and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the *status-quo-ante*[24].

Therefore the decisions of A.P. High Court in *Kola Mahalakshmi* case stands as legal hurdle for the efforts of either State or individual tribals in seeking land justice for the tribals.

Conclusions:

Justice must be seen in a broader perspective without confining to the fixed lens of legal frame work particularly in the context of prevalence of in equal societies. There is a continued conflict between customary laws of tribals and codified law in dispensation of justice. The Legal Institutions give priority to codified law which never recognized the customary law of tribals governing natural resources. The State is expecting justice in the given frame work of legal institutions which are not apt to deal the land alienation problem of tribals. Tribals seek simple form of justice without any elaborate legal procedure and giving any scope for weighting the justice based on land records which are invariably in favor of non tribals. As rightly observed by the Supreme Court in *P. Ramireddy* case that the community cannot shut its eyes to the fact that the competition between the tribals and non tribals partakes the character of the race between a handicapped one legged person and an able two legged person. It would be unfair to the State to continue the race using the present legal frame work in rendering justice to tribals. Therefore the present alien legal system is not an appropriate forum for administration of justice and an alternative dispute resolution mechanism must be put in place to deliver the land justice to tribals by amending the laws to suit the factual context.

24. *P. Rami Reddy and others v. State of A.P. and another*, (1988) 22 Reports (SC) 364.

DISCIPLINE IN INDIAN INDUSTRY – A BRIEF STUDY

By

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Discipline in the Industrial setup is very important and essential to build a healthy atmosphere for industrial production and labour welfare. Indiscipline destroys the cordial atmosphere and relation between the employer and employee. Indiscipline is considered as a serious menace in any institution such as family, society, country and also in any of the organisation, trade unions, religious organisations and political parties. Discipline is corner stone of the institution without which there will not be any progress and success.

Labour Laws and Labour welfare have become very important in independent India. The developing concept of social justice and social security are effecting far-reaching changes in labour laws in India. It is very unfortunate that majority of the workers are not knowing of their rights and the position of labour laws. There are many misunderstanding and conflicts between employer and employee which resulted due to ignorance of these rights and obligations. It is also pointed out that the employer is also not always fully aware of all laws specially those connected to his duties and obligations towards his employees. Adequate

knowledge and strict observance of labour laws both by employers and employees will certainly provides a great help in industrial progress and labour welfare. The employer is having the power to take disciplinary action against the employee to correct his misbehaviour and defaults. The employer in such situations will have to warn and dismiss the employee keeping in view the gravity of the misconduct.

2. *Framing of Standing Orders :*

The modern law of Industrial development requires that the terms of employment, conditions of service and rules of discipline should not only be written and shown to employees' concerned but it should also be reasonable, fair and uniform. Before the enactment of Industrial Employment (Standing Orders) Act, 1946 conditions of service of industrial employees were invariably ill-defined and were hardly ever known with even a slight degree of precision to the employees[1]. Further in many industrial establishments the conditions of service of employees were not uniform and were not even reduced to writing[2]. No doubt, in some large scale industrial establishment there were standing orders and rules to govern the day-to-day relations between the employers and workers but such standing orders or rules were one sided and were very elastic to suit the convenience of employers. Further neither workers Union nor the Government consulted before these rules or Standing Orders were framed. They gave and upper hand to employers in respect of all disputable points. These State of affairs not only resulted discriminatory treatment between employers and employees, though all of them are appointed in the same premises and for the same and similar work[3]. Further it was not inconformity with the social justice, inasmuch as there being no statutory protection available to the workmen. The contract of service was often so unnatural in character that it would be described as mere manifestation of subdued wish of workmen to sustain their living at any cost. An agreement to this nature was an agreement between two unequal's, namely, those who invested their labour and toil, flesh and blood and those brought in capital[4]. Moreover this was incompatible with the principles of collective bargaining and their effectiveness difficult, if not impossible. Therefore the standing orders act was passed. The statement of objects and reasons states that, "experience has shown that standing order defining the conditions of requirement, discharge disciplinary action, holidays, leave *etc* go a long way towards minimizing friction between the management and the workers in industrial undertaking". The Act applies to every industrial establishment where in one hundred or more workmen are employed, or were employed on any day of the preceding 12 months (Section 1(3) of the Standing Orders Act).

