

Parry and Co. Ltd. Vs. Presiding Officer, li Additional Labour Court, Madras and Others

Parry and Co. Ltd. Vs. Presiding Officer, li Additional Labour Court, Madras and Others

SooperKanoon Citation : sooperkanoon.com/819499

Court : Chennai

Decided On : Nov-17-1997

Reported in : 1997(3)CTC209

Judge : K. Govindarajan, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 10(1), 25L, 25N and 25N(7); [Factories Act, 1948](#) - Sections 2; [The Plantations Labour Act, 1951](#) - Sections 2

Appeal No. : W.P. Nos. 13286, 15066, 22474/1993, 11094/1994

Appellant : Parry and Co. Ltd.

Respondent : Presiding Officer, li Additional Labour Court, Madras and Others

Judgement :

ORDER

1. In W.P. Nos. 15066 and 13286 of 1993, the petitioners have prayed for issue of Writ of Certiorari, to quash the award dated January 8, 1993 passed by the first respondent in I.D. No. 171 of 1984. In W.P. Nos. 22474 of 1993 and 11094 of 1994, the petitioners, aggrieved against the portion of the said award granting only 50% of the backwages, have challenged the same.

2. E.I.D. Parry India Ltd., which is the first respondent in I.D. No. 171 of 1984 has filed W.P. No. 15066 of 1993 and Parry & Co. Ltd., which is the second respondent in I.D. No. 171 of 1984 has filed W.P. No. 13286 of 1993. Parry & Co. Ltd., is a Company incorporated under the Indian Companies Act, The E.I.D. Parry India Ltd., also is a company incorporated under the Indian Companies Act, which is a holding Company of M/s. Parry & Company Ltd. According to the management, Parry & Company is a commercial establishment engaged in commercial and agency business. It has been acting as a selling agent for the products of various Companies. Parry & Co., consists of various divisions, namely, engineering, general marketing, pharmaceuticals, shipping and travel. It was the agent for the products of Cynamid India Ltd., popularly known as 'Lederle' Products. According to the management, in December 1982, Cynamid India Ltd., informed the Parry & Company Ltd., about its intention to terminate the selling agency with effect from June 30, 1983. In view of such termination of the agency, according to the management, the volume of work in the various establishments of Parry & Co. Ltd., in the Southern and Eastern regions got considerably diminished and it was found that large number of workmen who were attending to the 'Lederle' products had become surplus to its requirement. The Board of Directors discussed about the same in the meeting held on June 27, 1983 and decided to retrench the surplus workmen. On the basis of the said decision, the management of Parry & Co. Ltd., decided that 75 workmen in the establishment of Madras and Southern branches/offices of Parry & Co. Ltd., should be retrenched from service. Similarly, in the establishment of Calcutta branch of Parry & Co. Ltd., namely in the Eastern region, workmen had to be retrenched in July 1983. According to the management, the seniority list was put up on the notice board at each place of the establishment of Madras and southern region branches/offices of Parry & Co. Ltd., on September 8, 1983 giving the names of all workmen in each category in which retrenchment was proposed, pending the seniority of each workmen and indicating the names of workmen sought to be retrenched from service. A copy of the seniority list was sent to the Union also. But the Union did not raise any objection for the seniority of any workman or the basis or principle under which the seniority was reckoned. On the basis of the said seniority list retrenchment notices were issued on July 15, 1983 and they were retrenched from the service on and from

September 15, 1983. Aggrieved against the said retrenchment, an Industrial Dispute was raised and the Government of Tamil Nadu in G.O. Ms. No. 451 (Labour) dated February 24, 1984, referred the matter under Section 10(1)(c) of the Industrial Disputes Act for adjudication to the II Additional Labour Court, Madras. The Scope of adjudication is 'whether the retrenchment of workers mentioned in Annexure-II is justified, and, if not, to what relief they are entitled. To compute the relief, if any, to be awarded in terms of money, if a company be so computed'. The said dispute was numbered as I.D. No. 171 of 1984.

