Supreme Court of India
Rajinder Kumar Kindra vs Delhi Administration Through ... on 27 September, 1984
Equivalent citations: 1984 AIR 1805, 1985 SCR (1) 866
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
RAJINDER KUMAR KINDRA

Vs.

RESPONDENT:
DELHI ADMINISTRATION THROUGH SECRETARY (LABOUR) AND ORS.

DATE OF JUDGMENT27/09/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MADON, D.P.

CITATION:
1984 AIR 1805 1985 SCR (1) 866
1984 SCC (4) 635 1984 SCALE (2)428

ACT:
Industrial Disputes Act, 1947-Section 11-A-Arbitrator and Court can reappraise evidence led in domestic enquiry to satisfy whether misconduct against workman is established. Arbitrator and the Court can reject evidence of misconduct based on no legal evidence,

Constitution of India-Article 136-Supreme Court can reject findings of misconduct based on no legal evidence.

Words and Phrases-Misconduct-Whether keeping one's own cheque book unattended amounts to misconduct on the part of the employee.

Gainful employment-What is-In the absence of employment staying with and helping one's father-in-law in his work is not gainful employment.

HEADNOTE:
The appellant was working as a salesman at a show room of a company. The company charge-sheeted the appellant inter alia on the ground of misconduct. The misconduct imputed to the appellant was that he was negligent in keeping his cheque-book in relation to his own private account in such a manner that it enable the Manager-cum-Cashier of the show room of the company in which the appellant was a salesman at the relevant time to misuse the cheque forms and thereby

defraud the company. An Inquiry Officer was appointed to enquire into the charges. The company examined some with cases and adduced evidence. The Inquiry Officer found the appellant guilty of all the charges. On the basis of the findings of the Inquiry Officer the company dismissed the appellant from service. The appellant raised an industrial dispute and the same was, by agreement, referred by the appropriate Government to an arbitrator as provided under Sec. 10(A)(1) of the Industrial Disputes Act, 1947. The company submitted that the arbitrator cannot sit in appeal over the findings of the inquiry. In his award, the arbitrator held that the findings of the Inquiry Officer were based on no legal evidence and were, therefore, perverse and the enquiry was therefore vitiated. Before a formal final order could be made by the arbitrator, he was elevated as a Judge of the Delhi High Court. That led to a second reference. The second arbitrator found the appellant guilty of all the charges and held that The dismissal of the appellant was not wrongful. The appellant filed a writ petition under Art. 226 in the High Court question-
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ing the correctness, validity and the legality of the award of the second arbitrator. A Division Bench of the High Court dismissed the matter in limine observing that the matter depends upon assessment of evidence and the Court cannot reappraise the same under Art. 226 of the Constitution. Hence this appeal by special leave.

Allowing the appeal,

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HELD: The charge levelled against the appellant is a composite charge and has two limbs. The first limb of the charge refers to negligence in handling his private cheque-book so that in conspiracy with the Manager cheque forms contained in the cheque-book issued to the appellant for operating his private account were used by the Manager to defraud the company. When a cheque-book is issued to a holder of an account by the bank, there is no law which requires him to keep his cheque-book in safe custody. He may keep his cheque book anywhere be likes and even if it is not in safe custody he does so at his own peril. Some one so minded to forge cheque and to withdraw money from some one's account may use anybody's cheque-book. In such a situation, the owner of the cheque-book unless he has participated in the conspiracy in any manner for facilitating withdrawal of the amount cannot be attributed any misconduct for keeping his cheque-book unattended or not in safe custody. Therefore first limb of The charge can be rejected as per se untenable without anything more. The second limb of the charge that since the appellant left his cheque-book unattended the appellant was negligent and guilty of wilful disobedience in performance of his duties as a salesman, has no force. Keeping one's own cheque-book unattended is no part of performance of duties of the employees and there was no

order by the employer how appellant should handle his private cheque-book. Therefore, the charge apart from being frivolous is ludicrous and could not have been even framed. Even if the allegation in the charge is left unquestioned it does rot constitute misconduct. The employer could not have framed such charges without any evidence in support of them yet and the second arbitrator holds them proved. Therefore the second arbitrator accepted the findings of the Inquiry Officer which were per se perverse. Not only the second arbitrator did not apply his mind to the submission of the appellant that the findings were perverse but he merely recorded his ipse dixit without in any manner analysing or examining or applying his mind to the evidence only to find out whether there was any evidence to substantiate the charge and whether any reasonable man would arrive at the conclusion which the Inquiry Officer had reached. The award of the second arbitrator, apart from the fact that it is based on no Legal evidence suffers from the additional infirmity of total non-application of mind. Any finding of misconduct based on total absence of evidence must fall.

