THE HIGH COURT OF KARNATAKA AT BENGALURU DATED

THIS THE 20TH DAY OF SEPTEMBER 2017

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

WRIT PETITION No. 63562/2016 (L-KSRTC)

KARNATAKA STATE ROAD TRANSPORT CORPORATION BANGALORE

v/s.

JOHN D'SOUZA

ORDER

Heard the learned counsel for the petitioner and the respondent/Party-in-person.

2. This court has embarked upon a detailed examination of the facts in view of the innumerable rounds of litigation between the parties before the Tribunal, this court and the Hon'ble Apex Court.

3. The facts in detail, necessary for the disposal of the case is that, the respondent who was employed as a Conductor with the petitioner-Corporation came to be transferred and relieved from Mangalore Division and posted in the Kanakapura Depot of Bengaluru Rural Division. That he was granted seven days joining time from 01.08.2005 to 07.08.2005 and that he reported to duty and worked for two days and thereafter, applied for Casual Leave from 12.08.2005 to 14.08.2005 and 15.08.2005 being a national holiday, the petitioner resumed duty on 16.08.2005 and worked till 17.08.2005.

4. The gist of the allegation against the respondent-Conductor is that, thereafter from 18.08.2005 to 28.08.2005, the petitioner remained absent without obtaining prior permission and hence, a report regarding unauthorized absence was prepared on 24.08.2005 by the Traffic Manager and forwarded by the Depot Manager to the Divisional Controller on 25.08.2005 stating that on account of the unauthorized absence, the Depot has suffered monetary loss on account of disruption of services and also resulted in inconvenience to passenger. Hence, the Disciplinary Authority deemed it fit to order an enquiry.

5. Accordingly, Articles of Charges dated 23.06.2006 was issued. The Enquiry Officer conducted enquiry and documents M1 to M6 came to be marked.M1 is the report of the Depot Manager, M2 is a Leave Application, M3 is the Report submitted by the Depot Manager to the Administrative Officer, M4 to M6 are the copies of the Muster Roll. The Enquiry Officer after recording the evidence of MW1 (K.K. Venugopal) and MW2 (Muthuraj) and their cross examination, adjourned the hearing on six dates, but as the delinquent officer failed to place any material on record, he closed the evidence on the side of the delinquent workman and thereafter the Enquiry Officer held the charges as proved and forwarded his report.

6. The Disciplinary Authority, based on the said enquiry report, got issued a show cause notice dated 31.08.2010 which elicited a detailed reply from the respondent-workman. The Disciplinary Authority being dissatisfied with the reply and further placing reliance on the numerous proceedings pending against him for misbehavior was pleased to accept the Enquiry finding and passed the order of dismissal, removing the respondent from the services of the petitioner-Corporation.

7. That a dispute had been raised in I.D. REF. No.243/2006 and as the said dispute was pending consideration, the petitioner-Corporation made an application seeking for approval as mandated by the provisions of Section

33 (2) (b) of the Industrial Disputes Act (hereinafter referred to as " I.D. Act " for short).The said application came to be numbered as S.A. No.1/2010.The Corporation got marked documents Exhibit-A1 to A-34 and got examined two witnesses, one Rangaswamy, Retd. Law Officer who incidentally was the Enquiry Officer (AW- 1) and one S. Ravi (Supervisor) (AW- 2).It is pertinent to note that the witnesses examined before the Labour Court, are different witnesses, than the ones examined during Enquiry in support of its case.(emphasis by this court).The workman got himself examined as respondent witness and got marked Exhibits-R1 to R104.That the labour court after considering the facts in the light of the material placed before it, was pleased to hold that the enquiry held by the applicant-Corporation was fair and proper. But proceeding further by its award dated 06.11.2013 it held against the Corporation on the ground of victimization and proportionality of the punishment. Aggrieved by the award, the petitioner preferred W.P. No.10271/2014.

8. In the aforesaid writ petition it was contended

that the labour court had seriously erred in permitting the respondent to lead evidence on the merits of the matter and that the labour court in respect of an enquiry pertaining to an application for approval under Section 33 (2) (b) of the I.D. Act is required to only look into the material evidence on record and examine whether the findings recorded in the domestic enquiry were just and proper. Such a contention is canvassed before this Court suppressing the fact that, it is the petitioner who let in additional evidence and got marked additional documents and got examined two additional witnesses, including the Enquiry Officer [underlining by this Court].That the labour court erred by rendering a finding on merits with regard to the plea of victimization and disproportionate punishment. This court found that the finding regarding proportionality of the punishment imposed, was on the basis of earlier orders passed by the the petitioner Corporation. This Court found that in cases of similar delinquencies, the Disciplinary Authority in 100's of cases has imposed a lesser punishment. That the Disciplinary Authority had also ignored the circular issued by the Managing Director which stipulated that the authorities have to adopt a uniform procedure in imposing punishment and hence held that, the labour court had concluded that the respondent had been singled out for harsher punishment and was was pleased to reject the application for approval and this court upheld the rejection of the application and was further pleased to dismiss the writ petition.

9. The petitioner aggrieved by the rejection of the writ petition, preferred a Writ Appeal No.30/2015.In the said Writ Appeal the petitioner-Corporation placing reliance on the ruling of the Hon'ble Apex Court rendered in the case of Martin Burn Ltd. V. R.N. Banergee reported in AIR 1958 SC 79 contended that the labour court transgressed the limits in respect of an enquiry, on an application seeking approval under the provisions of Section 33 (2) (b) of the Industrial Disputes Act. That the tribunal, only ought ought to consider the merits of the application and ought not to adjudicate the Industrial Dispute between the employer and the workman. The Hon'ble Division Bench of this court presided by the Hon'ble Chief Justice was pleased to hold that the tribunal while exercising its ' jurisdiction under Section 33 (2) (b) of the I.D. Act has failed to bear in mind the principles laid down in the Martin Burn LTD. V. R.N. Banergee case and concluded that the labour court had exceeded its jurisdiction under Section 33 (2) (b) of the I.D. Act and hence, was pleased to set aside the award passed by the labour court and was pleased to remand the matter to the labour court for consideration afresh. Thus the Serial Application No.1/2010 was taken up for re-hearing by the labour court.

