framed a preliminary issue and ultimately held that the suit did not disclose any cause of action. 'To reject a plaint under Order VII, rule 11, of the Code, the Court right at the initial stage has to go through the contents of the plaint and unaided by any defence taken subsequently by the defendant has to form its view, on the basis of the plaint, whether it discloses a cause of action or not. However, as already mentioned above, the plaint in accordance with the provisions of the Code referred to the mortgage deed dated 20th August, 1953 and was accompanied by a copy of it which had to be perused as a part of the plaint. On consideration of the plaint coupled with the recitals contained in the copy of the mortgage appended with it, it is clear that no cause of action had arisen in favour of the respondent on 25th January, 1985 when he filed the instant suit. Consequently, the plaint was rightly rejected by the learned trial Court.

(10) In view of what has been stated above, I allow this appeal, set aside the judgment dated 3rd December, 1985, and restore the judgment and decree dated 3rd September, 1985 of the learned Sub-Judge, IInd Class, Panipat, rejecting the plaint. There shall be no order as to costs.

H.S.B.

Before : D. S. Tewatia and M. M. Punchhi JJ

COCA-COLA FACTORY WORKERS' UNION (REGD.),—*Appellant.*

Versus

MANAGEMENT OF PUNJAB BEVERAGES PVT. LTD. AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 35 of 1985

May 7, 1986

Industrial Disputes Act (XIV of 1947)—Section 23(c)—Workmen absenting from duty during the currency of an illegal strike—Services of such workmen terminated by way of punishment for participating in the strike—Management neither holding domestic enquiry before passing order of termination nor proving misconduct of workmen before the Industrial Tribunal—Mere participation in an illegal strike—Whether entitles the management to terminate the services of the workmen—Said order—Whether liable to be quashed.

Held, that when it comes to the meting out of punishment to workers participating in an illegal strike as defined in Section 23(c)

of the Industrial Disputes Act, 1947, mere participation in such a strike *per se* is not sufficient to prove misconduct leading to the termination of services of the workmen. What is sufficient to merit termination of service by way of punishment is not dependent upon merely the fact that the given law or standing order does prescribe the punishment of termination of service or dismissal from service for participation in an illegal strike. Before inflicting punishment by way of termination of service distinction has to be drawn between those who were mere participants in such an illegal strike and those who played an activist role. The management must establish, either during the domestic enquiry or before the Industrial Tribunal that the worker in question indulged in vandalism or violence, instigation or sabotage. Where the management having not held the domestic enquiry before terminating the services of the workmen nor having adduced any evidence against the workmen regarding the individual misconduct there is no escape from the conclusion that the order terminating the services of the workmen passed by the management was illegal and liable to be quashed.

(Paras 11, 13 and 17)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment and order of the learned Single Judge dated October, 15, 1984, passed by Hon'ble Mr. Justice I. S. Tivana, in Civil Writ Petition No. 114 of 1981—Management of Punjab Beverages Private Limited vs. *Industrial Tribunal Union Territory, Chandigarh and others.*

J. C. Verma, Advocate, *for the appellant.*

Anand Prakash, Senior Advocate, Vinod Sharma and S. C. Kapur, Advocates with him, *for the respondent.*

JUDGMENT

D. S. Tewatia, J.

(1) This Letters Patent Appeal at the instance of the Coca-Cola Factory Workers' Union is directed against the Single Bench judgment dated 15th October, 1984, rendered in Civil Writ No. 114 of 1981 allowing the petition and quashing the award of the Industrial Tribunal dated 29th October, 1980, rendered in Reference No. 10 of 1973 quashing the termination orders passed by the Management of the Punjab Beverages (Private) Limited, Chandigarh, hereinafter referred to as the respondent-management, and ordering reinstatement of all the concerned workers, excepting 71 workmen

who had settled with the respondent-management and had abandoned their duties and 5 workers out of 20 workmen mentioned in paragraph 12 of the statement of claim, with 50 per cent backwages and other service benefits with continuity of service.

