Supreme Court of India
The Lord Krishna Textile Mills vs Its Workmen on 12 December, 1960
Equivalent citations: 1961 AIR 860, 1961 SCR (3) 204
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
THE LORD KRISHNA TEXTILE MILLS

Vs.

RESPONDENT:
ITS WORKMEN

DATE OF JUDGMENT:
12/12/1960

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1961 AIR 860 1961 SCR (3) 204
CITATOR INFO :
R 1969 SC 983 (3)
R 1972 SC1031 (23,24)
R 1978 SC1004 (9)

ACT:
Industrial Dispute-Dismissal of workmen-Misconduct not connected with pending dispute-Application for approval--Jurisdiction of Tribunal-U. P. Industrial Disputes Act, 1947 (U. P. 28 of 1947) s. 6E-Industrial Disputes Act , 1947 (14 of 1947), s. 33.

HEADNOTE:
Two officers of the appellant were assaulted by the workmen. In this connection the appellant served notices on eight workmen calling upon them to explain their conduct and to show cause why they should not be dismissed. In their explanations the workmen denied the charges. Thereupon a proper enquiry was held according to the Standing Orders, as a result of which the charges were found proved against the workmen and the appellant dismissed the workmen and asked them to take their final dues together with one month's pay in lieu of notice. As a dispute in respect of bonus was pending before the Industrial Tribunal, the appellant made applications to it under s. 6E(2) of the U. P. Industrial

Disputes Act, 1947, for approval of the dismissal of the workmen. The Tribunal refused to accord its approval and directed the appellant to reinstate the workmen from the date of suspension and to pay full wages for the period of unemployment. The appellant contended that the Tribunal acted beyond its jurisdiction and assumed powers of an appellate Court over the decision of the appellant.

Held, that the Tribunal had assumed jurisdiction not vested in it by assuming powers of an appellate Court and its refusal to accord approval was patently erroneous in law.

The requirement of obtaining approval under s. 6E(2)(b) of the U. P. Act (or S. 33(2) Of the Central Act) in cases of dismissal or discharge for misconduct not connected with a pending dispute as distinguished from the requirement of obtaining previous permission under s. 6E(1) of '.the U. P. Act (or s. 33(1) of the Central Act) in cases of misconduct connected with a pending dispute indicated that the ban imposed by s. 6E(2) was not as rigid or rigorous as that imposed by s. 6E(1). The jurisdiction to give or withhold permission was Prima facie wider than the jurisdiction to give or withhold approval. Where the employer had held a proper domestic enquiry and had dismissed the workmen as a result of such enquiry, all that the Tribunal could do was to enquire: (i) whether the Standing Orders justified the dismissal, (ii) whether the enquiry had been held as provided by the Standing Orders, (iii) whether wages for one month had been paid and (iv) whether an application for approval had been made as prescribed. In the present case all these conditions were

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satisfied but the Tribunal lost sight of its limitations and assumed powers of an appellate Court entitled to go into question of fact.

The Punjab National Bank Ltd. v. Its Workmen, [1960] S.C.R. 806, referred to.

Quaere: Whether the application for approval under s. 6E(2)(b) of the U. P. Act or under s. 33(2)(b) of the Central Act could be made after the order of dismissal had been passed or whether it had to be made before passing such an order.

Note:-Section 6E of the U.,P. Industrial Disputes Act, 1947 is identical in terms with s. 33 of the Central Industrial Disputes Act, 1947.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 427 of 1959. Appeal by special leave from the Award dated February 18, 1958, of the Industrial Tribunal (Textiles) U.P., Allahabad, in Petitions (under s. 6-E) Nos. (Tex.) 3 and 4 of 1957 and 1 of 1958.

