HIGH COURT OF GUJARAT *(D.B.)*

CHHOTALAL VAGHJIBHAI
V/S
VIVEKANAND MILLS COMPANY LIMITED

Date of Decision: 01 May 1969

Citation: 1969 LawSuit(Guj) 29

Hon'ble Judges: J B Mehta, S H Sheth

Eq. Citations: 1970 AIR(Guj) 277, 1970 GLR 517, 1970 LabIC 1606

Case Type: Special Civil Application

Case No: 399 of 1967

Head Note:

INDUSTRIAL LAW -Inquiry by manager - He himself a witness - Doctrine of bias - Applicable even in industrial adjudications - Such manager can not sit as a judge in his own cause - labour court holding inquiry as not fair and impartial -No objection to presence of manager during inquiry does not mean waiver of objection of employee - Order of Magistrate held illegal. INDUSTRIAL LAW - Allegations regarding incident - Incident taking place 3 years back - Application by party to get documents produced for past 4 years - If this record withheld right of Defence of employee is impaired - The inquiry and dismissal order were vitiated. INDUSTRIAL LAW - Representation Union withdrawing cases - Whether individual can oppose such withdrawal - Whether O.41 R.33 Civil Procedure Code applies.

The manager dismissing the employee acts as a quasi-judicial tribunal and that is why the principle embodied in the doctrine of bias has been applied even in industrial adjudications. An inquiry cannot be said to be held properly when the person holding the enquiry begins to rely on his own statements. The inquiry

must be conducted impartially and very requirement of conducting an impartial inquiry which is the necessary outcome of the principles of natural justice is that a person who is a witness should not only disassociate himself from the inquiry but he should not pass even the actual order. In such cases it is obvious that he is a disqualified person being a judge in his own cause. (Para 4) In view of the settled legal position the Industrial Court was obviously in error in disregarding the settled law which on admitted facts would have required the Industrial Court to quash the present order of dismissal The Labour Court had in terms held that there was no fair and impartial inquiry by such a manager who was a Judge in his own cause and who was so vitally interested in that matter and without even looking to the reasoning of the Labour Court the Industrial Court has summarily brushed off the whole question by observing that there was nothing whatsoever on the record to show that the inquiry was vitiated. The Industrial Court has only been influenced by the fact that the employee consented by saying that he did not object to the presence of the manager at the inquiry. That would only preclude the employee from raising contention about the inquiry being vitiated by the presence of the manager. That does not mean that the employee had waived this objection which he had been pressing at all stages and which led the Managing Director to entrust the enquiry to another officer. After the order of the Managing Director this Manager who could never be expected to be an impartial judge in his own cause could not have passed the impugned order of dismissal. (Para 5) Industrial Law-Allegations regarding incidents which took place 3 years ago-Party applying to get documents produced for the last 4 years-Withholding of this record amounts to stultifying the right of defence of the employee Such inquiry and dismissal order illegal. The Industrial Court could not shut its eyes to the judgment of the Labour Court and it could not uphold such a dismissal order which is against all the principles of natural justice. The circumstances are also such that this employee could not personally appear for supporting his own case when the Textile Labour Association was appearing before the Industrial Court. In such circumstances when the point is raised on admitted facts on the record and when it touches the jurisdiction of the authority to pass the dismissal order and which is based on the ground of contravention of principles of natural justice as per the settled law of the land this point can be permitted even at this stage. This is not a case where this point has been waived by the employee at any stage. (Para 6) The Industrial Court ought to have taken into consideration the fact that the transactions were of the year 1956 and when a plea was of a practice of long standing the employees would at least seek to prove the instances from the year