(2) The case set up by the appellant before the Tribunal was that the respondent-management used to manufacture soft drinks like Coca-cola, Fanta and Soda etc. To begin with, there was only one Workers' Union known as Coca-Cola Factory Workers' Union. This Union in the year 1971 served demand notice dated 21st December, 1971, on the respondent-management on behalf of 131 workers. This demand notice was settled as per memorandum of Settlement dated 9th February, 1972. This Union thereafter served fresh demand notice on the respondent-management on 24th June, 1972. It was the case of the Coca-Cola Workers' Union that the Punjab Beverages Workers' Union was the respondent-management's sponsored Union; that that Union served on the Management and the Reconciliation Officer on 23rd June, 1972 the demand notice allegedly dated 26th May, 1972 virtually mentioning therein the very demands which had been mentioned by the Coca-Cola Factory Workers' Union in its demand notice dated 24th June, 1972; that the Conciliation Officer started parallel conciliation proceedings on the demands of the Punjab Beverages Workers' Union without the knowledge of the appellant Union; that the respondent-management in connivance with the Conciliation Officer got a settlement reached with the Punjab Beverages Workers' Union in regard to their demand,—*vide* settlement dated 17th August, 1972, annexure P. 2; that when the appellant Union came to know of the aforesaid farcical settlement, it reiterated its demand by fresh demand notice dated 8th March, 1973, which demands were taken up for conciliation by the Conciliation Officer; that the respondent-management on 31st March, 1973 suspended 45 workers belonging to the appellant Union including its President, Vice-President, Secretary, Joint Secretary, Cashier and the Executive Members with a view to pressurise the appellant Union in regard to its demand notice dated 8th March, 1973; that the appellant Union represented majority of the workers; that as a result of the said provocative act on the part of the respondent-management the workers went on lightning strike; that on 31st July, 1973, the Government made the following reference under section 10 of the Act : (annexure R. 4) :

> "Whereas the Chief Commissioner , Chandigarh, is of the opinion that an industrial dispute is apprehended between

the Coca-Cola Factory Workers' Union and the management of the Punjab Beverages Private Ltd: Chandigarh, regarding the matters hereinafter appearing;

And whereas the Chief Commissioner, Chandigarh, considers is desirable to refer the dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Chief Commissioner, Chandigarh, is pleased to refer to the Labour Court, Chandigarh, the matters specified below for adjudication :

"Whether the strike by some of the workers of the Punjab Beverages Private Limited, Chandigarh, is illegal in the facts and circumstances of the case."

and also passed the order stating that the continuation of the strike thereafter was to be illegal; that in view of this the appellant Union called off the strike and gave a notice to that effect to the respondent-management, annexure R-6, calling upon them to permit the workers to join duty; that the respondent-management, however, did not permit the workers to join duty and a complaint regarding that was made to the concerned officer,—*vide* Exhibit A. 4 in Reference No. 6 of 1973.

(3) On the other hand, the case set up by the respondent-management before the Industrial Tribunal, as also in its writ petition, was that the settlement dated 17th August, 1972, with the Punjab Beverages Workers' Union was a genuine and *bona fide* settlement; that the Punjab Beverages Workers' Union was a genuine workers union commanding majority of the membership of the workers; that after serving of the demand notice dated 8th March, 1973, the workers belonging to the appellant Union stated slow-down strike; that when despite persuation by the respondent-management they continued their slow-down strike, the management suspended 45 workers who were protagonists of the slow-down strike; that the strike launched by the appellant Union and its workers who, in any case, represented minority of the work-force of the respondent-management, was illegal in view of the binding nature of the settlement dated 17th August, 1972, on the whole-body