[875 B-C; D-E; G-H; 878 H; 879 A-B]

The contention that once the second arbitrator came to the conclusion that the appellant was given full opportunity to participate in the domestic enquiry neither High Court under Art. 226 nor this Court underArt. 136 can sit in appeal over the findings of the Inquiry Officer and reappraise the evidence, has no force. In exercise of the jurisdiction conferred by Sec. 11-A of the Industrial Disputes Act, 1947 both arbitrator and this Court can reappraise the evidence led in the domestic enquiry and satisfy itself whether

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the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the Inquiry Officer were plausible one deducible from the evidence led in enquiry and not to re-appreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not.

C-E] [879

Workmen of M/s Firestone Tyre and Rubber Company of India (P) Ltd. v. Management and Others, [1973] 3 SCR 587, referred to.

It is well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Sec. 10-A or this Court in appeal under Art. 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though this Court would have been perfectly justified in exercise of powers conferred by Sec. 11A to do so. [880 A-B]

Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, [1980] 2 SCR 146, referred to.

It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non-application of mind. [880 C-D]

In the instant case, viewed from either angle, the conclusion of the Inquiry Officer as well as of the second arbitrator are wholly perverse and hence unsustainable. The High Court was clearly in error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence [880 F]

Between appraisal of evidence and total lack of evidence there is an appreciable difference which could never be lost sight of and the High Court ought not to have short circuited the writ petition. [880 F]

If there is absolutely no evidence in support of the only allegation of misconduct namely negligence in not keeping one's private cheque-book in safe custody, the conclusion is not only not a plausible one but it in wholly perverse and this Court is in complete agreement with the findings recorded by the first arbitrator that the findings of Inquiry Officer were perverse and the enquiry was wholly vitiated. [880 G]

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Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non-application of mind the only course open to court is to set it aside and consequently relief of reinstatement must be granted. [880 G]

The submission of the company that since the appellant was gainfully employed during the period of his dismissal, he should not be awarded back-wages must fail. The only evidence was that during his forced absence from employment since the date of termination of his service, the appellant and the members of his family were staying with his father-in-law and during this period the appellant was helping his father-in-law who had a coal-depot. On this evidence it cannot be said that the appellant was gainfully employed so as to reject the claim for back-wages. If this is gainfully employment as contended by the company, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be the gainful employment. Therefore, the appellant

would be entitled to full back-wages and all consequential benefits. [881 C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2386 of 1984.

Appeal by Special leave from the Judgment and Order dated the 2nd March, 1983 of the Delhi High Court in Writ Petition No. 314 of 1983.

Miss Mamta Sarin for the Appellant.

Pawan Kumar Jain and K. K. Gupta, for Respondent No. 2. The Judgment of the Court was delivered by DESAI. J. Appellant Rajinder Kumar Kindra was inducted as a peon by M/s Raymond Woolen Mills Ltd. ('employer' for short). In 1972 he was promoted as a salesman and at the relevant time he was serving at the Raymond's retail showroom in Karol Bagh, New Delhi. One Shri R.S. Negi was the Manager-cum-Cashier of the Karol Bagh Show-room of the employer under whom the appellant was working. He was served with a charge-sheet dated December 11, 1975 which reads as under:

> "That you, Shri Rajinder Kindra, is hereby informed that you, while working as a salesman at Raymonds' Retail Show-room, 2397/1, Hardhian Singh Road, New Delhi-5 have misappropriated cash and funds from the amounts of Raymonds' Woolen Mills Ltd., to the extent of Rs. 32,196/88 or a part thereof during the period 10.6.75 to 17.10.75 by manipulating false accounts, submitted bogus cheques into the Mills Account or by taking cash from the chest of the Retail Depot along with Shri R.S. Negi, Manager-cum-Cashier of Raymonds' Retail Show- room, 2397/1, Hardhian Singh Road, Karol Bagh, New Delhi.
>
> That you Shri Rajinder Kumar Kindra while acting as a salesman aided, abetted, connived and conspired with the Manager-cum-Cashier Shri R.S. Negi of the said show-room and issued various cheques in the amount of Rs. 15,027/75 from your cheque book with the ulterior motive and design to defraud the Company of the said amount by submitting these bogus cheques into the Mills' Account and thereby causing unlawful gain to yourself and causing unlawful loss to the Company in collusion with Manager-cum-Cashier Shri R.S. Negi. That you Shri Rajinder Kumar Kindra has willfuly/ negligently permitted the user of the cheques in order to defraud the company of the amount of Rs. 15,027/75 in conspiracy with Shri R.S. Negi and you have been habitually negligent and willfully disobedient in the performance of your duties as salesman."