1955 to 1958 to give a complete picture of the practice relied upon by the employee. Without considering this aspect which would assume great importance in judging whether the employee or the concerned manager committed the alleged misappropriation the Industrial Court summarily and cursorily brushed off this question on the ground that the show cause notice related to only two instances and therefore no evidence could be allowed of other instances. This conclusion of the inquiry officer which is approved by the Industrial Court is based on a complete misappropriation of the nature of the inquiry where in order to ascertain the truth of the defence of the employee as to whether the Manager misappropriated or the employee misappropriated the other instances would have to be examined. In these circumstances the Industrial Court was entirely wrong in holding that these documents were irrelevant and that a roving inquiry was sought to be made for four years documents. The Mills inquiry itself was started after three years and therefore the evidence had to be for the last four years. All these facts were not properly appreciated for otherwise the Industrial Court was bound to hold that the employees right of defence was completely stultified by withholding these records which were necessary to ascertain the truth of the plea of the concerned employee. Therefore the Labour Court was right in holding that the inquiry and the dismissal order were vitiated. (Para 7) Industrial Law-Representation by representative union-Representative union withdrawing cases-Individual cannot oppose such withdrawal-Civil Procedure Code (V of 1908)-Order 41 Rule 33 does not apply. It is well settled that an individual employee has no right to appear or act in any proceeding where the representative Union has appeared or acted. Therefore when the Textile Labour Association which had filed the original application in the Labour Court and filed the appeal before the Industrial Court withdrew the appeal by acting in the matter the individual had no locus standi to oppose that withdrawal. (Para 8) The provision of Order 41 Rule 33 of the Code of Civil Procedure is not applicable in industrial disputes. The residuary provision in Regulation 65 of the Industrial Court Regulations would not be sufficient to invoke such a special power which may be available under Order 41 Rule 33 for being resorted to in the mills appeal. (Para 9) Nageswarrao v. State of Andhra Pradesh Andhra Scientific Co. Ltd. v. Sheshagirt Rao. Workmen of Lambabari Tea Estate v. Lambabari Tea Estate A. S. Razvi v. The Divisional Engineer Telegraphs Ranger v. Great Western Railway Co. Girjashankar Kashiram v. Gujarat Spinning & Weaving Co. Ltd. referred to.

Acts Referred:

Constitution Of India Art 227, Art 226

Code Of Civil Procedure, 1908 Or 41R 33

Final Decision: Rule made absolute

Advocates: V B Patel, B R Shelat,K S Nanavati, I M Nanavati

Reference Cases:

Cases Referred in (+): **7**

Judgement Text:-

Mehta, J

[1] The petitioner-employee challenges in this petition under Articles 226 and 227 of the Constitution, the order of the Industrial Court, dated October 11, 1966 by which the Industrial Court set aside the order of the Labour Court allowing the Mills' Appeal and dismissed the application filed by the petitioner in the Labour Court. The short facts which have given rise to this petition are as under: -

[2] The petitioner was an employee in the Respondent No. 1 Mills Co., hereinafter referred to as 'the Mills', for a number of years and at the relevant time he was a Storekeeper in the Stores Department. One other Clerk, Kantilal, worked in the Sales Department and he, had been discharged by the Mills. On August 4, 1959. Kantilal wrote a letter to the Manager, referring to some misappropriation which were committed by the Manager from the sale proceeds of the two transactions in question. It appears that the petitioner was thereafter transferred as a Provident Fund Clerk. Kantilal reiterated his complaint by his second letter on November 9, 1959. It should be noted at this stage that both Kantilal and the petitioner are the shareholders of the Respondent No. 1 Mills Co. Kantilal issued similar notices to the firms involved in those transactions viz. to one Kalidas of M/s. Barrels and Machinery Supplying Co. and to one Chimanlal Jemaldas mentioning that the proceeds of these goods purchased by them were not credited in the Mills' account and were misappropriated by the Manager. These two transactions are of May 3, 1956 of sale of Beam Flanges to Chimanlal Jemaldas and on June 20, 1956 of sale of Cast Iron, a controlled item, to M/s. Barrels and Machinery Supplying Company through the said Kalidas. The Manager, the said Kalidas and the