of workers, including the members of the appellant Union in view of the provisions of section 18(3) read with section 12 of the Industrial Disputes Act, hereinafter referred to as the Act; that the respondent-management served individual notices upon the striking workers to resume work and they were also called upon to do so through public notices in the language newspapers, namely. 'Daily Milap' (Urdu), 'Daily Milap (Hindi), and 'Akali Patrika' (Punjabi) making it clear to them that if they did not join by the given date, their services would be terminated; that since the striking workers in question did not resume duty in response to the individual and public notices, their services were terminated with effect from 22nd May, 1973; that the reference made by the Government under section 10 of the Act was not legal; and that the services of the striking workers having been terminated, question of allowing them to resume duty did not arise, as in the meantime the respondent-management had recruited fresh hands to take their places. It was also their case that the striking workers had picketted the gate and by force were stopping the workers from entering the factory; that in view of the violence indulged in by the striking workers, the police was called; that the loyal workers were kept inside the factory and, that the workmen also issued a hand-bill giving reasons for the strike.

(4) The Industrial Tribunal framed the following four issues :

"(1) Whether 71 workmen out of the total workmen involved in the dispute in question had settled their case individully with the management and if not, what is its effect ?

(2) Whether the strike resorted to by the workmen was illegal and on that account the management was justified in terminating the services of the workmen mentioned at S. No. 1 to 194 in paragraph 1 of the statement of claim ?

(3) Whether the workmen mentioned at Sr. No. 1 to 20 in paragraph 12 of the statement of claim joined the alleged strike and did not otherwise absent themselves from duty and if so, whether the management could treat them to have left services of the management due to long absence ?

(4) Whether the workmen are entitled to reinstatement with full back wages and continuity of service ?"

Since the legality of the strike formed subject-matter of a separate reference (Reference No. 4 of 1973) referred for adjudication to the Labour Court, the Industrial Tribunal did not render any finding in regard to the legality of the strike under issue No. (2), as it was of the view that even if the strike was assumed to be illegal, then too the action of the management in terminating the services of the workmen mentioned at Serial Nos. 1 to 194 in paragraph 1 and of 20 workers mentioned in paragraph 12 of the statement of claim was bad. So the Industrial Tribunal proceeded to examine the action of the respondent-management on the assumption that the strike in question was illegal and unjustified and it ultimately came to the conclusion that the action of the respondent-management in terminating the services of the striking workmen was not justified. By the time, the Industrial Tribunal gave its award, the Labour Court had not announced its award regarding the legality of the strike.

(5) The award of the Industrial Tribunal was challenged by the respondent-management in this Court.

(6) During the pendency of the petition, the Labour Court also gave its award holding the strike to be illegal, of which fact the learned Single Judge took notice as the affirmation of the assumption made by the Industrial Tribunal regarding the illegality of the strike.

(7) Before the Industrial Tribunal, as also before the learned Single Judge, two judgments of the Supreme Court were made to vie for supremacy on behalf of the parties for clinching the issue in favour or against the parties—*The Oriental Textile Finishing Mills, Amritsar* v. *The Labour Court, Jullundur and others,* (1), relied upon on behalf of the respondent-management; and *Gujarat Steel Tubes Ltd. etc.* v. *Gujarat Steel Tubes Mazdoor Sabha and others* (2) relied upon on behalf of the appellant Union—even on the assumption that the strike was illegal and unjustified.

(8) The point at issue is as to whether mere participation in an illegal strike by remaining absent from duty is *per se* enough to justify termination of service. This issue came up for consideration

(1) A.I.R. 1972 S.C. 277.
(2) A.I.R. 1980 S.C. 1896.

before the Supreme Court in *India General Navigation and Railway Co. Ltd. and another* v. *Their workmen* (3). Their Lordships in that case, after observing in paragraph 23 with the observation that the strike was illegal and unjustified, took up for consideration the question as to what punishment, if any, should be meted out to the workmen who took part in the illegal strike. In paragraphs 24 and 25 of the judgment, their Lordships observed :