M. C. Setalvad, Attorney-General for India and G. C. Mathur, for the appellant.

B. P. Maheshwari, for the respondents.

1960. December 12. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-Three applications made by the appellant the Lord Krishna Textile Mills under s. 6-E(2)(b) of the United Provinces Industrial Disputes Act, 1947 (Act XXVIII of 1947) for obtaining the approval of the Industrial Tribunal to the dismissal of 8 of its workmen have been rejected; and the Tribunal has refused to accord its approval to the action taken by the appellant. This appeal by special leave challenges the legality, validity as well as the propriety of the said order, and the principal question which it seeks to raise is in regard to the scope of the enquiry permissible under s. 6-E(2)(b) as well as the extent of the jurisdiction of the Tribunal in holding such an enquiry. Section 6-E(2) of the U. P. Act is identical in terms with s. 33 of the Industrial Disputes Act, 1947 (XIV of 1947) (hereafter called the Act), and for convenience we would refer to the latter section because what we decide in the present appeal will apply as much to cases falling under s. 6-E(2)(b) of the U. P. Act as those falling under s. 33(2)(b) of the Act. It appears that on October 12, 1957 when the appellant's Controller of Production and the General Superintendent were discussing certain matters in the office of the appellant mills, Har Prasad, one of the 8 workmen dismissed by the appellant, came to see the Controller along with some other workmen. These workmen placed before the Controller some of their grievances; and when the Controller told their leader Har Prasad that the grievances set forth by them were not justified Har Prasad replied that the Controller was in charge of the management of the appellant mills and could do what he liked, but he added that the ways adopted by the management were not proper and "it may bring very unsatisfactory results". With these words Har Prasad and his companions left the office of the Controller. Two days thereafter Har Prasad and Mool Chand saw the Controller again in his office and complained that one of the Back Sizers Yamin had reported to them that the Controller had beaten him; the Controller denied the allegation whereupon the two workmen left his office. At about 6 p.m. the same evening a number of workmen of the appellant mills surrounded Mr. Contractor, the General Superintendent, and Mr. Surti when they were returning to their bungalows from the mills and assaulted and beat them. The two officers then lodged a First Information Report at Thana Sadar Bazar, Saharanpur about 9 p.m.; thereupon the Inspector of Police went to the scene of the offence, and on making local enquiries arrested two workmen Ramesh Chander Kaushik and Tika Ram. This offence naturally led to grave disorder in the mills, and the officers of the mills felt great resentment in consequence of which the mills remained closed for three days. The appellant's management then started its own investigations and on October 17 it suspended five workmen Har Prasad, Majid, Zinda, Yamin and Manak Chand. Notice was served on each of these suspended workmen calling upon them to explain their conduct and to show cause why they should not be dismissed from the service of the mills. As a result of further investigation the management suspended two more workmen Om Parkash and Satnam on October 24 and served similar notices on them. Ramesh Chander Kaushik and Tika Ram were then in police custody. After they were released from police custody notices were served on them on November 24 asking them to show cause why their services should not be terminated. All the workmen to whom notices were thus served gave their explanations and denied the charges levelled against them. An enquiry was then held according to the Standing Orders. At 'the said enquiry all the. workmen concerned as well as the representatives of the union were allowed to be

present and the offending workmen were given full opportunity to produce their witnesses as also to cross-examine the witnesses produced by the management against them. As a result of the enquiry thus held the management found the charges proved against the workmen concerned, and on November 19 Om Parkash, Satnam, Majid, Yamin, Zinda and Har Prasad were dismissed. These dismissed workmen were asked to take their final dues together with one month's pay in lieu of notice as required by the Standing Orders, On Decem- ber 20, the enquiry held against Tika Ram and Ramesh Chander concluded and as a result of the findings that the charges were proved against them the said two workmen were also dismissed from service and required to take their final dues with one month's wages in lieu of notice.

At this time an industrial dispute in respect of bonus for the relevant year was pending before the Industrial Tribunal (Textile) U.P., Allahabad. The appellant, therefore, made three applications before the Tribunal under s. 6-E(2) of the U. P. Act on November 21 and 27 and December 21, 1957 respectively. By these applications the appellant prayed that the Industrial Tribunal should accord its approval to the dismissal of the workmen concerned. On February 18, 1958 the Tribunal found that the appellant had failed to make out a case for dismissing the workmen in question, and so it refused to accord its approval to their dismissal. Accordingly it directed the appellant to reinstate the said workmen to their original jobs with effect from the dates on which they were suspended with continuity of service, and it ordered that the appellant should pay them full wages for the period of unemployment. It is on these facts that the question about the construction of s. 6-E(2)(b) of the U.P. Act falls to be considered.