said Chimanlal had on December 1 and 2, 1959, sent replies to that Kantilal. It appears that on September 4, 1957, the Gate Keeper reported to the Manager that the petitioner took away Kachcha gate passes from him on the pretext that he wanted to make pucca gate passes but he had not returned them. A show cause notice was issued by the very Manager, against whom these allegations were made by Kantilal, at Ex. 17 on December 3, 1959. Under the relevant Standing Order No. 12, the petitioner was asked to show cause as he had misappropriated the amounts of the said two transactions which was detected when the inquiry was made after the said Kantilal who was a share-holder complained by giving a notice to the Manager. These amounts were rot credited in the Mills, while the amounts were realised by the petitioners from the concerned merchants. It was further alleged that an attempt was made to involve the Manager in this matter and the petitioner had colluded with Kantilal in this connection in order to save himself, and he had got defamatory allegations made against the Manager through Kantilal and thus he had committed misconduct under the relevant Standing Order 12 for which he was liable to be dismissed. After the said show cause notice was served on the petitioner, the Company served another letter at Ex. 19, dated December, 5, 1959, on the petitioner pointing out that as the Manager was going to be a witness, if the petitioner wanted that the inquiry should be held by some other person, the Managing Director had ordered the Labour Officer Mr. Desai to hold inquiry. The inquiry was started on December 16, 1959. At the time of the inquiry, the petitioner was consulted and as the Manager was going to be the witness, the inquiry was handed over to the Labour Officer who was appointed in this connection to hold the inquiry by the Managing Director. When the inquiry was commenced by this Inquiry Officer, the petitioner filed his written reply dated December 16, 1959 at Ex. 25. In the said reply, the petitioner pointed out that he had prepared gate passes but the Manager had instructed him to prepare the gate passes of the merchants who had taken the goods and had paid the price to him. The manager used to sign these kachcha gate passes and they were prepared by the petitioner as per the instructions of the Manager and many such gate passes had been prepared by him during the course of his service. The petitioner further pleaded that the Manager had to give him specific instructions before preparing these kachcha gate passes by telling him that the concerned merchants had paid the monies to him and so for the goods mentioned by the Manager the kachcha chits were to be prepared as instructed by him. It was according to this permanent practice, which was observed in the Mills for preparing such kachcha chits, that the two impugned kachcha chits, for the transactions of 3-5-1959 of M/s. Chimanlal Jemaldas for Beam Flanges and on June 20, 1959 of M/s. Barrels Supplying Co. for Cast Iron, were prepared by him on the instructions of the Manager himself. It was, therefore, pleaded by him that in the

circumstances it was obvious that a person who was guilty himself was trying to find fault with the other person and the whole thing had been intelligently done to involve this innocent petitioner. After the written statement was presented, the petitioner submitted before the Inquiry Officer an application dated December 16, 1959. In that application, a request was made that before the inquiry commenced, the petitioner should be given a list of the Mills' witnesses and of the record and documents which the Mills wanted to rely upon against the petitioner and to permit inspection of all the records and only after this was done that further inquiry should be held. The petitioner also give a second application on the same day to the Inquiry Officer asking for production of certain documents as they were vital for his defence, and on basis of which he could file the written statement. These records were: (1) The gate keeper's "Avak-Jawak" books of the Mills for the years 1955, 1956, 1957, 1958 and his daily 'Avak-Javak' reports, (2) physical stock list of the stores department for 1955, 1956, 1957 and 1958 A. D. and the mills' pucca stock list, (3) Store-ledgers for the said years with monthly figure books for the said years, (4) Avak-Javak books of the stores department for the said years. It was finally requested that these books or records should be produced before the inquiry was commenced. The Inquiry Officer, however, rejected the second application on the ground that the show cause notice was relating to only two transactions and the application for production related to books or records of four years. The petitioner, thereafter, presented the final application on the same day stating that he had a feeling that the inquiry that was going to be held against him in the matter was not going to be impartial and that he felt that the inquiry would be held as per the deliberately pre-determined scheme of discharging or dismissing him. On this ground, the employee refused to participate in the inquiry, it appears that the Inspector of the Textile Labour Association, the Representative Union, advised the employee to take part in the inquiry, but as the employee was in these circumstances not prepared to participate in the inquiry, even the said Inspector withdrew from the inquiry as he also did not think it proper to take part in the inquiry. Thereafter, an ex-parte inquiry was held where the said Manager was examined before the Inquiry Officer and statements were taken of the concerned two merchants. Thereafter, considering the report of the inquiry, the very same Manager, against whom all these allegations were made, has passed the dismissal order against the petitioner on December 23, 1959. An approach letter under sec. 42(4) was written by the Textile Labour Association as a Representative Union on March 15, 1960 and thereafter the application was filed in the Labour Court by the Textile Labour Association as a Representative Union challenging the said dismissal order and for claiming reinstatement relief, on April 20, 1960. The Labour Court held