> "To determine the question of punishment, a clear distinction has to be made between those workmen who not only joined in such strike, but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations or acted in defiance of law and order, on the one hand, those workmen who were more or less silent participants in such a strike, on the other hand. It is not in the interest of the industry that there should be a wholesale dismissal of all the workmen who merely participated in such a strike. It is certainly not in the interest of the workmen themselves ...The punishment of dismissal or termination of services has, therefore, to be imposed on such workmen as had not only participated in the illegal strike, but had fomented it, and had been guilty of violence or doing acts detrimental to the maintenance of law and order in the locality where work had to be carried on. While dealing with this part of the case, we are assuming, without deciding, that it is open to the management to dismiss a workman who has taken part in an illegal strike.....In order to find out which of the workmen, who had participated in the illegal strike, belong to one of the two categories of strikers, who may, for the sake of convenience, be classified as (1) peaceful strikers, and (2) violent strikers; we have to enquire into the part played by them. That can only be done if a regular enquiry has been held, after furnishing a charge-sheet to each one of the workmen sought to be dealt with, for his participation in the strike. Both the types of workmen may have been equally guilty of participation in the illegal strike, but it is manifest that both are not liable to the same kind of punishment ....."

(3) A.I.R. 1960 S.C. 219.

The aforesaid view was reiterated by their Lordships in *I.M.H. Press, Delhi* v. *Additional Industrial Tribunal, Delhi and others* (4) as would be clear from the following observations :

> "It has been held by this Court in Indian General Navigation and Railway *v.* Their Workmen, A.I.R. 1960 S.C. 219, that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workmen taking part in the strike."

In that case, their Lordships distinguished *Model Mills Nagpur Ltd.* v. *Dharamdas* (5), where dismissal of workmen was upheld merely for taking part in an illegal strike by observing that "that was, however, a case where there was such a provision in the Standing Orders. The present however is not such a case for there are undoubtedly no Standing Orders in the appellant Press and, therefore, the general rule laid down in India General Navigation case, A.I.R. 1960 S.C. 219, will apply."

(9) The ratio of the judgment of the Supreme Court in *India General Navigation and Railway Co. Ltd. and another's case* (supra) was reiterated by their Lordships in *The Oriental Textile Finishing Mills, Amritsar's case* (supra), as is evident from the following observations :

> "This case merely illustrates what has been stated by us that even where the strike is illegal a domestic enquiry must be held. In the case before us admittedly there were no Standing Orders applicable to the Appellant. Nonetheless a domestic enquiry should have been held in order to entitle the management to dispense with the services of its workmen on the ground of misconduct. This view of ours is also supported by another case of this Court in *India General Navigation and Railway Co. Ltd.* v. *Their workmen* (6), where it was held that mere taking part in an illegal strike without anything further would not

(4) A.I.R. 1961 S.C. 1168.
(5) A.I.R. 1958 S.C. 311.
(6) 1960 2 S.C.R. 1=1960 S.C. 219.

necessarily justify the dismissal of the workers taking part in the strike...

Their Lordships nevertheless while concluding the judgment in paragraph 12 repelled the contention advanced on behalf of the workers that even where the strike was illegal in order to justify the dismissal or the order terminating the services of workmen on the ground of misconduct, the management must prove that they were guilty of some overt acts such as intimidation, incitement of violence with the following observations :

"We do not think that in every case the proof of such overt acts is a necessary pre-requite. In this case there is a persistent and obdurate refusal by the workmen to join duty notwithstanding the fact that the management has done everything possible to persuade them and give them opportunities to come back to work but they have without any sufficient cause refused, which, in our view, would constitute misconduct and justify the termination of their services. The workmen as spoken to by the Labour Officers and also as is evidenced by the documentary evidence to which we have referred, were unwilling to join duty till the workmen who were suspended were also taken back. There is nothing to justify the allegation that the management wanted to terminate their services under some pretext with a view to recruit them afresh and deprive them of accrued benefits. The notices clearly mention that the workmen would be free to join duty by a certain date and only after that date the management was prepared to entertain them as new entrants if they were to apply by the date specified in the notices. It appears to us, therefore, that management has proved misconduct and the stand taken by it was reasonable. There was nothing that it could do further in view of the unjustified attitude taken by the workers by staying away from work particularly after they were given over a month's time within which to commence work. In the view we take the order terminating their services was not improper..."

