Supreme Court of India

M/S. Bharat Sugar Mills Ltd vs Shri Jai Singh And Others on 20 September, 1961

PETITIONER:
M/S. BHARAT SUGAR MILLS LTD.

Vs.

RESPONDENT:
SHRI JAI SINGH AND OTHERS

DATE OF JUDGMENT:
20/09/1961

BENCH:

ACT:
Industrial Dispute-"Go slow" by workmen-Application for permission to dismiss-Domestic enquiry not Proper-If Tribunal can take independent evidence for finding prima facie case Mala fides and victimisation-Delay in making application-Effect of-Industrial Disputes Act, 1947 (14 of 1947).s. 33.

HEADNOTE:
Certain workmen of the appellant resorted to "go slow". The appellant held, a domestic enquiry and as a result thereof decided to dismiss 21 workmen. After considerable delay it made an application under s. 33 of the Industrial Disputes Act, 1947, for permission to dismiss these workmen. Evidence was led before the Tribunal to prove the charge against the workmen. The Tribunal held that the domestic enquiry was not proper, that the appellant was guilty of mala fide conduct and victimisation, that, except in the case of one workmen, the others were not guilty of any deliberate go slow and accordingly granted permission in respect of the one workman alone. The appellant contended that the finding that the remaining 20 workmen were not guilty of deliberate go slow was perverse and that the finding in respect of mala fides and victimisation was arbitrary and erroneous. The workmen contended that once the domestic enquiry was found to be improper the Tribunal had to dismiss the application and it could not take independent evidence and arrive at a finding of its own as to the guilt of the workmen.
Held, that in an application under s. 33 of the Industrial Disputes Act, 1947, when there has been no domestic enquiry or when the domestic enquiry has not been properly conducted it is the duty of the Tribunal to take evidence of both sides and to decide whether the alleged misconduct has been made out. The evidence produced before the Tribunal clearly

established that 13 out of the 20 workmen were guilty of deliberate go slow. Go slow was a pernicious and dishonest practice which was a misconduct punishable with dismissal under the standing orders. Actual participation in go slow was serious misconduct and the management could not reasonably be accused of mala fides or revengefulness if it proposed punishment of dismissal for such conduct. There was delay in holding the domestic enquiry and the management showed lamentable callousness in this matter. In cases of this nature the enquiry should be held as early as possible, specially when the workmen arc put under suspension. Again, there was delay in making the application for permission to
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dismiss. But these delays did not show that the management was guilty of mala fides or of an intention to victimise. The order of the Tribunal refusing permission to dismiss 13 of the workmen was entirely wrong and unjust and could not be allowed to stand.
Sasa Musa Sugar Works v. Shobrati Khan, [1959] Supp. 2 S. C. R. 836, Shri Ram Swarath Sinha v. Belsund Sugar Co., Ltd. 1959 L. A. C. 697 and Punjab National Bank Ltd. v. its workmen,, [1960] 1 S. C. R. 806, referred to.

JUDGMENT:

CiviL APPELLATE JURISDICTION : Civil Appeal No. 252 of 1960.

Appeal by special leave from the Award dated March 6, 1958, of the Industrial Tribunal, Bihar, Patna in Misc. Case No. 1 of 1959.

A. B. N. Sinha, K. K. Sinha and G. N. Dikshit, for the appellants.

T. R. Bhasin, for the respondents.

1961. September 20. The Judgment of the Court was delivered by DAS GUPTA J.-The appellant, a Sugar Mill Company, made on December 31, 1956 an application under s. 33 of the Industrial Disputes Act before the Industrial Tribunal, Bihar, Patina for the dismissal of 21 workmen for misconduct in connection with "go slow" alleged to have been resorted to by the workmen of the factory from the midnight of February 12, to the February 18, 1955. The Tribunal held that actual participation in a "go slow" had been established only against one of the workmen at the Donga end and that the "go slow" at the later stages in which the other 20 workmen had been engaged occurred as a necessary consequence of this go slow by one workman at the Donga end and was not a deliberate ,go slow" by them, The Tribunal was of opinion also that the management was not acting bona fide and really was seeking to victimise, active members of the Union which the employer had refused to recognise. Accordingly, it refused permission in respect of 20 of the workmen and gave permission to dismiss only Nihora Dubey a workman at the Donga The correctness of this refusal is challenged before is in this appeal by special. leave-. The appellant's contention is two-fold. First it is

said that the finding of the Tribunal that these workmen in respect of whom permission to dismiss was refused were not guilty of any deliberate go slow is perverse; secondly it is contended that the Tribunal's view that the employer was guilty of mala fide conduct and victimisation of these workmen for Union activities is arbitrary and erroneous.