3. A claim petition was filed on behalf of the workmen. In the said claim petition, the retrenchment was challenged mainly on the following grounds :-

(1) E.I.D. Parry India Ltd. and Parry & Company Ltd., cannot be treated differently and they are single establishment. So, the management should have prepared a common seniority list and the present seniority list published by the management cannot be sustained. On that basis the said common seniority list the junior most workmen should be retrenched from the said seniority list.

(2) The management has not complied with the requirements under Section 25-N of the said Act.

(3) The management has not complied with Rule 62 of the Rules framed under the said Act.

4. The management field counters by way of reply to the claim statements. According to the management, Parry & Co. Ltd., is only a Commercial establishment. As it is not an industry it need not follow the procedure contemplated under Section 25-N of the said Act. It was its further case that the seniority list was published in accordance with the Rules, on September 8, 1983 and a copy of the same was also sent to the unions which did not raise any objection regarding the same and so the retrenchment made on September 15, 1983 is in accordance with the provisions of the Act and Rules. It is further contended that Parry & Co. IAD., and E.I.D. Parry India Ltd., are two different Companies incorporated under the provisions of the Indian Companies Act. So, E.I.D. Parry Ltd., and Parry & Co. Ltd., cannot be treated as one single

establishment. On the above basis the management justified the retrenchment of 75 workers.

5. The Labour Court in its order dated January 8, 1993 found that the management complied with Rule 62 of the Rules and also Section 25-F of the said Act, that the management has not complied with the requirement under Section 25-N of the said Act, that the workers mentioned in Nos. 26, 55 and 62 are not entitled to any relief under the reference and that the retrenchment with respect to others cannot be sustained and they are entitled for reinstatement with backwages at 50% of the salary from the date of retrenchment. Aggrieved against the same, the managements have filed the above Writ Petitions, and, on behalf of the workmen, W.P. Nos. 22474 of 1993 and 11094 of 1994 have been filed aggrieved against the finding that they are entitled to only 50% of the backwages.

6. In the light of the above rival contentions we have to decide the following issues in this case :-

(1) Whether Section 25-N of the said Act will apply to the management and if it so applies, whether they have complied with requirement of the same or not.

(2) Whether the seniority list published by the management for the propose of retrenchment is in accordance with the provisions of the Act and Rules.

(3) Whether the Labour Court is correct in awarding only 50% of the backwages in favour of the workmen while setting aside the retrenchment.

7. According to the petitioners/managements, they need not comply with Section 25-N of the said Act as Parry & Co. Ltd., is not an industrial establishment. According to the workmen since the managements have not complied with Section 25-N of the said Act the retrenchment in question cannot be sustained.

8. To decide the said issue, it is necessary and will be useful to extract the relevant provisions of the said Act and to look into the scope of Section 25-N of the said Act. Section 25-N of the said Act insofar as it relates to the present discussion is as follows :-

'25-N. Conditions precedent to retrenchment of workmen - (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, - (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.'

9. The said Section will apply only to an industrial establishment which has been defined under Section 25-L of the said Act, which reads as follows :-

'25-L Definitions - For the purpose of this Chapter,

(a) 'Industrial establishment' means -

(i) a factory as defined in clause (m) of Section 2 of the [Factories Act, 1948](#) (63 of 1948);

(ii) a mine as defined in clause of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951);

(b) Notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2,
-

(i) in relation to any company in which not less than fifty-one per cent, of the paid up, share capital is held by the Central Government, or

(ii) in relation to corporation (not being a corporation referred to in sub-clause (i) of clause (a) of Section (2) established by or under any law made by Parliament.

The Central Government shall be the appropriate Government.'

TO appreciate the scope of the said definition, we have to refer to Section 2(m) of the Factories Act (63 of 1948), which is as follows :-

'(m) 'factory' means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) wherein twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place);

(Explanation I) - For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account;

(Explanation II) - For the purpose of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or, part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.'

11. The definition with respect to manufacturing process as defined under Section 2(k) of the Factories Act has to be looked into. Section 2(k) of the Act reads as follows :-

'(k) 'manufacturing process' means any process for - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting finishing or breaking up ships or vessels; or

(vi) preserving or storing any articles in cold storage.'