that there was no fair and impartial inquiry as the petitioner's right of defence was completely stultified by withholding these material documents and as the Manager had such a bias, as he was himself charged for these misapprorpriations and had taken such an active interest throughout the proceedings and had been a witness and had been a judge also in his own cause. The Labour Court, therefore, held that the inquiry was vitiated and the order of dismissal was bad. However, the reinstatement was not ordered considering the strained relations between the management and the petitioner, and it was only ordered that the petitioner be deemed to be continued in service till the date of the order of the Lower Court dated February 19, 1965. The Mill Company was directed to pay his full wages from the date of dismissal to the date of the order of the Labour Court and from that date his services were to stand terminated and he was to be given all benefits to which an employee who has been discharged simpliciter would be entitled to. Against this order of the Labour Court, the Textile Labour Association filed an appeal and the Mills also filed a cross appeal before the Industrial Court. When these appeals came up for hearing before the Industrial Court, by a pursis given in the appeal filed by the Textile Labour Association, the Textile Labour Association withdrew the said appeal on the ground that the concerned clerk was advised to accept the reinstatement subject to other conditions but he was not prepared to go in the Mills in view of the strained relations. Therefore, the question of proceeding with the said appeal did not survive and the Textile Labour Association did not press the said appeal and prayed for allowing it to be withdrawn. This appeal has, therefore, been dismissed by the Industrial Court, even though the petitioner himself wanted to press this appeal, on the ground that the Representative Union had a right to appear or act by excluding even any individual employee as per the settled legal position. As regards the other appeal of the Mills, the Industrial Court held that the Labour Court had completely misconceived the scope of the inquiry and it reversed the conclusion of the Labour Court that the employee's right of defence was stultified, by rejection of his request for the various books or records for the four years in question. The Industrial Court, further held that the inquiry was not vitiated on any other ground, especially as the concerned clerk had consented to the Manager remaining present at the inquiry and the enquiry was entrusted to an independent officer of the Company by the Managing Director. The Industrial Court also held that the employee in these circumstances was not justified in withdrawing from the inquiry and he must thank himself if he refused to participate in the inquiry. In the result, the order passed by the Manager was held to be justified on the basis oiex-parte inquiry recorded against the petitioner and the petitioner's application was dismissed by the Industrial Court, by the impugned order dated October 11, 1966. The petitioner has, therefore, as a concerned employee, filed this petition challenging

the said order of the Industrial Court in this petition.

[3] At the hearing, Mr. Patel raised the following contentions:

(1) That the Industrial Court had disregarded the settled law in coming to the conclusion that such a dismissal order was not vitiated, even though it was passed by a Manager who was a person against whom allegations for these particular misappropriations were made and who had himself started the inquiry by issuing the show cause notice and who was a witness and a judge in his own cause.

(2) That the Industrial Court, on a complete misconception of the nature of the inquiry before the Management, had come to a patently erroneous conclusion that the right of defence of the petitioner was not stultified.

(3) That the Industrial Court on the aforesaid conclusion should not have dismissed the petitioner's appeal and in any event, should have invoked the powers under Order 41, Rule 33, or relevant Regulation 65 for doing substantial justice even in the Mills' appeal by declaring that the petitioner continued in service unaffected by the order of dismissal sought to be passed by such a disqualified person who totally lacked jurisdiction and which was against all the principles of natural justice.

(4) That in any event, the order of the Industrial Court is perverse even on the basis of the material of the ex-parte inquiry.

(5) That the order in any event was vitiated because of the unfair labour practice as found by the Labour Court.

[4] As regards the first question, from the facts which we have already set out, it is obvious that Kantilal made allegations in 1959 in his capacity as a shareholder against the concerned Manager that he had misappropriated the amounts realised from these two transactions in question, which took place on May 3, 1956 and June 20, 1956, as the show cause notice itself mentions. It was the complaint of Kantilal which led to the said show cause notice being issued against the petitioner. The Manager, who was