One Shri V.K. Soni was appointed as Enquiry Officer to enquire into the aforementioned charges. In the course of enquiry, the appellant denied the charges levelled against him. He stated that the cash

used to remain with Manager- cum-Cashier Shri R.S. Negi and it is for him to explain about some cheques drawn and the statement of account submitted by him. He denied himself having issued any cheque. He denied that he was negligent in performance of his duty. The employer examined Shri O.D. Sharma, Shri G.L. Kapur, Shri V.K. Malhotra and Shri Nandan Singh as witnesses for the management. The appellant gave evidence on his behalf and he was cross-examined on behalf of the employer. He also examined one Shri A.K. Godbole as his witness.

The Enquiry Officer Shri V.K. Soni submitted his report dated June 22, 1976. In the report, he Inter alia held that the appellant had been guilty of gross negligence and misconduct in the discharge of his duties and he was 'actively responsible for committing the fraud on the Company with Shri R.S. Negi to the extent of Rs. 15027.75 and all the charges as contained in the charge-sheet against the appellant were held proved. The employer accepted the report and dismissed the appellant from service with effect from August 25, 1916.

The appellant raised an industrial dispute inter alia contending that the findings of the enquiry officer were perverse and there was no evidence in respect of either the charge of negligence or embezzlement of funds and that the dismissal from service was wholly unjustified. The employer and the appellant by a written agreement agreed to refer the existing industrial dispute arising out of the dismissal from service of the appellant to an arbitrator, as provided by Sec. 10 (A) (1) of the Industrial Disputes Act (Act for short). The first respondent Delhi Administration pursuant to aforementioned written agreement referred the following dispute to Shri G. C. Jain, Presiding Officer of the Labour Court, Delhi who was selected by the parties to be the arbitrator. It reads as under:-

> "(1) Whether the services of Shri R.K. Kindra were terminated illegally and unjustifiably ? (2) Whether the enquiry proceedings were initiated by the principles of natural justice and equity ? (3) To what relief if any, is the worker entitled ?"

The employer contended before the arbitrator that the enquiry held by him is fair and just and full opportunity was afforded to the appellant to participate in the enquiry, to cross-examine witnesses produced by the management and to lead his evidence. It was further contended that the conclusions reached by the enquiry officer and findings recorded by him are borne out by the evidence and permissible inferences drawn from the evidence and they are such that any reasonable person would reach on the evidence the conclusion of guilt of the appellant. It was submitted that the arbitrator cannot sit in appeal over the findings of the enquiry officer. It was further contended that at any rate there is satisfactory evidence to show that the appellant negligently kept his cheque book in relation to his private banking account in such a manner as to be accessible to any one to misuse the same and this was done intentionally, so as to facilitate the commission of fraud presumably by Manager-cum-Cashier Shri R.S. Negi. In the ultimate analyses this was the only misconduct attributed to the present appellant.

The arbitrator held that none of the witnesses of the employer has stated that the appellant misappropriated any amount of the Company or he had manipulated false accounts or had submitted bogus cheques in the account of the employer or had taken away any amount from the

chest of the retail depot or had abetted, aided, conspired or connived with Shri R.S. Negi or issued any cheque to defraud the Company. Thus the employer failed to lead any evidence before the arbitrator to impute any misconduct to the appellant as alleged in the charge-sheet. The arbitrator concluded that there was no evidence in support of charge No. 1 and 2 and there was no evidence to prove Charge No. 3. The conclusion reached by the arbitrator may be extracted:

> "In conclusion, I hold that the findings of the Inquiry Officer were based on no legal evidence and were, therefore, perverse. The enquiry is, therefore, vitiated. I hold accordingly."

