the prosecutions launched were not set aside on the ground to be defective but the High Court of Bombay would exercise the powers to quash the proceedings with a view to secure the ends of justice. It has been pointed out that the interest of public at large and for the society is far more important than the interest of individual and such interest or right of an individual to continue prosecution must give way to the larger interest of the society. Here before me also, as indicated above, it was sought to be urged by the learned Government Counsel that the proceedings in question are bad for want of the necessary sanction under Sec. 196 of the Code. Such a case is being made out clearly in respect of those complaints in which the offence under Sec. 153A Penal Code came to be referred unequivocally. A similar view can be and requires to be taken in the remaining complaints too, because without naming the offence, clear averments, which would constitute offence punishable under Sec. 153A Penal Code have been made. Looking to the averments made and the alleged offence indicated, the sanction of the State Government was a *sine qua non* or a condition precedent. This is indeed an additional factor and the State could have refused such sanction but only if the complaints would have approached them. I do base my conclusion that the present proceedings require to be allowed and the complaints before the Court below require to be quashed on this technical aspect also.

21. Incurring the distaste of repetition. I would say that, in my opinion the State, acting *pro-bono-publico* may feel duty bound to intervene, the test being the subsisting exigency demanding the upkeep of the social interest of the community at large and the facts and circumstances annexed to the prayers of the State do in fact demonstrate such an exigency, and when the State the supreme custodian of the social interest of the community at large, comes before me, the plea, in the facts and circumstance requires a countenance, to secure the ends of justice within the meaning of Sec. 482 of the Code of Criminal Procedure.

22. Thus, in my opinion the present application requires to be allowed and the same is hereby accordingly allowed. The proceedings in form of C.C. No. 41 of '89 pending on the file of the learned Chief Judicial Magistrate, Rajkot, and in form of C.C. No. 84 of '88 on the file of the learned Chief Judicial Magistrate, Godhra, along with two private complaints registered as C.C. No. 35 of 88 and 35 of '88 before the Jamnagar Courts are hereby quashed. Rule is made absolute accordingly.

(JBS) *Application allowed.*

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice R. A. Mehta and
the Hon'ble Mr. Justice B. J. Shethna

SHREENARAYAN KANAIYALAL v. M/S. ANUP ENGINEERING LTD.*

Industrial Disputes Act, 1947 (XIV of 1947) — Dismissal of the workman without holding inquiry — Even if the employer succeeds in establishing the misconduct and Labour Court holds in favour of the employer even then the dismissal would be operative only from the date the award becomes operative

* Decided on 6-5-1994. Special Civil Application No. 10082 of 1993 against the order of the Labour Court dt. 26-7-1993 rejecting the application for salary.

and the employer is bound to pay the wages from the date of order of dismissal till the date of the order of the Labour Court.

In view of the fact that this is a case of no inquiry and dismissal without any inquiry, the employer will be entitled to lead evidence and make an attempt to justify his action of dismissal by proving the misconduct and the magnitude thereof. Even assuming that the employer establishes it and the Labour Court holds in favour of the employer, the finding and dismissal would be operative only from the date the award becomes operative and even in such case of success, the employer is bound to pay the wages from the date of his order of dismissal till the date of the order of the Labour Court. (Para 16)

One more aspect also requires special mention. The workmen have been dismissed without holding any inquiry almost three years ago. The employer, if he wanted to hold an inquiry, would have suspended the workman and the workman would have been entitled to suspension allowance and would have been in a position to reasonably defend. Here, the workman does not get anything pending inquiry. He is in a psotion worst than that of suspension. (Para 18)

In the present case, the employer had already succeeded in virtually killing the union and making the workmen totally defenceless and helpless. Six out of 21 workmen have already settled with the employer. If such gross injustice and illegality continues and one after another workman is made to settle or to struggle and defend, it would not only be denial of natural justice but also of substantial justice and justice according to law. (Para 18)

D. C. Roy v. Presiding Officer M. P. Industrial Court, Indore, (1), Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (2), Desh Raj Gupta v. Industrial Tribunal-IV U. P. (3), Spl.C.A. No. 5694 of 1988 decided on 22-9-92 by G.H.C. (4), relied on.