Section 2(g) of the Industrial Employment Standing Orders Act 1946 defines "Standing Orders" to mean rules relating to matters setout in the Schedule. It is pointed out here therefore, the items which have to be covered by the Standing Orders in respect of which the employer has to make a draft for submission to the certifying officers are matters specified in the Schedule. The matters are referred to in the schedule of the above Act of 1946.

With regard to the Item No.9 of the Schedule which we are concerned for the maintenance of discipline in the industrial establishment, the employer will have to take suitable steps for controlling the indiscipline of the employees. The 'misconduct' under item 9 for which an employee can be

1. *U.P. State Electricity Board v. Hari Shanker Jain*, (1978) 4 SCC 16.
2. *S.S. Railway Company v. Workers' Union*, AIR 1969 SC 513 at 518.
3. *Agra Electric Supply Co. v. Aladin*, (1969) 2 LLJ 540, 544 (SC).
4. *Uptron India Ltd. v. Shammi Bhan*, 1998 LLR 385.

dismissed need not necessarily have been committed in the course of his employment. It is enough if it is of such nature as to affect his suitability for a particular employment[5]. Before taking any disciplinary action against the employee who has committed misconduct the employer must ensure that the employee is told which act of his has constituted indiscipline or misconduct. Keeping in view of this in mind, the Government and employers have included lists of misconducts in their Standing Orders and service rules. Justice demands that every disciplinary action against an employee is in a judicial spirit and in accordance with the principle of natural justice. The primary principle of natural justice is that no penalty be it minor or major, should be given without an enquiry into the misconduct.

3. Misconduct :

It is very difficult to define the term 'misconduct'. It can be said that misconduct is an act or omission which has been identified in the Standing Orders or Service Rules of an organisation. A misconduct has to be enact or habitual conduct which spoils the employer employees relationship. The Standing Orders enumerates the misconduct of the employees in the industrial establishment. But for any disciplinary action misconduct should be properly defined.

The following are certain misconduct enumerated in the Model Standing Orders mentioned in the Employment (Standing Orders) Act, 1946:

1. Wilful insubordination or disobedience, whether alone or together with others, to any lawful and reasonable superior.
2. Theft, fraud or dishonesty in connection with employer's business and property.
3. Wilful damage to, or loss or employer's goods or property.
4. Taking or giving bribes or any illegal gratification.
5. Habitual absence without leave or absence without notifying leave for more than ten days.
6. Habitual breach of any law applicable to the establishment.
7. Habitual late attendance.
8. Riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline.
9. Habitat negligence or neglect of work.
10. Frequent repetition of any act or omission for which a fine may be imposed.
11. Striking work or inciting others to strike work against provisions of any law or rule having the force of law.

It is to be noted that the list of misconducts is not exhaustive. Modifications and additions can be made depending on the nature and the need of each industrial establishments or institutions. The important point is fairness and reasonableness in terming any behaviour as misconduct. Some of the misconducts refer to a single Act, others to habitual Acts or omission, while in still others it is the wilful character of the act that constitutes misconduct.

The question arises whether can a conduct of employee outside an industrial establishment be treated as misconduct? It can be said that generally an Employee's Conduct outside an institution is no concern of the employer. In exceptional situations, the behaviour of the employee outside the industrial employment can be directly related with his employment. In such circumstances the employer may take action for punishing the employee. However, the management has to prove the misconduct committed by the employee. The Employee in various

5. *New Victoria Mills v. Labour Court*, AIR 1970 Alld. 210, 213.

circumstances has to be given an opportunity to explain the reasons for his misconduct before any disciplinary action is taken against him. It is to be mentioned the penalties may be of different from minor to major but the procedure is to be followed formally. The important principle of every disciplinary proceeding is that no penalty without a previous investigation is made.

The following are important cases cited relating to the misconduct of industrial employees

- Dismissal of a workmen from service for assaulting the Secretary of the society will be justified and the award of the labour Court against the concerned workman stands affirmed by the division bench also[6].
- Non utilization of housing loan taken, will amount to misconduct[7].
- Dismissal of a bus driver for rash driving and killing three passengers and injuring 41 will be proper[8].
- Even verbal abuse by an employee will be sufficient for his dismissal from service[9].
- Nearly a hotel employee was awarded the 'Best Boy' certificate will not absolve him from misconduct[10].
- Gravity of misconduct must be measured in terms of its nature while imposing punishment[11].
- Dismissal of a workman for calling the employer as chor (thief) will be justified[12].
- Staging demonstration and shouting abusive slogans will amount to serious misconduct[13].