10. This is the fifth round of litigation between the parties merely and only in respect of the approval application numbered as Serial Application No.1/2010 in REF. No.243/2006.It is not to state that the litigation between the parties is limited only to these five rounds of litigation. These are only some of the battles in the ongoing war between the parties. This court deems it necessary, for reasons to follow, the necessity to traverse the contours of some of the litigation between the parties.

11. The respondent had preferred a Writ Petition Nos. 11236-237/2012 and Writ Appeal Nos.537-538/2013.The said writ petition and writ appeal were in respect of the finding rendered by the labourt court in respect of the preliminary issue as to whether the enquiry conducted was fair and proper. The learned single judge was pleased to reject the writ petition. But the Division Bench after taking into consideration the nature of the order passed was pleased to hold as below:

" 7. In the above facts, we have no hesitation in holding that all the legal pleas and contentions available to the appellant for opposing the application of the respondent before the Labour Court are left open by the Labour Court and the only issue concluded by the order impugned before the learned Single Judge is as to whether the domestic enquiry held against him was fair and proper. Therefore, with these observations the appeals are dismissed ".

[emphasis supplied by this court].

12. That apart the respondent had also preferred a Review Petition in Writ Appeal No.30/2015 and the said Review Petition bearing R.P. No.375/2016 came to be rejected by order dated 02.09.2016.It is also relevant to note that the Division Bench of this court in Writ Appeal No.2363/2005 arising out of the order passed in W.P. No.25706/2002 & 7732-34/2005 was pleased to order as follows:

" In view of the agreement between the parties, we direct that the Corporation should serve a comprehensive charge sheet of all the allegations made against the appellant and if his explanation thereto is not satisfactory a retired District Judge from the panel maintained by the Corporation be appointed as enquiry officer who will enquire into those charges and submit the report within three months on the basis of which the Corporation shall proceed to take take action,, if any, in accordance with law. It is, however, made clear that the enquiries already held or initiated against the appellant shall not be pursued any further. "(emphasis supplied by this court).

13. It is seen that the above observation came to be made by the Hon'ble Division Bench of this court in the light of the allegations of bias leveled against the petitioner herein. There was also another Writ Appeal No.3766/2009 arising out of order dated 13.10.2009 passed in W.P. No.29861/2009.The said writ petition to be preferred calling in question the order placing the respondent herein, under suspension on account of a complaint dated 29.07.2009.The Division Bench of this court while disposing off the Writ Appeal was pleased to hold as follows:

" 7. In view of the above submission of the learned Counsel for the respondent Corporation, it would be just and proper for this court and having regard to the allegations made in the complaint vide Annexure- J and some of the witnesses have not signed in the complaint and two among them have given statement before the Deputy Chief Security Officer that no such alleged incident has taken place, in these circumstances, it would be just and proper for us to permit the appellant to give a representation today itself to the Disciplinary Authority and the same shall be considered and pass appropriate orders by revoking the suspension order pending enquiry and the disciplinary authority is directed to dispose of the enquiry proceedings expeditiously and conclude the same within three months from the date of receipt of certified copy of this order. On 23/01/2010, date of enquiry is fixed; the appellant-party-in-person shall attend the same. Till the enquiry is concluded, the service conditions of the appellant shall not be disturbed." (emphasis supplied by this court).

14. It is also relevant to note that the respondent herein had preferred a Spl. Leave Petition calling in question the order passed in Writ Appeal Nos.537 538/2013 and notice came to be ordered by the Hon'ble Supreme Court in the Special Leave to Appeal (Civil) No. (S) 34485-34486/2013 but subsequently on account of passing of the final award itself the SLP came to be dismissed as having been rendered infructuous.

15. In view of the peculiarities of this case, this court examines in detail, the reasoning rendered by the labour court, the second time around, to reject the serial application No.1/2010 preferred by the petitioner under Section 33 (2) (b) of the I.D. Act read with Rule 61 (2) of the Industrial Disputes (Karnataka) Rules, 1957.In this regard it is relevant to note that the labour court has embarked on a detailed examination of the facts and circumstances and has yet again been pleased to reject the application preferred under Section 33 (2) (b) of the I.D. Act seeking approval for the act of dismissing the respondent from service. The labour court has considered the fact of setting aside of the order of dismissal dated 05.10.1987 and consequential reinstatement by the Hon'ble Apex Court, the fact of suspension of the respondent and the report of the district judge absolving him of the charges and the act of the disciplinary authority rejecting the report and choosing to pass an order of dismissal from service.

16. It has also considered the fact that the respondent instead of calling in question the order of dismissal, proceeded to lodge a complaint against the Managing Director and that the management thereafter reinstated the respondent. That the management to avoid payment of backwages for the period of suspension had imposed a minor punishment which came to be called in question by the respondent in W.P. No.25706/2002 and resulted in this court directing an enquiry against the disciplinary authority and pursuant to the orders of this court in the aforesaid writ petition, enquiry was conducted and disciplinary authority was found guilty of eight charges and it was assured to this court that action would be initiated against him and consequently punishment came to be imposed on the disciplinary authority.

17. It has also considered the fact of a complaint against the disciplinary authority and the disciplinary authority being caught red-handed by the Lokayukta police while accepting/receiving a bribe of Rs.10,000/from a delinquent conductor. That thereafter the aforesaid writ petition came to be dismissed on the premise of availability of an alternative remedy. That despite the passage of several years though the petitioner had alleged nine charges in the objections, no enquiry was conducted and the respondent had called in question the order in W.A. No.3766/2009 which came to be disposed off with a direction to dispose off the enquiry within the stipulated time. Despite such a direction no enquiry has been conducted against the respondent.

18. It has also considered the fact of the respondent having filed complaints against the disciplinary authority and the Managing Director in Complaint No.377/2009 and 299/2010 and as Secretary of a Union called KSRTC & BMTC Samyukta Karmikara Sangha he has appeared in 523 disputes on behalf of co-worker's and in most of the disputes the employees have been ordered to be reinstated.