Workmen of Motipur Sugar Factory (P) Ltd. v. The Motipur Sugar Factory P. Ltd. (5), Punjab Beverages (P). Ltd. v. Suresh Chand (6), Basu Deba Das v. M. R. Bhope (7), Ahmedabad Sarangpur Mills Co. Ltd. v. I. G. Thakore (8), Delhi Cloth & General Mills Co. v. Shri Rameshwar Dayal (9), Fakirbhai Fulabhai v. Presiding Officer (10), State of Maharashtra v. Chandrabhan (11), M/s. Sasa Musa Sugar Works Pvt. Ltd. v. Shobrati Khan & Ors. (12), P. H. Kalyani v. M/s. Air France (13), referred to.

Sharad B. Pandit, for the Petitioner.
K. S. Nanavati with *K. D. Gandhi*, for the Respondent.

MEHTA, J. The undisputed facts are simple and eloquent and the question involved is a short one. *If* an employer who has dismissed a workman without holding any inquiry, justifies the dismissal by leading evidence before the Labour Court/Industrial Tribunal, whether it will relate back to the date of dismissal order of the employer o*r* will be operative from the date of award of the Labour Court/ Industrial Tribunal ? In other words, whether in such a case, the workman will be entitled to wages till the award ?

(1) AIR 1976 SC 1760 (2) AIR 1980 SC 1896 (3) AIR 1990 SC 2174
(4) Spl. C. A. No. 5694 of 1988 decided on 22-9-92 by G. H. C.
(5) AIR 1965 SC 1803 (6) AIR 1978 SC 995 (7) 1993 Lab.IC 1677
(8) 1965 GLR 259 (9) AIR 1961 SC 689 (10) AIR 1986 SC 1168
(11) AIR 1983 SC 803 (12) AIR 1959 SC 923 (13) AIR 1963 SC 1756

The present petitioner (a protected workman) and 21 other workmen came to be dismissed from service by identical orders dated April 20, 1991 (Annexure B to the petition). That order itself states that the workman is a representative of a Union and their demands dated January 7, 1991 were pending before the Conciliation officer. It is alleged that during the pendency of that industrial dispute before the Conciliation officer, from 1st April, 1991, obstructions were created in production process and movement of goods and removal of goods outside the factory; there was an atmosphere of gherao, danger and terror and there was an apprehension about the safety of the properties of the company and of customers, traders and safety of officers of the company and production had become impossible. It is further alleged that the petitioner-workman by participating in the aforesaid activities, had committed a grave misconduct and for that grave misconduct, the workman was dismissed from service with immediate effect. It is also stated that the Company reserved the right to prove the misconduct as and when necessary because in the circumstances, it was not possible to hold departmental inquiry.

2. This dismissal is the subject-matter of Reference (LCA No. 2292 of 1990) for reinstatement with full backwages.

3. After about a year, when the hearing of the reference did not progress, an application was made for interim relief for a direction that the employer be directed to pay full salary from the date of dismissal till date of the final award in the Reference. The Labour Court dismissed the application by its judgment and order dated July 26, 1993. Being aggrieved thereby, the workman has come to this Court. It may be stated that this is only a test case. The Company has similarly dismissed 21 other workmen. It is stated that six of the 21 workmen have settled the matter with the employer and 15 workmen are still out of employment and without any wages since about two years and nine months.

4. The learned Counsel for the petitioner-workman submits that the Labour Court has found that the petitioner is a protected workman and also that *prima facie,* the action of the employer is illegal, but the Labour Court denied the interim relief on the ground that the employer is to be given an opportunity to prove the charges and sustain the order of dismissal and if the Labour Court sustains the order of dismissal, it would relate back to the date of order of dismissal and the workman would not be entitled to backwages.

5. The learned Counsel for the workman has relied on a series of Supreme Court judgments and submitted that when there is no inquiry and the workman has been dismissed from service, even if the employer succeeds in establishing the misconduct in the Labour Court for the first time and the Labour Court finds the workman guilty of misconduct and justifies the order of dismissal, such order of dismissal would become operative only from the date of the award of the Labour Court and it would not relate back to the original date of order of dismissal passed by the employer. It is submitted that this is not a case of a *bona fide* inquiry having been held by the employer and some defect having been found in such inquiry; and the employer leading the evidence before the Labour Court and satisfying such Court and thereby justifying the order of dismissal. It would be only in a case of dismissal after a *bona fide* inquiry and later found to be defective and the misconduct being

established in the Labour Court, the Labour Court order would relate back to the date of original order of dismissal passed by the employer. For this proposition, reliance had been placed on the following Supreme Court judgments :

(1) *M/s. Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan and Ors.,* AIR 1959 SC 923;
(2) *D. C. Roy v. Presiding Officer*, AIR 1976 SC 1760;
(3) *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha,* AIR 1980 SC 1896;
(4) *Desh Raj Gupta v. Industrial Tribunal-IV, UP,* AIR 1990 SC 2174;
(5) Judgment of the Division Bench of this Court in *Special Civil Application No. 5694 of 1988, delivered on 22-9-1992* (Coram : S. B. Majmudar, J. as he then was and A. N. Divecha, J.)