On these findings nothing remains save and except the consequential order that the dismissal from service of the appellant must be quashed and set aside and the appellant be reinstated in service with all consequential benefits unless of course the employer had sought an opportunity to lead evidence before the arbitrator to substantiate the charges. No such opportunity was sought and therefore as held by this court in Shanker Chakraborte v. Britannia Biscuits Co. Ltd., nothing further was required to be done and the award reinstating the appellant should have followed. Unfortunately making of this consequential order was postponed. The finding of the arbitrator is dated May 24, 1976. It appears that soon thereafter Shri G.C. Jain arbitrator was elevated as a Judge of the Delhi High Court and he consequently before taking his oath did not make the final order which was merely a formal part of his duties. That unfortunately led to a second reference. This time reference was made under Sec. 10 (A) (1) to Shri N.L. Kakkar, retired Additional District and Sessions Judge, Delhi as an arbitrator. The same three points were referred to Shri Kakkar for his decision. Shri Kakkar after narrating the evidence that was led before the enquiry officer summed up his findings as under:-

> (a) "That the services of Shri R.K. Kindra, were not terminate illegally or unjustifiably but on account of charges having been successfully proved against him, especially the third charges that is with regard to willfully/negligently permit the user of cheques in order to defraud the company in conspiracy with Shri R.S. Negi and negligence in the performance of his duties as a salesman.
>
> (b) That the enquiry proceedings were not vitiated by the principles of natural justice and equity as full opportunity was given to the workman and no prejudice was caused to him by any act of the management, although he was given full opportunity to lead his evidence and to cross-examine the witnesses of the management and particularly there was no enmity between the work man and the enquiry officer and the dismissal as such was not wrongful.
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> (c) That the workman is not entitled to any relief, and is not entitled to reinstatement with back wages and continuity of service since he has been gainfully employed with Shri Tara Chand at his coal depot ever since his dismissal.
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> The reference by way of award is answered accordingly."

The appellant filed a writ petition under Art. 226 in the High Court of Delhi questioning the correctness, validity and the legality of the award made by Shri Kakkar. A Division Bench of the High Court dismissed the matter in limine, observing that the matter depends upon assessment of evidence and the Court cannot reappraise the same under Art. 226 of the Constitution. Hence this appeal by special leave.

Let it be made absolutely clear at the outset that the only misconduct imputed to the appellant was that he was negligent in keeping his cheque-book in relation to his own private account in such a manner that it enabled Shri R.S. Negi, Manager-cum Cashier of the Branch in which the appellant was a salesman at the relevant time to misuse the cheque forms and thereby defraud the employer. Mr. P.K. Jain learned counsel for employer specifically conceded that the only misconduct alleged against the appellant consists of his negligence in keeping his own cheque-book by which he could operate his own private account in such manner as to enable someone so-minded to misuse the cheque forms. He was repeatedly asked what law, rule, regulation or a standing order, if there be any, which requires an employee to keep his own private cheque-book under lock and key or safe custody so that no one except himself can have access to it and we waited for the answer in vain. It was conceded that the appellant is not guilty of any embezzlement or misappropriation of funds of the employer though a grandiose albeit flamboyant charge was framed that he misappropriated cash and funds from the accounts of the employer to the extent of Rs. 32,196.88 p. or part thereof during the period June 10, 1975 to October 10, 1975 by manipulating false accounts, submitting bogus cheques into the employer's account or by taking cash from the chest of the branch alongwith Shri R.S. Negi, Manager- cum-Cashier of the Branch. There is not a tittle of evidence in support of the allegation of misappropriation or embezzlement of funds or manipulation of accounts by the appellant. This was in terms conceded. The allegation, to be specific, of the employer is that Shri R.S. Negi, Manager- cum-Cashier misused the cheque forms from the cheque-book of the appellant in respect of his private account and embezzled funds of the employer. It was not the case of the employer that applicant drew cheques or embezzled cash from the chest. Another allegation was that the appellant abetted, aided, connived at or conspired with Manager-cum- Cashier Shri R.S. Negi, in charge of the branch and issued various cheques in the amount of Rs. 15,027.75 p. drawn on forms of cheques contained in the cheque-book of the appellant issued to him for operating his own private account with ulterior motive of defrauding the employer by submitting bogus cheques into the account of the employer and thereby caused wrongful gain to himself and wrongful loss to the employer, in collusion with Shri R.S. Negi. Again it was conceded that there is absolutely not an iota of evidence which could indicate that the appellant issued any a cheques himself or that he aided or abetted someone to issue the r bogus cheques. These were the allegations in charges Nos. 1 and 2 and the finding by Mr. Kakkar that they are proved can be styled as perverse on the admission of the employer himself because not a single witness in the course of domestic enquiry so stated. Mr. Jain, learned counsel for the respondent could not point out one single sentence of evidence in support of these two charges.