12. The learned senior counsel appearing for the managements placing reliance on the said provisions has submitted that the management is doing only agency business and there is no manufacturing process being carried on to bring Parry & Co. Ltd. under the mischief of Section 25-N of the said Act. The learned counsel has also submitted that there is no pleading in the claim petition that Parry & Co. Ltd. has an industrial establishment wherein 300 or more workmen are employed. According to the learned counsel the activities in Parry & Co. Ltd. cannot be said as manufacturing one. If there is no manufacturing activities, then Section 25-N of the said Act would not come into play.

13. In the claim petition, in paragraph 24, the Union has stated that the management has not obtained prior permission under Section 25-N of the said Act, and, since the management did not make any application at all, the retrenchment is illegal. In answer to this Parry & Co. Ltd., in its counter has stated that the Parry & Co Ltd., is a commercial establishment and Section 25-N of the said Act would not apply to this commercial establishment. The Labour Court in its order came to the conclusion that Parry & Co. Ltd., is an industry and so non-compliance of Section 25-N of the said Act would make the retrenchment illegal.

13 A. The learned counsel appearing for the petitioners/managements has also submitted that the claimants have not proved that Parry & Co. Ltd., has been carrying on some manufacturing process so as to enable them to bring them into the mischief of Section 25-N of the Act. According to the learned counsel, though to in the counter it is stated that 'the agency involved receiving. The products in bulk, ware-housing, unpacking and packing (emphasis is mine) according to the

customers requirements and despatching products to various dealers/customers' it cannot be said that such type of packing would come into the scope of Section 2(k) of the Factories Act. In support of his submission, the learned counsel has relied on the decision in *E. Hare, Sales Director, The Imperial Tobacco Company Limited v. State* 1955 I L R All 683 wherein it is held as follows, with respect to the scope of Section 2(k) of the Factories Act :-

'As cursory reading of the definition may lead one to think that any kind of packing of an article or a substance would fall within the definition of a 'manufacturing process' But, in my view, a careful consideration of the words and the scheme of the enactment would lead to a contrary result. The various notes mentioned in the definition have got to have a relation to the control object, namely the 'manufacturing process'. If this were not so, then extraordinary results may follow. Take, for example, an oilman's store which engages twenty-five persons as salesmen and where articles purchased by customers are every day packed in order to be handed over to the customers or to facilitate transport of these articles. If the definition were as wide, and if the definition was to be entirely divorced from the idea which is necessarily conveyed by the two words defined, namely 'manufacturing process' then every oilman's store would become a factory. There are other curious results that are likely to follow. Take an illustration like this. There is a joint Hindu family consisting of twenty eight members. The Karta of the family is a believer in the virtues of self-help and manual labour, and he insists that every member of the family should clean his own utensils, wash them and then properly pack them for storage after every meal more than twenty people are engaged in the act of washing and cleaning and thereafter of 'packing'. Can it be said that since this is so, the premises of the joint family becomes a factory, I may notice here that the members of the joint family would be 'workers' within the definition of Section 2(1) of the Act (for it defines a 'worker' as a person employed ... whether for wages or not in cleaning any part of the machinery or premises used for a manufacturing process, or the subject of the manufacturing process) in the event of our accepting the interpretation which is put on behalf of the State on the words 'manufacturing process'. In my view, the definition of worker is clearly indicative of the fact that merely packing or cleaning or even repairing, altering or ornamenting etc., would not fall within the definition unless and until it can be shown that such

packing, cleaning, ornamenting, etc. is a sequence or rectal connected with, a manufacturing process.

14. The learned counsel has further relied on the Division Bench decision of Allahabad High Court in *S. G. P. Mills v. Inspector of Factories* : AIR1969 All547 wherein the Division Bench also has relied on the above said decision, holding as follows :-

'It seems to us that the packing that is aimed at in Section 2(k)(i) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series operations that taken together constitute the manufacture of the article for sale. In the present case, however, the packing is not of a finished article but of the raw material, and this packing i.e., the baling of the grass, has nothing to do with making the article fit or convenient for sale. Many kinds of raw materials have to be packed for delivery to the factory by being placed in sacks, baskets or packing cases or by being tied into bundles; but we do not think it was the Legislature's intention that such preliminary packing of the raw material should be treated as a 'manufacturing process'. It is significant that in the list of processes set forth in Section 2(k)(i), 'packing' comes immediately after 'finishing', a circumstance which lends support to the contention that the packing referred to is the process undertaken after the article has been manufactured and finished.'