As we have already observed the material provisions of s. 6- E of the U. P. Act are the same as s. 33 of the Act after its amendment made by Act 36 of 1956; and since the fatter section is of general application we propose to read the relevant provisions of s. 33 of the Act and deal with them. All that we say about this section will automatically apply to the corresponding provisions of s. 6-E of the U. P. Act. Section 33 occurs in Chapter VII of the Act which contains miscellaneous provisions. The object of s. 33 clearly is to allow continuance of industrial proceedings pending before any authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other industrial dispute; that is why the plain object of the section is to maintain status quo as far as is reasonably possible during the pendency of the said proceedings. Prior to its amendment by Act 36 of 1956 s. 33 applied generally to all cases where alteration in the conditions of service was intended to be made by the employer, or an order of discharge or dismissal was proposed to be passed against an employee without making a distinction as to whether the said alteration or the said order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. In other words, the effect of the unamended section was that pending an industrial dispute the employer could make no alteration in the conditions of service to the prejudice of workmen and could pass no order of discharge or dismissal against any of his employees even though the proposed alteration or the intended action had no connection whatever with the dispute pending. between him and his employees. This led to a general complaint by the employers that several applications had to be made for obtaining the permission of the specified authorities in regard to matters which were not connected with the industrial dispute pending adjudication; and in many cases where alterations in conditions of service were urgently required to be made or immediate action against an offending workman was essential in the interest of discipline, the

employers were powerless to do the needful and had to submit to the delay involved in the process of making an application for permission in that behalf and obtaining the consent of the Tribunal. That is why, by the amendment made in s. 33 in 1956 the Legislature has made a broad division between action proposed to be taken by the employer in regard to any matter connected with the dispute on the one hand, and action proposed to be taken in regard to a matter not connected with the dispute pending before the authority on the other.

Section 33(1) provides that during the pendency of such industrial proceedings no employer shall (a) in regard to any matter connected with the dispute alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings, or (b) for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman connected with such dis- pute, save with the express permission in writing of the authority before which the proceeding is pending. Thus the original unamended section has now been confined to cases where the proposed action on the part of the employer is in regard to a matter connected with a dispute pending before an industrial authority. Under s. 33(1) if an employer wants to change the conditions of service in regard to a matter connected with a pending dispute he can do so only with the express permission in writing of the appropriate authority. Similarly, if he wants to take any action against an employee on the ground of an alleged misconduct connected with the pending dispute he cannot do so unless he obtains previous permission in writing of the appropriate authority.

The object of placing this ban on the employer's right to take action pending adjudication of an industrial dispute has been considered by this Court on several occasions. In the case of the Punjab National Bank Ltd. V. Its Workmen (1) this Court examined its earlier decisions on the point and considered the nature of the enquiry which the appropriate authority can hold when an application is made before it by the employer under s. 33(1) and the extent of the jurisdiction which it can exercise in such an enquiry. "The purpose the Legislature had in view in enacting s. 33", it was held, "was to maintain the status quo by placing a ban on any action by the employer pending adjudication"; and it was added "but the jurisdiction conferred on the Industrial Tribunal by s. 33 was a limited one. Where a proper enquiry had been held and no victimisation or unfair labour practice had been resorted to, the Tribunal in granting permission had only to satisfy itself that there was a prima facie case against the employee and not to consider the propriety or adequacy of the proposed action". It is significant that the Tribunal can impose no conditions and must either grant permission or refuse it. It is also significant that the effect of the permission when granted was only to remove the ban imposed by s. 33; it does not necessarily validate the dismissal or prevent the said dismissal from being challenged in an industrial dispute. This position is not disputed before us. What is in dispute before us is the nature of the enquiry and the extent of the authority's jurisdiction in holding such an enquiry under s. 33(2). Section 33(2) deals with the alterations in the conditions of service as well as discharge or dismissal of workmen concerned in any pending dispute where such alteration or such discharge or dismissal is in regard to a matter not connected with the said pending dispute. This class of cases where the matter giving rise to the proposed action is unconnected with the pending industrial dispute has now been taken (1) [1960] 1 S.C.R. 806.