Mr. P.K. Jain urged that the third charge which was to the effect that the appellant permitted the use of the cheques from the cheque-book issued to him by the Bank in which he was maintaining his own private account to defraud the employer to the tune of Rs. 15,027.75 p. in conspiracy with Shri R.S. Negi and that he was negligent and was guilty of wilful disobedience ill performance of his

duties as a salesman was substantiated. It is a composite charge. The first limb of the charge refers to negligence in handling his private cheque book so that in conspiracy with Shri R.S. Negi cheque forms contained in the cheque-book issued to the appellant for operating his private account were used by Shri R.S. Negi to defraud the employer. Rejecting the language improperly used the charge is that the appellant kept his private cheque book unattended or not in safe custody so that Mr. R.S. Negi misused the cheque forms from this cheque book. In support of this allegation, the evidence is that the appellant did not keep his cheque-book under lock and key or in safe custody so that no one else except himself will have access to the same We have not been able to understand apart from appreciating this charge. When a cheque book is issued to a holder of an account by the Bank, there is no law which requires him to keep his cheque book in safe custody. He may keep it in any manner and if in the process some one misuses the cheque and withdraws money from the account of the holder, the bank will be able to disown its liability pleading negligence of the holder of the account. A man can keep his cheque book anywhere he likes and even if it is not in safe custody he does so at his own peril. In the event of misuse as a result of negligent handling of the cheque book, the Bank will be able to disown its liability if someone by misuse of the forms of cheques withdraws any amount from the account in respect of which the cheque book is issued. That is not the case here. The accusation is that the appellant kept his cheque book in such a manner as to be accessible to any one and that some one unscrupulously removed the forms of cheques from the cheque book of the appellant and used them to withdraw money from the appellant's account but from the employer's account. Some one so minded to forge cheque and to withdraw money from some one's account may use anybody's cheque book. In such a situation, the owner of the cheque book unless he has participated in the conspiracy in any manner for facilitating withdrawal of the amount cannot be attributed any misconduct for keeping his cheque book unattended or not in safe custody. There fore first limb of the charge No. 3 can be rejected as per se untenable without anything more.

The second limb of the third charge is that the appellant was negligent and guilty of wilful disobedience in performance of his duties as a salesman. Not a single witness has spoken of any negligence on the part of the appellant in performance of his duties. There is not the remotest suggestion in the evidence to that effect. Not a single witness has spoken about any wilful disobedience in performance of duty. Some flamboyant charges appears to have been cooked up by the employer without any regard for truth or without any regard for responsibility ill making such heinous allegation and levelling serious accusation without an iota of evidence in support of it We repeatedly asked Mr. P.K. Jain, learned counsel for the employer to show from the evidence led before the inquiry officer which order of the employer was disobeyed much less unwilfully by the appellant, as also acts of omission and commission in performance of duty to spell out negligence. The only reply we received was that the appellant kept his cheque book unattended. Keeping one's own cheque book unattended is no part of performance of duties of the employee and there was no order by the employer how appellant should handle his private cheque book.

Let is be made distinctly clear that this Court in this appeal is not re-appreciating evidence. Mr. G.C. Jain, the first Arbitrator who completed a major part of the enquiry in the reference made to him under sec. 10 (A) (1) after meticulously examining the evidence led on behalf of the employer in the enquiry proceedings concluded as under:-

"22. I have carefully examined this entire evidence. None of the witnesses has stated that Shri Kindra had misappropriated any amount of the Company or he had manipulated false accounts, or had submitted bogus cheques in the mills account and had taken away any amount from the chest of the retail depot or had abetted, aided conspired or connived with Shri R.S. Negi or issued any cheque to defraud the company. What PW-1 to PW-3 said is that Shri Negi used five cheques from the cheque book of this workman to defraud the company. There is no evidence to show any fraud on the part of Shri Kindra or to connect him with misappropriation by Shri Negi. The mere fact that his cheques were used is not sufficient to hold that he had entered into conspiracy with Shri Negi or that he wilfully or negligently permitted the use of the cheques in order to defraud the company to the amount of Rs.