On the basis of the above said decisions, the learned Senior Counsel appearing for the management has submitted that mere packing will not come within the scope of Section 2(k) of the Factories Act to construe that it is manufacturing process.

15. In the present case even according to the managements, as stated earlier, they are receiving the product in bulk and they are unpacked and packed according to the customers requirement and despatching the products to various dealers and customers. Such an act has to be construed as manufacturing process on the basis of the decision reported in : AIR1969 All547 (supra) wherein it is held that packing of the finished manufactured articles which is done to facilitate or to make possible its sale or transport for sale to customers. This form

of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for Sale. Even according to the counter, Parry & Co. Ltd., used to receive the finished manufactured articles in bulk and repack the same according to the customers' requirement and despatch the products to various dealers/customers. This form of packing, according to the Division Bench of the Allahabad High court would come within the scope of Section 2(k) of the Factories Act. So, the submission of the learned counsel that the packing process being made by Parry & Co .Ltd., cannot be construed as manufacturing process cannot be sustained.

16. Relying on Section 25-K of the Industrial Disputes Act, the learned counsel has submitted that Chapter V-B will apply to an Industrial establishment in which not less than 300 workmen are employed. The case of the managements is that there is no evidence before the Labour Court to show that anyone of the establishments of Parry & Co. Ltd., employed more than 300 workers so as to construe as a factory. According to the learned counsel each of the department has to be construed as separate establishment. But this submission is contrary to the stand taken before the Labour Court. In the reply to the claim petition it is stated that seniority list is prepared with respect to all the departments of the establishment/company. In the written argument filed on behalf of Parry & Co. Ltd., it is stated that no employee was appointed for any particular division or agency- Employees were transferred from one division to another. Therefore 'Lederle' agency cannot be treated as a separate establishment nor the retrenchment be confined to workmen attending to the work of 'Lederle' agency. When retrenchment is to be effected in a particular category of workmen, seniority should be reckoned taking into account all the workmen employed in that category in the entire establishment. The seniority list published by the managements mentioned as Ex.W. 1 will also clearly show that the number of workmen in the establishment are more than 300. The submission of the learned counsel that each department should be taken as separate establishment cannot be accepted in view of the stand taken by the management itself.

17. It is the submission of the learned counsel that none of the departments of the petitioners/managements is a factory so as to enable them to take a licence under

the Factories Act. Such submission cannot be accepted in view of the decision reported in *S. G. C. & D. T. E. U. v. S. G. C. & D. T. Ltd. & Anr.* : (1986)ILLJ490SC wherein it is held as follows at P 499 :

'The first thing to notice about Cl. (m) of Sec-2 of the Factories Act is that it defines a 'factory' meaning 'any premises including the precincts thereof' and it does not define it as meaning 'any one premises including the precincts thereof'. Under this definition, therefore it is not required that the industrial establishment must be situate in any one premises only. The second thing to notice about Cl. (m) is that the premises must be such as in any part thereof a 'manufacturing process' is being carried on. The expression 'manufacturing process' is defined in Cl. (k) of Sec. 2 of the Factories Act. The said Cl. (k) is as follows :-

'(k) 'manufacturing process 'means for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or,

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photo-gravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting; finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

Thus, the different processes set out in sub Cl. (i) of Cl. (k) of Sec. 2 must be with a view to use, sale, transport, delivery or disposal of the article or substances manufactured.