It does not appear to have been disputed that " go slow" was actually resorted to in this factory from February 12, to February 18, 1955. It was indeed hardly open to the workmen to dispute this, after all the pomp and ceremony with which go slow" was celebrated. We find that as early as January 15, 1955, 10 demands were communicated by the Union on behalf of the workmen by a letter which said that unless these demands were conceded by the January 26, 1955 the workmen world resort to "go slow" from January 30, 1955. This notice to "';.to slow appears to have been withdrawn on the 22nd January, 1955, apparently on the advice of the Assistant Commissioner of Labour, Muzaffarpur. A further letter was issued the same day in which 5 demands were made with a request to concede these by the 6th February failing which it was said they would "resort to go slow from the February 19, 1955". The, Secretary of the Bharat Sugar Mills to whom the Conciliation Officer wrote, that very day, wrote back on January 22, 1955, that they had not received any notice dated January 22, 1955. In reply to a further communication from the Assistant Labour Commissioner the appellant sent a telegram on February 3, 1955, regretting inability to attend the proposed conciliation meeting on February 4, 1955 as both the Secretary and the Assistant Secretary were away. Then on February 8 another telegram was sent on behalf of the management informing the Assistant Labour Commissioner that the General Secretary would be returning soon and that any date after the 11th may be fixed. Thereafter, in reply to a further communication from the Assistant Commissioner inquiring as to what date would suit the management the General Secretary Shri K.C. Sarda sent another telegram requesting the Assistant Labour Commissioner to fix any date before the 17th. This telegram was sent on February 11. On the next date, February 12, Sarda sent a further telegram to the Assistant Labour Commissioner stating that he would come to Muzaffarpur on the 15th afternoon. Before any action could however be taken by the Assistant Labour Commissioner, the workers commenced their "go slow" from the midnight of February 12.

"Go slow which a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontended or disgruntled workmen sometime resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, ",go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons logo slow" has always been considered a serious type of misconduct. The Standing Orders which have been made under the Standing Orders Act for the appellant factory specify "go slow" as misconduct in sub-cl. (u) of cl. (1) para. M under the words : " Malingering or deliberate delaying of production and carrying out of orders." It is strange therefore to see that notice of intention to commit this misconduct was solemnly given by the Union in one letter after another. Some light on the mystery is however thrown by the fact that in Bihar a Committee to consider and report on the question of "go slow" tactics in industries was appointed by the Bihar Central Standing Labour Advisory Board

and the report of the Committee was submitted in 1951. The Committee made, several recommendations including one that "go slow" by workers should be treated on a par with strike. It also recommended however that workers should not resort to "go slow" without at least 7 days notice, that the notice would remain in force for 4 weeks but. that it would not be necessary to notify the exact date of starting the "'go slow". Another recommendation was that workers should not resort to "go slow" during the pendency of a conciliation proceeding but that the conciliation proceeding must be concluded within four weeks of the notice. The Committee went to the length of recommending that "go slow" due to mal-practices by the management would be justified. By a resolution dated December 1, 1951, the Government of Bihar "'were pleased to accept the recommendations of the "go slow" Committee and expressed their "thanks to the members of the Committee for the well considered report." No action was however taken to delete item (u) of clause (1) of para. M of the Standing Orders and so under the Standing Orders which it may be mentioned were certified on November 7, 1951, the deliberate delaying of production continued to remain a -misconduct" under the law inspite of the bleags it received from the Committee and the Government of Bihar.

As to the fact that "go slow" was resorted to in the factory from the midnight of February 12, 1955, up to the February 18, 1955, could not be and was not disputed, it becomes necessary to consider the evidence on the record to examine the conclusion reached by the Tribunal that there was no deliberate "go slow" by any of the present respondents. The charge -sheets which were served on the workmen accused them not only of actual participation in the "go slow" but also of instigating and intimidating other workmen to ",go slow". It is to be noticed however that while' ,,,inciting others to strike work" is misconduct under' the Standing Orders para M. el. sub-el. (u) incitement to deliberate delaying of production has not been specifically made a misconduct under the Standing Orders.