6. The learned Counsel for the respondent-employer has tried to distinguish the judgment and submitted that the Supreme Court has in several cases held that cases of "no inquiry" and "defective inquiry" stand on the same footing and, therefore, in both the cases, if the Labour Court comes to the conclusion that the order passed by the employer is just and legal, it would relate back to the original date of order of dismissal. It is submitted that the dismissal without holding inquiry is at the most an illegal order and not a *non est* order. The respondent has relied on the judgments of the Supreme Court in the following cases :

(1) *Workmen of Motipur Sugar Factory P. Ltd. v. The Motipur Sugar Factory P. Ltd.,* AIR 1965 SC 1803;
(2) *P. H. Kalyani v. M/s. Air France,* AIR 1963 SC 1756;
(3) *Punjab Beverages Pvt. Ltd. v. Suresh Chand,* AIR 1978 SC 995;
(4) Bombay High Court judgment of a learned single Judge in the case of *Basu Deba Das v. M. R. Bhope & Anr.,* 1993 Lab.IC 1677.
(5) *Ahmedabad Sarangpur Mills Co. Ltd. v. I. G. Thakore,* (1965) VI GIR 259.

7. In the case of *M/s. Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan and Ors.,* AIR 1959 SC 923, in para 9, the Supreme Court came to the conclusion that not only 32 workmen who were found guilty of misconduct, but other 16 workmen who were not found to be guilty of misconduct by the Tribunal, were also held guilty of the misconduct and the Supreme Court observed that "go slow" is a serious misconduct which is insidious in its nature and cannot be countenanced and the management was entitled to get the permission to dismiss them. The Supreme Court proceeded to observe as under :

> "But as the management held no enquiry after suspending the workmen and proceedings under Sec. 33 were practically converted into the inquiry which normally the management should have held before applying to the Industrial Tribunal, the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings under Sec. 33; (see the decision of this Court in the *Management of Ranipur Colliery v. Bhuban Singh* ('1959) C.A. No. 768 of 1957, Dt. 21-4-59 (AIR 1959 SC 833)."

8. This case was considered by five Judges Bench of the Supreme Court in the case of *P. H. Kalyani v. M/s. Air France,* AIR 1963 SC 1756. This is the case

on which the employer relies, but the facts of the case show that there was a charge-sheet given and a *bona fide* inquiry held and finding of misconduct recorded and punishment of dismissal awarded by the employer. There was a question about the Station Manager, who had issued the charge-sheet against the delinquent, having bias against the delinquent workman and the Labour Court held that even if there was some violation of the principles of natural justice on the ground of bias of the Station Manager, the respondent-employer had adduced all the evidence before the Labour Court in support of his action and on the evidence, the Labour Court held that the order of dismissal was justified. Even in that case of defective inquiry, an attempt was made on behalf of the workman to contend that there could be no approval of the action taken in pursuance of such a defective inquiry and even if the Labour Court held that the dismissal was justified, it should have ordered the dismissal from the date of the award relying on *Sasa Musa case* (supra) and the quotation which is referred to above has been quoted there also and the Supreme Court in *P. H. Kalyani's case* (supra) proceed to observe as follows :

> "The matter would have been different if in that case an inquiry had been held and the employer had come to the conclusion that dismissal was the proper punishment and then had applied under Sec. 33 (1) for permission to dismiss. In those circumstances, the permission would have related back to the date when the employer came to the conclusion after an inquiry that dismissal was the proper punishment and had applied for removal of the ban by an application under Sec. 33 (1)".

The Supreme Court further observed that in the case before it, the employer held an inquiry though it was defective and passed an order of dismissal. The Supreme Court held that if the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made and the observations in the *case of Sasa Musa* would apply to a case where employer had neither dismissed the employee nor had come to the conclusion that the case for dismissal has been made out.