out of the scope of s. 33(1) and dealt with separately by s. 33(2) and the following sub-sections of s. 33. Section 33(2) reads thus:

> "During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,-
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> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
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> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

It would be noticed that even during the pendency of an industrial dispute the employer's right is now recognised to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant standing orders. In regard to such alteration no application is required to be made and no approval required to be obtained. When an employer, however, wants to dismiss or discharge a workman for alleged misconduct not connected with the dispute he can do so in accordance with the standing orders but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no such workmen shall be discharged or dismissed unless two conditions are satisfied; the first is that the employee concerned should have been paid wages for one month, and the second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer. It is plain that whereas in cases falling under s. 33(1) no action can be taken by the employer unless he has obtained previously the express permission of the appropriate authority in writing, in cases falling under sub-s. (2) the employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission indicates that the ban imposed by s. 33(2) is not as rigid or rigorous as that imposed by s. 33(1). The jurisdiction to give or withhold permission is prima facie wider than the jurisdiction to give or withhold approval. In dealing with cases falling under s. 33(2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the standing orders, whether the employee concerned has been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under s. 33(2)(a) no such approval is required and the right of the employer remains unaffected by any ban. Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry under s. 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under s. 33(1), and in exercising its powers under s. 33(2) the appropriate authority must bear in mind the departure deliberately made by the Legislature in

separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for s. 33(5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to s. 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order.

Section 33(3) deals with cases of protected workmen and it assimilates cases of alterations of conditions of service or orders of discharge or dismissal proposed to be made or passed in respect of them to cases falling under s. 33(1); in other words, where an employer wants to alter conditions of service in regard to a protected workman, or to pass an order of discharge or dismissal against him, a ban is imposed on his rights to take such action in the same manner in which it has been imposed under s. 33(1). Sub- section (4) provides for the recognition of protected workmen, and limits their number as therein indicated; and sub-s. (5) requires that where an employer has made an application under the proviso to sub-s. (2), the authority concerned shall without delay hear such application and pass as expeditiously as possible such orders in relation thereto as it deems fit. This provision brings out the legislative intention that, though an express permission in writing is not required in cases falling under the proviso to s. 33(2)(b), it is desirable that there should not be any time lag between the action taken by the employer and the order passed by the appropriate authority in an enquiry under the said. proviso.

Before we proceed to deal with the merits of the dispute, however, we may incidentally refer to another problem of construction which may arise for decision under s. 33(2)(b) and which has been argued before us at some length. When is the employer required to make an application under the proviso to s. 33(2)(b)? Two views are possible on this point. It may be that the proviso imposes two conditions precedent for the exercise of the right recognised in the employer to dismiss or discharge his workman pending a dispute. The use of the word "unless" can be pressed into service in support of the argument that the two conditions are conditions precedent; he has to pay wages for one month to the employee, and he has to make an application for approval; and both these conditions must be satisfied before the employee is discharged or dismissed. On this view it would be open to the employer to discharge or dismiss his employee after satisfying the said two conditions without waiting for the final order which the authority may pass on the application made before it in that-

behalf. The Legislature has indicated that there should be no time lag between the making of the application and its final disposal, and so by sub-s. (5) it has specifically and expressly provided that such application should be disposed of as expeditiously as possible. This view proceeds on the assumption that the word "unless" really means "until" and introduces a condition precedent.

On the other hand, it is possible to contend that the application need not be made before any action has been taken, and that is clear from the fact that the application is required to be made for approval of the action taken by the employer. "Approval" according to its dictionary meaning suggests that what has to be approved has already taken place; it is in the nature of ratification of what has already happened or taken place. The word "approval" in contrast with the word "previous permission" shows that the action is taken first and approval obtained afterwards. Besides, the

words "action taken" which are underlined by us, it may be argued, show that the order of discharge or dismissal has been passed, and approval for action thus taken is sought for by the application made by the employer. On the first construction the words "action taken" have to be construed as meaning action proposed to be taken, whereas on the latter construction the said words are given their literal meaning, and it is said that the discharge or dismissal has taken place and it is the action thus taken for which approval is prayed. In support of the first view it may be urged that the words "action taken" can well be interpreted to mean "action proposed to be taken" because it is plain that the condition as to payment of wages cannot be literally construed and must include cases where wages may have been tendered to the workman but may not have been accepted by him. In other words, the argument in support of the first interpretation is that in the construction of both the conditions the words "paid" and "action taken" cannot be literally construed, and in the context should receive a more liberal interpretation. "Paid wages" would on that view mean "wages tendered" and "action taken" would mean "action proposed to be taken". If these two words are literally construed there may be some inconsistency between the notion introduced by the use of the word "unless" and these words thus literally construed.