4. Disciplinary Proceedings:

There is a procedure to be followed to a domestic enquiry. The important principle is that "not only must justice be done, it must appear to be done". Many employees guilty of serious misconduct could not be adequately punished merely because proper disciplinary procedure had not been observed. There is certain procedure to be followed in all kinds of organisational setup such as academic, industrial and Government whatever may be the form or procedure in conducting the domestic enquiry, it is very much a part of the labour laws and should be followed to make every disciplinary action valid in law.

5. Important Steps to be followed in the procedure of conducting a domestic enquiry:

The following are the steps,

1. Preliminary Enquiry Initial Investigation,
2. Charge-sheet,
3. Consideration of the employee's reply to the charge-sheet,
4. Appointment of an enquiry officer,
5. Participants of a domestic enquiry,
6. The procedure of the domestic enquiry,
7. Recording of the enquiry,
8. Report of the enquiry

6. *Management of Tiruchendur Sarvodaya Sangam, represented by the President, Tiruchendur v. A. Natarajan*, 2005 – I LLJ 1022 (Mad SC).
7. *Bharat Petroleum Corporation Ltd. v. Petroleum Employees Union*, 2005 – I CLR 1013 (Bom HC).
8. *Managing Director Karnataka State Road Transport Corporation, Bangalore v. Pramod Kumar*, 2005 LLR 1022 (Kan HC).
9. *L.K. Varma v. HMT Ltd.*, (2006) 2 SCC 269.
10. *Le Meridian v. G. Srinivasa Murthy*, 2006 LLR 970 (Karn. SC).
11. *General Manager Appellate Authority v. Mohammad Nizamuddin*, (2006) 7 SCC 410.
12. *Sahil Khan v. Ashmat and Company*, 2007 LLR 217 (Bom. HC).
13. *Sahil Khan v. Ashmat and Company*, 2007 LLR 217 (Bom. HC).

Preliminary enquiry is only a fact finding inquiry to conduct such an enquiry no specific rules are prescribed and the investigation is made to know the facts and to determine whether the employee should be charge-sheeted or not. The report of the Preliminary Enquiry is not a conclusive proof of the allegations. If the Preliminary Enquiry reveals that there is *prima facie* truth in the allegations against an employee, he must be given a charge-sheet (a show-case notice), before the commencement of the formal enquiry. The charge-sheet must contain details of the allegations and other particulars which the accused persons must know so that he can give proper explanation and defend his actions. The charge-sheet should also give reference to the section of the Standing Orders or Service Rules that indicates the misconduct. Another important point to be noted here that a charge-sheet may indicate a proposed punishment to be taken against him, but it is not mandatory.

The Competent Authority to issue a charge-sheet must be an appointing authority or any other authority higher to the person who has been charged with certain allegations. There is a general principle that he must be given reasonably sufficient to answer the charges in writing and the charge-sheet should mention the time within which the employee has to give his reply. Generally four to seven days is a feasible time period and more time can also be given if the employee is out of station.

The charge-sheet should be in duplicate with office copy to be signed by the employee as received and should be sent by a registered post with acknowledgement due to the latest available address of the employee. The refusal to accept the charge-sheet is to be regarded as misconduct. The employee has got the right to submit an explanation of the charge. However, he cannot be compelled to submit an explanation. It is important to mention that Article 20 of the Indian Constitution gives him protection from being compelled to be a witness against himself[14], however, it is incumbent on the employer to hold the enquiry whether the employee replies to the charges or not. If the employee answers the charge-sheet then the explanation must be considered by the employer. If it is found satisfactory, disciplinary action must be dropped against the employee. And if the explanation is unsatisfactory or false then the employer must inform the employee in writing that the domestic enquiry will be held to find the truth. It is to be noted here that if the employee admits to the misconduct committed by him, he may be informed of the decision of the penalty to be imposed and it must be given in writing. A record of charge-sheet, the reply of the employee and the penalty imposed must be filed for future reference. If the employee fails to submit any explanation, the employer may proceed with the domestic enquiry and important point to be noted here is that failure to submit an explanation or failure to appear at an enquiry cannot be considered as admission of guilt.