In the present case, the dismissal order itself shows categorically and without any doubt that the employer had dismissed the employee and the employer also came to the conclusion that the case for dismissal had been made out, of course without holding any inquiry. In *P.H. Kalyani's case* also, the Supreme Court held that the dismissal of the employee takes place from the date of the award and so until then, the relation of employer and employee continues in law and in fact. Therefore, this judgment, instead of in any manner helping the respondent-employer, clearly goes to show that in a case of "no inquiry", employer even if succeeds in establishing the misconduct and justifies the order of dismissal in the Labour Court, it would be operative only from the date of the award of the Labour Court and will not relate back to the original date of order of dismissal.

9. The learned Counsel for the respondent has also referred to some judgments of the Supreme Court wherein it is observed that the case of defective inquiry and no inquiry stand on the same footing. It is true that the Supreme Court has said

so, but in each of these cases, the Supreme Court has held that in the context of the question whether the employer has a right and opportunity to justify the order of dismissal by leading evidence before the Labour Court, for that purpose, both defective inquiry and no inquiry stand on the same footing and there is no dispute regarding that principle. Therefore, these cases are not referred to in detail. However, these cases are considered in other similar judgments which are cited hereinabove.

One such judgment is in the case of *Workmen of Motipur Sugar Factory (P). Ltd. v. The Motipur Sugar Factory (P). Ltd.*, AIR 1965 SC 1803. In para 11 page 1808, the Supreme Court has observed as follows :-

> "(11) It is now well settled by a number of decisions of this Court that where an employer has failed to make an inquiry before dismissing or discharging a workman, it is open to him to justify the action before the Tribunal by leading all relevant evidence before it. In such a case, the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the Tribunal which will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic inquiry has been properly held."

Sasa Musa's case was also referred to and other cases were also referred to, but the question of relating back was not required to be gone into. The Supreme Court further observed as follows :

> "A defective enquiry in our opinion stands on the same footing as no enquiry and in either case, the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of dismissal or discharge was proper."
>
> "(12) If it is held that in cases where the employer dismisses his employee without holding an inquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion, it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases, the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the Tribunal for itself and that clearly would be to the benefit of the employee. That is why, this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself. This view is consistent with the approaches which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the enquiry has in fact been held. We must, therefore, reject the contention that as there was no enquiry in this case, it was not open to the respondent to justify the discharge before the Tribunal."

Thus, it is clear that the rationals for holding that in a case of defective inquiry or no inquiry the employer is to be given an opportunity to justify the dismissal is to reduce the multiplicity of proceedings and expeditious end of an industrial dispute. If the employer has already held an inquiry and found the workman guilty, but because of some defect, the inquiry is held defective, the Labour Court coming

to its own conclusion on the evidence led before it, may hold the action of the employer in dismissing the workman after defective inquiry as justified, but when the employer has not bothered to hold any inquiry and for the first time, the inquiry is held by leading evidence before the Labour Court, there is no reason why the finding of the respondent arrived at for the first time in the Labour Court shoud result into retrospective dismissal merely because the employer had chosen the high-handed and illegal short-cut.

10. In the case of *D. C. Roy v. Presiding Officer, Labour Court,* AIR 1976 SC 1760, all the previous cases of the Supreme Court on the question and both sets of authorities were considered. In that case, the learned Counsel for the workmen had relied on the *case of Sasa Musa* and the learned Counsel for the respondents had relied on the *case of P. H. Kalyani. Sasa Musa case* (supra) was distinguished on the ground that it was a case of no inquiry whereas *D. C. Roy case* was a case of defective inquiry and, therefore, it was covered by the judgment of the Supreme Court in the *case of P. H. Kalyani* and the observations in *P. H. Kalyani's case* were noted that the matter would have been different if in *Sasa Musa,* inquiry had been held. The Supreme Court in *D. C. Roy's case,* further sounded a note of caution that *P. H. Kalyani's case* is not to be construed as a charter for employer to dismiss employee after the pretence of an inquiry. The inquiry in the instant case did not suffer from such defects so as to make it *non est.* Supreme Court further observed that on an appropriate occassion, it may become necessary to carve an exception to the ratio of *Kalyani's case* so as to exclude from its operation at least that class of cases in which under the facade of a domestic inquiry, the employer passes an order gravely detrimental to the employee's interest like an order of dismissal. The relevant quotation reads as follows :

> "We would, however, like to add that the decision in *P. H. Kalyani's case* (AIR 1963 SC 1756) is not to be construed as a charter for employers to dismiss employees after the pretence of an inquiry. The inquiry in the instant case does not suffer from defects so serious or fundamental as to make it *non est*. On an appropriate occasion, it may become necessary to carve an exception to the ratio of *Kalyani's case* so as to exclude from its operation at least that class of cases in which under the facade of a domestic inquiry, the employer passes an order gravely detrimental to the employee's interest like an order of dismissal. An inquiry blatantly and consciously violating principles of natural justice may well be equated with the total absence of an inquiry so as to exclude the application of the 'relation back' doctrine."