It may also be urged in support of the first contention that if the ban imposed by the proviso does not mean that an application has to be made before any action is taken by the employer it would be left to the sweet will of the employer to make the requisite application at any time he likes. The section does not provide for any reasonable period within which the application should be made and prescribes no penalty for default on the part of the employer in making such an application within any time. On the other hand, this argument can be met by reference to s. 33A of the Act. If an employer does not make an application within a reasonable time the employee may treat that as contravention of s. 33(2)(b) and make a complaint under s. 33A, and such a complaint would be tried as if it is an industrial dispute; but, on the other hand an employer can attempt to make such a complaint ineffective by immediately proceeding to comply with s. 33(2)(b) by making an application in that behalf and the authority may then have to consider whether the delay made by the employer in making the required application under s. 33(2)(b) amounts to a contravention of the said provision, and such an enquiry could not have been intended by the Legislature; that is why the making of the applica- tion should be treated as a condition precedent under the proviso. If that be the true position then the employer has to make an application before he actually takes the action just as he has to tender money to the employee before dismissing or discharging him. But, if it is not a condition precedent, then he may pass an order of discharge or dismissal and make an application in that behalf within reasonable time.

We have set forth the rival contentions in regard to the construction of the proviso, but we do not propose to express our decision on the point, because, having regard to their pleadings, we cannot allow the respondents to raise this question for our decision in the present appeal. It is clear from the contentions raised before the Tribunal and the pleas specifically raised by the respondents in their statement of case before this Court that both parties agreed that the application in question had been properly made under the proviso; and the only point at issue between them is about the validity and propriety of the order under appeal having regard to the limited jurisdiction of the enquiry under s. 33(2)(b), and it, is to that question that we must now return. Before we do so, however, we ought to add that our attention had been drawn to three decisions of this Court in

which, without any discussion of the point, the validity of the employers' applications made under s. 33(2)(b) appears to have been assumed though the said applications were presumably made after the employers had dismissed their employees. They are: Delhi Cloth and General Mills Ltd v. Kushal Bhan (1); The Management of Swatantra Bharat Mills, New Delhi v. Ratan Lal (2); and The Central India Coal fields Ltd., Calcutta v. Ram Bilas Shobnath (3). We wish to make it clear that these decisions should not be taken to have decided the point one way or the other since it was obviously not argued before the Court and had not been considered at all.

In view of the limited nature and extent of the enquiry permissible under s. 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by s. 33(2)(b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal? Has an enquiry been held an provided by the standing order? Have the wages for the month been paid as required by the proviso?; and, has an application been made as prescribed by the proviso? This last (1) [1960] 3 S.C.R. 227.

(2) Civil Appeal No. 392 of 1959 decided on 28.3.1960 (3) Civil Appeal No. 162 of 1959 decided on 31.3.1960 question does not fall to be decided in the present appeal because it is common ground that the application has been properly made. Standing Order 21 specifies' acts of omission which would be treated as misconduct, and it is clear that under 21(s) threatening or intimidating any operative or employee within the factory premises is misconduct for which dismissal is prescribed as punishment. This position also is not in dispute. There is also no dispute that proper charge-sheets were given to the employees in question, an enquiry was properly held, and opportunity wag given to the employees to lead their evidence and to cross-examine the evidence adduced against them; in other words, the enquiry is found by the Tribunal to have been regular and proper. As a result of the enquiry the officer who held the enquiry came to the conclusion that the charges as framed had been proved against the workmen concerned, and so orders of dismissal were passed against them. In such a case it is difficult to understand how the Tribunal felt justified in refusing to accord approval to the action taken by the appellant.