Above are the observations from that case on which the respondent-Management has rested its case.

(10) *In Gujarat Steel Tubes Ltd's case* (supra) while dealing with punishment, Krishna Iyer, J., who delivered the majority opinion, in paragraph 112 of the judgment, observed that—

> "...the strike being illegal is a non-issue at this level. The focus is on active participation. Mere absence without more may not compel the conclusion of involvement."

In paragraph 113, it was further observed that :

> "Likewise, the further blot on the strike, of being unjustified, even if true, cuts notice. Unjustified, let us assume; so what ? The real question is, did the individual worker, who was to pay the penalty, actively involve himself in this unjustified mis-adventure ? Or did he merely remain a quiescent non-worker during that explosive period ? Even if he was a passive striker, that did not visit him with the vice or activism in running an unjustified strike. In the absence of proof of the militant participant the punishment may differ. To dismiss a worker, in an economy cursed by massive unemployment, is a draconian measure as a last resort. Rulings of this Court have held that the degree of culpability and the quantum of punishment turn on the level of participation in the unjustified strike...Did any dismissed worker instigate, sabotage or indulge in vandalism or violence?"

To the contention on behalf of the management that if it would not have terminated the service of the workmen and would not have employed fresh hands, then the Mills would have been branded as sick unit, the reply of their Lordships was—

> "The Management's necessity to move the mill into production for fear of being branded a 'sick unit' is understandable. Of course, collective strike is economic pressure by cessation of work and not exchange of pleasantries. It means embrassing business. Such a quandary cannot alter the law. Here the legal confusion is obvious. No inquest into the Management's recruitment of fresh hands is being made at this stage. The enquiry is into the

personal turpitudes of particular workmen in propelling an illegal and unjustified strike and the proof of their separate part therein meriting dismissal..."

Their Lordships delineated the procedure and scope of enquiry in the following words, while considering as to whether a workman has been legally punished :

"Is there a punishment of any workman ? If yes, has it been preceded by an enquiry ? If not, does the Management desire to prove the charge before the tribunal ? If yes, what is the evidence, against whom, of what misconduct ? If individuated proof be forthcoming and relates to an illegal strike, the further probe is this : was the strike unjustified? If yes, was the accused worker an active participant therein ? If yes, what role did he play and of what acts was he author ? Then alone the stage is set for a just punishment. These exercises, as an assembly-line process are fundamental..."

When their Lordships were confronted by the counsel for the Management with *The Oriental Textile Finishing Mills, Amritsar's case* (supra), they explained the position in the following words :

"We fail to see how it runs counter to the established principle. The Court, in fact, held that even where the strike is illegal, before any action was taken with a view to punishing the strikers a domestic enquiry must be held. Even though the Standing Orders prescribing enquiry before punishment did not provide for any such enquiry the Court held that nonetheless a domestic enquiry should have been held in order to entitle the management to dispense with the service of the workman on the ground of misconduct, viz. participation in the illegal strike. After so saying, the Court agreed with the view of the Court in India General Navigation and Railway Co. Ltd. case (supra) and reaffirmed the principle that mere taking part in an illegal strike without anything further would not necessarily justify the dismissal of all the workers taking part in the strike..."

Their Lordships did notice that aspect of *The Oriental Textile Finishing Mills, Amritsar's case* (supra), which was highlighted in paragraph 12 of the judgment and when a contention was advanced on the basis of those observations on behalf of the management, they repelled the contention with the following observations :

> "Sri Sen, of course, relied on this judgment to show that where a strike was resorted to and the workers were called upon to join service within the stipulated time, on their failure it was open to the company to employ new hands. This is reading more into the ruling than is warranted..."