In the modern industrial world it is often not possible for all processes which ultimately result in finished produce to be carried out at one place and by reason of

the complexity and number of such processes and the acute shortage of accommodation in many cities, several of these processes are often carried out in different buildings situate at different places. Further, in many cases, these functions are distributed amongst different departments and divisions of a factory and such departments, and divisions are housed in different buildings. That a factory can be housed in more than one building is also clear from Sec. 4 of the Factories Act which provides as follows :-

'4. Power to declare different departments to be separate factories or two or more factories to be a single factory - The State Government may, on an application made in this behalf by an order in writing, that for all or any of the purposes of this Act, different department or branches, of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory.

With respect to the contention that each of those departments covered by a licence as per Shops and Establishments Act and that they need not take licence with respect to those departments under the Factories Act and so it cannot be construed as industrial establishment, also cannot be sustained, in view of the above said decision wherein it is held as follows :- 'The next contention raised on behalf of the Company was that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act and, therefore, they could not be treated as one. According to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and then Churchgate Division into two separate legal entities. It is as difficult to follow the contention of the Company as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered as a separate legal entity except where a registration of incorporation is obtained under the Companies Act. The Factories Act and the Bombay Shops and Establishments Act are regulatory statutes and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed in the factory of the establishment, as the case may be.'

18. In this case from the above discussion it can be seen that more than 300 workmen were working in the manufacturing process including, viz., unpacking, packing in the departments of the managements. Moreover it is the specific case of the managements before the Labour Court that, 'for the purpose of retrenchment, Parry & Co. Ltd., should be deemed to have worked in one single Industrial Establishment' (emphasis is mine). In view of the above, the Labour Court is correct in holding that the petitioners/managements are industrial establishments coming within the purview of Section 25-N of the said Act. In this case, admittedly, the managements have not obtained prior permission as contemplated under Section 25-N of the said Act.

19. For the non-compliance of Section 25-N of the Act, an alternative submission was made by the learned Senior Counsel saying that on the date of retrenchment, Section 25-N of the said Act was not in the statute book. Section 25-N was struck down by the Division Bench of this Court on March 20, 1980 in and by the decision reported in *Gateway Auto Services v. Regional Director, E. S. I. Corporation* : (1980)IILLJ255Bom . An appeal was filed against the said decision. On that basis the learned counsel has submitted that even if the managements wanted to comply with the same, it was not possible and so notwithstanding the fact that the is Apex Court reversed the said decision of the Madras High Court in *Meenakshi Mills v. The Management of Meenakshi Mills* : (1992)IILLJ294SC the management should suffer for non compliance of Section 25-N of the said Act. The said Judgment was believed on May 15, 1992. Such an argument, if accepted, would amount to allowing the parties to apply the effect of the decision of the Apex Court prospectively i.e. from May 15, 1992. But, in view of the decision of the Apex Court upholding the validity of Section 25-N of the Act it has to be taken that Section 25-N of the Act had always been in the statute book. In this case though the Supreme Court was quite conscious about the decision of the Madras High Court, reported in : (1980)IILLJ255Bom stated supra and the subsequent amendment under Act 49, 1984, the Supreme Court did not mention anything in its decision reported in : (1992)IILLJ294SC about the application of the same prospectively. Ignoring the decision of the Supreme Court, upholding the validity of the provision, this Court cannot at this stage hold that the managements need not comply with the requirement under Section 25-N of the said Act.

20. In : [1967]2SCR762 , Golak Nath v. State of Punjab the Apex Court had dealt with the powers of the Court regarding the scope of retrospective operation of law declared by the Supreme Court, which is as follows :-

'As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;

(2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India;

(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice, of the cause or matter before, it'

21. Mr. Prakash, learned counsel appearing for the Union has submitted that the finding of the fact recorded by a Tribunal cannot be challenged in the proceedings for issue of a writ of certiorari on the ground that the relevant material evidence adduced before the Tribunal are inadequate or irrelevant to sustain the impugned finding. In support of his submission he has relied on the decision reported in Syed Yakoob v. Radhakrishnan : [1964]5SCR64 wherein it is held as follows :-

'The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Court or Tribunals; these are cases where orders are passed by inferior Courts or Tribunals without Jurisdiction or in excess of it, or as a result of fair exercise of Jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving opportunity to be an heard to the party affected by the order; or where the procedure adopted in dealing with the dispute opposed to principles of

natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned findings. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which so can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Court under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque* : [1955]1SCR1104 , *Nagendra Nath v. Commr. of Hills Division* : [1958]1SCR1240 and *Kaushalya Devi v. Bachittar Singh*, : AIR 1960 SC1168 .