facing all these allegations of the concerned shareholder, had himself issued this show cause notice and even he mentioned this fact that the petitioner had colluded with Kantilal and to save himself the petitioner got these allegations made against the Manager that the Manager had himself misappropriated this amount. Even the notice addressed by Kantilal to the Manager and the persons of M/s. Barrels and Machinery Supplying Co. and Chimanlal Jemaldas, the concerned merchants, were replied by those three persons on December 1 and 2, 1959, just a day or two before the issuance of this show cause notice. Even the management was conscious of the fact that looking to the nature of this allegation the manager was a necessary witness in the case. The Managing Director had, therefore, ordered right from the beginning that if the petitioner objected, the inquiry should be held by the Labour Officer. The petitioner was consulted and he reiterated his objection even at the stage of inquiry and that is why the inquiry was handed over to the Labour Officer. Therefore, it is clear that the Manager was the person against whom this very allegation was made by the shareholder and who himself had issued the show cause notice and had initiated this inquiry against the petitioner and who was a vital witness could not become a judge in his own cause, as he naturally could not remain unbiassed or impartial in such an inquiry. It is in these circumstances, that the Managing Director directed the present Manager not to hold the inquiry if the petitioner objected. Therefore, it is obvious from these facts that the present Manager who was in the position of the person facing the charge, the complainant, witness and the tribunal himself, could not have passed the dismissal order. Such a dismissal order would be against all principles of natural justice by a biased tribunal. The position of law in this connection is completely settled by various decisions of the Supreme Court. In Nageswarrao v. State of Andhra Pradesh, A. I. R. 1959 S. C. 1376 (at p. 1378), the doctrine of bias has been explained :

> "The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are: (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly Secm to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal"; and that "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a Judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they

are not Courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, /'. e. authorities who are empowered to discharge quasi-judicial functions. "

There is no dispute that the Manager dismissing the employee acts as a quasi-judicial tribunal, and that is why this principle has been applied by their Lordships of the Supreme Court even in industrial adjudication. In Andhra Scientific Co. Ltd. v. Sheshagiri Rao, A. I. R. 1967 S. C. 408 (at p. 410), the dismissal order by a person who gave actual decision was held to be vitiated by violation of rules of natural justice on the ground that the person who gave evidence as a witness at one stage acted as a Judge at the later stage and he actively procured the evidence, with the avowed motive of securing a conclusion against the workman. On these facts, the manner in which the inquiry was conducted could hardly be said to have ensured fairplay which rules of natural justice required. The same view was reiterated by following this decision by the Constitutional Bench in Workmen of Lambabari Tea Estate v. Lambabari Tea Estate, 1966(2) L. L. J. 315, (at p. 317). It was held that the manager did not keep his function as the enquiry officer distinct but became witness, prosecutor and manager in turns and therefore, the inquiry was vitiated for contravention of principles of natural justice. Their Lordships in terms observed that they should content themselves by saying that the inquiry should always be entrusted to a person who is not a witness. If it is not possible to find such a person from that estate, some officer from another estate should be asked to help in the matter. An inquiry cannot be said to be held properly when the person holding the enquiry begins to rely on his own statements. These observations of their Lordships furnish a complete answer to Mr. Nanavati's contention that the standing order necessitated a departure from the principles of natural justice by requiring the Manager to pass such an order of dismissal. In fact, there is no such necessity if we look to the wordings of the standing order, which include in the definition of Manager even an acting manager. Therefore, in such circumstances, when the Managing Director appointed another inquiry officer, another acting manager could have been equally appointed. Mr. Nanavati in this connection also sought to make a distinction that when an inquiry was ordered to be held by an independent officer there was sufficient compliance with the principles of natural justice. Their Lordships observed

that the inquiry should be entrusted to a person who is not a witness and not to be entrusted in this manner for their Lordship is intend that actually the decision should not be taken by a biased manager. The inquiry must be conducted impartially and the very requirement of conducting an impartial inquiry which is the necessary outcome of the principles of natural justice is that a person who is a witness should not only disassociate himself from the inquiry, but he should not pass even the actual order In such cases, it is obvious that he is a disqualified person being a judge in his own cause. He would not, therefore, remain indifferent or hold the scales even and that is why their Lordships went to the extent of observing that in such cases if it is not possible to find such a person from that estate or from that Company, some officer from other Company should be asked to help him to hold this inquiry. In the present circumstances standing orders amply empower the Company to appoint another officer for this purpose when this manager was disqualified.