11. These cases have been further referred to and followed in the case of *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha,* AIR 1980 SC 1896. The relevant paras are paras 151 and 152 which read as follows :-

> "151. We are mindful of the submission of Sri Tarkunde, urged in the connected appeal by the Sabha, that where no enquiry has preceded a punitive discharge and the Tribunal, for the first time, upholds the punishment, this Court has in *D. C. Roy v. Presiding Officer, M.P.Industrial Court, Indore,* 1976 (3) SCR 801 : (AIR 1976 SC 1760) taken the view that full wages must be paid until the date of the award. There cannot be any relation back of the date of dismissal to when the management passed the void order.
>
> 152. *Kalyani,* 1963 (1) Lab.LJ 679 : (AIR 1963 SC 1756) was cited to support the view of relation back of the award to the date of the employer's termination orders.

We do not agree that the ratio of *Kalyani* corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore, relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shell of the Management's order, pre-dating of the nativity does not arise. The reference to *Sasa Musa* (AIR 1959 SC 923) in *Kalyani* enlightens this position. The latter case of *D. C. Roy v. Presiding Officer, M. P. Industrial Court, Indore* (supra) specifically refers to *Kalyani's case* and *Sasa Musa's case* and holds that where the Management discharges a workman by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being *de novo*, and an order, which may suffer from some defects but is not still-born or void and all that is needed in the law to make it good is a subsequent approval by a Tribunal which is granted, cannot be obfuscated."

The above observations fully support the case of the petitioner.

12. In the case of *Desh Raj Gupta v. Industrial Tribunal-IV, U.P.*, AIR 1990 SC 2174, the Supreme Court has reiterated, applied and extended the ratio and observations in the *case of Gujarat Steel Tubes* as was suggested in *P. H. Kalyani's case.* In *Desh Raj Gupta's case*, there was a charge-sheet and domestic inquiry resulting into dismissal. The Tribunal held that principles of natural justice had not been followed in the domestic inquiry and the management was asked to justify the order of dismissal on merits and accordingly, the parties led their evidence and the Tribunal recorded the findings that the charges levelled were established on the material on record and the workman was not entitled to any relief. In the Supreme Court, on behalf of the appellant-workman, the second contention was that the workman should be paid his salary from the date of his dismissal till the date of the award of the Tribunal and in para 9, the Supreme Court, relying on its observations in *Gujarat Steel Tubes* held that if the order of punishment passed by the management is declared illegal and the punishment is subsequently upheld by the Tribunal, the date of dismissal cannot relate back to the date of illegal order of the employer and, therefore, the workman was held entitled to this salary from the date of dismissal order till the date of award of the Tribunal with 12 % interest. It is not necessary to go to that extent in the present case because the present case is not a case of defective inquiry, but admittedly it is a case of no inquiry.

13. The Division Bench judgment in *Special Civil Application No. 5694 of 1980 dated 22-9-1992* also supports sqaurely the contentions raised by the petitioner. The service of the workman in that case was terminated by an order purporting to be a simplicitor discharge and the Labour Court came to the conclusion that it was punitive discharge and the evidence was led before the Labour Court regarding the alleged misconduct of assaulting Divisional Controller. In the Labour Court, the misconduct of the workman was established and the order of termination was justified. The Division Bench held that even if the Labour Court had thought it fit for the first time to impsoe any punishment in the light of the evidence led before it by the respondents, then in that event, the said order would have operated from the date of the order passed by the Labour Court and the Division Bench further observed that as per the settled legal position, the petitioner would have been required to be paid all backwages from the date of the original order of termination till the

date of the award of the Labour Court and the Supreme Court *cases of Deshraj Gupta* and *Gujarat Steel Tubes* were relied to hold that if the order of punishment passed by the management is declared illegal and the punishment is upheld subsequently by the Labour Court, the date of dismissal cannot relate back to the date of illegal order of the employer and, therefore, the workman was entitled to the wages from the date of his dismissal till the date of the award. We are in respectful agreement with the view taken by the Division Bench which is the consistent view taken by the Supreme Court and which is binding to everyone.