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law corded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provisions, or sometimes in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the

relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face, of the record as such and the Court may need an argument to discover the said error but there can be no doubt that where can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision reasonably capable of two construction and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.'

22. In the present case it cannot be said that now the Tribunal has come to the conclusion not on the basis of any material or on material is available to support the findings of the Tribunal. The above discussion will clearly show that Section 25-N of the said Act will apply to Parry & Co. Ltd. The Petitioners management had not obtained permission under Section 25-N of the said Act and so the order of the Labour Court has to be sustained.

The Labour Court found that the seniority list has been published in accordance with law after complying with Rule 62 of the Rules framed under the Act. The learned counsels appearing for the respondent/workman so as to enable them to sustain the order passed by the Labour Court have submitted that the seniority list published is not in accordance with the Rules. Rule 62 of the Rules is as follows :-

'Maintenance of seniority list of workmen : (1) The employer shall prepare and maintain a list of all workmen in each category employed in his establishment, their names being arranged according to seniority of service in the category

concerned.

He shall make out copies of the list of all workmen in the particular category in which retrenchment is contemplated indicating in it clearly the names to all those who are proposed to be retrenched and cause copies of such list to be pasted on the notice board in a conspicuous place in the premises of the establishment easily accessible to the workmen, at least seven days before the date of actual retrenchment. Copies of the list shall also be sent to the registered trade union connected with the industrial establishment.

(2) As soon as a retrenchment is effected, he shall also prepare another list of workmen who were retrenched at the time as also those retrenched during the (preceding 24 months) their names being arranged according to the seniority of their service in the category and cause copies thereof to be pasted on the notice board in a conspicuous place in the premises of the establishment easily accessible to the retrenched workmen. Copies of the list shall also be sent to the registered trade union connected with the Industrial establishment'.

24. According to the said Rule, the employer shall prepare and maintain the list of all workmen in each category employed in his establishment and he should prepare copies of the said list of all workmen in a particular category in which retrenchment is contemplated and the copies of such list should be pasted in the notice board in a conspicuous place of the establishment easily accessible to the workmen at least 7 days before the actual date of retrenchment. It is admitted that the seniority list was published on September 8, 1983 and retrenchment was effected on September 15, 1983. Even on the basis of the admitted fact, there cannot be any clear seven days between the abovesaid dates. Hence the findings of the Labour Court that the managements have complied with the requirement under Rule 62 of the Rules cannot be sustained. As stated above, in between the two dates, there will be only six clear days and not seven clear days as held by the Labour Court.

25. Moreover, in view to the above discussion, I come to the conclusion that the entire establishment of Parry & Co. Ltd., should be treated as one establishment. It is also admitted that the entire workmen of Parry & Co. Ltd. have not been

included in the seniority list. The employees working in northern region have not been included in the seniority list. Without including those employees the correct seniority list could not have been arrived at. This aspect of the matter, the Labour Court, has not at all considered in its order. So, the finding of the Labour Court that the management had complied with Rule 62 of the Rule cannot be sustained.

26. Once the retrenchment cannot be sustained the benefits given under sub-section (7) of Section 25-N of the said Act should be given to the workmen. Sub-section (7) of Section 25-N of the said Act is as follows :-

'(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefit under any law for the time being in force as if no notice had been given to him.'

In this case the Labour Court has not given any valid reason to restrict the award only to 50% of the backwages; merely because the case is not disposed of for about ten years, though reference was made in 1984 itself the benefits for which the workmen are entitled to in law could not be denied. In the absence of any materials before the Labour Court to prove that the workmen would not have remained unemployed during the pendency of the reference, the finding of the Labour Court in this regard cannot be sustained.

27. In view of the above discussion, W.P. Nos. 13286 and 15066 of 1993 are dismissed. W.P. Nos 22474 of 1993 and 11094 of 1994 are allowed. No costs.