[5] In this connection, the decision of our Division Bench consisting of Miabhoy J. (as he then was) and myself, in A. S. Razvi v. The Divisional Engineer, Telegraphs, I. L. R. 1964 Guj. 45. is quite apposite. At pp. 59 to 62, it was pointed out that this is a cardinal principle of administration of justice that no person shall be a judge in his own cause. The principle applies not only in a case where the judge or the adjudicator is himself the prosecutor or suitor, but it applies also to all these cases where the judge or the adjudicator is so situated with reference to the lis that there is a real likelihood of bias taking place in the final decision of the case. The principle had, therefore, been applied where the judge or the adjudicator appeared as a witness in the cause. The principle emerges from the fact that the judge or the adjudicator had a duty to act judicially. In the eye of law, a person cannot act judicially unless and until the person is qualified to be a judge or an adjudicator, and a person is disqualified from being a judge or an adjudicator, if he has a bias in the dispute which he is called upon to adjudicate. The seat of a judge or an adjudicator is held so sacrosanct that it cannot be occupied by any one unless and until he is qualified to be a judge or an adjudicator and a person, who has a bias in the lis, is totally disqualified and incompetent to occupy such a sacred seat. The principle emerges from the fact that disqualification of a judge or an adjudicator results in the vitiation of the whole proceeding before him and demands that his orders should be quashed or set aside. The proceeding being void, the Court does not pause to inquire whether the order passed or decision arrived at is right, nor does it

pause to consider whether a qualified judge or an adjudicator would have passed the same order or come to the same decision. The decision is quashed because the disqualified person had no jurisdiction to pass even a correct order or record a right decision. Theoretically it is possible to says that holiness, piety or a high sense of duty may endow a person with the rare fight of deciding correctly a case even against himself. But the aforesaid principle does not take into account such rare gifts. The law views the matter entirely on the footing that an average individual is subject to human frailties, and it bases itself on the fact that a person, endowed with ordinary quali-Ss and subject to human weaknesses, to which human flesh is heir to, is not likely to maintain that mental equipoise, open mindedness and f play, which are the true badges of a judge or an adjudicator. The mind of a judge or an adjudicator must be so pure that the moment the law feels that a judge or an adjudicator is so situated with reference to a cause that the stream of his thought is likely to be polluted by personal or extraneous consideration or as stated by Lord Cranwarth, L. C. in Ranger v. Great Western Railway Co. (1854) 5 House of Lords Cases, 72, the judge or the adjudicator is not likely to be indifferent, it concludes that the cause is one which cannot be entrusted to the person suffering from such a disqualification. In view of this settled legal position, the Industrial Court was obviously in error in disregarding the settled law which on admitted facts would have required the Industrial Court to quash the present order of dismissal. The Labour Court had in terms held that there was no fair and impartial inquiry by such a manager who was a judge in his own cause and who was so vitally interested in that matter and without even looking to the reasoning of the Labour Court, the Industrial Court has summarily brushed off the whole question by observing that there was nothing whatsoever on the record to show that the inquiry was vitiated. The Industrial Court has only been influenced by the fact that the employee consented by saying that he did not object to the presence of the manager at the inquiry. That would only preclude the employee from raising contention about the inquiry being vitiated by the presence of the manager. That does not mean that the employee had waived this objection which he had been pressing at all stages and which led the Managing Director to entrust the enquiry to another officer. After the order of the Managing Director, this Manager who could never be expected to be an impartial judge in his own cause could not have passed the impugned order of dismissal. Therefore, on this short ground, the order of the Industrial Court which is in complete disregard of the settled law laid down by the various decisions must be set aside.

[6] Mr. Nanavati, however, vehemently argued that this question was not specifically raised at any stage and not even in the present petition and it should not be allowed to