The legal position that was clearly stated in *India General Navigation and Railway Co. Ltd. and another's case* (supra) was that mere participation in an illegal and unjustified strike was not enough to justify termination of service of a workman, the management must prove his activist role in the strike. This was affirmed by a Bench of the same strength in *I.M.H. Press, Delhi's case* (supra). A Bench of co-equal strength in *The Oriental Textile Finishing Mills, Amritsar's case* (supra) after approvingly quoting the legal position stated in the *India General Navigation and Railway Co. Ltd. and another's case* (supra), nevertheless took a view that mere participation in a strike added to the fact of his refusal to join duty in response to the notice served upon him, would justify the termination of service.

(11) Not responding to the notice of the management to resume duty would not signify an activist role in the strike envisaged in *India General Navigation and Railway Co. Ltd. and another's case* (supra) and *I.M.H. Press, Delhi's case* (supra), which position has not only been reaffirmed in *Gujarat Steel Tubes Ltd.'s case* (supra), but their Lordships in a way have not approved the deviation made in *The Oriental Textile Finishing Mills, Amritsar's case* (supra), as would be evident by their observations in paragraph 138, already extracted. We are, therefore, clearly of the view that the judicial concensus at the highest level when it comes to the meting out of punishment to workers participating in an illegal and unjustified strike is that mere participation in such a strike *per se* is not sufficient to impose punishment of termination of service on a

workman; the management must establish either during the domestic enquiry or failing that before the Tribunal that the worker in question indulged in vandalism or violence, instigation or sabotage.

(12) Dr. Anand Prakash, Senior Advocate, appearing for the respondent-Management, however, invited our attention to *Bata Shoe Co. (P) Ltd: v. D. N. Ganguly and others* (7), in which their Lordships sought to explain the following observations from *India General Navigation and Railway Co. Ltd: and another's case* (supra)—

> "To determine the question of punishment, a clear distinction has to be made between those workmen who not only joined in such strike, but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations or acted in defiance of law and order, on the one hand, those workmen who were more or less silent participators in such a strike, on the other hand..."

by stating that "those observations have, however, to be read in the context of that case which was (1) that it was not shown in that case that an employee merely taking part in an illegal strike was liable to be punished with dismissal under the Standing Orders, and (2) that there was no proper managerial enquiry. In these circumstances the quantum of punishment was also within the jurisdiction of the Industrial Tribunal. In the present case, however, the finding of the tribunal was that there was misconduct which merited dismissal under the Standing Orders and that the managerial enquiry was proper. In these circumstances those observations torn from their context could not be applied to the facts of this case. The reasoning of the tribunal therefore that as those 47 workmen had not taken part in violence the appellant was not justified in dismissing them could not be accepted on the facts of that case."

(13) It may be observed that in *Bata Shoe Co. Ltd.'s case* (supra), the domestic enquiry had been held and the Standing Orders applicable to the case provided for punishment with dismissal of workmen participating in an illegal strike. Holding of an enquiry was a condition precedent for imposing punishment. Such an

(7) A.I.R. 1961 S.C. 1158.

enquiry may be a domestic enquiry and if no domestic enquiry is held, then requisite material proving the misconduct can be placed before the Tribunal. But what is sufficient to merit termination of service by way of punishment is not dependent upon merely the fact that the given law or the Standing Order does prescribe the punishment of termination of service or dismissal from service for participating in an illegal strike. If such a power is not there, then the question of imposition of that punishment would become questionable in all circumstances. In *India General Navigation and Railway Co. Ltd. and another's case* (supra), which was decided by a larger Bench, their Lordships proceeded on the assumption that the management was entitled to dismiss the workmen who had taken part in an illegal strike and then put the striking workers into two categories (1) those who were the mere participants in such an illegal strike, and (2) those who played activist role, and then stated the position that the workers who merely participated in the illegal strike, their services could not be terminated.