19. It is also alleged that third party workmen had preferred criminal complaint against the disciplinary authority and that the said officer was under the impression, that the same was on the instigation of the respondent and hence, nursed a grudge against the respondent. It has also taken into account the plea of the respondent that in cases involving unauthorized absence even for periods in excess of 150 to 200 days, the disciplinary authority has has condoned the same and continued them in service and that the respondent has been victimized for the above stated actions. It has also considered the fact of the respondent having made an application for sanction of 11 days leave from 18.05.2005 onwards. That it has also considered the fact of the respondent having reported to duty on receipt of the call notice. It has also considered the contention that the act of appointing an enquiry officer from the Bengaluru Central Division instead of Bengaluru Rural Division. It is further stated that intentionally no enquiry was held despite the order of the Division Bench and this is with an intention to victimize the respondent for his crusade against the corruption. On the pleadings before it the labour court formulated four issues for consideration which are as follows:

1. Whether domestic enquiry held against first party is fair and proper?

2. Whether the Enquiry Officer is justified in holding that the charges are proved?

3. Whether the disciplinary authority is justified in dismissing the first party?

4. To what award or order the parties entitled?

20. Issue No.2 and 3 are relevant for the purpose of this writ petition. The labour court has considered the relevant rulings relied on by the petitioner/applicant. After a detailed examination of the respective contentions and the material on record i.e. Exhibits A1 to A34 on behalf of the petitioner and the depositions AW1 and AW2 and after taking into consideration the deposition of the respondent as RW1 and the exhibits marked as Exhibit-R1 to R104 on behalf of the respondent was pleased to render a finding in the negative in respect of issue No.2 and 3, thereby holding that the enquiry officer was not justified in concluding that the charges were proved and also that the disciplinary authority was not justified awarding the punishment of dismissal from service. The tribunal has rendered the finding keeping in mind the terms of the order in W.A. No.30/2015 and in the light of the law laid down by the Hon'ble Apex Court in the case of Martin burn Limited vs R.N. Banerjee. The labour court has specifically adverted to the above at para 22. In para 23 it has held as follows:

" 23. In view of the specific observation and directions referred above I am of the considered view that this court cannot determine extraneous issues other than the restricted remand order. In the first place this court has to consider the Principles laid down in the decision reported in MARTIN BURN LTD VS R.N. BANERJEE reported in 1958 SUPREME COURT 79. Para 28 of the said judgment is quoted hereunder for ready reference

" 28. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service.A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed.While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.(See Buckingham and Carnatic Co. Ltd. Case (1). "

Perusal of the Para quoted above shows as to how prima facie case is to be examined. Prima-facie ref Latin-term, on the first appearance. A fact presumed to be true unless it is disproved. In common parlance the term prima facie is used to describe the apparent nature of something upon initial observation. In legal practice the term generally used to describe two things: the presentation of sufficient evidence by a Civil claimant to support the legal claim (a Prima facie case), or a piece of evidence itself (prima facie evidence).”

21. It is apparent that the labour court has bound itself to the parameters stipulated by the Hon'ble Apex Court and as directed by the Hon'ble Division Bench of this court. Proceeding further it has held that the application under Section 33 (2) (b) of the I.D. Act is an independent proceeding and not an interlocutory proceeding and in this regard, it has relied on the ruling of the Hon'ble Apex Court reported in 1978 SCC (L &S) 396 in the case of Lalla Ram V. D.C.M. Chemical Works wherein, the Hon'ble Apex Court has been pleased to hold as follows:

" In proceedings under S. 33 (2) (b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) Whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (ii) Whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee. "(emphasis by this court).

22. The labour court having regard to the parameters, as settled by the Hon'ble Apex Court, has proceeded to hold that it is not sufficient if the enquiry is found to be fair and proper but labour court is also required to look into the findings rendered by the enquiry officer and it has also reasoned that the enquiry officer must base his decision on materials produced before the forum and evaluation/appreciation of the material before the enquiry officer ought to be in a pragmatic manner and ought not to assign reasons which do not appeal to prudence.

23. It has further held that the fact of holding that the domestic enquiry was held in a fair and proper manner, would only be sufficient to hold that the charges were made known to the workmen and he was provided an opportunity etc. and proceeded to hold that mere intimating the charges to the workmen and affording him sufficient opportunity would not by themselves absolve the enquiry officer of rendering a report, which justifies the findings on the basis of the materials placed before it and supported by cogent reasoning. Keeping the above criterion in mind the labour court has proceeded to examine the serial application.

24. It has further examined Exhibit-A1 the Articles of charges which alleges that the respondent-workman has unauthorisedly absented himself. Proceeding further it has held that unauthorized absence means a deliberate and willful absence without obtaining the permission from the competent authority. It held that if the absence is for a sufficient cause and with intimation to the superior officer, then the same would not amount to an unauthorized or willful absence.

25. It has proceeded to examine the exhibit A2 the report of the depot Manager to the Divisional Controller regarding the absence from 18.08.2005 to 25.08.2005.It has also examined Exhibit A3 the leave application addressed by the respondent to the Depot Manager dated 17.08.2005 and concluded that the respondent had indeed made an application requesting for sanction of leave and hence, it held that the allegation of the petitioner-corporation that the respondent had not submitted any leave application was prima-facie incorrect.

26. It has also examined Exhibit A5 the letter dated 24.08.2005, addressed to the Administrative Officer by the Depot Manager, wherein it is stated that the leave sought by the respondent is treated as absent and in this regard the depot manager has obtained a report from the Assistant Supervisor of the Kanakapura depot and thereafter it has concluded that the enquiry officer has failed to appreciate the crucial document A3 and that the same amounts to infringement of principles of natural justice and to hold so it has relied on the ruling reported in AIR 1985 SC 1121 rendered in the case of Anil Kumar vs Presiding Officer and Others wherein, the Hon'ble Apex Court was pleased to observe as follows:

" Where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable. "

27. The labour court has further relied on the cross examination of AW1 to buttress it's finding wherein AW1 has admitted that the leave application has been submitted before him and has proceeded to find fault with the enquiry officer for having failed to adjudicate the genuineness of the leave application and reasons stated therein. It has further relied upon Exhibit R5 and R6.Exhibit R5 is the letter addressed by the Workman dated 29.08.2005 and sent through RPAD and served on the Depot Manager and Exhibit R6 is another letter sent through RPAD to the Divisional Controller and served on him vide R6 (b) an acknowledgement card. It has also noted that the respondent, in these two letters, has categorically asserted that he had applied for leave till 28.08.2005 and had reported to duty on 29.08.2005 and he was refused duty by the depot manager and he was directed to seek direction from the Divisional Controller and hence, the letter Exhibit R6 and has concluded that on a conjoint reading of Exhibit R3, R5 and R6, it can be deduced that the respondent had reported to duty on 29.08.2005 after a period, in respect of which he had applied for leave under Exhibit A3.