The learned Counsel for the respondent has also relied on another judgment of the Division Bench of this Court in the case of *The Ahmedabad Sarangpur Mills Co. Ltd. v. I. G. Thakore & Anr.*, (1965) VI GLR 259 and it is submitted that in that case, after considering the Supreme Court judgments in the *case of Sasa Musa, Phulwari and P. H. Kalyani*, the Division Bench has held that the observations made in *Sasa Musa case* apply only to the case where the employer had neither dismissed the employee nor had come to the conclusion that the case for dismissal had been made out. It is submitted that in the present case, the employer had in fact dismissed the employee and also come to the conclusion that the case for dismissal had been made, though without holding any inquiry. It is, therefore, submitted that having regard to the observations in *Sarangpur Mills case*, the dismissal if ultimately held to be justified, would relate back to the date of the original order. This is not a correct reading of the judgment in *Sarangpur Mill's case*. *Sarangpur Mill's case* was a case of defective inquiry. There was no dispute that the inquiry was held. However, that inquiry was held to be a defective inquiry because a witness who had not been examined by the Company in presence of the workman was only offered for cross- examination. Thus, it was a case of defective inquiry and in that context, the judgment of the Division Bench is that the finding of the Labour Court would relate back to the date of dismissal order by the employer. It was not a case of no inquiry. Here is a patent case of dismissal without any inquiry whatsoever and the dismissal is admittedly on the basis of allegation of misconduct. When there are such clear and gross admitted facts, there is no escape from the conclusion that the case is directly and fully covered by the ratio laid down by the Supreme Court in the *case of Sasa Musa, D. C. Roy, Gujarat Steel Tubes* and *Deshraj Gupta* as discussed hereinabove. The distinction is sought to be made out on the ground that in the present case, the employer had dismissed the workman and in the *case of Sasa Musa*, the employer had applied for permission to dismiss the workman is a distinction without any merit. In fact, in the *case of D. C. Roy*, the Supreme Court further sounded a note of caution that *Kalyani's case* was not to be construed as a charter for the employer to dismiss an employee after the pretence of an inquiry. Thus, dismissal by the employer without inquiry or after defective inquiry is a common factor in both the sets of cases and the material point of difference is absence of inquiry and holding a *bona fide* but defective inquiry. In *Gujarat Steel Tubes case* also, the Supreme Court had held that the dismissal without inquiry would be a void dismissal and if the Tribunal for the first time passes an order recording a finding of misconduct and thus breathes life into the dead shell of the Management's order, pre-dating of the nativity does not arise. The ratio of *Sasa Musa case* was again reiterated holding that if the Management discharges the workman by an order

which is void for want of an inquiry, the doctrine of 'relation back' cannot be invoked.

In view of all these judgments of the Supreme Court, the observations in the *Sarangpur Mill's case* cannot in any manner help the respondent-employer. The observations in that case have to be read and confined to the facts of that case, viz., a defective inquiry.

14. The learned Counsel for the respondent has also relied on the Supreme Court judgment in the case of *Punjab Beverages (P). Ltd. v. Suresh Chand & Anr*., AIR 1978 SC 995. That case arose out of Recovery Application under Sec. 33C(2) of the Industrial Disputes Act. There the workman was suspended, charge-sheeted and after regular inquiry, found guilty and dismissed and the worker's contention was that the dismissal was in breach of Sec. 33(2)(b) and, therefore, the order of dismissal was void and inoperative and the workman is deemed to be continuing in service and entitled to receive wages and maintain application for recovery of dues from the employer under Sec. 33(2)(b). In that context, the Supreme Court held that right to the money must be an existing one and the workman who has been dismissed from service, the dispute regarding which is yet to be decided, it cannot be said that he could straightway insist on the order for recovery from his employer on the ground that the dismissal order is illegal and void; and in that context, the Supreme Court observed that the recovery application under Sec. 33(2)(b) was not maintainable. This judgment cannot have any bearing on the question in controversy in this matter.

