standing order. If the Labour Court Was bound to take into account all these circumstances, to consider what type of relief has to be granted, we fail to see why the Labour Court is not entitled to consider the circumstances which led the management to the, passing of the orders more than six months prior to the misconduct coming to the notice of an employer. In our opinion, it cannot be the object of the Act that notwithstanding the fact that the, workman,: who has been found guilty in a proper domestic enquiry and punished, for, such misconduct, has to be given relief either by way of reinstatement with back wages or compensation and back wages without reinstatement, when once he,. has shown that the order of punishment was passed beyond the period of six months referred to in section 78(1)(D)(i). Such a position, is not.,warranted by the statute. Nor will it be conducive to industrial peace and the cordial relationship that should exist between an employer and an employee.

It should not be missed that the opening words of section 78 (1) are 'A Labour Court shall have power'. We have already pointed out that the effect of section 78(1) is that the Labour Court shall have the power to decide the types of disputes mentioned therein and it has also the power to grant the reliefs referred to in paragraphs (C) and (D). That does not mean that when once the Labour Court finds that an order of punishment has been passed beyond the period of six months, it has to straightaway set aside that order irrespective of the reasons which caused the delay in passing those orders. The fact that the section has conferred certain powers, does not mean that the Labour Court must of necessity and under all circumstances grant the reliefs which it has the power to grant. It is a well established proposition that the. power to grant a certain relief includes obviously the power of refusing that relief. Authority for this proposition is to be found in Ebrahim Abbobakar and Another v. Custodian General of Property(1). It may be that if an employer has passed an order of punishment beyond the period of six months and if it is found that he has no satisfactory explanation for the delay or if he has not been vigilant and active in initiating disciplinary action and passing suitable orders, the Labour Court may be justified in straightaway quashing the orders on the ground that they have been passed beyond the period of six months. If, on the other hand, as in the case before us, an employer has been vigilant in initiating disciplinary proceedings and has satisfied the Labour Court about the reasons for the delay in passing the orders of punishment, the Labour Court is not justified in setting aside the orders solely on the ground that the period of six months has expired.

There is a very elaborate discussion by this Court in The State of Uttar Pradesh and Others v. Babu Ram Upadhya(2) regarding the various principles that have to be borne in mind in decid-

(1) [1952] S.CR. 696.

(2) [1961] 2 S.C.R. 679.

ing whether the use of the word 'shall' in a statute makes the provision mandatory or directory. It has been emphasised that for ascertaining the real intention of the legislature the court, among other things, may consider the nature and the design of the statue the consequences which would follow from construing it one way or other and whether the object of the legislation will be defeated or furthered by a particular construction. The question whether to award of an Industrial Tribunal ceases to be effective due to the non-publication of the same by the appropriate Government within a period of thirty days from the date of its receipt under section 17(1) of the Industrial Disputes Act, 1947, has been considered by this Court in The Remington Rand of India. Ltd v. The workmen(1. Section 17(1), omitting the unnecessary parts. reads as follows "..... every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit".

It may be noted that the expression used is 'shall'. The question that arose for consideration before this Court was whether the above provision was mandatory or directory. This Court held that the provision as to time in the above section is merely directory and not mandatory, and that the limit of time has been fixed only as showing that the publication of the award ought not to be held up. It was further held that the publication of the award beyond the time mentioned in the section does not render the award invalid. The learned Solicitor invited our attention to the decision of the Court of Appeal in.Driscoll v. Church Commissioners for England(2). In that decision the Court had to construe section 84 of Law of Property Act 1925, which provided for the authority concerned on being satisfied about the 'circumstances mentioned in the said section, to wholly or partially discharge or modify any restriction. The conferment of power on the authority was in these terms "The authority..... shall..... have power from time to time on the application of any person interested ..... by order wholly or particularly to discharge,or modify any such restriction on being satisfied. . . .".

Though it was contended that if the necessary circumstances envisaged by the section are established the authority has no alternative but to order modification, the Court of Appeal rejected that contention and held that the section does give a discretion to the Tribunal whether to modify the restriction at all. This decision, in our opinion, is quite apposite to the matter on hand.

(1) [1968] 1 S.C.R. 164. (2) [1957] 1 RB.330 Having due regard to the various aspects discussed above, we are of the opinion that the provisions contained in section 78(1) (D) (i) are not mandatory but only directory. The Labour Court will certainly have power to give relief to an employee if an order of dismissal, etc. is passed by the employer after the expiry of six months from the date when the misconduct came to the notice of the employer provided the employer has not been diligent in initiating disciplinary proceedings and if he is not able to offer satisfactory and adequate reasons for the delay in passing the orders imposing punishment. The provision only emphasises that an employer should be vigilant in taking disciplinary action against an employee for misconduct, once the said misconduct has come to his notice and that, as far as possible, the proceedings including the final orders imposing punishment must all be completed within a period of six months. This will be the normal rule. Such an interpretation does not impinge upon either the rights of an employer to initiate disciplinary action or the rights of an employee to have a proper and fair enquiry conducted

against him. If the employer is able to satisfy a Tribunal about the reasons for not being able to pass the order imposing punishment within the period of six months, the Tribunal has no power to set aside the order merely on the ground that the period of six months has elapsed.