Proceeding further the labour court has observed that though exhibits R5 and R6 were available with the management, the management has suppressed the production of these two documents before the Enquiry Officer and has concluded that the finding is perverse in the light of the law laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Prakash Chand Jain reported in 1969 1 SCR735.

28. It has also relied on the cross examination of the management witnesses to conclude that the rejection of Exhibit A3, the leave application has not been intimated to the respondent workman. The conclusion is based on the admission by the Petitioners witness. Hence, the labour court has faulted the enquiry officer for having concluded that the respondent had unauthorizedly absented himself and held that it is unsustainable and concluded that the Enquiry Officer could not have at all arrived at the finding on the material before him.

29. It has also relied on R14 representation dated 20.09.2010 by the respondent-workman to the Divisional Controller wherein he has once again reiterated that though he reported for work after completion of the leave period stated in Exhibit A3, he was refused work by the Depot Manager and his leave application has not been considered. The labour court has further concluded that the Enquiry Officer has seriously erred in not appreciating the fact of non intimation of the rejection of the leave application and also for not stating the reason for not appreciating the leave application. It has also opined that the finding regarding habitual absence rendered is not at all substantiated. The observation of the enquiry officer that the respondent was in the habit of unauthorisedly absenting himself was despite the fact that no such material was ever placed before the enquiry officer nor was such a case pleaded or canvassed by the management and concluded that the enquiry officer has utterly failed to appreciate the oral and documentary evidence in their proper perspective while arriving at the conclusion that the respondent had deliberately and willfully absented himself from duty from 18.08.2005 to 28.08.2005.

30. It has further concluded that the enquiry officer has not at all appreciated Exhibit A3 in its proper perspective and also the fact that the respondent had reported to duty on 29.08.2005 and had the enquiry officer also considered the fact that the respondent was refused work for 61 days till 29.10.2005, the enquiry officer could not have arrived at such a conclusion. It has further concluded that the enquiry officer merely accepted the contentions of the management without assigning any cogent reasons for doing so and held that the enquiry report is an discursive report as it is vitiated by lack of legal reasoning and by perversity in the appreciation and evaluation of evidence. The labour court further held that the enquiry report is vitiated by the non application of mind in view of the fact that the enquiry report was totally oblivious to the defence put-forth by the respondent in the form of cross-examinations and the admission elicited.

31. The labour court proceeding further has held that the enquiry report was forwarded to the respondent along with the second show cause notice at Exhibit A30 and has observed that along with the second show cause notice Exhibit A29 alleged to be the past history was also enclosed and it is observed that the Exhibit A29 speaks about 31 misconducts. Proceeding further it has observed that none of the alleged misconduct have been demonstrated before it by producing the orders disposing off them. Relying on the admissions of AW2 elicited during the course of cross examination, it has observed that the respondent in the course of cross examination has elaborately elicited that the alleged misconducts were not proved. It is necessary and pertinent to recall the order of the Division Bench of this court at this juncture. The order extracted supra at Para 11, speaks volumes about the attitude and conduct of the officers of the Petitioner Corporation. That too the order in W.A. No.2363/2005 came to be passed on an arrangement arrived between the parties before the Division Bench. It has referred to paragraph 5 of the cross examination wherein, the witness has admitted that a fine of Rs. 10/-was imposed but was unable to state if the imposition of fine, was after holding an enquiry or without holding one nor was any material placed to demonstrate the imposition of fine. It has further elaborately discussed the admissions by the management witness AW2, which utterly demolishes the case canvassed by the petitioner-management. With regard to the alleged past misconduct the labour court has

faulted the management for having screened the alleged orders imposing the punishments. The same are not produced even before this court. It is pertinent to note that the very reliance on the alleged past mis-conduct is by itself a contumacious act being in contempt of the order of the Division Bench rendered in W.A. No.2363/2005, wherein it was ordered as;

"It is, however, made clear that the enquiries already held or initiated against the appellant shall not be pursued any further."

32. It has also noted that exhibit A29 is a computer generated copy and nothing can be made out as to whether any punishment or penalty was actually imposed and has concluded that this very fact is suffice to demonstrate that the disciplinary authority has resorted to victimization and hence has imposed the punishment of termination as in exhibit A30.It has also observed that exhibit A29, the alleged past history, was never before the enquiry officer nor was the documents (orders imposing punishments) made available to enable the respondent-workman to effect a detailed reply and concluded that the failure to provide the relied upon documents has prejudiced the respondent by disabling him from meeting out the bald allegations.

33. This court now proceeds to examine the petition averments. It is contended in para 8 that the labour court is required to examine only the material evidence before the Enquiry Officer to render a finding on the misconduct alleged. Such a contention is canvassed before this Court suppressing the fact that, it is the petitioner who let in additional evidence and got marked additional documents and got examined two additional witnesses, including the Enquiry Officer and it is contended that as the respondent failed to tender evidence, the enquiry officer decided the case on the basis of the documents available produced during the enquiry. It is contended that the purpose of enquiry is only to provide fair and reasonable opportunity to the workman to defend himself. That the leave application submitted by the workman is of no consequence as it was received on 24.08.2005 by the time the report was already sent by the Divisional Controller. This is prima facie, an erroneous statement as the noting by the Depot Manager on the leave application states that it received on 23.08.2005, that is prior to sending of the report on 25.08.2005.In fact, the report sent on 24.08.2005 is with regard to the leave application only. This is an improvement of its case before this court. Neither the petitioner nor the Enquiry Officer have doubted the veracity of the workman's statement/reasoning in the leave letter, that he was unwell. Nothing in this direction has either been suggested to him nor anything adverse elicited during the course of cross examination of the workman. If the cause shown in the leave letter, was doubted or if the workman was called upon to do so, the above contention would have merited consideration. Further, the leave application has been rejected, not on the ground that the reasons assigned were false or not substantiated, but on the ground that it is belated. It is further contended that such a report is mandated if an employee remains absent for a period of eight days without intimation. If that be so, then the report dated 24.08.2005 was premature as it is sent on the 6th day of absence itself. This fact is also not taken note of by the Enquiry Officer, which is reflective of either, serious non application of mind or a biased and prejudiced mind.