6. Appointment of Enquiry Officer:

It is very important to note that the enquiry officer should be someone who has no personal knowledge of the incident and he can be an insider or outsider. A lawyer can also be appointed as an enquiry officer but the person who holding the enquiry must be a person with an open mind and he must maintain judicial neutrality and impartiality while conducting the enquiry.

After conducting an enquiry the enquiry officer gives a report with regard to the misconduct committed by the employee. The enquiry officer must mention in his report in brief the evidence of both sides collected relating to the charges and weigh the evidence to arrive at a conclusion. He must give his decision on the innocence or culpability of

14. *Khem Chand v. Union of India*, (1959) I LLJ 167 (SC)

the employee with regard to the charge framed and he need not suggest any method. The enquiry officer will have to follow the principles of a natural justice to the domestic enquiry.

The punishing authority is not bound to punish the employee on the basis of the findings of the enquiry. There are certain usual punishments generally inflicted as disciplinary action such as warning, imposing fine, suspension, withholding of increments, demotion, discharge for misconduct and dismissal *etc*.

The following cases are given below relating to the appointment an enquiry officer:

- Even if an enquiry is being conducted by a legally trained officer, the delinquent employee cannot have assistance of lawyer for representation[15].
- Holding of an enquiry of an employee by his sub-ordinate will amount to bias[16].
- Appointment of outsider as an Enquiry Officer will not be valid if the certified standing orders prohibit the appointment of Enquiry Officer from the department of the establishment[17].
- An enquiry report by an Enquiry Officer must be based on analyzation of evidence as adduced before him and also it is imperative that while giving his findings, he should discuss and link the evidence with the allegation of misconduct otherwise it will be rendered as perverse[18].
- An enquiry will be fair and proper when the Enquiry Officer has based his report on the evidence and after hearing the delinquent[19].

7. Principles of Disciplinary Action and Principles of Natural Justice:

The management is not bound to adopt the procedure which a Court of Law adopts in the trail of cases, however, the rule that the case should heard "in a judicial spirit and in accordance with the principles of natural justice" is an essential principle or element in the disciplinary procedure to be adopted by the enquiry officer. It is the opinion adopted by the Courts in India and therefore every labour authority or Court should insist that the principles of natural justice be followed in every disciplinary proceeding so that justice is not only be done, but must appear to be done.

The following are the important principles of natural justice:

1. No penalty should be given without an enquiry.
2. The employee must be informed clearly in writing as to the charges alleged against him.
3. He must be given an opportunity to be heard and defended.
4. The charge should be proven.
5. No evidence should be used except that which has been brought up in the presence of the worker at the enquiry.
6. The enquiry proceeding must be conducted in good faith with no intent to victimize.
7. The penalty must be proportionate to the misconduct.

15. *K.C. Mani Central Warehousing Corporation*, 1994 LLR 312.
16. *Abu Sali v. The Commandant*, 1995 LLR 61.
17. *Indian Telephone Industries Ltd. v. Devi Shankar Kumar Shukla*, 1997 LIC 2588 (All HC).
18. *Association of Engineering Workers, Mumbai v. Hindustan Motor Manufacturing Company, Mumbai*, 2004 LLR June issue (Bom. HC) 138.
19. *Girish Chandra Trivedi v. Bastar Kshatriya Gramini Bank*, 2006 LLR 754 (Chht. HC)

If the above principles are not followed properly or scrupulously, the labour authority or Court may reversely decision of the employer and the penalty imposed on the employee may be set aside as illegal.