The Labour Court, in the case before us, has proceeded on the basis that the provision in section 7 8 (1) (D) (i) is a period of limitation prescribed by the statute which cannot be extended or enlarged by the Court. This approach, in our opinion, is erroneous. There is no question of any period of limitation provided by the said provision; nor does the question of extending or enlarging the period arises in this case. The whole question is whether the Labour Court on whom certain powers are conferred, should exercise those powers or not. The power conferred on the Labour Court will have to be exercised having due regard to the various other circumstances; such as whether the employer has shown sufficient cause for not passing the orders within the period of six months. It is significant to note that there is no such provision in the Industrial Disputes Act. We are also informed that the Act applies only to certain industries and all the other industries are governed by the Industrial Disputes Act. It will be anomalous to hold that an order passed under the Act beyond the period of six months is illegal and a similar order passed. after a proper and fair enquiry, though beyond six months, will be legal and valid under the Industrial Disputes Act. We have already referred to section 73 of the Employees' State Insurance Act and the prohibition against an employer to pass orders of punishment under the circumstances mentioned therein. The interpretation placed by us on the relevant provision will steer clear of all anomalies and 796Sup.C.I./73 will also be in accordance with the object and purpose of the Act which is to regulate the relationship of the employer and the employee. Before we close the discussion on this aspect, it is necessary to refer to the decision of the Madhya Pradesh High Court in Raipur Cooperative Central Bank, Ltd., and another v, State Industrial Court, Indore, and others(1). We have already referred to the fact that the Labour Court has relied on this decision as supporting its view. The said High Court had to consider the provisions of sub-section (3) of section 16 of the Central Provinces and Berar Industrial Disputes Settlement Act,. 1947, hereinafter referred to as the Berar Act. The said Berar Act was enacted to make provision for the promotion of peaceful and amicable settlement of industrial disputes by conciliation and arbitration and for certain other purposes. Section 16 dealt with Reference of disputes to Labour Commissioner. Sub-section (1) provided that powers can be conferred on a Labour Commissioner by the State Government by notification to decide an Industrial dispute etc. A right was conferred by sub-section (2) on an employee working in an industry, to which the notification applied, to invoke ,the jurisdiction of the Labour Commissioner for granting reinstatement and payment of compensation. The said sub-section further provided that such an application for this purpose had to be made by an employee within six months from the date of dismissal, etc. The material part of sub-section (3) was as follows :-

> "On receipt of such application, if the Labour commissioner after such enquiry as may be prescribed, finds that the dismissal, discharge, removal or suspension was in contravention of any of the provisions of this Act or in contravention of a standing order made or sanctioned under this Act or was for a fault or misconduct committed by the employee more than six months prior to the date of such dismissal, discharge, removal or suspension, he may direct..... ".

The reliefs that could be granted were substantially in the same terms as in paragraph (D) of the Act, but in sub- section (3) of section 16 of the Berar Act there is no provision regarding the fault or misconduct coming to the notice of the employer, as in clause (i) of paragraph (D) of the Act. From the judgment of the Madhya Pradesh High Court, we find that a workman was dismissed for misconduct on August 23, 1956. The allegations of misconduct related to embezzlement of three sums of money. The last item of embezzlement was on June 28, 1955. The Labour Commissioner, whose jurisdiction was invoked by the workman, took the view that the employer came to know of the misconduct only on April 9, 1956 when the auditor's report was received and hence the order of dismissal had been properly passed within six months from the date of knowledge. On a revision being filed by the workman, the State Industrial Court reversed the decision of the Labour Commissioner and set aside the order of dismissal holding that the question of knowledge does not come into the picture in view of the clear terms of sub-section (3). The employer challenged this decision before the High Court under Articles 226 and 227 of- the Constitution. The only contention that was raised before the High Court, as is seen from the judgment, was that section 16(3) should be liberally construed by allowing ,the management to establish that they obtained knowledge of the embezzlement only within a period of six months prior to passing the order of dismissal. The High Court rejected this contention on the ground that the statute is clear and that an employer cannot be permitted to put forward their own inaction, in defence. Another reason given by the High Court for rejecting this contention was that the statute has prescribed a period of limitation for determining the services of a delinquent employee as a measure of punishment and that such a period of limitation cannot be enlarged or extended by a court. The contention that has; been placed before us on behalf of the appellant regarding the interpretation to be placed on clause (i) of paragraph (D) of the Act, was not pleaded before the High Court. In the Act, there is a clear provision regarding the misconduct coming to the notice of the employer. A similar provision was not in the Berar Act. The High Court has interpreted Section 16(3) in isolation without having due regard to the scheme of the Act and the context in which the said section occurs. The same principles laid down by is for interpreting section 78(1)(D)(i) of the Act should have been borne in mind in interpreting section 16(3) of the Berar Act also. For instance, in a particular case, an employer may be able to satisfy the Tribunal that he had been kept out of knowledge of the misconduct due to the fraud of the opposite party and, therefore, he came to know of the said misconduct only within a period of six months prior to the date of passing the order. Similarly, an employer may also be able to satisfy the Tribunal about the reasons for the delay caused in passing the orders. These and similar circumstances have not been considered by the High Court. The view of the High Court that the provision in section 16(3) is a period of limitation is erroneous. As we are of the opinion that the decision of the Madhya Pradesh High Court is erroneous, the support sought by the Labour Court on this decision is of no avail.

As pointed out by us earlier, the Labour Court has upheld all the contentions of the appellant on facts. In fact, as pointed out already, it has also held that if it had power to condone the delay for passing the orders of dismissal, it would have unhesitatingly ordered the same. The appellant has properly explained the delay as having been caused beyond its control. The only ground on which the two orders of dismissal were set aside was because of the fact that they have been passed 'beyond the period of six months. From what is stated above, it follows that the interpretation Placed by the Labour Court on section 78 (1) (D) (i) is erroneous. Accordingly, We set aside the two orders

granting relief to the workmen concerned. The appeals are in consequence allowed. There will be no order as to costs.

S.N.C. Appeals allowed.