34. It is nextly contended that an employee is required to apply for leave and get it sanctioned before remaining away from duty. In the instant case as the leave application was received after submission of the report by the Depot Manager, the same cannot be construed as a leave application only. Further the said leave application was not accompanied by medical certificate and that the enquiry officer has rightly recorded a finding that the leave application is submitted belatedly and hence, a finding that he is unauthorisedly absent is valid. That the labour court erred in placing reliance on the material placed by the respondent-workman before the labour court though the said documents were not part of the enquiry report and cannot be considered by the labour court to examine the correctness of the order of the dismissal. In this regard it is pertinent to recall the order passed by the Division Bench of this court and headed by the then Hon'ble Chief Justice. The order came to be passed in W.A. Nos.537-538/2013 referred to supra. Therein the Division Bench

observed that all contentions and legal pleas are left open. This apart, this court takes serious note of the conduct of the petitioner. On the one hand it is vehemently argued and strenuously canvassed that the labour court ought ought not not to look into any extraneous material to rule upon the correctness of the finding by the Enquiry Officer, but must restrain itself to the material placed before the Enquiry Officer.

35. If the labour court has looked into other material, it is only on the insistence of the petitioner. It is the petitioner who got two additional witnesses examined and got introduced 18 additional documents before the labour court It is relevant and pertinent to note, that the witnesses who deposed before the Labour Court are not the witnesses before the Enquiry Officer, but it is the Enquiry Officer himself and another supervisor to speak about the " Past Mis-Conducts " which was never before the Labour Court. Having invigorated the Labour Court to render a finding in their favour, the petitioner's are to be estopped from contending otherwise. The petitioner cannot be permitted to Approbate and Reprobate. The same is also not illegal in view of law laid down by the Apex Court, in Martin's Burn case where it is held that the Labour Court is entitled to look into and enquire about allegation of victimization and unfair labour practice and the crux and core of the allegations by the respondent workman is that certain officers of the Petitioner Corporation, are abusing their powers to wreak vengeance for his real and perceived acts.

36. That the labour court ought to have examined the validity and correctness of the order of the dismissal only with reference to the documents placed before the enquiry officer. That the documents produced before the labour court were not available with the disciplinary authority. That the labour court has been influenced by the order passed in W.P. No.10271/2014 which has been set aside by the Division Bench. That the scope of enquiry, on an application under Section 33 (2) (b) of the I.D. Act is very limited. To buttress the above argument it is contended that the fact that the labour court has been influenced by the order in W.P. No.10271/2014 is evident by a reading of para 20 of the impugned order. For the sake of convenience para 20 is extracted below:

"Per contra the respondent in person relied on the decisions and also he has filed written arguments produced order copy of Writ Petition No.10271/2014 (L-KSRTC) dated 21.11.2014 and also produced copy of the Review petition bearing No.375/2016 filed by him before the Hon'ble High Court of Karnataka along with order dated 2.9.2016 wherein the Review application is dismissed. "

37. From a plain reading of the above, this court is unable to apprehend as to a how a mere reference to material relied on by one of the parties would become evidence of a fact of the court being influenced. The labour court has merely recounted the material relied upon by the respondent. It is contended that the labour court has observed in page 54 of the impugned order in the same manner as was earlier observed by the labour court in para 25 of the order dated 06.10.2013 and that the same amounts to reproduction of a portion of the order which was set aside by the Division Bench and hence, it stands vitiated. It is contended that labour court has failed to take into consideration the principles laid down by the Hon'ble Apex court in the case of Martin Burn Ltd. V. R.N. Banergee reported in AIR 1958 SC 79. It is contended that the labour court erred in placing reliance on Exhibit R5 and R6 as they were not part of the enquiry records.

It is contended that the reliance on Krishnakanth Paramar case is erroneous and that corporation need not demonstrate that the unauthorized absence was willful or deliberate. It is contended that the reason assigned in the leave letter that he was unwell is not supported by any documentary evidence. It is further contended that the respondent ought to have exercised restraint in the language employed by him against the officers of the corporation and the language employed by him is unwarranted, uncharitable and objectionable.

38. It is further contended that the fact of rendering of 29 years of service or the fact of attaining superannuation is immaterial, as there is no allegation that no facts, or material has been suppressed by the

petitioners and that he cannot be heard complaining of suppression as he has failed to utilize the opportunity to demonstrate his case that there is no malafide intention in passing the order of dismissal.

The petitioner has filed into the court memo dated 23.03.2017 enclosing therewith the call letter dated 05.09.2005 and the reply to the same by the respondent dated 20.09.2005.But there is no explanation by the petitioner as to why though call letter was issued on 05.09.2010, the workman was permitted to resume duty only from 29.10.2005.There is not even a suggestion in the cross examination of the workman, that he had deliberately absented himself despite receipt of call letter.

39. In reply the respondent has filed statement of objections and additional statement of objections to which the petitioner has filed rejoinder and has made a slew of allegations, which in totality, paints a picture that the respondent is being victimized. This court now proceeds to examine if any illegality is committed by the labour court or the appreciation of evidence by it is vitiated by perversity.

40. The petitioner has placed reliance on a catena of decisions to canvass the illegality and perversity in the order of the labour court.