We shall therefore confine our attention to the appellant's case that these workmen actually participated in the "go Flow". A complaint was made on behalf of the respondents that the charges that were given to the workmen were vague. We have examined the charges and consider this complaint wholly unjiustfied. We have no hesitation however in accepting the criticism by the learned counsel for the respondents that the enquiry made by the domestic tribunal of the appellant was far from a proper enquiry, as the minimum requirements of natural justice were not satisfied. It appears that no witness was examined by the Enquiring Officer and the only person examined was the workman against whom the enquiry was being held. Reports by some officers of the company were taken into consideration but it does not appear that the contents of these reports were read out and explained to the workmen. The persons whose reports were thus considered were present at the enquiry, but even so it does not appear that the workman was given an opportunity to examine them. Indeed, as none of these persons were actually examined in the presence of the workmen the question of their cross-examination by or on behalf of the workmen did not arise. The workman thus had not only no proper chance of knowing what was being alleged against him and by whom but also no chance of testing the correctness of the allegations that were in fact made in the written report.

In view of these serious defects in the enquiry by the domestic tribunal it was not possible for the Industrial Tribunal to place any reliance an the findings of that domestic tribunal in order to decide

whether permission to dismiss should be given Under s. 33 of the Industrial Disputes Act. (Vide Phulbari Tea Estate v. Its Workmen) Evidence was however adduced by the appellant before the Industrial Tribunal to make out its case that the workmen concerned were in fact guilty of the alleged misconduct. On behalf of the respondents it has been urged before us that once it is found that the enquiry by the domestic tribunal has been defective it was not open to the Industrial Tribunal before which the application under section 33 is made to allow any evidence to be adduced before it. We see no force in this contention. /When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment the Tribunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out.' The proper way for performing this duty where there has not been a proper enquiry by the management is, for the Tribunal to take evidence, of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the (1) [1960] (1) S. C. R. 32.

alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct.

It may be pointed out in this connection that in Sasa Musa Sugar Works V. Shobrati Khan & others (1) the management's application under section 33 had not been preceded by any enquiry into the misconduct of the workman and that itself, it was urged on behalf of the workmen was a reason why the application should be rejected. The Industrial Tribunal held that all the evidence 'which might have been taken in the enquiry by the management had been led before it and it was in full possession of the facts and no question of any prejudice to the workmen arose as it would be open to it on a review of the entire, evidence before it to decide whether the application for permission to dismiss should be granted or not. On a consideration of that evidence the Tribunal held as regards 16 of the workmen concerned that there was no evidence that they had taken part in the alleged misconduct of "'go slow" or instigation to ,,,go slow". No objection appears to have been taken either before the Appellate Tribunal or before this Court to the application being disposed of on the evidence taken before the Industrial Tribunal itself, and in, fact this Court allowed the application under section 33 in respect of all the 48 workmen on the basis of the evidence given before the Industrial Tribunal.

(1) [1959] S. C. R. Suppl. 11 p. 836.

It is worth noting that several years before this, the Appellate Tribunal had in Shri Ram Swarath Sinha v. Belsund Sugar Co., Ltd. (1), laid it down that the materials on which a Tribunal acts in disposing of an, application for permission to dismiss may consist of (1) entirely the evidence taken by the management at the enquiry and the proceedings of the enquiry, or (2) that evidence and in addition thereto further evidence led before the Tribunal, or (3) evidence placed before the Tribunal for the first time in support of the charges.

It was pointed out there that the last mentioned case pre- supposed an absence of a prior enquiry by the management. It is not without significance that even though the question whether in the absence of a proper prior enquiry by the management evidence can for the first time be placed before the Tribunal-in support of the alleged misconduct had been discussed in Belsund Sugar Co., Ltd. (1), no objection to the taking of such evidence for the first time before the Tribunal was raised before this Court on behalf of the respondent in Sasa Musa Sugar Work's Case (2). Nor can we ignore the fact that for a long time now, it has been settled law that in the case of an adjudication of a dispute arising out of a dismissal of a workman by the management (as distinct from an application for permission to dismiss under s. 33), evidence can be adduced for the first time before the Industrial Tribunal. The important effect of the omission to hold an enquiry is merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out. This war, (1) [1959] L. A. C., 697.