(14) In view of this, with respect, the reason given by their Lordships in the *Bata Shoe Co. (P) Ltd.'s case* (supra) for distinguishing the aforesaid view of their Lordships in *India General Navigation and Railway Co. Ltd. and another's case* (supra) was not germane.

(15) Another case, that was relied upon by Dr. Anand Parkash, Senior Advocate, was *Mill Manager, Model Mills Nagpur Ltd.* v. *Dharam Das etc.,* (8), in support of his contention that the services of the striking workmen participating in an illegal strike could be terminated.

(16) That was a case where the Standing Order applicable provided imposition of punishment of dismissal for taking part in an illegal strike. In that case, due enquiry had been held by the management for terminating the services. In that case only two questions appear to have been touched (1) whether for participation in an illegal strike a workman could be dismissed, and (2) whether the order of dismissal had been passed after holding a due enquiry by the management?

(8) A.I.R. 1958 S.C. 311.

(17) In the present case, admittedly, the services of the workmen were terminated without holding a domestic enquiry, as is evident from the evidence of RW4 G. S. Cheema, Administrative Officer, who stated that no charge-sheet was served individually upon any worker. Nor any evidence pertaining to individual misconduct of a workman was adduced before the Tribunal. The Tribunal while dealing with this aspect commented that the only evidence in this regard was of RW4 Cheema, which was of a general nature. The respondent-management having not held a domestic enquiry before terminating the services of the workmen, nor having adduced any evidence against the workmen regarding their individual misconduct, there is no esccape from the conclusion that the order of termination of the services of the workmen passed by the respondent-management was illegal.

(18) The question as to whether the strike launched by the workmen on 31st March, 1973 was illegal was left undecided by the Tribunal in view of the fact that this very question was subject-matter of another reference. In our opinion, even if it was so, this very question did arise from the reference made to the Tribunal also and the Tribunal, on the material adduced before it, could not shirk its responsibility from pronouncing thereupon.

(19) The Labour Court, while deciding Reference No. 4 of 1973, has, no doubt, held that the strike launched by the workmen was illegal, in view of the provisions of section 23(C) of the Act. The reason given by the Labour Court for so holding is that the strike was launched during the period when settlements dated 9th February, 1972 and 17th August, 1972 were in operation. The provisions of section 23(C) are in the following terms :

> "23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—
>
> * * * * *
>
> (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

A perusal of the aforesaid provisions would show that the reason for going on strike must relate to the matters covered by the settlement.

(20) In the present case, the workmen before the Tribunal, as also in their written statement, have taken the stand that they went on strike as a result of the provocation given by the respondent-management by suspending 45 workmen belonging to their Union, which included the President, Vice-President, Secretary, Joint Secretary, Cashier and Executive Members. It has been asserted that they did not go on strike in pursuance of the demand notice dated 8th March, 1973. In this regard, attention is invited to the written statement of the workmen, and Annex. R-3 annexed therewith, in which the workman denied the allegations of the respondent-management that the workmen, in support of their demand contained in demand notice dated 8th March, 1973, first went on slow-down strike when the respondent-management acted by suspending 45 workmen, the workers went on lightening strike, which continued till 31st July, 1973, the date on which the present reference was made by the Government and continuation of the strike was notified to be illegal. The workmen denied the fact that they went on slow-down strike and in this regard drew attention to paragraph 13 of their written statement, the relevant portion of which is as under :

> "13. Para 13 is totally denied...It is totally denied that any go-slow had started or was being adopted. As a matter of fact, the production of the factory depends on its demand. Sometimes the demand is higher the production is ordered to be higher and in case the demand is lower the production is also lower. No cogent evidence is produced by the management to establish the go-slow. The go-slow was vehemently denied."