41. The petitioner apart from relying on the rulings of the Hon'ble Apex Court in Martin Burn Ltd. V. R.N. Banergee has also placed reliance on the unreported judgment of the Hon'ble Apex Court rendered in Civil Appeal No.6765-66/2014 in the case of Management of TNSRTC Vs M. Chandrashekaran. The Hon'ble Apex Court in the said case was dealing with a case of disciplinary proceedings initiated against the workman on account of an accident caused by him resulting in fatal injuries and death. A contention was raised that no eye witness were examined by the department nor the Conductor of the bus or the passengers traveling in the bus were examined. Hence, the labour court deemed it fit to exonerate the workman. The Hon'ble Apex Court relying on the doctrine of Res ipsa loquitur was pleased to uphold the punishment. In the said facts the Hon'ble Apex Court was pleased to hold that the principles of Res ipsa loquitur squarely apply in the case on hand. The said principle is inapplicable in the facts and circumstances of the case. The Hon'ble Apex Court was pleased to hold that in the light of the law laid down in the Martin Burn Ltd. V. R.N. Banergee the Commissioner had committed a jurisdictional error while considering the application for approval of order of punishment under Section 33 (2) (b) of the I.D. Act. In the said case, the Hon'ble Apex Court was pleased to hold that the Commissioner had erred in re-appreciating the evidence and substituting a report of the enquiry officer with its own judgment it also was pleased to observe it was not a case of no legal evidence produced during the enquiry by the department in relation to the charges framed. The Hon'ble Apex Court was of the considered opinion that adequate material had been produced during the departmental enquiry and that the workman had not discharged the burden cast upon him to demonstrate that the accident had happened due to some other cause and hence, it held that the doctrine of Res ipsa loquitur squarely applies. In the instant case on hand, the categorical finding by the labour court is that the evidence before the enquiry officer was not sufficient evidence to arrive at the conclusion that the charge was proved and in fact the labour court has categorically held that the omission to consider the leave application was fatal and amounted to violation of principles of natural justice. The learned counsel for the petitioner has placed reliance on the ruling reported in ILR 2012 KAR 4473 which is rendered yet again by placing reliance on Martin Burn Ltd. V. R.N. Banergee case.

42. The learned counsel for the petitioner has placed reliance on the ruling of the Hon'ble Apex Court rendered in the case of Cholan Road Ways Vs G. Thirugnandasamandam which is is yet again a case, involving the causing of the accident by the workman of the Transport Corporation and the Hon'ble Apex Court placed reliance on the principles of Res ipsa Loquitur was of the opinion that the accidents speaks for itself or tells its own story and held that once the said doctrine is made applicable the burden of proof would shift on to the delinquent to demonstrate that he was not negligent.

43. In the instant case there is no clear cut material is placed before the Enquiry Officer to demonstrate the allegation of unauthorised absence. On the other hand, the leave application placed before the Enquiry Officer has not been considered by the Enquiry Officer. Furthermore, it is an admitted fact that rejection of the leave application is not communicated to the delinquent workman, leading to the ambiguity in reasoning by the Enquiry Officer. In fact, the Hon'ble Apex Court in judgment rendered in C.A. Nos.6765-66/2014 was pleased to observe as follows at paragraph 11:

" 11. Applying the principle stated in Cholan Roadways Ltd. (Supra), what needs to be considered is about the probative value of the evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the respondent rashly or negligently. The material relied by the Department during the enquiry supported the fact that the respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the impact was so severe that the two vehicles were extensively damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied by the Department ..... "

44. The above is indicative of the nature of material placed before the Enquiry Officer. The material placed before the Enquiry Officer was clear cut and unambiguous facts which spoke for themselves and hence, the Apex Court concluded that the doctrine of Res ipsa loquitur was square applicable. On the contrary, in the case on hand, the labour court has observed that there is no material which unambiguously demonstrate the fact of unauthorised absence and in the opinion of this court it has rightly done so. The material placed before the Enquiry Officer is nothing but the version of the Depot Manager against whom the petitioner had expressed grievances with regard to allotment of work. In fact, he has alleged that he was posted on routes which entailed 10 to 11 hours duty and sometimes was forced to stay in remote places where there was no sanitation facilities much less living accommodation. The ambiguity is further compounded by the leave application. It is also pertinent to note that additional evidence and additional witnesses have been examined by the labour court at the instance of the petitioner only.

45. The learned counsel for the petitioner has placed reliance on the ruling reported in 2014 4 SCC108. The ingredients of the said case are not on pari materia with the facts involved herein. There the Hon'ble Apex Court was dealing with a case involving long and unauthorised absence without intimation to the employer despite repeated memoranda and reminders calling upon the delinquent to explain his unauthorised absence and to rejoin duty. The Apex Court was pleased to observe that a medical certificate submitted belatedly on 01.04.1997 i.e. after a delay of 8 months leads to the irresistible conclusion that the the respondent respondent had unauthorisedly absented himself from 28.08.1995. In the case on hand the critical factor which has not been explained by the Enquiry Officer is the leave application placed before it as Ex. M2.No material is placed by the employer before the Enquiry Officer to even demonstrate the falsity in the reasons ascribed for seeking leave. Hence, the reliance in the aforesaid ruling is of no avail. That apart, it is an admitted fact that the employer has in thousands of cases condoned unauthorised absence in respect of periods ranging from 150 to 200 days with light punishments. It is also a fact that the employer has consented to compromise several writ petitions involving unauthorised absence wherein, the workman has agreed to give up his claim in respect of back wages and restricted his claim for re instatement alone. Hence, no fault can be found with the opinion of the labour court with regard to the proportionality of the punishment.

46. The learned counsel for the petitioner has relied on multiple rulings rendered by this court which have been rendered following the aforestated rulings of the Apex Court.

47. The primary contention is that the labour court erred in relying on material other than those that were available before the Enquiry Officer. In support of this contention reliance is placed on the law laid down by the three judge bench of the Hon'ble Apex Court in the case of Martin Burn Ltd. V. R.N. Banergee reported in AIR 1958 SC 79.