15. The learned Counsel for the respondent has strongly relied on a judgment of a single Judge of Bombay High Court in the case of *Basu Deba Das v. M. R. Bhope & Anr.*, 1993 Lab.I.C. 1677. It was also a case of defective inquiry and the learned single Judge in para 42 has held as follows :

> "42. The principles that can be deduced from the above case is that it is the holding of an enquiry or the non-holding of it which will determine the doctrine of 'relation back'. It would depend on facts of a particular case. There may be cases where there may be no enquiry at all before an order of dismissal is passed. There may be cases where there is merely a facade of enquiry, an enquiry in blatant violation of principles of natural justice. In such cases, doctrine of relation back will not apply. There must be yet another set of cases where an enquiry is held and an order of dismissal is passed. The enquiry may not suffer from blatant violation of the principles of natural justice or may suffer from some defects which renders the order of dismissal bad. In such cases, the order of dismissal is not one which is still-born or void. Such an order can be made good by evidence and subsequently approved by the Labour Court/Industrial Tribunal. In such a case, the doctrine of 'relation back' will apply. In addition the character of misconduct ascribed to the employee plays an important part in the application of the principle of 'relation back'."

This judgment directly goes against the employer because holding of an inquiry or not holding of an inquiry would determine the application of the doctrine of relation back. The case before us is admittedly a case of no inquiry and, therefore, the doctrine of 'relation back' would not be applicable and even if the employer succeeds in establishing the misconduct, the order of dismissal if at all justified, would be operative from the date of the order of the Labour Court.

16. In view of the fact that there is a case of no inquiry and dismissal without any inquiry, the employer will be entitled to lead evidence and make an attempt to justify his action of dismissal by proving the misconduct and the magnitude thereof. Even assuming that the employer establishes it and the Labour Court holds in favour of the employer, the finding and dismissal would be operative only from the date the award becomes operative and *even* in such case of success, the employer is bound to pay the wages from the date of his order of dismissal till the date of the order of the Labour Court.

The learned Counsel for the petitioner submits that the workman has been out of employment since almost three years. The employer was out to crush the union and had summarily and unceremoniously dismissed 21 workmen including protected workmen and office bearers of the union and locked out and closed the factory for about four months and successfully killed the union. It is an admitted position that another Union had come on the scene with which the management arrived at a settlement and re-started the factory. It is, therefore, submitted that if such high-handed and illegal action of the employer is allowed to operate, it would not result into only injustice, but would result into death of a trade union and the economic death of Trade Union leaders. It is submitted that though serious allegations have been made, no police complaint was filed at any time; no damage to the property or person was ever reported or alleged and the action of the respondent- employer was purely *mala fide* and out of victimisation, with a view to crush the union. It is not necessary to go into the merits of the rival contentions on this aspect, but the fact remains that even if the employer succeeds in the Labour Court, the employer will have to pay wages upto the date of the award of the Labour Court. If the employer fails, there would be further orders for reinstatement, but this is a case where even if the employer succeeds, the backwages will have to be paid because the order of dismissal will not relate back to the original date.

17. The learned Counsel for the respondent-employer submitted that this cannot be done at this stage and reliance has been placed on the Supreme Court judgment in the case of *Delhi Cloth & General Mills Co. v. Shri Rameshwar Dayal,* AIR 1961 SC 689. As seen from the facts of that case, in para 3, a domestic inquiry was held and the charge was proved and in view of the seriousness of the misconduct and looking to his past record, he was ordered to be dismissed and an application for permission was made. The Tribunal as a measure of interim relief, directed the appellant-Mill to permit the respondent-workman to work and the respondent was directed to report for duty. The Supreme Court observed at page 692 of the report that when a Tribunal is considering application under Sec. 33 (a) and it has finally to decide whether an employee should be reinstated or not, it is not open to the Tribunal to order reinstatement as an interim relief because that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer fails in the proceeding under Sec. 33(a). In the present case, there is no question of the employer succeeding in the Tribunal on the question of backwages and 'relation back'. As far as backwages are concerned, it would not depend upon whether the employer fails or succeeds in the proceedings and, therefore, this judgment has no application to the facts of the present case where though this may be called an interim award (since the final ward is not passed),

this is not in the nature of an interlocutory order. This is in a sense final order because as far as backwages are concerned, the workman finally succeeds and the employer finally fails.

18. One more aspect also requires special mention. The workmen have been dismissed without holding any inquiry almost three years ago. The employer, if he wanted to hold an inquiry, would have suspended the workman and the workman would have been entitled to suspension allowance and would have been in a position to reasonably defend. Here, the workman does not get anything pending inquiry. He is in a position worst than that of suspension.