(2) [1959] S. C. R. Suppl. 11 P. 836.

recently pointed out again in the Punjab National Bank Itd., v. Its Workmen (1) in these words : ',if no enquiry has in fact been held by the employer; the issue about the merits of the impugned order of dismissal is at large before the Tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved..... The reasons for which it is proper for the Tribunal to take evidence itself as regards the alleged misconduct when adjudicating upon a dispute arising out of an order of dismissal which has been made by the management are equally present in the case where the management makes an application for permission to dismiss without having held a proper enquiry. In our opinion the tribunal rightly allowed the management to adduce evidence before it in support of its application for permission to dismiss even though the domestic enquiry held by it was highly defective as pointed out above.

Of the six witnesses examined on behalf of the management the important evidence as regards the participation in the "go slow" during the period February 12 to February 18 is given by Ishwari Dayal, Chief Engineer, Kanpur the chief Chemist and Bhikari, a machine man.

On February 13, 1955 the Chief Engineer submitted a report to the Secretary, K. C. Sarda about what he had seen that very day. He referred to this report in an affidavit sworn before a Magistrate and stated that the facts stated in the report was true. In his deposition before the Tribunal he has referred to this affidavit and said that the statements made therein are correct. While a more

satisfactory way of putting Dayal's evidence on record, would have been to record his testimony on all these matters mentioned in the affidavit and report directly, it cannot be reasonably said that the statements made in the affidavit ,and report do not amount to legal evidence on (1) [1960] (1) S.C.R. 806.

which the Tribunal could act. In this report the Chief Engineer states thus :-

> "I noticed that groups of persons from the assembled crowd moved about the factory announcing the commencement of the go-slow" and actually threatened those who would not fall in line with them. I particularly noticed Harikishan Kuer, Baijnath Singh, Ramdeo Singh, Nagendranath and Baldeo and others whose name didn't remember in the crowd taking an active part Later in the report he says that:
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> "as a result of the instigation as aforesaid and perhaps as planned in advance, the 'go-slow' actually started with the incoming shift. The abnormally slow running of the mill Engine and the Cane Carrier came to my notice immediately. I personally checked up the stream pressure and found that it was normal. Thereupon I called Dhannoo Mistry, Mill House Fitter and expressed my resentment at a low speed, after all my persuasions and directions to them not to resort to goslow. Dhannoo Mistry had the impudence to tell me that it shall remain low as they had gone on go slow and the question of restoring the normal speed did not arise. Finding Dhannoo Mistry's attitude as it was, I went with the Shift Engineer Mr. Mukherji to Swarath Singh who was at the Mill Engine and Hardeo Singh who was at the Cane Carrier Clutch, and asked them to restore normal speed immediately..... They paid no heed to my orders and were determined to continue the go slow."

It is important to notice that of the persons named by this witness as having taken an active part-by which he obviously meant an active part in moving about the factory announcing the commencement of the go slow-Baijnath Singh 1 and Ramdeo Singh were both engaged in the Evaporator section, Baijnath being an Evaporator Cooly while Ramdeo Singh being an Evaporator Reliever; Harikishan Kuer was an Assistant Panman while Baldeo and Nagendranath Prasad were Engine men, Baldeo being an Assistant Fitter and Nagendranath being a Pitter. We have no hesitation in believing as correct these statements made by the Chief Engineer in his report made on February 13. There can be no doubt therefore that Swarath Singh, Hardeo Singh and Dhannoo actually participated in the go slow. As regards Harikishan Kuer, Baijnath, Ramdeo and Nagendranath and Baldeo we have to remember that it is not disputed that there was in fact a go slow in the different jobs on which these men were engaged. If they had not been proved to have taken an active part in promoting the go slow, there may have been some scope for saying that the go slow in their jobs was the consequence of the go slow at the Donga and not deliberate go slow on their part. When however we find that these persons were active in asking other workmen to go slow, they cannot be reasonably heard to say that the go slow in their own jobs was not deliberate on their part. The Tribunal was in our opinion clearly in error in thinking that the go slow in the jobs where these persons were engaged was merely the result of the go slow at the Donga end and not deliberate go slow on their part. In our opinion, the evidence of Ishwari Dayal definitely establishes

that these several persons, Harikishan Kuer, Baijnath Singh, Ramdeo Singh, Nagendranath Prasad, Baldeo,- Dhannoo Mistry, Sawarath Singh and Hardeo Singh did actually participate in delaying production.