It has been urged before us by the appellant that in holding the present enquiry the Tribunal has assumed powers of an appellate court which is entitled to go into all questions of fact; this criticism seems to us to be fully justified. One has merely to read the order to be satisfied that the Tribunal has exceeded its jurisdiction in attempting to enquire if the conclusions ,of fact recorded in the enquiry were justified on the merits. It did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. On the other hand it has expressly proceeded to consider questions of fact and has given reasons some of which would be inappropriate and irrelevant if not fantastic even if the Tribunal was dealing with the relevant questions as an appellate court. "The script in which the statements have been recorded", observes the Tribunal, "is not clear and fully decipherable". How this can be any reason in upsetting.the finding of the enquiry it is impossible to understand. The Tribunal has also observed that the evidence adduced was not adequate and that it had not been properly discussed. According to the

Tribunal the charge- sheets should have been more specific and clear and the evidence,should have been more satisfactory. Then the Tribunal has proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and has come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges have been proved against the workmen in question. In our opinion, in making these comments against the findings of the enquiry the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under s. 33(2)(b). It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under s. 33(2)(b). It is conceivable that even in holding an enquiry under s. 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence. Having carefully considered the reasons given by the Tribunal in its award under appeal, we have no hesitation in holding that the appellant is fully justified in contending that the Tribunal has assumed jurisdiction not vested in it by law, and consequently its refusal to accord approval to the action taken by the appellant is patently erroneous in law. Mr. Maheshwari, however, wanted us to examine the case of Har Prasad, because, according to him, Har Prasad has been victimised by the employer for his trade union activities. Har Prasad is the President of the Kapra Mill Mazdoor Union, Saharanpur, and it is because of his activities as such President that the appellant does not like him. It is common ground that at the relevant time Har Prasad was not recognised as a protected workman, and so his case does not fall under s. 33(3). The Tribunal has observed that this workman has not been named by any witness as having taken part in any assault, and it was therefore inclined to take the view that his dismissal amounted to victimisation. We have carefully considered this workman's case, and we are satisfied that the Tribunal was not justified in refusing to accord approval even to his dismissal. It is common ground that Har Prasad led the deputation to the Controller of Production both on October 12 and October 14; and the threat held out by him on the earlier occasion is not denied by him. In terms he told the Controller that his conduct would bring trouble. It is significant that some of the workmen who assaulted the officers on October 14 had accompanied Har Prasad and were present when he gave the threat to the Controller. Air. Sushil Kumar, who is the appellant's Controller of Production, has deposed to this threat. The sequence of events that took place on October 14 unambiguously indicates that it was the threat held out by Har Prasad and the incitement given by him that led to the assault on the evening of October 14. Mr. Sushil Kumar's evidence appears to be straightforward and honest. He has frankly admitted that in the past Har Prasad had been co-operating with him and that he had. never instigated any attack on the officers on any previous occasion. Har Prasad no doubt denied that there was any exchange of hot words during the course of his interview with the officers but he has not disputed Mr. Sushil Kumar's evidence that he uttered a warning at the time of the said interview. In fact his contention appears to have been that action should have been taken against him soon after he uttered the threat. On the evidence led at the enquiry, the enquiry officer came to the conclusion that the charge framed against this workman had been clearly proved. The charge was that he had plotted and hatched a conspiracy for assaulting the General Superintendent,

Weaving Master, Chief Engineer, Factory Manager and the Controller of Production. The details of the charge were specified, and at the enquiry it was held that these charges had been proved. There is no doubt that these charges, if proved, deserve the punishment of dismissal under the relevant standing orders. The Tribunal, however, purported to examine the propriety of the finding recorded against Har Prasad and came to the conclusion that the said finding was not justified on the merits. As we have already pointed out the Tribunal had no jurisdiction to sit in appeal over the findings of the enquiry as it has purported to do. The result is that the conclusion of the Tribunal in regard to all the workmen is unjustified and without jurisdiction.

The appeal is accordingly allowed, the order passed by the Tribunal is set aside, and approval is accorded to the action taken by the appellant under s. 6E. There will be no order as to costs.

Appeal allowed.

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