be permitted. We do not agree with this contention of Mr. Nanavati. The employee was all along feeling that there would not be an impartial inquiry and he had objected to the Manager holding even an inquiry because he was a witness in the case. Ultimately, the employee walked out after putting on record the application that he was not going to have any impartial inquiry. In this matter his apprehensions have now proved to be true because the same Manager who was a judge in his own cause actually passed the dismissal order against this employee. Even in his application before the Labour Court it was in terms mentioned that he was dismissed without any legal inquiry and on the basis of an ex-parte inquiry. Even before the Labour Court this point was in terms agitated and the Labour Court held the inquiry to be vitiated because the Manager was a judge in his own cause. It is only the Industrial Court which has treated this objection in the perfunctory manner by holding that there were no vitiating grounds in the circumstances of the case. It is true that the Textile Labour Association had not pressed its other appeal and, therefore, the written arguments by the petitioner where all these grounds are specifically raised need not have been looked into by the Industrial Court. The Industrial Court, however, could not shut its eyes to the judgment of the Labour Court where all these questions have been elaborately discussed and it could not uphold such a dismissal order which is against all the principles of natural justice. Even in the present petition, Mr. Patel was able to point out certain paragraphs where the impartial nature of the inquiry and the competence of the authority to pass dismissal order have been challenged. Besides, in the present case, the point goes to the root. The circumstances are also such that this employee could not personally appear for supporting his own case when the Textile Labour Association was appearing before the Industrial Court. In such circumstances, when the point is raised on admitted facts on the record and when it touches the jurisdiction of the authority to pass the dismissal order and which is based on the ground of contravention of principles of natural justice as per the settled law of the land, we would permit this point even at this stage. Therefore, there is no ground whatsoever made out by Mr. Nanavati for supporting the order on this count. We may incidentally mention that at some stage of the argument Mr. Nanavati touched the question of waiver, but he was unable to substantiate this ground on the facts of the case because the employee had all along protested and even refused to participate in the inquiry, taking the risk of an ex-parte inquiry. The point was pressed even before the Labour Court, and even before the Industrial Court he was shouting at the top of his voice even in the written arguments. Therefore, this is not a case where this point has been waived by the employee at any stage.

[7] As regards the second question also, the approach of the Industrial Court is totally

perverse as it has misconceived the entire nature of the inquiry. The written statement of the employee was to the effect that there was an established practice in this unit according to which he was asked to prepare kachcha gate passes by the Manager by instructing him that he had received the amounts for the goods which were allowed to be passed from the concerned merchants. It was the case of the petitioner that this practice was not only a long standing practice, but almost a permanent practice. The shareholder was alleging that the Manager had misappropriated these two amounts of the transactions which took place in 1956. As the complaint of the shareholder was made in 1959, after three years, the present inquiry was instituted in 1959 on the basis of the said complaint, as it is in terms stated in the show cause notice. In such circumstances, in order to arrive at the real truth of the matter, whether the Manager misappropriated the amounts of these two transactions which took place in 1956 or the concerned employee misappropriated these two amounts, the relevant plea of the employee as to the established practice had to be taken into account. In support of this plea, the employee would have to prove the other instances where such kachcha receipts were signed both by the Manager and the concerned employee and in which case the goods had gone from the Mills' stores and the proceeds had not been credited in the Mills' account or that the proceeds were credited as having been realised by the Manager himself. It is only with a view to show these instances that the concerned clerk demanded these books or records from the year 1956. The Industrial Court felt surprised as the demand was made of these four years' books or records. The Industrial Court ought to have taken into consideration the fact that the transactions were of the year 1956 and when a plea was of a practice of long standing, the employee would atleast Seck to prove the instances from the year 1955 to 1958 to give a complete picture of the practice relied upon by the employee. Without considering this aspect which would assume great importance in judging whether the employee or the concerned manager committed the alleged misappropriation, the Industrial Court summarily and cursorily brushed off this question on the ground that the show cause notice related to only two instances and, therefore, no evidence could be allowed of other instances. This conclusion of the inquiry officer, which is approved by the Industrial Court, is based on a complete misconception of the nature of the inquiry, where in order to ascertain the truth of the defence of the employee as to whether the Manager misappropriated or the employee misappropriated, the other instances would have to be examined. It is obvious that if the employee had been able to show a few instances where the same type of kachcha gate passes were signed by the Manager and the concerned employee and that the goods had gone out of the Mills' Store, and the payment were not credited or were received by the manager, the employee's case,

even in respect of the two present transactions would be completely corroborated by the independent documentary evidence. In these circumstances, the Industrial Court was entirely wrong in holding that these documents were irrelevant and that a roving inquiry was sought to be made for four years' documents. The Mills' inquiry itself was started after three years and, therefore, the evidence had to be for the last four years. Therefore, the Industrial Court was wrong in holding that the Labour Court was Under a misconception as to the nature of this inquiry. All these facts were not properly appreciated for otherwise the Industrial Court was bound 7 to hold that the employee's right of defence was completely stultified by withholding these records, which were necessary to ascertain the truth of: the defence of the concerned employee. Therefore, the Labour Court was right on both these grounds in holding that the inquiry and the dismissal order were vitiated. The Industrial Court had committed, a patent error of law in reversing the decision of the Labour Court by disregarding the settled law in this connection and by a completely perverse approach on a total misconception of the nature of the inquiry. Therefore, on these two grounds, the order of the Industrial Court must be set aside.