15,027.75 p. Or part thereof Management's own witness have stated that these cheques were utilised either with the connivance of Shri R.K. Kindra or because of his negligence in respect of the same. None of them has stated with certainty that Shri Kindra was a party to this misappropriation. No doubt the evidence shows that he was not very careful in keeping his cheque book under lock and key. But this circumstance is not sufficient to hold that he had entered into any conspiracy with Shri R.S. Negi or was a party to the misappropriation. Thus there was no evidence in support of charge No. 1 and 2. There is no evidence that Shri Kindra wilfully permitted the user of his cheque book. There is no evidence that his negligence in keeping the cheque book in a drawer without a lock was with a view to defraud the company. There is no evidence that he was habitually negligent or willfully disobedient in the discharge of his duties. The manner of keeping his personal cheque book was not a part of his duties as salesman. Thus there was no evidence to prove charge No. 3 as well."

He further concluded in paragraph 23 of his award that the findings of the enquiry officer were based on no legal evidence and were therefore perverse and the enquiry was vitiated. The employer never sought an opportunity to lead evidence before arbitrator to substantiate the charges. In fact on the conclusion recorded by Mr. G.C. Jain he should have made a consequential order of setting aside the order of dismissal and directing reinstatement with back wages but he unnecessarily procrastinated and then before he could attend to the remainder of the work, he was elevated to the bench of the Delhi High Court leaving the appellant to face the music of a fresh enquiry and a complete sommer sault by the new arbitrator.

A fresh reference was made to Sh. N.L. Kakkar, Mr. P.K. Jain, learned counsel for the employer/contended that this Court is only concerned with the award of Mr. Kakkar and the findings recorded by Mr. G.C. Jain are not relevant. We have serious reservations about this submission, but it is not necessary in this case to decide that point. We would now confine ourselves to the award of Shri Kakkar.

In Paragraph 1 to 5, the history of the dispute and the charges framed against the appellant have been set out by Mr. Kakkar. Paragraph 6 deals with what the enquiry officer did. Paragraph 7

reproduces the contentions on behalf of the appellant. Paragraph 8 summarises the contentions on behalf of the employer. Paragraphs 9, 10 and 11 deal with the manner in which the enquiry was held. Paragraph 12 refers to the written arguments submitted on behalf of the employer. In the concluding paragraph 13, Mr. Kakkar states that the circumstances of the case and the evidence produced by the parties before the enquiry officer as well as in the present proceedings and on the consideration of the documents filed and proved, it is held as therein stated. He then recorded his ipse dixit not discussing the evidence or the total absence of it. It may be pointed out that in the course of the enquiry held against the appellant by Mr. U.K. Soni, enquiry officer, the employer had examined 4 witnesses namely Shri O.D. Sharma, Shri G.L. Kapur, Shri V.K. Malhotra and Shri Nandan Singh. No witness was examined before Shri G.C. Jain and the employer relied upon the report of the enquiry officer and the evidence of the four witnesses recorded by the enquiry officer. When the matter came up before Mr. Kakkar, the employer had not examined any witness but had submitted the report of the enquiry officer and the evidence of the aforementioned witnesses. Therefore when it was contended before the arbitrator that even accepting the evidence of the four witnesses, as if unchallenged, no reasonable man could ever come to the conclusion that the misconduct imputed to the appellant in charges No. 1, 2 and 3 could be said to be proved, it was incumbent upon him to examine the evidence. We invited Mr. P.K. Jain to point out to us which evidence is being relied upon in support of the charge of embezzlement and the charge relating to alleged misappropriation of funds. He could not lay his hand on any piece of evidence. Conceding that there is no evidence in support of the charge of embezzlement and misappropriation of funds simultaneously conceding that charges No. 1 and 2 are not proved, he repeatedly emphasised that the only conducts of which appellant is guilty is that the appellant had so deliberately left his cheque book unattended as to be accessible to anyone who may misuse it and this constitutes negligence in performance of duty. Even at the cost of the repetition, we must point out that keeping one's private cheque book in any manner is no par. Of the performance of the duty of the employee. To say the least the charge apart from being frivolous is ludicrous and could not have even framed. Even if the allegation in the charge is left unquestioned it does not constitute misconduct. The employer could not have framed such charges without any evidence in support of them yet Mr. Kakkar holds them proved. Therefore Mr. Kakkar accepted the findings of the enquiry officer which were per se perverse. Not only Mr. Kakkar did not apply his mind to the submission of the appellant that the findings were perverse but he merely recorded his ipse dixit without any manner analysing or examining or applying his mind to the evidence only to find out whether there was any evidence to substantiate the charge and whether any reasonable man would arrive at the conclusion which the enquiry officer had reached. The award of Mr. Kakkar, apart from the fact that it is based on no legal evidence suffers from the additional infirmity of total non-application of mind. Any finding of misconduct based on total absence of evidence must fail.