They also denied the fact that any appeal in question had been issued by the workmen and in this regard drew attention to paragraph 17 of the written statement before this Court :

> "17. Para 17 is totally denied. No such pamphlet was issued by Shri O. P. Sharma. It is a creation of the management itself. It has been proved on the record...The handbill as mentioned in this para was not issued by Shri O. P. Sharma and was denied by him in the witness box."

In our opinion, the workmen did not go on slow-down strike. The lesser production could be relatable to various factors, say, non-disposal of accumulated stock and the break-down in power supply. A complete chart is maintained by the respondent-management pertaining to the running of the plant in which reasons for no-production, low-production, or higher-production are to be mentioned. In accordance with the chart produced by the respondent-management for the month of March 1973, 10,67,446 crates were filled up for the period from 8th March, 1973 to 30th March 1973. There was no mention of the fact that there was low production due to go-slow strike in the column of remarks. Only on 31st March, 1973 in the column of remarks, it was mentioned that the plant was stopped due to labour trouble. In this regard, reference to the statement of RW6 Tirath Ram Sharma an employee of the Management, may be made, the relevant portion of which is as under :

> "There was no minimum daily quota of production of Coca Cola, Fanta and Soda fixed...If demand increases, shifts are reduced accordingly. There may be reduction in production, for failure of electricity, causing of defect in machinery...Slow speed is made according to the exigencies of service of the situation. The slow down is mentioned in the remarks column of production. It is not specified that it was due to labour trouble, though on 31st March, 1973 it is mentioned in the remarks column that the plant is stopped due to labour trouble. It is true that in the production reports from 18th March, 1973 to 28th March, 1973, there is no mention of slow-down in the remarks column..."

Forty-five workmen were admittedly, suspended by the respondent-management on 31st March, 1973 and that very day thereafter the workmen went on the lightning strike. In the circumstances, there appears to be merit in the contention of the appellant Union that 45 workmen were suspended in order to pressurise the workmen to withdraw their demand notice dated 8th March, 1973. The reason for the strike, therefore, related only to the provocative action of the respondent-management and the suspension of 45 workmen. This reason has no relation whatsoever with the matters covered by the settlement dated 9th February, 1972 or the settlement dated 17th August, 1972. In view of this, in our opinion, the strike in question could not be labelled to be illegal and unjustified.

(21) The strike being legal and justified, the termination of the services of the workmen was, therefore obviously illegal and unjustified.

(22) Now the next question that falls for consideration is as to what relief the workmen are entitled to. In the circumstances of this case, we are of the opinion that reinstatement of the workmen with fifty per cent back-wages and other service benefits in continuity of service would meet the ends of justice for all the workmen in the present case are the permanent workers of the respondent-management, and we order accordingly.

(23) While ordering reinstatement, we are aware of the fact that in the meantime the respondent-management might have employed fresh hands, but in this regard our burden is somewhat lightened by the fact that when during the proceedings we tried to get the parties to arrive at some compromise, the respondent-management made an offer to reinstate the workmen in question with payment of five year's minimum wages which offer was not acceptable to the appellant Union.

(24) For the reasons aforementioned, we allow the appeal, set aside the judgment of the learned Single Judge dated 15th October, 1984 and maintain the award of the Industrial Tribunal dated 29th October, 1980 with costs which are assessed at Rs. 1,000 (Rs. One thousand only).

R.N.R.

Full Bench

Before P. C. Jain, C.J., D. S. Tewatia and S. P. Goyal, JJ.

COMMISSIONER OF INCOME TAX,—*Appellant.*

versus

MOHINDER LAL,—*Respondent.*

Income Tax Reference No. 219 *of* 1980

August 14, 1986.

Income Tax Act (XLIII of 1961)—*Sections* 271(1)(c) *and* (2) *and* 274(2) *as amended by Taxation Laws (Amendment) Act,* 1975—*Section* 65—*Income Tax Officer while framing assessment recording a finding that assessee had concealed income above Rs.* 25,000—*Said I.T.O.*