In the case of *Fakirbhai Fulabhai Solanki v. Presiding Officer,* AIR 1986 SC 1168, the Supreme Court had an occasion to deal with a case where the workman was not paid subsistence allowance during the pendency of proceedings under Sec. 33(3) of the Industrial Disputes Act and the Supreme Court held that denial of payment of subsistence allowance during the pendency of such proceedings amounts to violation of the principles of natural justice and the Supreme Court observed in paras 5 and 8 of the judgment as follows :-

> "5..... When an application is made under Sec. 33(3) of the Act the workman is entitled to defend himself before the Tribunal. In those proceedings, it is open to him to show that the domestic enquiry held against him was not in accordance with law and principles of natural justice and the action proposed to be taken against him by the management is unjust and should not be permitted. Sometimes, it may be necessary to either of the parties to lead evidence even before the Tribunal. The proceedings before the Tribunal very often take a long time to come to an end. In this very case, the proceedings were pending before the Tribunal for nearly six years. Most of the workmen are not in a position to maintain themselves and the members of their families during the pendency of such proceedings. In addition to the cost of maintenance of his family, the workman has to find money to meet the expenses that he has to incur in connection with the proceedings pending before the Tribunal. In this case, the appellant was in receipt of salary and allowance till the end of disciplinary enquiry. But from 13-8-1979, he was not paid even the barest subsistence allowance till August 5, 1985 when the Tribunal passed its order/award on the application of the management and the complaint of the appellant. It is true that in the instant case, the Tribunal granted the application of the management and rejected the complaint of the appellant. It was also quite possible that the Tribunal could have rejected the application of the management and upheld the complaint of the appellant in which case the appellant would have been entitled to continue to be an employee under the management of the factory and the disciplinary enquiry held against him would have had no effect at all. Because it is difficult to anticipate the result of the application made before the Tribunal, it is reasonable to hold that the workman against whom the application is made should be paid some amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. And if no amount is paid during the pendency of such an application, it has to be held that the workman concerned has been denied a reasonable opportunity to defend himself in the proceedings before the Tribunal. Such denial leads to violation of principles of natural justice and consequently vitiates the proceedings before the Tribunal under sub-sec. (3) of sec. 33 of the Act and any decision given in those proceedings against the workman concerned. No material has been placed before us in this case to show that the appellant had sufficient means to defend himself before the Tribunal.

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8. But in neither of the above two decisions the Court considered the question from the angle from which we have approached the problem. In neither of them, the Court had the occasion to consider whether the denial of payment of subsistence allowance during the pendency of the proceedings under Sec. 33 (3) of the Act would amount to violation of principles of natural justice. They approached the question from the angle of the common law right of a master to keep a workman under suspension either during the pendency of a domestic enquiry into an act of misconduct alleged to have been comitted by a workman or during the pendency of an application under Sec. 33 of the Act. Those were perhaps halcyon days when such applications were being disposed of quickly. If the Court had realised that such applications would take nearly six years as it has happened in this case, their view would have been different. An unscrupulous management may by all possible means delay the proceedings so that the workman may be driven to accept its terms instead of defending himself in the proceedings under Sec. 33 (3) of the Act. To expect an ordinary workman to wait for such a long time in these days is to expect something which is very unusual to happen. Denial of payment of atleast a small amount by way of subsistence allowance would amount to gross unfairness."

In the present case, the employer had already succeeded in virtually killing the union and making the workmen totally defenceless and helpless. Six out of 21 workmen have already settled with the employer. If such gross injustice and illegality continues and one after another workman is made to settle or to struggle and defend, it would not only be denial of natural justice but also of substantial justice and justice according to law. In that *case of Fakirbhai* (supra) and in the case of *State of Maharashtra v. Chandrabhan,* AIR 1983 SC 803, a person who was deprived of his means of livelihood, even of the means of subsistence and was made to face the inquiry and legal proceeding, it was held to be a denial of reasonable opportunity to him and it was held to be violation of the principles of natural justice and the ultimate dismissal, after such deprivation, was held to be illegal. This is also an additional and substantial reason why the workman should get wages legitimately and justly due to him.

19. In the result, the petition succeeds and the rule is made absolute by quashing and setting aside and reversing the judgment of the Labour Court and the application of the workman for a direction to the employer to give full salary to the petitioner-workman from the date of dismissal till the date of final award in the Reference is granted. The respondent-employer is directed to pay all the arrears of salary from the date of dismissal, i.e., April 20, 1991 till today and to continue to pay regularly every month. The amount of arrears of salary is directed to be paid within two months from today. The employer is directed to produce within one month a computation of the amounts payable under this judgment, in the Labour Court and this Court. The respondent shall also pay costs of this petition quantified at Rs. 2500/- to the petitioner.

(JBS) *Petition allowed.*

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