[8] As regards the reliefs which should be given, Mr. Patel vehemently argued his third contention. After the decision of the Supreme Court, in Girjashankar Kashiram v. Gujarat Spinning & Weaving Co. Ltd., 1962 (1) L. L. J. 369, it is well settled that an individual employee has no right to appear or act in any proceeding where the Representative Union has appeared or acted. Therefore, when the Textile Labour Association, which had filed the original application in the Labour Court and filed the appeal before the 'Industrial Court, withdrew the appeal by acting in the matter, the individual had no locus standi to oppose that withdrawal. Mr. Patel vehemently argued that the decision of the Supreme Court based on the scheme of Secs. 27A, 32 and 33 would not apply to the present case where the question was of reinstatement of a single employee. We do not agree with this contention of Mr. Patel for the simple reason that even in that case the application was under sec. 42(4) by individual employee and still, it was held that where a Representative Union had acted in that matter, the individual employees would have no locus standi to proceed with' their applications. Mr. Patel next argued that the Representative Union is bound to act on behalf of the employees and its right to act is as the representative of the employees and it could not, therefore, withdraw the appeal when the individual protested against any such action. The Representative Union cannot be made to split up its personality. In any event, the point is concluded by the decision of the Supreme Court which is completely binding on us and it is not open to this Court to distinguish this decision on facts. It is only, in case of

the decision of the concurrent Court that the doctrine of obiter, per incuriam or distinction on facts could be applied. Therefore, the Industrial Court was right in allowing the Textile Labour Association to withdraw its appeal. In that view of the matter, the claim of reinstatement which was the subject-matter of the appeal filed by the Textile Labour Association could not be granted. Mr. Patel, therefore, argued that the provisions of Order 41, Rule 33 of the C. P. Code could be invoked to grant such relief to the employee as the justice of the case requires. Mr. Patel is right in urging that this is a case where the order of the disqualified Manager is against all principles of natural justice and is in contravention of the mandatory terms of the standing orders. Besides, when the inquiry was vitiated, the company had a right to lead evidence before the Labour Court and to get a decision from the Labour Court on merits by justifying its action of dismissal. This course has also not been adopted. Mr. Patel, therefore, argued that the order of the Labour Court is patently erroneous as it has declared the employee to be continuous in service only till the date of the order of the Labour Court and has discharged him on that date by the order of discharge simpliciter.

[9] In these circumstances, Mr. Patel wanted us to pass an order that the employee continued in service till the date when he would have superannuated, meanwhile, during the intervening period, or atleast to grant compensation during the period. These were the reliefs which could be obtained in appeal filed by the Textile Labour Association. Once that appeal was withdrawn, in the Mills' appeal no such relief could be granted. The provision of Order 41, Rule 33 of the Code of Civil Procedure has not been applied, as Mr. Patel was unable to show any provision in the Industrial Court Regulations which required the Industrial Court to exercise all the powers of the appellate Court under the Code of Civil Procedure. Mr. Patel only relied upon Regulation 65 which corresponds to sec. 151. The said Regulation provides that nothing in these Regulations shall be deemed to limit or otherwise affect the power of the Court to make such order as may be necessary for the ends of justice. That residuary provision would note in our opinion, be sufficient to invoke such a special power which may be available under Order 41, Rule 33, for being resorted to even in the Mills' appeal. Therefore, once the order of the Industrial Court is set aside, the only relief that would be granted to the employee would be to restore the order of the Labour Court in toto.

[10] As the first two points of. Mr. Patel are accepted, it is not necessary to go into the fourth and fifth contentions of Mr. Patel.

[11] In the result, this petition is allowed and the order of the Industrial Court, is set

aside and is quashed by a certiorari and the order of the Labour Court is restored in toto. Rule accordingly made absolute with costs.

Rule made absolute.