The Chief Chemist, A. N. Kapur, submitted to the Secretary one report on February 12, 1955 and ,two more reports on February 13. In the first report he said that having received information at about 9.30 A. m. that Gulab Singh, Evaporatorman, was inciting persons who were doing periodical cleaning of the Evaporators that day that they should do the cleaning slowly as if the "go-slow" had already started in their case, he immediately went to the Evaporators and questioned Gulab Singh about his alleged conduct and that Gulab Singh ultimately admitted that it was true but that he had merely been saying what others had decided.

In the second report marked Ex. 4 (b) the Chief Chemist states that trouble started on the midnight of February 12 after "C" shift was over and that he noticed "Baijnath Singh, Hira Sukul, Harikishan Kuer, Ramdeo Singh, Ramayan Singh and Golla among others asking other workers to stay on and see that the go slow was actually started. He says also that the noticed Kawalpati and Bachan, Centrifugal Coolies and a few others taking a prominent part in proclaiming that go slow must be started.

In the third report the Chief Chemist stated that after 8 A. M. on February 13 he noticed Kawalpati and Bachan and Amar Mahto, Jai Singh and Gulab Singh and others going round the factory and openly saying that as the go slow had started any workman who sided with the factory will be severely dealt with. We can see no reason to doubt the truth of the statements made by the Chief Chemist. Of the persons named by him, Baijnath Singh, Harikishan Kuer and Ramdeo Singh were also named by Isbawari Dayal as we have already pointed out above. In addition to these Hira Sukul, Ramayan Singh, Golla, Jai Singh Amar Mahto and Gulab Singh must be held to have actually asked others to go slow and when this fact is taken with the admitted fact that "go slow" was actually practiced at the stages of production where these workmen were engaged there can be no escape from the conclusion that they were guilty of active participation in go slow, As regards Kawalpati and Bachan we have, apart from this evidence of the Chief Chemist that they were going round the factory saying that go slow must be continued, the evidence of Bhikari Rout that on February 14 he found these two, not operating the machine, and sitting there on a gunny bag and sugar was falling down from the Pugmill. From this evidence of Bhikari Rout taken with the evidence of the Chief Chemist, it appears clear beyond any reasonable doubt that these two workmen, Bachan and Kawalpati did also actively participate in "go slow".

We are therefore of opinion that the evidence adduced before the Tribunal clearly establishes that the following respondents, Harikishan Kuer, Baijnath Singh, Ramdeo Singh, Nagendra-nath Prasad, Baldeo, Dhannoo Mistry, Swarath Singh, Hardeo Singh, Kawalpati, Bachan, Ramayan Singh, Jai Singh, Hira Sukul, Golla and Gulab Singh were guilty of misconduct within the meaning of paragraph M el. (1) sub-el. (u) of the Standing Orders. Of these Ramdeo Singh and Golla are reported to be dead.

Before however permission can be granted to dismiss them for this misconduct we have to see whether the charge of mala fide and victimisation brought against the management is true. The workmen's suggestion which found favor with the Tribunal was that it was because of the Union activities of these 21 workmen that the management decided to take action against them and that the allegation that they had taken part in the go slow was merely a sham excuse. As regards the above workmen who it is established by the evidence were in fact guilty of go slow, can it be said that though the management takes action against them for this misconduct the real reason for the managements proposal is these people's Union activities ? We are unable to see any. justification .for this view. If the misconduct had not been serious and still the management sought to dismiss them, taking advantage of the fact that under the Standing Orders a punishment of dismissal could be given, there might have been some scope for an argument that the apparent reason for the management's action was not the real reason. It is not possible however to consider actual participation in go slow as anything but very serious misconduct and no management can be accused reasonably of mala fide or of revengefulness if, it proposes punishment of dismissal for such conduct. The Industrial Tribunal appears to have been impressed by the fact that 13 other workmen who were suspended were pardoned and taken back while 21 ,were not allowed to join duty. It appears clear that several at least of the 13 who had been taken back were also active members of the Union. There is no ground for saying therefore that the management discriminated against these 21 workmen because of the fact that they were active members of the Union. It may very well be that they have been taken back as their active participation in the go slow was not established. Without knowing fully the circumstances under which those other 13 were taken back to work it is not proper to hold that there has been any discrimination against these 2 1. Learned Counsel for the respondents next contended that mala fide and victimisation were 'writ large on the conduct of the management 'in preventing the holding of a meeting for conciliation which was attempted by the Assistant Labour Commissioner. It is also urged that by this conduct the company provoked the workmen to resort to go slow. Even if it were' found that the company had deliberately avoided the proposed meeting there would be no ground for saying that the workmen had been "provoked" to go slow. Inspite of the recommendation of the go slow committee and the resolution of Bihar Government ,go slow" continued to be a misconduct under the Standing Orders "-and a mere refusal of the company to attend the conciliation meeting cannot be considered such provocation as would compel or justify the commission of misconduct. Nor can we find-even assuming for the present that the company did deliberately prevent the conciliation meeting before the 12th February-that this showed an intention to victimise. Before an industrial adjudication can find an employer guilty of an intention to victimise there must be reason to think that the employer was intending to punish workmen for their Union activities while purporting to take action ostensibly for some other activity. It would-be unreasonable to think, that the appellant, expected that if the meeting was not held on the date as proposed the workmen were surer to start go slow and that would give the management an opportunity of proceeding against the Union workers. It was not unreasonable for the management to expect better sense from workmen and to hope that they would not commit misconduct too readily. While we do not wish to say that no unfair conduct on the part of the management in negotiations over the workers' threat to go slow would ever justify a finding of mala fides on the employer's part, we must clearly say that the mere asking for adjournment of a conciliation meeting is not such conduct on which mala fides or an intention to victimise can be reasonably based. Apart from this, we are not satisfied that in the present case the management was