8. Conclusion:

The author of this paper of examining the various cases decided by the Courts it can be said that there are many types of misconduct are being committed by the employees such as non performance of work[20], negligence of duty[21], absence without leave, late attendance, strike, go slow, gherao, in sub-ordination abusing officers, riotous, and disorderly behaviour during working hours at the establishment, misconduct relating to morality such as theft, dishonesty and fraud, disloyalty, corruption, and moral turpitude. In view of this, these misconducts in industries it can be said that there is wide spread indiscipline among the workers. Moreover the employers are not in a position to conduct the domestic enquiries in a proper way and systematically by which the employees are the sufferers and many of the employees are getting punishments without proper enquiries. The managements will have to conduct the enquiries properly and must try to maintain the discipline in the interests of the production and they will have to work for the welfare of the employees then only there can be an industrial progress and peace in the country. The Government also creates legal awareness among the employees about the law relating to Standing Orders and their duties towards the employers and to avoid stoppage of work frequently. The workers education centre's will have to play an important role for educating the employees on various subjects such as organisation of trade unions, rights and duties of the workers, labour welfares, working conditions and social security *etc.* It is found that majority of the employers are failing in educating the workers with regard to their rights and duties. The Students of Law, Teachers of Law, Advocates, Judges of Labour Courts and social workers will have to spread the worker's education through the legal aid and legal literacy centres established at the Law Colleges.

It is very unfortunate to mention here that the human values of many persons have gone down totally due to their indiscipline behaviour and by which it affects the development and progress of the Nation. The discipline is very essential in family, community, organisation and in every institution whether it is a Government or private. It gives pain to every member of the democratic country to know about the quarrellings, fightings, using abusive language ignoring the concept of the basic principles of defamation *etc.* Democracy does not mean to speak as they like offending the characters of the other dignitaries and reputed persons. The younger generation is not in a position to grasp the importance and true ideals of democracy.

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20. *Goswamy v. G.M. South Eastern Railways*, (1966) I LLJ 1994 Cal; *Press Labour Union v. Express Newspaper*, (1963) I LLJ 492 Mad (DB); *Janata Pictures and Threatres Ltd. v. Amulya Chakravarthy*, (1956) II LLJ LAT

21. *Victoria Jute Company Ltd. v. Fifth Industrial Tribunal*, (1965) I LLJ 628; *Bharat Sugar Mills Ltd. v. Jay Singh*, (1961) II LLJ 644 (SC)

the year 2009 with the approval of Ethics Committee of (Hyderabad Eye Research Foundation) L.V. Prasad Eye Institute, Hyderabad. Participated in Indian Eye Research Group 19th Annual Meet and presented a poster and also Presented a free paper in International Assembly of Community Ophthalmologists & Second Annual Meet of the Association of Community Ophthalmologists of India (ACOIN) during 2011.

ROLE OF TRADE UNIONS IN INDIA – A LEGAL ANALYSIS

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1. Introduction:

Trade Union is an association of workers established for the purpose of protecting and promoting economic and social interest of its members through its collective efforts. Trade Unionism is the organised expression of the aspirations, needs and attitudes of all the workers. Trade Unions are considered to be a major and important component of the modern industrial relations. All the trade unions have objectives or goals to achieve, which are provided in their constitutions and each trade union has its own method and strategy to achieve those goals. The workers associations and also the employers associations are called as trade unions according to the law. Both of the trade unions will have to work to achieve their benefits, the workers associations will have to pressurize the employers in improving their working conditions, increasing their wages and for the welfare of the workers relating to the health and safety *etc.*, whereas the employers associations which are also called trade unions will have to bargain very systematically for reducing the cost of expenditure on workers wages, bonus and welfare *etc.*, to achieve the goal of earning more profits for their investment of the capital.

The struggles between these workers unions and the employers unions are going on consistently since a long time. It has traditionally ascribed to worker's organisations a particularly philosophy and function – collective representation to protect and promote the interest of the workers within a given socio-economic system. In earlier days there was more exploitation of workers by the employers by which the workers suffered a lot. India being an agricultural country predominantly all the people were engaged in the agriculture. Due to the establishment of East India Company the Britishers having acquired power in India and established number of factories and employed the Indian workers, engaging them in production of the goods. At that time the Indian workers were not having the knowledge of factories system and many of them are exposed to exploitation by the employers and also because of poverty, illiteracy and ignorance. The working hours of the factory workers were very hazardous and also the employers use to dominate the workers by not allowing them to form a union of the workers. Due to the efforts of some leaders like *N.M. Joshi* and other social workers the British Government passed and enactment in the year 1926 called as the Trade Union Act. The Trade Union Act allowed the workers to register the Trade