48. She would draw the attention of the court to para 22 which held as follows:

" 22. The nature and scope of the enquiry before the Labour Appellate Tribunal under S. 22 of the Act has been the subject matter of decisions of this Court in Atherton West and Co. Ltd. V. Suti Mill Madoor Union, 1953 SCR 780:(AIR 1953 SC 241) (C), The Automobile Products of India Ltd. v.Rukmaji Bala, 1955-1 SCR 1241:(S) AIR 1955 SC 258) (D) and Lakshmi Devi Sugar Mills Limited v. Ram Sarup, 1956 SCR 916:(S) AIR 1957 SC 82) (E). In the last mentioned case this Court succinctly laid down the principles governing such enquiry and observed atp. 935 (of SCR):(at pp. 93-94 of AIR):

" The Tribunal before whom an application is made under that section, has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only only got got to to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge of punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban, and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization." (emphasis by this court). wherein, the Hon'ble Apex Court after relying on a catena of its own decisions more particularly on the ruling reported in AIR 1957 SC 82 was pleased to quote with approval and rely on the finding rendered therein which reads as follows:- " provided the employer is not acting mala fide or is not resorting to any unfair practice or victimization.".It is also relevant to quote the contents of para 23 & 25 and the conclusion of the Hon'ble Apex Court justifying the approach of the labour appellate tribunal which took upon itself the burden of determining whether on the material submitted before it by the appellant a prima facie case for termination was made out.

" 23. We have, therefore, got to consider whether in the instant case a prima facie case was made out by the appellant for terminating the service of the respondent and whether in giving the notice dated the respondent's service the appellant was motivated by any unfair labour practice or victimization.

25. This circumstance was considered by the Labour Appellate Tribunal as sufficient to entitle it to determine for itself whether a prima facie case for the termination of the respondent's service was made out by the appellant. It was open to the appellant to submit a charge-sheet to the respondent and institute a formal inquiry into his work and conduct. If that had been done and the appellant had, after holding such formal enquiry come to the conclusion that the respondent was guilty of the charges which were leveled against him and had then decided to terminate his service, the Tribunal could not have intervened and on its coming to the conclusion that a prima facie case for the termination of the service of the respondent was thus made out, it would have granted the appellant the permission asked for. Unfortunately for the appellant, in spite of the work and conduct of the respondent being demonstrably unsatisfactory and, therefore, justifying the conclusion that he was unsuitable to be retained in its service, the appellant did not hold any formal enquiry of the nature indicated above and did not afford to the respondent an opportunity to have his say in the matter of the charges leveled against him. The Labour Appellate Tribunal therefore rightly took upon itself the burden of determining whether on the material submitted before it by the appellant a prima facie case for the termination, of the respondent's service was made out by the appellant. "

49. Proceeding further the Hon'ble Apex Court after assessing the factual material on record was pleased to observe as follows:

" If, therefore, these essential ingredients were wanting, it cannot be said that the evidence led by the appellant before the Labour Appellate Tribunal was sufficient to establish a prima facie case for the termination of the respondent's service. "

Now this court applying the principles enunciated by the Apex court proceeds to examine whether the labour court has fallen into error by transgressing the parameters as settled by the Apex Court for the conduct of an enquiry. It is pertinent to note that not only has the Apex Court quoted with approval the law laid down in AIR 1957 SC 82, but proceeding further has taken upon itself the task to assess if the action of the employer in terminating the services was motivated by any unfair labour practice or victimization.

50. From the above, the irresistible conclusion follows is that that the tribunal may endeavour to examine a case by transgressing the parameters settled by the Apex Court if it is of the opinion that the action is tainted by unfair labour practice or victimization or malafides.

51. In the instant case, the labour court has not only considered the material before the enquiry officer, but also those that were placed before it by the petitioner itself in support of its serial application. The tribunal after examining the material has concluded that the appreciation of the leave letter (Ex.A- 3) by the enquiry officer leaves much to desire and that the same amounts to infringement of principles of natural justice and to arrive at that conclusion it has relied upon on the ruling reported in AIR 1985 SC 1121.Wherein the apex court has held that an enquiry report, is a quasi judicial enquiry must state the reasons for the conclusion. It cannot be an ipse dixit of the enquiry officer. It has to be a speaking order in the sense that conclusion is supported by cogent reasons. The copy of the enquiry report is produced as s Annexure B to the writ petition. On a perusal of the enquiry report, this court finds that the Enquiry Officer has merely recounted the contention of the management that the leave application is received belatedly on 24.08.2005 and that an employee can avail leave only after obtaining prior sanction and has proceeded to reject the same as being not of any help to the employee the respondent herein. In fact the appreciation is perse erroneous as the noting of the Depot Manager states otherwise. In fact no material is relied upon for the Enquiry Officer to arrive at the conclusion that the leave application is belated except the self serving statement of the management witness.

52. The reasoning to say the least is perverse the enquiry officer has not examined any material to either conclude that the leave application was belatedly received nor has he relied on any provision of the regulations or rules to accept the contention that no leave can be availed without prior sanction. That apart, the reasoning does not appeal to prudence also. It is beyond comprehension how a person who is ill can be expected to approach the authorities to obtain sanction and then proceed for treatment to the Hospital. If this is to be accepted as the legal position then, it would be open for the employer to contend, that an employee who has suffered grievous injuries in an accident or who is critically ill must come over to the office to make a leave application, wait for the sanction and thereafter proceed for treatment. This is nothing but absurdity and no provision of the regulation or rules is placed in support thereof. Hence, this court is of the considered opinion that the appreciation of evidence more particularly, (Ex.-M2/Ex.-A3) is vitiated by perversity. That apart, as held by the Hon'ble Apex Court in the case of Anil Kumar Vs. Presiding Officer, it was the bounden duty of the enquiry officer to record reasons and mere ipse dixit would not suffice the requirements of law as they do not tantamount to reasoning.

53. That apart it is seen that neither has the employer assailed the reason of ill health set out in the leave letter nor has the enquiry officer rendered a finding that the ground of ill health pleaded in the leave letter is false nor is even a issue framed. In the absence of such a finding, the only inescapable conclusion that a

prudent mind can arrive at is that the enquiry officer has deliberately ignored a material piece of evidence. Hence, the same is vitiated.