guilty of any deliberate attempt to delay the conciliation meeting. The reasons for asking an adjournment of the meeting were clearly mentioned in the several telegrams sent by the management to the Labour Commissioner and there is nothing on the record to justify a conclusion that these reasons were not true or honestly given.

Our attention was drawn to the delay in holding the enquiry and the subsequent delay in filing the application for permission to dismiss.

That there has been great and indeed unusual delay is clear. The charge-sheets were served on the workmen in March 1955 and the explanations were received about the middle of March, but the domestic enquiry took place in September 1955. Trying to explain this delay of several, months, Sarda, the General Secretary, has stated thus :-"The enquiry into the charge sheets could not be commenced before the beginning of September, 1955, because of my continued ill health which necessitated complete rest for several weeks at a time and also because of my multifarious Assignments which took me many a time to Patna and outside the State of Bihar. I could not assign the matter of holding the enquiries to other officers namely Chief Engineer or the Chief Chemist because they were themselves complainants against the workmen concerned."

We are unable to consider this explanation wholly satisfactory and are inclined to think that the management showed lamentable callousness in this matter of proceeding with the enquiry .In cases of this nature the enquiry should be held as early as possible, specially when the management takes the step of putting the workmen under suspension. No application for permission to dismiss was filed immediately. It was only in August 1956 that such an application was filed under s. 22 of the Industrial Disputes Appellate Tribunal Act before the Labour Appellate Tribunal, Calcutta. But that was rendered infructuous on account of the disposal of the matter before the Labour Appellate Tribunal. The present application was made as late as December 30, 1956, after an application by the workmen themselves under section 23 of the Industrial Disputes. Appellate Tribunal Act had been withdrawn. We do not find any satisfactory explanation for the management's delay in applying for-permission to dismiss. At the same time, it is not possible to say that these delays show even remotely that in making the application for per-

minion to dismiss the management was guilty of mala fides or an intention to victimise.

We have therefore come, to the conclusion that the Tribunal's order in refusing permission to dismiss these workmen, viz., Harikishan Kuer, Baijnath Singh, Nagendranath Prasad, Baldeo, Dhannoo Mistry, Swarath Singh, Hardeo Singh, Kawalpati Bachan, Ramayan Singh, Jai Singh, Hira Sukul and Gulab Singh was entirely wrong and unjust and cannot be allowed to stand. As however even though no stay of the Tribunal's order was granted when special leave was allowed by thins Court and still the workmen concerned have not been allowed to work or paid their wages the permission should not be granted to dismiss them before the date of this judgment.

As the two respondents Ramdeo and Golla are dead, there is no question of granting permission now to dismiss them, even though on the evidence on the record, the appellant might have been entitled to permission to dismiss these, two with effect from this date, if they were living. These two

will be entitled to wages till the date of their death. As regards the other respondents we are of opinion that the application was rightly refused inasmuch as the evidence adduced before the Industrial Tribunal does not establish the charge of misconduct against them.

We accordingly allow the appeal in part and set aside the order of the Industrial Tribunal in respect of these 13 workmen named above and order that the management is granted permission to dismiss them with effect from the date of this judgment. There will be no order as to costs. Appeal allowed in part.