Mr. Jain contended that once Mr. Kakkar came to the conclusion that the appellant was given full opportunity to participate in the domestic enquiry neither High Court under Art. 226 nor this Court under Art. 136 can sit in appeal over the findings of the enquiry officer and reappraise the evidence. We have not at all attempted to re-appreciate the evidence though in exercise of the jurisdiction conferred by sec. 11-A of the Industrial Disputes Act, 1947 both arbitrator and this court can reappraise the evidence led in the domestic enquiry and satisfy itself whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the

arbitrator has only the power to decided whether the conclusions reached by the enquiry officer were plausible one deducible from the evidence led in the enquiry and not to re-appreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not. This court in Workmen of M/s Firestone Tyre Rubber Company of India (P) Ltd. v. Management & Others, held that since the introduction of sec. 11-A in the Industrial Disputes Act, 1947, the Industrial tribunal is now equipped with the powers to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman. It is equally well-settled that the arbitrator appointed under Sec. 10-A is comprehended in sec. 11-A. This court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, held that an arbitrator appointed under sec. 10-A of the Industrial Disputes Act, 1947 is comprehended in sec. 11-A and the arbitratal reference apart from sec. 11-A is plenery in scope. Therefore it would be within the jurisdiction both of the arbitrator as well as this court to re- appreciate the evidence though it is not necessary to do so in this case. It is thus well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under sec. 10-A or this court in appeal under Art. 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of Powers conferred by sec. 11-A to do so.

It is equally well-settled that where a quasi-judicial tribunal or arbitrator records findings based on no legal evidence and the findings are either his ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The industrial tribunal or the arbitrator or a quasi-judicial authority can reject not only such findings but also the conclusion based on no legal evidence or if it is merely based on surmises and conjectures unrelated to evidence on the ground that they disclose total non- application of mind. Viewed from either angle, the conclusion of the enquiry officer as well as of the arbitrator Mr. Kakkar are wholly perverse and hence unsustainable. The High Court, in our opinion, was in clearly error in declining to examine the contention that the findings were perverse on the short, specious and wholly untenable ground that the matter depends on appraisal of evidence.

Between appraisal of evidence and total lack of evidence there is an appreciable difference which could never be lost-sight of and the High Court ought not to have short circuited the writ petition.

If there is absolutely no evidence in support or the only allegation of misconduct namely negligence in not keeping one's private cheque book in safe custody, the conclusion is not only not a plausible one but it is wholly perverse and we are in complete agreement with findings recorded Mr. G.C. Jain that the findings of enquiry officer were perverse and the enquiry was wholly vitiated.

Where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non- application of mind the only course open to us is to set it aside and consequently relief of reinstatement must be granted and nothing was pointed to us why we should not grant the same.

It was next contended on behalf of the appellant that reinstatement with full back-wages be awarded to him. Mr. P.K. Jain, learned counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross-examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand who owns a coal depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul, together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case has left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back-wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal-depot, it cannot be said that the appellant was gainfully employed. This was the only evidence in support of the submission that during his forced absence from service he was gainfully employed. This cannot be said to be gainful employment E so as to reject the claim for back-wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back-wages and all consequential benefits.

Accordingly, the appeal is allowed and the award of the arbitrator Shri Kakkar is set aside and the appellant is re- instated in service with full back-wages and consequential benefits to which he would have been entitled had he not been unlawfully thrown out from service, and the costs of this appeal quantified at Rs. 3,000. The back-wages payable to the appellant and the costs awarded herein shall be paid to him within 2 months from today. The appellant shall be physically reinstated in service within a week from today. The appellant shall be entitled to all the consequential benefits f his continuous service.

H.S.K. Appeal allowed.