54. The next vitiating aspect of the case which the enquiry officer has deliberately ignored is the reports forwarded by the depot manager on 24.08.2005 and on 25.08.2005.Even as per the petitioner's contention a person is construed to have unauthorizedly absent himself and is required to obtain the permission of the Divisional Controller to report for duty only if he has continuously absented himself for 8 days. In the instant case, it is not in dispute that the respondent remained absent from 18.08.2005 and even before the passage of 8 days and despite the receipt of the leave letter has proceeded to forward a report to the Divisional Controller on the sixth day itself. That apart it is also not in dispute that the respondent was denied work on his return to duty on 29.08.2005. It is also not in dispute that no order or proceedings of the depot manager rejecting the leave application was forwarded to the respondent-workman. It is also not in dispute that though the fact of the workman reporting for duty on 29.08.2005 was brought to the notice of the Divisional Controller precious little action was taken to permit him to rejoin duty and it is also not in dispute that he rejoined duty only on 29.10.2005.Though it is contended that a call letter was issued on 05.09.2005, neither is it placed before the enquiry officer nor before the labour court. This only demonstrates the attitude and animosity harboured by the officers of the petitioner employer, towards the workman. It is also an indicator of the fact to what extent the petitioner's officers were willing to go to achieve their object. The petitioner cannot be heard complaining of the tribunal transgressing the parameters set down by the Hon'ble Apex Court for the short reason that it is the petitioner who paved the way for the same, by adducing additional evidence before the tribunal. Having placed additional material before the tribunal and having thereby called upon the tribunal to render a finding on that basis, the petitioner is estopped from contending otherwise. The petitioner cannot Approbate and Reprobate. That apart the tribunal is justified in perusing the material and rendering a finding based on the additional material placed before it as it has concluded that the petitioner is guilty of victimization.

55. It is further pertinent to note that apart from the additional materials placed before the labour court by the petitioner, the petitioner who got two more witnesses examined in support of the charges. In fact, AW2 was examined to speak about the alleged previous misconducts numbering 30 leading to an elaborate cross examination and demolition of the attempt by the petitioner corporation to portray him as a serial offender. Having invited the labour court to render a finding on the basis of the additional material placed before it, the petitioner cannot be heard complaining about the same.

56. One other factor which is of relevance is I.A. No.1, preferred by the respondent u/ s 11 of the I.D. Act. before the Labour Court. The said application was preferred praying the labour court to frame an additional issue as follows:

" Whether the respondent proves that the disciplinary authority/applicant had personal enmity towards the respondent and hence he misused his official disciplinary powers to pass the dismissal order. "

57. The very relief sought and the grounds urged in support of the said application prima-facie demonstrate that the workman was complaining of victimisation and unfair labour practices by certain officials of the corporation. In fact, I.A. No.III came to be preferred by the workman complaining that the attendance register extract which was marked before the enquiry officer was a doctored one and prayed for a direction to produce the original. The said application came to be allowed. In fact, exhibit A1 to A26 have been got marked through one Sri. Rangaswamy, the Enquiry Officer and retired Joint Law Officer previously in the service of the petitioner corporation. The answers elicited during his cross examination makes an interesting reading. When it was suggested to him that the enquiry pertained to unauthorised absence during the year 2006, he replies that he does not remember. Similar is the answer to another suggestion suggestion,, that in the said enquiry

the management had not examined any witnesses. In fact he has admitted that the address shown in the articles of charges, i.e., Exhibit Al and the address of the respondent described in Exhibit A4, A12, A13, A14, A16, A18, A19 and A25 are different. He also admits that the delinquent workman has explained as to why he could not answer to the Articles of Charges. He also admits that he has not considered nor given reasons to reject the same in his enquiry report. These are but a few admissions in the cross examination which are recorded and running to about 20 pages. In fact he has admitted that about 25 adjournments were granted on the request of the petitioner-employer and that between dates 05.09.2008 to 16.04.2009 neither the presenting officer nor the employer witnesses were present. He has also admitted that the wife of respondent has complained against the enquiry officer i.e. the witness, stating that the enquiry officer has given false reports against her on three occasions.

58. Thereafter, they have got examined a supervisor as AW2.On perusal of the evidence by way of affidavit it is seen that the core of the 3 paragraph evidence, let in by the said witness AW2 is that the service of the respondent was most unsatisfactory and that the respondent was involved in 31 cases for which he was imposed minor punishment in all cases. With regard to this witness the labour court has observed that in the cross examination the witness was not able to establish even a single instance of imposition of punishment in a manner known to law nor were the punishment orders placed before the labour court.

59. In the light of the above damning findings and observation, this court has bestowed its attention to the cross examination recorded over five pages. After a detailed perusal of the same, this court concurs with the finding rendered by the labour court. In fact, the respondent by further evidence dated 22.08.2012 which is titled as follows " Further Evidence Of The Applicant On Victimisation In Form Of Affidavit " has detailed innumerable instances and has also got marked exhibits R-22 to R-96 in support of the allegations. He has also got filed additional evidence in the form of an affidavit and also got marked exhibits R-97 to R-100.It is relevant and pertinent to note that the cross examination by the petitioner-employer on such a detailed affidavit and material, to say the least has been perfunctory.

60. It is also of utmost relevance to take note of the fact that, none of the allegations made by the respondent workman, pertaining to victimisation and unfair practices, have been denied by the petitioner-employer nor material placed to contradict the allegation let alone disproving them. In the absence of contradiction of the same, either by way of documentary or oral evidence, the labour court was right in holding that the respondent-workman has been victimised by the officials of the employer corporation. The allegations by the workman were neither bald nor vague or ambiguous. In fact he has named the officials who are inimical to him.

61. From the above discussion, the only inescapable conclusion that one can arrive at, is that, certain officials of the employer-corporation have embarked upon a witch hunt, with the sole intent of victimizing the respondent-workman to achieve their nefarious designs. Though this court concludes so, this court refrains from imposing and awarding cost to the respondent-workman as this court is of the considered opinion that this is a fit case where a liberty ought to be granted to the respondent workman to initiate appropriate proceedings to prosecute the employer-corporation and the concerned officials who have abused their powers resulting in loss of man hours and productivity to the corporation and for the unwarranted pain, suffering and hardship inflicted on the respondent workman. In the event, such a claim is made by the respondent workman and in the event the same being awarded, the respondent-corporation shall pay the same and thereafter take steps to positively recover the same from the concerned officials.

62. In the light of the above discussion, this court is of the considered opinion that the petition must fail and accordingly, the writ petition is dismissed.

63. No costs are imposed as liberty is reserved to the petitioner to agitate it separately and accordingly, I.A. No.1 stands disposed off in the light of the liberty granted to the petitioner to initiate appropriate proceedings.

In view of the dismissal of the writ petition I.A. No.2 and 3 do not survive for consideration.